



January 26, 2010

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## HOUSE BILL No. 1107

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DIGEST OF HB 1107 (Updated January 25, 2010 10:12 pm - DI 75)

**Citations Affected:** IC 8-1.5.

**Synopsis:** IURC review of certain water rates. Provides that: (1) a municipality that operates a water utility; or (2) users of the waterworks located outside the corporate boundaries of the municipality; may petition the utility regulatory commission (IURC) under certain circumstances for review and revision of the rates and charges imposed on the users. Requires the IURC to prescribe the form and content of the petition. Provides that a petition is deemed approved if the IURC does not approve or disapprove the petition within 120 days. Authorizes the IURC to adopt rules.

**Effective:** July 1, 2010.

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### Battles, Thompson, Frizzell, Lutz

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January 5, 2010, read first time and referred to Committee on Commerce, Energy, Technology and Utilities.  
January 26, 2010, amended, reported — Do Pass.

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HB 1107—LS 6891/DI 103+



January 26, 2010

Second Regular Session 116th General Assembly (2010)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2009 Regular and Special Sessions of the General Assembly.

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## HOUSE BILL No. 1107

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A BILL FOR AN ACT to amend the Indiana Code concerning utilities.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 8-1.5-3-8.1 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 8.1. (a) This section  
3 applies to all municipally owned water utilities that have been taken  
4 out of the jurisdiction of the commission for the approval of rates and  
5 charges.

6 (b) After the introduction of the ordinance establishing the rates and  
7 charges under section 8 of this chapter, but before the ordinance is  
8 finally adopted, the municipal legislative body shall hold a public  
9 hearing at which users of the waterworks, owners of property served or  
10 to be served by the waterworks, and other interested persons may be  
11 heard concerning the proposed rates and charges. Notice of the hearing,  
12 setting forth the proposed schedule of rates and charges, shall be:

- 13 (1) published in accordance with IC 5-3-1 (IC 5-3-1-1 through  
14 IC 5-3-1-9);  
15 (2) mailed to owners of vacant or unimproved property if the  
16 ordinance includes a fee for water service to vacant or  
17 unimproved property; and

HB 1107—LS 6891/DI 103+



1 (3) mailed to users of the waterworks located outside the  
 2 municipality's corporate boundaries.  
 3 The notice may be mailed in any form so long as the notice of hearing  
 4 is conspicuous. The hearing may be adjourned from time to time.  
 5 **Notice mailed under subdivision (3) must include a statement that,**  
 6 **following adoption of the ordinance, users of the waterworks**  
 7 **located outside the municipality's corporate boundaries may**  
 8 **petition the commission under section 8.3 of this chapter to review**  
 9 **and adjust the rates and charges imposed on the users.**  
 10 (c) After the hearing, the municipal legislative body shall adopt the  
 11 ordinance establishing the rates and charges, either as originally  
 12 introduced or as modified. A copy of the schedule of rates and charges  
 13 adopted shall be kept on file and available for public inspection in the  
 14 offices of the board and the municipal clerk. **The ordinance must**  
 15 **state in plain language the percentage difference between the rates**  
 16 **and charges imposed on:**  
 17 **(1) users of the waterworks located outside the corporate**  
 18 **boundaries of the municipality; and**  
 19 **(2) users of the waterworks located within the corporate**  
 20 **boundaries of the municipality.**  
 21 (d) The rates and charges established for any class of users or  
 22 property shall be extended to cover any additional property that is  
 23 subsequently served and falls within the same class, without any  
 24 hearing or notice.  
 25 (e) The municipal legislative body may change or readjust the rates  
 26 and charges in the same manner as they were established.  
 27 (f) Rates and charges collected under this chapter are considered  
 28 revenues of the waterworks.  
 29 SECTION 2. IC 8-1.5-3-8.2 IS AMENDED TO READ AS  
 30 FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 8.2. (a) This section  
 31 applies to all municipally owned water utilities that have been taken  
 32 out of the jurisdiction of the commission for the approval of rates and  
 33 charges.  
 34 (b) Owners of property connected or to be connected to and served  
 35 by the waterworks authorized under this chapter may file a written  
 36 petition objecting to the rates and charges of the waterworks so long as:  
 37 (1) the petition contains the names and addresses of the  
 38 petitioners;  
 39 (2) the petitioners attended the public hearing provided under  
 40 section 8.1 of this chapter;  
 41 (3) the written petition is filed with the municipal legislative body  
 42 within five (5) days after the ordinance establishing the rates and

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1 charges is adopted under section 8.1 of this chapter; ~~and~~  
 2 (4) the written petition states specifically the ground or grounds  
 3 of objection; **and**  
 4 **(5) the petitioners have not filed a petition with the**  
 5 **commission under section 8.3 of this chapter appealing the**  
 6 **same rates and charges of the waterworks.**

