

IC 8-1.5-3

Chapter 3. Operation of Municipally Owned Utilities Generally

IC 8-1.5-3-1

Application of chapter

Sec. 1. This chapter applies to all municipalities, except consolidated cities, that own or operate utilities.

As added by Acts 1982, P.L.74, SEC.1.

IC 8-1.5-3-2

"Board" defined

Sec. 2. As used in this chapter, "board" refers to the board operating a municipally owned utility as determined under section 3 of this chapter.

As added by Acts 1982, P.L.74, SEC.1.

IC 8-1.5-3-3

Control of utilities; control of storm water facilities in third class cities; ordinance; creation of utility service board

Sec. 3. (a) The legislative body of a municipality may, by ordinance, provide for the control of any or all of its municipally owned utilities by:

- (1) the municipal works board;
- (2) a board consisting of the members of the municipal legislative body;
- (3) a utility service board established under subsection (f) or established before January 1, 1983, under IC 8-1-2-100 (repealed); or
- (4) the board of directors of a department of waterworks established under IC 8-1.5-4.

The legislative body of a third class city also may adopt an ordinance under this subsection to provide for the control of any or all of its storm water facilities by a board described in subdivisions (1) through (4). An ordinance granting control of any or all of a third class city's storm water facilities to a board described in this subsection may be separate from or combined with an ordinance granting control of the third class city's municipally owned utilities to a board described in this subsection.

(b) If, at the time an ordinance is adopted under subsection (a) to grant control of any or all of a third class city's storm water facilities to a board described in subsection (a) the third class city has a department of storm water management under IC 8-1.5-5, the ordinance must specify a procedure for the transition of control of the affected storm water facilities from the board of directors of the department of storm water management to the board described in subsection (a).

(c) The registered voters of a municipality may file a petition addressed to the legislative body requesting that the question of the creation of a utility service board be submitted to a referendum. The

petition must be signed by at least the number of the registered voters of the municipality required under IC 3-8-6-3 to place a candidate on the ballot.

(d) Within thirty (30) days after a petition is filed, the municipal clerk shall certify to the legislative body and to the county election board that a sufficient petition has been filed.

(e) Following certification, the legislative body shall submit the question of the creation of a utility service board to a referendum at the next election. The question shall be submitted to the registered voters of the municipality by placement on the ballot in the form prescribed by IC 3-10-9-4 and must state:

"Shall the legislative body of the municipality of _____ adopt an ordinance providing for the appointment of a utility service board to operate _____ (Insert name of utility here)?"

(f) If a majority of the voters voting on the question vote for the creation of a utility service board, the legislative body shall, by ordinance, establish a utility service board consisting of not less than three (3) nor more than seven (7) members. Not more than two-thirds (2/3) of the members may be of the same political party. All members must be residents of the area served by the board. The ordinance must provide for:

- (1) a majority of the members to be appointed by the executive and a minority of the members to be appointed by the legislative body;
- (2) the terms of the members, which may not exceed four (4) years, with initial terms prescribed so that the members' terms will be staggered;
- (3) the salaries, if any, to be paid to the members; and
- (4) the selection by the board of a chairman, who shall not be considered the head of a department for purposes of IC 36-4-9-2.

(g) The registered voters of the municipality may also file a petition requesting that the question of the abolition of the utility service board be submitted to a referendum. The procedure for filing of the petition and the referendum is the same as that prescribed by subsections (c) through (e).

As added by Acts 1982, P.L. 74, SEC.1. Amended by P.L.16-1983, SEC.6; P.L.3-1987, SEC.500; P.L.12-1995, SEC.100; P.L.282-2003, SEC.1.

IC 8-1.5-3-3.3

Legalization of certain utility service boards

Sec. 3.3. For purposes of section 3 of this chapter, a utility service board that:

- (1) was established before January 1, 1983, under IC 8-1-2-100 (before its repeal and formerly Acts 1913, c.76, s.109, as amended);
- (2) has continued in existence without interruption since its creation; and
- (3) was established without submitting the question of its

creation to the voters of the municipality for approval in a referendum;
is legalized and its actions validated.
As added by P.L.220-2011, SEC.187.

IC 8-1.5-3-4

Board; powers and duties

Sec. 4. (a) The board has general supervisory powers over the utilities under its control, with responsibility for the detailed supervision of each utility to be vested in its superintendent, who is responsible to the board for the business and technical operation of the utility. The board shall:

