



Reprinted  
February 28, 2020

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# ENGROSSED HOUSE BILL No. 1131

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DIGEST OF HB 1131 (Updated February 27, 2020 3:17 pm - DI 119)

**Citations Affected:** IC 8-1; IC 34-57; IC 36-4; IC 36-9.

**Synopsis:** Utility matters. Makes the following changes for purposes of a statute that subjects a water or wastewater utility organized after June 30, 2018, to the jurisdiction of the Indiana utility regulatory commission (IURC) with regard to certain aspects of the water or wastewater utility's operations for a period of 10 years: (1) Provides that the term "water or wastewater utility" includes a municipally owned utility that provides water service to less than 8,000 customers. (2) Deletes references to organization of a water or wastewater utility as a legal entity. Requires the IURC, in a rate case for a water or wastewater utility that extends service to an infrastructure development zone at the request of the governmental entity that established the infrastructure development zone, to approve inclusion in the water or wastewater utility's rate schedule of a surcharge payable only within the geographic area of the infrastructure development zone. (Under current law, such a surcharge must apply within the entire jurisdiction of the governmental entity.) Provides that with respect to any water main (Continued next page)

**Effective:** Upon passage.

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## Pressel, Soliday, Heine

(SENATE SPONSORS — GARTEN, DORIOT)

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January 8, 2020, read first time and referred to Committee on Utilities, Energy and Telecommunications.

January 16, 2020, amended, reported — Do Pass.

January 27, 2020, read second time, amended, ordered engrossed.

January 28, 2020, engrossed. Read third time, passed. Yeas 97, nays 0.

### SENATE ACTION

February 5, 2020, read first time and referred to Committee on Utilities.

February 24, 2020, amended, reported favorably — Do Pass.

February 27, 2020, read second time, amended, ordered engrossed.

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EH 1131—LS 6793/DI 101



extension or wastewater main extension, a utility shall comply with the IURC's rules governing water main extensions or wastewater main extensions, regardless of whether the utility is subject to the IURC's jurisdiction for the approval of rates and charges. Provides that a utility that on January 1, 2020, provides water service, wastewater service, or both, to property that is not located within the municipality that owns or operates the utility, and that was in an unincorporated part of a township that reorganized with a municipality to become a part of the resulting reorganized municipality: (1) is subject to the jurisdiction of the IURC with respect to: (A) rates and charges; (B) stocks, bonds, notes, or other evidence of indebtedness; (C) rules; and (D) the annual report filing requirement; and (2) must file a rate case with the IURC before July 1, 2020. Provides that a dispute arising over a water main extension or wastewater main extension may be submitted as an informal complaint to the IURC's consumer affairs division, regardless of whether the person requesting the extension is a customer of the utility involved. Provides that if the IURC determines that it requires additional staff to handle the volume of informal complaints submitted, the IURC may impose a fee on a party against whom a decision is rendered. Provides that the fee may not exceed: (1) the IURC's actual costs in administering the informal complaint; or (2) \$750. Provides that certain procedures for acquisition by a municipal utility of property of another utility apply to acquisition by a non-municipal utility of property of another utility, and prescribes requirements regarding appraisal of the value of utility property acquired by a non-municipal utility. Amends as follows statutes that allow a municipality to enter into contracts with owners or lessees of property in the vicinity of, but not within, the municipality, under which the owners or lessees agree to pay or contribute money to the municipality for municipal or public purposes: (1) Provides that a municipality may enter into such a contract only with regard to property that is located in the unincorporated area of the county. (2) Specifies that the unincorporated area of the county does not include an unincorporated part of a township that becomes part of a municipality through a reorganization. (3) Provides that such a contract in effect on June 30, 2020, for property located within the boundaries of a municipality may continue for the unexpired term of the contract, but may not be renewed or extended. Provides that certain provisions regarding approval of sewage disposal and treatment fees apply to a sanitation district that: (1) is located in a county that meets specified population parameters; and (2) is under an order or party to an agreement with one or more state or federal agencies to remediate environmental conditions.



Reprinted  
February 28, 2020

Second Regular Session of the 121st General Assembly (2020)

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 2019 Regular Session of the General Assembly.

## ENGROSSED HOUSE BILL No. 1131

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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 8-1-1.9-3, AS ADDED BY P.L.126-2018,  
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 UPON PASSAGE]: Sec. 3. As used in this chapter, "water or  
4 wastewater utility" means:  
5 (1) a public utility that provides water service, wastewater service,  
6 or both water service and wastewater service to the public; or  
7 (2) a municipally owned utility that provides water service to  
8 less than eight thousand (8,000) customers.  
9 SECTION 2. IC 8-1-1.9-4, AS ADDED BY P.L.126-2018,  
10 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
11 UPON PASSAGE]: Sec. 4. (a) Notwithstanding IC 8-1-2.7 and any  
12 other law under which a water or wastewater utility is exempt from or  
13 may withdraw from the jurisdiction of the commission, a water or  
14 wastewater utility that is organized as a legal entity after June 30, 2018,  
15 is subject to the jurisdiction of the commission with respect to:  
16 (1) rates and charges;  
17 (2) stocks, bonds, notes, or other evidence of indebtedness;

EH 1131—LS 6793/DI 101



(3) rules; and  
 (4) the annual report filing requirement;  
 for the period of ten (10) years beginning on the day on which the  
 water or wastewater utility is organized. ~~as a legal entity.~~

(b) This section does not affect:

(1) any statutes requiring or permitting a water or wastewater  
 utility to petition the commission before providing service to the  
 public; or

(2) the commission's jurisdiction regarding statutes and petitions  
 referred to in subdivision (1).

