

# COMMITTEE REPORT

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## MADAM PRESIDENT:

The Senate Committee on Utilities and Technology, to which was referred Senate Bill No. 299, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

- 1           Page 1, delete lines 1 through 17, begin a new paragraph and insert:  
 2           "SECTION 1. IC 8-1-2-92 IS AMENDED TO READ AS  
 3           FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 92. (a) Every license,  
 4           permit, or franchise granted after April 30, 1913, to any public utility  
 5           shall have the effect of an indeterminate permit subject to the  
 6           provisions of this chapter, and subject to the provisions that:  
 7                 (1) the license, franchise, or permit may be revoked by the  
 8                 commission for cause; or ~~that~~  
 9                 (2) the municipality may purchase **or condemn** the property of  
 10            ~~such public utility~~, as provided in ~~this section~~: **IC 8-1.5-2.**  
 11           Any such municipality is authorized to purchase such property and  
 12           every such public utility is required to sell such property at the value  
 13           and according to the terms and conditions as provided in ~~this chapter~~:  
 14           **IC 8-1.5-2.**  
 15                 (b) If this chapter should be repealed or annulled, then all such  
 16           indeterminate franchises, permits, or grants shall cease and become  
 17           inoperative, and in place thereof such utility shall be reinstated in the  
 18           possession and enjoyment of the license, permit, or franchise  
 19           surrendered by such utility at the time of the issue of the indeterminate  
 20           franchise, permit, or grant; but in no event shall such reinstated license,  
 21           permit, or franchise be terminated within a less period than five (5)

1 years from the date of the repeal or annulment of this chapter.

2 SECTION 2. IC 8-1-2-93 IS AMENDED TO READ AS FOLLOWS  
 3 [EFFECTIVE JULY 1, 2009]: Sec. 93. Any public utility accepting or  
 4 operating under any indeterminate license, permit, or franchise granted  
 5 after April 30, 1913, shall by acceptance of any such indeterminate  
 6 license, permit, or franchise be deemed to have consented to a future  
 7 purchase **or condemnation** of its property including property located  
 8 in contiguous territory within six (6) miles of the corporate limits of  
 9 such municipality by the municipality in which such utility is located,  
 10 at the value and under the terms and conditions as provided in ~~this~~  
 11 ~~chapter, IC 8-1.5-2~~, and shall thereby be deemed to have waived the  
 12 right of requiring the necessity of such taking to be established by the  
 13 judgment of a court, and to have waived all other remedies and rights  
 14 relative to condemnation, except such rights and remedies as are  
 15 provided in ~~this chapter IC 8-1.5-2~~ and shall have been deemed to have  
 16 consented to the revocation of its license, permit, or franchise by the  
 17 commission for cause.

18 SECTION 3. IC 8-1.5-2-7 IS AMENDED TO READ AS  
 19 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 7. (a) A certificate of  
 20 public convenience and necessity is not required as a condition  
 21 precedent to the owning, leasing, acquisition, construction, or operation  
 22 of a utility by a municipality, even if there is a public utility engaged in  
 23 a similar service. The acquisition of electric utility property and  
 24 assignment of a municipal electric utility's service area are, however,  
 25 subject to the provisions of IC 8-1-2.3 and IC 8-1-2-95.1.

26 (b) A municipality that wants to own and operate, **including by**  
 27 **purchase or condemnation under IC 8-1-2-92, IC 8-1-2-93, or**  
 28 **another law**, a utility where there is a public utility engaged in a  
 29 similar service:

30 (1) under a franchise granted by the municipality; or

31 (2) under an indeterminate permit as defined in IC 8-1-2-1;

32 ~~may~~; **shall**, after a hearing ~~as provided by~~ **under** section 10 of this  
 33 chapter and an election ~~as provided~~ **required** by section 16 of this  
 34 chapter, declare by ordinance that public convenience and necessity  
 35 require the establishment, **including by purchase or condemnation**  
 36 **under IC 8-1-2-92, IC 8-1-2-93, or otherwise**, of a municipally  
 37 owned utility. **However, an election under section 16 of this chapter**  
 38 **is not required if the municipality and the public utility enter into**  
 39 **a mutually acceptable agreement for the municipality's acquisition**  
 40 **of the property of the public utility, including the compensation**  
 41 **paid by the municipality to the public utility. An ordinance adopted**  
 42 **under this subsection is final."**

1 Page 2, line 4, after "utility," insert "**or under section 15 of this**  
2 **chapter for the condemnation of the property of a public utility,**".