- (1) fix the number and compensation of employees;
- (2) adopt rules governing the appointment of employees including making proper classifications and rules to:
 - (A) determine the eligibility of applicants;
 - (B) determine by competitive examination the relative fitness of applicants for positions;
 - (C) establish eligible lists arranged according to the ratings secured;
 - (D) provide for the appointment of those having the highest ratings; and
 - (E) provide for the promotion of employees;
- (3) subject to IC 36-4-9-2, appoint a superintendent or manager of each utility under its control who is responsible to the board for the business and technical operation of the utility; the board shall make the appointment on the basis of fitness to manage the particular utility to which he is to be assigned, taking into account his executive ability and his knowledge of the utility industry;
- (4) subject to IC 36-4-9-12, hire attorneys when required for the operation of the utility;
- (5) hire professional or expert personnel when required for the operation of the utility;
- (6) submit a budget of its financial needs for the next year in the detail required by the municipal legislative body;
- (7) recommend to the legislative body reasonable and just rates and charges for services to the patrons of each utility;
- (8) appropriate, lease, rent, purchase, and hold all real and personal property of the utility;
- (9) enter upon lands for the purpose of surveying or examining the land to determine the location of any plant or appurtenances;
- (10) award contracts for:
 - (A) the purchase of capital equipment;
 - (B) the construction of capital improvements; or
 - (C) other property or purposes that are necessary for the full and efficient construction, management, and operation of each utility;
- (11) adopt rules for the safe, economical, and efficient

management and protection of each utility;

(12) deposit at least weekly with the municipal fiscal officer all money collected from each utility to be kept in a separate fund subject to the order of the board; and

(13) make monthly reports to the fiscal officer of the receipts and disbursements of money belonging to each utility and an annual report of the condition of the utility.

(b) The board may purchase by contract electricity, water, gas, power, or any other commodity or service for the purpose of furnishing the commodity or service to the patrons of the municipally owned utility or to the municipality itself.

(c) If the board wants to purchase the commodity or service from a public utility and the parties cannot agree on a rate or charge to be paid for it, either party may apply to the commission or other appropriate state or federal regulatory agency to establish a fair and reasonable rate or charge to be paid for the commodity or service.

(d) The board may discontinue water service by a waterworks to:

(1) a water consumer; or

(2) any property;

upon failure by the water consumer or the property owner to pay charges legally due for sewer or sewage disposal plant service. However, the water service may not be discontinued for nonpayment of sewer or sewage disposal plant service charges until the charges have been due and unpaid for at least thirty (30) days.

(e) Before water service is discontinued under subsection (d), the board must give written notice to the water consumer or property owner of its intention to discontinue water service if the unpaid sewer or sewage disposal plant service charges are not paid before a date specified in the notice. The notice must be mailed not less than ten (10) days before water service is to be discontinued and addressed to the water consumer or the property owner at his last known address.

As added by Acts 1982, P.L.74, SEC.1.

IC 8-1.5-3-4.5

Application of section; bid, proposal, or quotation submitted by trust

Sec. 4.5. (a) This section applies to the award of a contract under this chapter by acceptance of bids, proposals, or quotations.

(b) A bid, proposal, or quotation submitted by a trust (as defined in IC 30-4-1-1(a)) must identify each:

(1) beneficiary of the trust; and

(2) settlor empowered to revoke or modify the trust.

As added by P.L.336-1989(ss), SEC.19.

IC 8-1.5-3-5

Superintendent; powers and duties; compensation; bond; removal

Sec. 5. (a) The superintendent of each utility shall:

(1) appoint, supervise, and dismiss all employees of the utility;

(2) employ unskilled labor when needed, without competitive

examination;

(3) investigate all claims against the utility;

(4) oversee the operation of the utility and any construction work, repairs, or alterations to the system; and

(5) advise the board in all matters that will bring about an efficient and economical operation and maintenance of the utility.

(b) The superintendent is entitled to the compensation for his services that is determined by resolution of the board.

(c) The superintendent shall give bond in a sum not less than double the estimated amount of money that may be in his hands at any time. The bond shall be conditioned upon the faithful discharge of his duties and the payment to the proper person of all money in his hands. The bond is subject to the approval of the executive of the municipality.

(d) The superintendent may be removed by the board for cause at any time after notice and a hearing.

As added by Acts 1982, P.L.74, SEC.1.

IC 8-1.5-3-6

Load building appliances; purchase; sale and advertisement

Sec. 6. (a) The board may purchase, sell, and advertise, for the purpose of sale, load building appliances.

(b) Load building appliances shall be designed to be used in:

(1) the consumption of the products; or

(2) the use of the services;

that the utility furnishes or is equipped to furnish to its customers.

As added by Acts 1982, P.L.74, SEC.1.

IC 8-1.5-3-7

Retirement account

Sec. 7. The board may set up a retirement account for the benefit of the employees and past employees of each utility. The board may provide for the method, manner, and amount of contributions by the utility out of its earnings, reserves, or earned surplus, and by employees if required by the plan, and may create an account for the utilities and allocate to the account contributions sufficient to establish the plan on a sound actuarial basis, including contributions for past services of employees. However, the plan may not require contributions from an employee to exceed six percent (6%) of his wage or salary.

As added by Acts 1982, P.L.74, SEC.1.

IC 8-1.5-3-8

Rates and charges

Sec. 8. (a) A municipality owning a utility under this chapter shall furnish reasonably adequate services and facilities.

(b) The rates and charges made by a municipality for a service rendered or to be rendered, either directly or in connection therewith, must be nondiscriminatory, reasonable, and just.