7 (c) Unless the objecting petition is abandoned, the municipal clerk  
 8 shall file in the office of the clerk of the circuit or superior court of the  
 9 county a copy of the rate ordinance or ordinances together with the  
 10 petition. The court shall then set the matter for hearing at the earliest  
 11 date possible, which must be within twenty (20) days after the filing of  
 12 the petition with the court. The court shall send notice of the hearing  
 13 by certified mail to the municipality and to the first signer of the  
 14 petition at the address shown on the petition. All interested parties shall  
 15 appear in the court without further notice, and the municipality may not  
 16 conduct any further proceedings concerning the rates and charges until  
 17 the matters presented by the petition have been heard and determined  
 18 by the court.

19 (d) At the discretion and upon direction of the court, the petitioners  
 20 shall file with the petition a bond in the sum and with the security fixed  
 21 by the court. The bond must be conditioned on the petitioners' payment  
 22 of all or part of the costs of the hearing and any damages awarded to  
 23 the municipality if the petition is denied, as ordered by the court.

24 (e) Upon the date fixed in the notice, the court shall, without a jury,  
 25 hear the evidence produced. The court may confirm the decision of the  
 26 municipal legislative body or sustain the objecting petition. The order  
 27 of the court is final and conclusive upon all parties to the proceeding  
 28 and parties who might have appeared at the hearing, subject only to the  
 29 right of direct appeal. All questions that were presented or might have  
 30 been presented are considered to have been adjudicated by the order of  
 31 the court, and no collateral attack upon the decision of the municipal  
 32 legislative body or order of the court is permitted.

33 (f) If the court sustains the petition, or if the petition is sustained on  
 34 appeal, the municipal legislative body shall set the rates and charges in  
 35 accordance with the decision of the court.

36 SECTION 3. IC 8-1.5-3-8.3 IS ADDED TO THE INDIANA CODE  
 37 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 38 1, 2010]: **Sec. 8.3. (a) This section applies to a municipally owned**  
 39 **water utility that:**

- 40 **(1) has been taken out of the jurisdiction of the commission**
- 41 **for the approval of rates and charges; and**
- 42 **(2) provides water service to users located outside the**

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corporate boundaries of the municipality.

(b) If the municipal legislative body adopts an ordinance under section 8.1 of this chapter that imposes rates and charges on users of the waterworks located outside the corporate boundaries of the municipality that exceed by more than twenty-five percent (25%) the rates and charges imposed on users of the waterworks located within the corporate boundaries of the municipality, either or both of the following may petition the commission to review and adjust, if necessary, the rates and charges imposed on users of the waterworks located outside the corporate boundaries of the municipality:

- (1) The municipality.
- (2) The lesser of:
  - (A) ten percent (10%) of; or
  - (B) twenty-five (25);
 users of the waterworks located outside the corporate boundaries of the municipality.

A petition must be filed not more than fourteen (14) days after the date on which the ordinance is adopted.

(c) The filing of a petition with the commission under subsection (b) stays the ordinance adopted under section 8.1 of this chapter. The rates and charges in effect before the adoption of the ordinance remain in effect until the commission:

- (1) approves or disapproves the petition under subsection (d); and
- (2) if applicable, adjusts the rates and charges imposed by the ordinance.

(d) The commission shall prescribe the form and manner of a petition filed under subsection (b). If the commission fails to approve or disapprove a petition within one hundred twenty (120) days after the petition is filed in the form and manner prescribed by the commission, the petition is deemed approved. A petition is automatically disapproved if the petitioner has filed a petition under section 8.2 of this chapter with respect to the same rate ordinance.

(e) If the commission determines that the rates and charges imposed on users of the waterworks located outside the corporate boundaries of the municipality are not reasonable and just, the commission may:

- (1) establish reasonable and just rates and charges for users of the waterworks located outside the corporate boundaries of the municipality; and

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- 1           **(2) order the municipal legislative body to adopt an ordinance**
- 2           **imposing the reasonable and just rates and charges.**
- 3       **(f) This section does not:**
- 4           **(1) authorize the commission to review or revise rates and**
- 5           **charges imposed on users of the waterworks located within**
- 6           **the corporate boundaries of the municipality; or**
- 7           **(2) otherwise return a municipal water utility to the**
- 8           **jurisdiction of the commission for the approval of rates and**
- 9           **charges.**
- 10       **(g) The commission may adopt rules under IC 4-22-2 to**
- 11       **implement this section.**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Commerce, Energy, Technology and Utilities, to which was referred House Bill 1107, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 4, line 5, delete "ten percent (10%)" and insert "**twenty-five percent (25%)**".

and when so amended that said bill do pass.

(Reference is to HB 1107 as introduced.)

MOSES, Chair

Committee Vote: yeas 10, nays 0.

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