3 Page 2, delete lines 19 through 38, begin a new paragraph and  
4 insert:

5 "**(e) This section does not apply to the acquisition of a subject**  
6 **utility company under IC 8-1-30-5.**

7 SECTION 5. IC 8-1.5-2-15 IS AMENDED TO READ AS  
8 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 15. (a) **Before a**  
9 **municipality may exercise the power of eminent domain under**  
10 **IC 8-1-2-92, IC 8-1-2-93, or otherwise, to acquire the property of**  
11 **a public utility, the municipality shall make a good faith offer to**  
12 **purchase the property of the public utility.**

13 (b) If the municipality and the owners of a ~~the~~ public utility are  
14 unable to agree upon a price to be paid for the property of the public  
15 utility, the municipality may:

16 (1) ~~by ordinance declare that a public necessity exists for the~~  
17 ~~condemnation of the utility property;~~ **exercise the power of**  
18 **eminent domain;** and

19 (2) bring an action in the circuit or superior court of the county  
20 where the municipality is located against the utility for the  
21 condemnation of the property.

22 ~~(b) An ordinance adopted under subsection (a) is final.~~

23 ~~(c) For the purpose of acquiring the property of a public utility under~~  
24 ~~subdivision (2), the municipality (†) may shall~~ exercise the power of  
25 eminent domain ~~in accordance with IC 32-24;~~ and (2) is required only  
26 to establish the necessity of taking as this chapter requires. **under**  
27 **IC 32-24-1.**

28 ~~(d) (c)~~ The provisions of this section do not apply to the acquisition  
29 of:

30 (1) electric utility property or the assignment of service areas  
31 covered by IC 8-1-2.3 and IC 8-1-2-95.1; **or**

32 (2) **a subject utility company under IC 8-1-30-5.**"

33 Page 3, after line 16, begin a new paragraph and insert:

34 "SECTION 7. IC 32-24-2-5 IS AMENDED TO READ AS  
35 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 5. (a) **Except as**  
36 **provided in subsection (b), if:**

37 (1) a municipality has the power to acquire property under this  
38 chapter; or

39 (2) another statute provides for proceedings by a municipality for  
40 acquiring property under this chapter;

41 the board exercising those powers may proceed under IC 32-24-1  
42 instead of this chapter.

1           **(b) If a municipality acquires property under IC 8-1.5-2, the**  
 2           **municipality shall proceed under IC 32-24-1 instead of this**  
 3           **chapter.**

4           SECTION 8. IC 32-24-2-6 IS AMENDED TO READ AS  
 5           FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 6. (a) This chapter  
 6           applies if the works board of a municipality wants to acquire property  
 7           for the use of the municipality or to open, change, lay out, or vacate a  
 8           street, an alley, or a public place in the municipality, including a  
 9           proposed street or alley crossings of railways or other rights-of-way.  
 10          **However, this chapter does not apply if a municipality wants to**  
 11          **acquire the property of a public utility (as defined in IC 8-1-2-1).**

12          (b) The works board must adopt a resolution that the municipality  
 13          wants to acquire the property. The resolution must describe the  
 14          property that may be injuriously or beneficially affected. The board  
 15          shall have notice of the resolution published in a newspaper of general  
 16          circulation published in the municipality once each week for two (2)  
 17          consecutive weeks. The notice must name a date, at least ten (10) days  
 18          after the last publication, at which time the board will receive or hear  
 19          remonstrances from persons interested in or affected by the proceeding.

20          (c) The works board shall consider the remonstrances, if any, and  
 21          then take final action, confirming, modifying, or rescinding its original  
 22          resolution. This action is conclusive as to all persons."

23          Renumber all SECTIONS consecutively.

(Reference is to SB 299 as introduced.)

**and when so amended that said bill do pass .**

Committee Vote: Yeas 7, Nays 3.

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**Senator Charbonneau**