(c) "Reasonable and just rates and charges for services" means rates and charges that produce sufficient revenue to:

(1) pay all the legal and other necessary expenses incident to the operation of the utility, including:

- (A) maintenance costs;
- (B) operating charges;
- (C) upkeep;
- (D) repairs;
- (E) depreciation;
- (F) interest charges on bonds or other obligations, including leases; and
- (G) costs associated with the acquisition of utility property under IC 8-1.5-2;

(2) provide a sinking fund for the liquidation of bonds or other obligations, including leases;

(3) provide a debt service reserve for bonds or other obligations, including leases, in an amount established by the municipality, not to exceed the maximum annual debt service on the bonds or obligations or the maximum annual lease rentals;

(4) provide adequate money for working capital;

(5) provide adequate money for making extensions and replacements to the extent not provided for through depreciation in subdivision (1); and

(6) provide money for the payment of any taxes that may be assessed against the utility.

(d) It is the intent of this section that the rates and charges produce an income sufficient to maintain the utility property in a sound physical and financial condition to render adequate and efficient service. Rates and charges too low to meet these requirements are unlawful.

(e) The board may recommend to the municipal legislative body rates and charges sufficient to include a reasonable return on the utility plant of the municipality.

(f) Rates and charges established under this section are subject to the approval of:

- (1) the municipal legislative body by ordinance; and
- (2) the commission, in accordance with the procedures set forth in IC 8-1-2.

The commission shall approve rates and charges that are sufficient, in addition to the cash revenue requirements set forth in subsection (c), to include a reasonable return on the utility plant of the municipality if the legislative body so elects.

(g) Except for a municipally owned utility taxed under IC 6-1.1-8-3, the commission shall approve rates and charges sufficient to compensate the municipality for taxes that would be due the municipality on the utility property were it privately owned. These rates and charges in lieu of taxes may be transferred to the municipal general fund, if the legislative body so elects.

(h) The commission shall grant a request that an increase in rates and charges not be effective until after the occurrence of a future

event if the legislative body so requests.

(i) A municipality that acquires and operates a utility under IC 8-1.5-2 by exercising the power of eminent domain may not impose a special rate, charge, surcharge, or other fee, other than rates and charges approved under this section or otherwise authorized by law, on the customers of the utility in order to pay for the costs associated with acquiring the utility through the exercise of the power of eminent domain.

As added by Acts 1982, P.L. 74, SEC.1. Amended by P.L.105-1983, SEC.2; P.L.35-1990, SEC.28; P.L.172-2009, SEC.5.

IC 8-1.5-3-8.1

Hearings; adoption of rates and charges; notice; contents

Sec. 8.1. (a) As used in this section, "utility" refers to a municipally owned:

- (1) water utility;
- (2) wastewater utility; or
- (3) combined water and wastewater utility;

that is not under the jurisdiction of the commission for the approval of rates and charges.

(b) As used in this section, "works" refers to water or wastewater utility works.

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

- (1) published in accordance with IC 5-3-1 (IC 5-3-1-1 through IC 5-3-1-9);
- (2) mailed to owners of vacant or unimproved property if the ordinance includes a fee for water or wastewater service to vacant or unimproved property; and
- (3) mailed to users of the works for service to property located outside the municipality's corporate boundaries.

The notice may be mailed in any form so long as the notice of hearing is conspicuous. The hearing may be adjourned from time to time. Notice mailed under subdivision (3) must include a statement that, following adoption of the ordinance, the users described in subdivision (3) may be entitled to petition the commission under section 8.3 of this chapter to review and adjust the rates and charges imposed on the users if a petition under section 8.2 of this chapter or under IC 36-9-23-26.1 with respect to the same rate ordinance has not been filed.

(d) After the hearing, the municipal legislative body shall adopt the ordinance establishing the rates and charges, either as originally introduced or as modified. A copy of the schedule of rates and charges adopted shall be kept on file and available for public inspection in the offices of the board and the municipal clerk. An

ordinance adopted after March 31, 2012, that imposes different rates and charges for service to property located outside the corporate boundaries of the municipality as compared to property located within the corporate boundaries of the municipality must state in plain language the percentage difference between the rates and charges.

(e) The rates and charges established for any class of users or property shall be extended to cover any additional property that is subsequently served and falls within the same class, without any hearing or notice.

(f) The municipal legislative body may change or readjust the rates and charges in the same manner as they were established.

(g) Rates and charges collected under this chapter are considered revenues of the utility.

As added by P.L.77-1991, SEC.1. Amended by P.L.139-2012, SEC.1.

IC 8-1.5-3-8.2

Objections to rates and charges; bonds; hearings

Sec. 8.2. (a) As used in this section:

- (1) "utility"; and
- (2) "works";

have the meaning set forth for those terms in section 8.1 of this chapter.

(b) Owners of property connected or to be connected to and served by the works authorized under this chapter may file a written petition objecting to the rates and charges of the utility so long as:

- (1) the petition contains the names and addresses of the petitioners;
- (2) the petitioners attended the public hearing provided under section 8.1 of this chapter;
- (3) the written petition is filed with the municipal legislative body within five (5) days after the ordinance establishing the rates and charges is adopted under section 8.1 of this chapter;
- (4) the written petition states specifically the ground or grounds of objection; and
- (5) a petition has not been filed with the commission under section 8.3 of this chapter or under IC 36-9-23-26.1 appealing the same rates and charges of the utility.

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

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

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

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

As added by P.L. 77-1991, SEC.2. Amended by P.L. 139-2012, SEC.2.

IC 8-1.5-3-8.3

Objection to extraterritorial rates and charges; review by commission

Sec. 8.3. (a) This section applies to a utility that provides service to property located outside the corporate boundaries of the municipality.

(b) As used in this section:

- (1) "utility"; and
- (2) "works";

have the meaning set forth for those terms in section 8.1 of this chapter.

(c) This subsection applies if a municipal legislative body adopts an ordinance under section 8.1 of this chapter or under IC 36-9-23-26 that is in effect on March 31, 2012, and that imposes rates and charges on users of the works for service to property located outside the corporate boundaries of the municipality that exceed by more than fifteen percent (15%), but not more than fifty percent (50%), the rates and charges imposed on users of the works for service to property located within the corporate boundaries of the municipality. Not later than September 30, 2012, the municipality may petition the commission to approve the percentage difference between rates and charges established in the ordinance for property within and property outside the corporate boundaries. In the petition, the municipality shall set forth the following:

- (1) The date on which the ordinance took effect.
- (2) The percentage difference between rates and charges imposed on users of the works for service to property located outside the corporate boundaries of the municipality and to property located within the corporate boundaries of the

municipality.

(3) Whether the works that is the subject of the ordinance is a water utility works, a wastewater utility works, or both a water and wastewater utility works.

If the commission determines that a petition filed under this subsection satisfies the requirements of this subsection, the commission shall approve the petition, including the percentage difference between rates and charges described in subdivision (2). If the commission determines that a petition filed under this subsection does not satisfy the requirements of this subsection, the commission shall disapprove the petition. However, if the percentage difference imposed in the ordinance was the subject of an objecting petition that was filed under section 8.2 of this chapter or under IC 36-9-23-26.1 and sustained on final judgment or appeal, as applicable, by a court, the percentage difference is considered approved without the filing of a petition under this subsection.

(d) If a municipality that files, or that is exempt from filing, a petition under subsection (c) adopts an ordinance under section 8.1 of this chapter or under IC 36-9-23-26 after March 31, 2012, that imposes rates and charges on users of the works for service to property located outside the corporate boundaries of the municipality that exceed the rates and charges imposed on users of the works for service to property located within the corporate boundaries of the municipality by more than the sum of the percentage difference approved or considered approved by the commission under subsection (c) plus fifteen percent (15%), 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 works for service to property located outside the corporate boundaries of the municipality:

(1) The municipality.

(2) The lesser of:

(A) ten percent (10%) of all; or

(B) twenty-five (25);

users of the works whose property is located outside the corporate boundaries of the municipality.

A petition filed under this subsection must be filed not more than fourteen (14) days after the date on which the ordinance referred to in this subsection is adopted. A petition may not be filed under this subsection if a petition has already been filed under section 8.2 of this chapter appealing the same rates and charges.

(e) If a municipal legislative body, other than a municipal legislative body described in subsection (c), adopts an ordinance under section 8.1 of this chapter or under IC 36-9-23-26 after March 31, 2012, that imposes rates and charges on users of the works for service to property located outside the corporate boundaries of the municipality that exceed the rates and charges imposed on users of the works for service to property located within the corporate boundaries of the municipality by more than fifteen percent (15%), 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 works for service to property located outside the corporate boundaries of the municipality:

- (1) The municipality.
- (2) The lesser of:
 - (A) ten percent (10%) of all; or
 - (B) twenty-five (25);

users of the works whose property is 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. A petition may not be filed under this subsection if a petition has already been filed under section 8.2 of this chapter or under IC 36-9-23-26.1 appealing the same rates and charges.

(f) The filing of a petition with the commission under subsection (d), (e), or (m) stays the ordinance adopted under section 8.1 of this chapter or under IC 36-9-23-26. The rates and charges in effect before the adoption of the ordinance remain in effect until:

- (1) the commission approves or disapproves the petition; and
- (2) if applicable, the commission adjusts the rates and charges imposed by the ordinance on users of the works whose property is located outside the corporate boundaries of the municipality.

(g) The commission shall prescribe the form and manner in which a petition must be filed under subsection (d), (e), or (m). A petition filed under subsection (d)(2), (e)(2), or (m)(2) must be signed by:

- (1) each individual user seeking review by the commission; or
- (2) one (1) or more attorneys licensed to practice law in Indiana who represent the individual users seeking review by the commission.

The burden of proof to demonstrate that the proposed rates and charges are nondiscriminatory, reasonable, and just is on the municipality, regardless of who petitions the commission. The commission shall 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. However, the commission may extend the one hundred twenty (120) day deadline for up to sixty (60) days for good cause if all parties to the proceeding agree. A petition is automatically disapproved if the petitioner has filed a petition under section 8.2 of this chapter or under IC 36-9-23-26.1 with respect to the same rate ordinance.

(h) For purposes of determining whether the percentage difference between rates and charges imposed on users of the works for service to property located outside the corporate boundaries of the municipality and the rates and charges imposed on users of the works for service to property located within the corporate boundaries of the municipality is nondiscriminatory, reasonable, and just under section 8 of this chapter, the commission:

- (1) may consider the benefit and expense to all users of the works of extending the works outside the corporate boundaries of the municipality; and

(2) may not consider any connection fees or capital surcharges imposed on users of the works for service to property that is located outside the corporate boundaries of the municipality that are specifically designated to pay for the costs associated with main extensions to the users of the works.

(i) If the commission determines that the percentage difference between the rates and charges imposed on users of the works for service to property located outside the corporate boundaries of the municipality and the rates and charges imposed on users of the works for service to property located within the corporate boundaries of the municipality is not nondiscriminatory, reasonable, and just under section 8 of this chapter, the commission may:

- (1) establish nondiscriminatory, reasonable, and just rates and charges for users of the works for service to property located outside the corporate boundaries of the municipality; and
- (2) order the municipal legislative body to adopt an ordinance imposing the nondiscriminatory, reasonable, and just rates and charges.

However, with respect to rates and charges imposed in an ordinance that was the subject of an objecting petition filed under section 8.2 of this chapter or under IC 36-9-23-26.1 and sustained on final judgment or appeal, as applicable, by a court, the commission may not establish rates and charges such that the percentage difference between rates and charges established by the commission is less than the percentage difference between rates and charges imposed in the ordinance.

(j) This section does not:

- (1) authorize the commission to review or revise rates and charges imposed on users of the works for service to property located within the corporate boundaries of the municipality; or
- (2) otherwise return or subject a utility to the jurisdiction of the commission for the approval of rates and charges.

(k) The commission may adopt rules under IC 4-22-2 to implement this section.

(l) The commission may not impose a fee with respect to proceedings under this section.

(m) This subsection applies if a municipal legislative body, other than a municipal legislative body described in subsection (c), adopts an ordinance under section 8.1 of this chapter or under IC 36-9-23-26 that is in effect on March 31, 2012, and that imposes rates and charges on users of the works for service to property located outside the corporate boundaries of the municipality that exceed by more than fifty percent (50%) the rates and charges imposed on users of the works for service to property located anywhere within the corporate boundaries of the municipality. Not later than December 31, 2013, 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 works for service to property located outside the corporate boundaries of the municipality:

- (1) The municipality.

(2) Subject to subsection (n), the lesser of:

(A) ten percent (10%) of all; or

(B) twenty-five (25);

users of the works whose property is located outside the corporate boundaries of the municipality.

(n) At least twenty (20) days before a group of users described in subsection (m)(2) may petition the commission under subsection (m), the group of users must file the petition with the municipal legislative body. The municipal legislative body and the group of users shall attempt to resolve the issues set forth in the petition concerning the rates and charges imposed on the group of users. If the group of users and the municipal legislative body are unable to resolve the issues within ten (10) days, the group of users may petition the commission under subsection (m).

As added by P.L.139-2012, SEC.3. Amended by P.L.163-2013, SEC.1; P.L.270-2013, SEC.8.

IC 8-1.5-3-9

Removal of utility from jurisdiction of commission for approval of rates and charges; procedure

Sec. 9. (a) This subsection applies to a municipally owned utility that before June 1, 1987, was taken out of the jurisdiction of the commission for the approval of rates and charges. A utility to which this subsection applies is removed from the jurisdiction of the commission for approval of the issuance of stocks, bonds, notes, or other evidence of indebtedness.

(b) Except as provided in subsection (a), a municipal legislative body that wants to be taken out of the jurisdiction of the commission for approval of rates and charges and of the issuance of stocks, bonds, notes, or other evidence of indebtedness may submit the following public question to the registered voters of the municipality at the next election in the form prescribed by IC 3-10-9-4:

"Shall the municipally owned utility be taken out of the jurisdiction of the utility regulatory commission for approval of rates and charges and of the issuance of stocks, bonds, notes, or other evidence of indebtedness?"

(c) A municipal legislative body shall certify the public question to the county election board of the county that contains the greatest percentage of population of the municipality under IC 3-10-9-3 and submit the question under subsection (b) if it receives a petition that:

(1) is signed by at least the number of the registered voters of the municipality required under IC 3-8-6-3 to place a candidate on the ballot; and

(2) requests that the municipally owned utility be removed from the jurisdiction of the commission for approval of rates and charges and of the issuance of stocks, bonds, notes, or other evidence of indebtedness.

(d) If a majority of those voting favor taking the municipally owned utility out of the jurisdiction of the commission, the utility:

(1) is removed from the jurisdiction of the commission for

approval of rates and charges and of the issuance of stocks, bonds, notes, or other evidence of indebtedness; and
(2) shall mail written notice of the withdrawal from commission jurisdiction to the commission within thirty (30) days after the utility's withdrawal.

As added by Acts 1982, P.L. 74, SEC.1. Amended by P.L.124-1987, SEC.1; P.L.23-1988, SEC.62; P.L.10-1988, SEC.217; P.L.12-1995, SEC.101.

IC 8-1.5-3-9.1

Removal of utility from jurisdiction of commission for approval of rates, charges, and evidences of indebtedness; alternative procedure

Sec. 9.1. (a) This section applies to the following:

- (1) Water utilities that are owned or operated by second class cities.
- (2) Third class cities.
- (3) Towns.

(b) In addition to section 9 of this chapter, a municipally owned utility to which this section applies may be removed from the jurisdiction of the commission for the approval of rates and charges and of the issuance of stocks, bonds, notes, or other evidence of indebtedness, if the municipal legislative body adopts an ordinance removing the utility from commission jurisdiction. The municipal legislative body shall, at least thirty (30) days before the final vote on the ordinance, mail written notice of the meeting to all ratepayers of the utility and to the commission. For a second class city the municipal legislative body must hold two (2) public meetings before the final vote on an ordinance removing the utility from commission jurisdiction may be adopted. An explanation of the removal process must be provided at each public meeting under this section. Each public meeting must be held in a different location.

(c) The ordinance described in subsection (b) takes effect sixty (60) days after adoption by the municipal legislative body.

(d) The question of removal from commission jurisdiction shall be submitted to the registered voters of the municipality if, within the sixty (60) day period described in subsection (c), the legislative body receives a petition:

- (1) that is signed by at least the number of the registered voters of the municipality required under IC 3-8-6-3 to place a candidate on the ballot; and
- (2) that requests the legislative body to submit the question of removal from commission jurisdiction to the registered voters of the municipality at the next election.

The municipal legislative body shall certify the public question in subsection (e) to the county election board of the county that contains the greatest percentage of population of the municipality under IC 3-10-9-3.

(e) If the legislative body receives a petition described in subsection (d) in the proper form, the legislative body shall submit

the following public question to the registered voters of the municipality at the next election in the form prescribed by IC 3-10-9-4:

"Shall the municipally owned utility be taken out of the jurisdiction of the Indiana utility regulatory commission for the approval of rates and charges and of the issuance of stocks, bonds, notes, or other evidence of indebtedness?"

The legislative body shall mail written notice of the referendum to the commission at least ten (10) days before the date of the election.

(f) If a majority of those voting on the question described in subsection (e) favor taking the municipally owned utility out of the jurisdiction of the commission, the utility is removed from the jurisdiction of the commission for approval of rates and charges and of the issuance of stocks, bonds, notes, or other evidences of indebtedness.

(g) If the legislative body receives a petition in proper form under subsection (d), the ordinance does not take effect until after removal is approved by a majority of those voting. If a majority of those voting vote against removal, the utility remains under the jurisdiction of the commission and the ordinance does not take effect.

(h) In addition to the notice required by subsection (b), if the municipal legislative body adopts the ordinance, described in subsection (b), the municipal legislative body shall mail written notice of the withdrawal from commission jurisdiction to the commission within thirty (30) days after the ordinance becomes effective.

(i) Notwithstanding this section or section 9 of this chapter, the commission may require a municipally owned utility that generates electric power to provide information to the permanent forecasting group under IC 8-1-8.5-3.5.

(j) This section does not affect the obligations of a municipally owned utility under IC 8-1-2.3, IC 8-1-8.5, IC 8-1-22.5, or IC 8-1.5-3-14.

(k) Notwithstanding subsection (a) and the procedure set forth in section 9 of this chapter, if a city adopts an ordinance under this section before January 1, 2013, to remove the city's municipally owned electric utility from the jurisdiction of the commission for the approval of rates and charges and of the issuance of stocks, bonds, notes, or other evidence of indebtedness, the removal of the city's municipally owned electric utility from the commission's jurisdiction for the approval of rates and charges and of the issuance of stocks, bonds, notes, or other evidence of indebtedness is effective for all purposes and is legalized and validated.

As added by P.L.82-1988, SEC.6. Amended by P.L.77-1991, SEC.3; P.L.12-1995, SEC.102; P.L.163-2013, SEC.2.

IC 8-1.5-3-9.5

Return of utility to commission jurisdiction following removal

Sec. 9.5. (a) This section applies to municipally owned utilities that are withdrawn from commission jurisdiction under section 9 of

this chapter, including a municipally owned utility described in section 9(a) of this chapter.

(b) A municipal legislative body that wants to return a municipally owned utility to the jurisdiction of the commission for approval of rates and charges and of the issuance of stocks, bonds, notes, or other evidence of indebtedness may submit the following public question to the registered voters of the municipality at the next election in the form prescribed by IC 3-10-9-4:

"Shall the municipally owned utility be returned to the jurisdiction of the utility regulatory commission for approval of rates and charges and of the issuance of stocks, bonds, notes, or other evidence of indebtedness?"

(c) A municipal legislative body shall certify the public question to the county election board of the county that contains the greatest percentage of population of the municipality under IC 3-10-9-3. The county election board shall submit the question under subsection (b) if it receives a petition that:

(1) is signed by at least the number of the registered voters of the municipality required under IC 3-8-6-3 to place a candidate on the ballot; and

(2) requests that the municipally owned utility be returned to the jurisdiction of the commission for approval of rates and charges and of the issuance of stocks, bonds, notes, or other evidence of indebtedness.

(d) If a majority of those voting favor returning the municipally owned utility to the jurisdiction of the commission, the utility is returned to the jurisdiction of the commission for approval of rates and charges and of the issuance of stocks, bonds, notes, or other evidence of indebtedness. If a majority of those voting disapprove of returning the municipally owned utility to the jurisdiction of the commission, an election may not be conducted on the public question of returning to the jurisdiction of the commission for four (4) years from the date of the last election on that public question.

(e) The public question of returning to the jurisdiction of the commission may not be submitted to the registered voters of the municipality at an election conducted within four (4) years after the date the municipally owned utility was last withdrawn from commission jurisdiction.

(f) If a municipally owned utility is returned to the jurisdiction of the commission under this section, the municipal legislative body shall mail written notice to the commission.

As added by P.L.82-1988, SEC.7. Amended by P.L.12-1995, SEC.103.

IC 8-1.5-3-9.6

Return of utility to commission jurisdiction following removal under alternative procedure

Sec. 9.6. (a) This section applies to municipally owned utilities that are withdrawn from commission jurisdiction under section 9.1 of this chapter.

(b) The municipal legislative body may adopt an ordinance returning the municipally owned utility to the jurisdiction of the commission for the approval of rates and charges and of the issuance of stocks, bonds, notes, or other evidence of indebtedness if it receives a petition:

- (1) that is signed by at least the number of the registered voters of the municipality required under IC 3-8-6-3 to place a candidate on the ballot; and
- (2) that requests the legislative body to adopt an ordinance returning the municipally owned utility to the jurisdiction of the commission.

If the municipal legislative body fails to adopt an ordinance under this subsection within ninety (90) days after receipt of the petition, a petition requesting the adoption of an ordinance to return to commission jurisdiction may not be submitted for four (4) years from the date the last petition was submitted under this subsection.

(c) If the municipal legislative body fails to adopt the ordinance described in subsection (b) within ninety (90) days after receipt of the petition, the public question of the return to commission jurisdiction shall be submitted to the registered voters of the municipality if the legislative body receives a second petition:

- (1) that is signed by at least the number of the registered voters of the municipality required under IC 3-8-6-3 to place a candidate on the ballot;
- (2) that requests the legislative body to submit the question of the return to commission jurisdiction to the registered voters of the municipality at the next election; and
- (3) that is submitted to the legislative body after the expiration of the ninety (90) day period described in this subsection.

The municipal legislative body shall certify the public question described in subsection (d) to the county election board of the county that contains the greatest percentage of population of the municipality under IC 3-10-9-3.

(d) If the legislative body receives a petition described in subsection (c) in the proper form, the legislative body shall submit the following public question to the registered voters of the municipality at the next election in the form prescribed by IC 3-10-9-4:

"Shall the municipally owned utility be returned to the jurisdiction of the utility regulatory commission for the approval of rates and charges and of the issuance of stocks, bonds, notes, or other evidence of indebtedness?"

The legislative body shall mail written notice of the referendum to the commission at least ten (10) days before the date of the election.

(e) If a majority of those voting on the question described in subsection (d) favor returning the municipally owned utility to the jurisdiction of the commission, the utility is returned to the jurisdiction of the commission for approval of rates and charges and of the issuance of stocks, bonds, notes, or other evidence of indebtedness. If a majority of those voting disapprove of returning

the municipally owned utility to the jurisdiction of the commission, an election may not be conducted on the public question of returning to the jurisdiction of the commission for four (4) years from the date of the last election on that public question.

(f) The public question of returning to the jurisdiction of the commission may not be submitted to the registered voters of the municipality at an election conducted within four (4) years after the date the municipally owned utility was last withdrawn from commission jurisdiction. In addition, a petition requesting the adoption of an ordinance under subsection (b) may not be submitted within four (4) years after the date the municipally owned utility was last withdrawn from commission jurisdiction.

(g) If a municipally owned utility is returned to commission jurisdiction under this section, the municipal legislative body shall mail written notice to the commission.

As added by P.L.82-1988, SEC.8. Amended by P.L.12-1995, SEC.104.

IC 8-1.5-3-10

Rates and charges; electric service outside corporate boundaries

Sec. 10. Whenever a municipality operates an electric utility that provides service outside the corporate boundaries of the municipality, the charges for service outside the corporate boundaries may not differ from the charges for service inside the corporate boundaries unless the utility clearly demonstrates significant cost factors that make different charges nondiscriminatory, reasonable, and just.

As added by Acts 1982, P.L.74, SEC.1.

IC 8-1.5-3-11

Funds; management

Sec. 11. (a) The money belonging to each municipally owned utility shall be kept by the municipal fiscal officer as separate funds as required by any bond ordinance or accounting procedures established by the commission or the state board of accounts. The municipal legislative body, with the approval of the board, may transfer surplus earnings of the utility to the general fund. The money may not, however, be transferred unless the terms and conditions of any bond ordinance, resolution, indenture, contract under IC 8-1-2.2, or similar instrument binding upon the utility are complied with.

(b) A cash reserve fund shall be created by ordinance and carried on the records of the utility or utilities by providing for monthly contributions or transfers to the cash reserve fund of surplus earnings of the utility or utilities.

(c) "Surplus earnings" are those cash earnings remaining after provision has been made to take care of current obligations, including:

- (1) operating expense;
- (2) depreciation or replacement fund;
- (3) bond and interest sinking fund;

- (4) retirement fund; or
- (5) any other priority fund requirements fixed by law.

(d) After creation of the cash reserve fund, the legislative body may include in the municipal general fund budget, as revenue in lieu of taxes, an amount equal to the actual balance in the cash reserve fund as of June 30 of the current year. However, the available cash reserve fund balance may be transferred to the municipal general fund only during the calendar year for which the budget was adopted, and transfers may not be made from any utility funds to the general fund except from the cash reserve fund.

(e) If at any time after the final approval of the budget an emergency should arise for further appropriations from the general fund, the legislative body may, by ordinance, transfer additional money from the cash reserve fund to the general fund to provide for the additional appropriations, the transfer to be limited to the accretions to the cash reserve fund since the preceding June 30.

(f) A cash reserve fund, if authorized by ordinance, may be used to make loans to another utility owned by the same municipality, for periods not to exceed five (5) years, at any interest rate. The repayment of the loan and interest shall be returned to the cash reserve fund.

As added by Acts 1982, P.L.74, SEC.1.

IC 8-1.5-3-12

Loan from utility to municipality; loan requirements; limitation on amount

Sec. 12. (a) A municipality may, by ordinance of its legislative body, borrow money from a utility owned by the municipality for any of the following purposes:

- (1) Current purposes in anticipation of taxes levied and to be collected during the current or following year.
- (2) Carrying out an eligible efficiency project (as defined in IC 36-9-41-1.5) within the municipality.

(b) The board may by resolution lend money to the municipality if the utility has on hand:

- (1) a surplus of cash exceeding by at least the amount loaned the sum of all amounts required to pay the indebtedness of the utility falling due during the current calendar year and the following year;
- (2) the amount necessary to meet current expenses during the year; and
- (3) the amount necessary to pay for improvements contemplated to be made during the current calendar year minus the estimated receipts during the calendar year.

(c) A loan made under subsection (a)(1) may not be made for a sum in excess of fifty percent (50%) of the amount estimated to be collected from anticipated taxes.

(d) A loan under this section:

- (1) must be evidenced by an obligation of the municipality;
- (2) must be signed by the executive;

(3) is due:

(A) on or before thirty (30) days after the last day for the payment of anticipated taxes, in the case of a loan made under subsection (a)(1); and

(B) on a date determined by the board (but not more than six (6) years after the date of the loan), in the case of a loan made under subsection (a)(2); and

(4) may bear interest at any rate as determined by the board, payable at maturity.

As added by Acts 1982, P.L.74, SEC.1. Amended by P.L.88-2009, SEC.2.

IC 8-1.5-3-13

Investments of surplus money; authorization of officers

Sec. 13. The municipal legislative body may, by ordinance, authorize officers charged by law with custodial care, expenditure, and investment of utility money to invest or reinvest surplus money of a utility in the manner prescribed by IC 5-13-9.

As added by Acts 1982, P.L.74, SEC.1. Amended by P.L.19-1987, SEC.20.

IC 8-1.5-3-14

Annual report; exemption; examination of accounts

Sec. 14. (a) A municipally owned utility under the jurisdiction of the commission for approval of rates and charges and of the issuance of stocks, bonds, notes, or other evidence of indebtedness shall file with the commission an annual report of the operation of the plant on forms prescribed by the commission. The annual reports shall be kept in the office of the commission as a public record. A municipally owned utility that has withdrawn from commission jurisdiction under IC 8-1-2-100 (before its repeal on January 1, 1983) or section 9 or 9.1 of this chapter is not required to file the annual report required by this section.

(b) The state board of accounts shall examine all accounts of every municipally owned utility at regular intervals. In the examination, inquiry shall be made as to:

(1) the financial condition and resources of the utility;

(2) whether the laws of the state have been complied with; and

(3) the methods and accuracy of the accounts and reports of the utilities examined.

The examination shall be made without notice, and its cost shall be paid out of the funds of the utility.

As added by Acts 1982, P.L.74, SEC.1. Amended by P.L.68-1990, SEC.2.

IC 8-1.5-3-15

Utilities operated under IC 8-1-11.1; rights and powers

Sec. 15. A utility operated under IC 8-1-11.1 retains the rights and powers conferred by IC 8-1-11.1-3.1, notwithstanding section 1 of this chapter.

As added by Acts 1982, P.L.74, SEC.1.