SECTION 3. IC 8-1-2-46.2, AS ADDED BY P.L.91-2017,  
 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 UPON PASSAGE]: Sec. 46.2. (a) As used in this section, "water or  
 wastewater utility" means a public utility, other than a not-for-profit  
 utility, as defined in section 125(a) of this chapter, that provides water  
 or wastewater service to the public.

(b) Notwithstanding any law or rule governing extension of service,  
 a water or wastewater utility may, on a nondiscriminatory basis, extend  
 service for economic development purposes or to rural areas without  
 a deposit or other adequate assurance of performance from the  
 customer, to the extent that the extension of service results in a positive  
 contribution to the utility's overall cost of service over a twenty (20)  
 year period. However, if the water or wastewater utility determines that  
 the extension of service will not result in a positive contribution to the  
 utility's overall cost of service over a twenty (20) year period, the water  
 or wastewater utility may require a deposit or other adequate assurance  
 of performance from:

(1) the developer of the project; or

(2) a local, regional, or state economic development organization.

(c) Subsection (d) applies if:

(1) a county executive, a municipal legislative body, or, in Marion  
 County, the county fiscal body, establishes an infrastructure  
 development zone under IC 6-1.1-12.5-4; and

(2) the county executive, municipal legislative body, or county  
 fiscal body requests a public utility to extend water or wastewater  
 utility service to the geographic territory established as the  
 infrastructure development zone.

(d) A water or wastewater utility that receives a request described  
 in subsection (c)(2) may file a petition with the commission seeking  
 approval of the requested extension of service. If the commission  
 approves the petition, in future general rate cases, the commission shall  
 approve rate schedules that include a surcharge payable only by



customers located in the geographic area within the jurisdiction of the governmental entity described in subsection (c), ~~including or, if requested by the governmental entity, only within~~ the geographic area established as an infrastructure development zone. The surcharge shall recover depreciation expense, weighted cost of capital, and federal and state income tax applicable to the extension of water or wastewater utility service.

SECTION 4. IC 8-1-2-61.9 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE UPON PASSAGE]: **Sec. 61.9. (a) As used in this section, "utility" means a municipally owned utility (as defined in IC 8-1-2-1(h)) that provides water service or wastewater service, or both, to the public.**

**(b) This section applies only to a utility that on January 1, 2020, provides water service, wastewater service, or both, to property that satisfies all of the following:**

**(1) The property is not located within the municipality that owns or operates the utility.**

**(2) The property was in an unincorporated part of a township that reorganized with a municipality under IC 36-1.5 to become a part of the resulting reorganized municipality.**

**(c) Notwithstanding IC 8-1-2.7 and any other law under which a water or wastewater utility is exempt from or may withdraw from the jurisdiction of the commission, a utility to which this section applies is subject to the jurisdiction of the commission with respect to:**

**(1) rates and charges;**

**(2) stocks, bonds, notes, or other evidence of indebtedness;**

**(3) rules; and**

**(4) the annual report filing requirement.**

**However, a utility to which this section applies may impose and collect rates and charges existing on February 1, 2020, until the rates and charges are replaced by rates and charges determined under the rate case required by subsection (d).**

**(d) A utility to which this section applies must file a rate case with the commission before July 1, 2020.**

SECTION 5. IC 8-1-2-101.5 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE UPON PASSAGE]: **Sec. 101.5. (a) This section applies to:**

**(1) a water main extension;**

**(2) a wastewater main extension; or**

**(3) an agreement that:**



(A) is for a water main extension or a wastewater main extension; and

(B) is entered into after June 30, 2020, by a utility and the person requesting the extension.

(b) As used in this section, "utility" means a municipally owned utility (as defined in IC 8-1-2-1(h)) that provides water service or wastewater service, or both, to the public.

(c) With respect to any water main extension or wastewater main extension, a utility shall comply with the commission's rules governing water main extensions or wastewater main extensions, as applicable, including:

(1) 170 IAC 6-1.5, in the case of a water main extension; or

(2) 170 IAC 8.5-4, in the case of a wastewater main extension; as may be amended by the commission, regardless of whether the utility is subject to the jurisdiction of the commission for the approval of rates and charges. However, a utility is not required to comply with any provisions in the commission's main extension rules that require reporting to the commission.

(d) Disputes arising under this section may be submitted as informal complaints to the commission's consumer affairs division, in accordance with IC 8-1-2-34.5(b) and the commission's rules under 170 IAC 16, including provisions for referrals and appeals to the full commission, regardless of whether the person requesting the extension is a customer of the utility.

(e) The commission shall adopt by:

(1) order; or

(2) rule under IC 4-22-2;

other procedures not inconsistent with this section that the commission determines to be reasonable or necessary to administer this section. In adopting the rules under this section, the commission may adopt emergency rules in the manner provided by IC 4-22-2-37.1. Notwithstanding IC 4-22-2-37.1(g), an emergency rule adopted by the commission under this subsection and in the manner provided by IC 4-22-2-37.1 expires on the date on which a rule that supersedes the emergency rule is adopted by the commission under IC 4-22-2-24 through IC 4-22-2-36.

(f) If the commission determines that it requires additional staff to handle the volume of informal complaints submitted under this section, the commission may impose a fee under this section. Any fee charged by the commission under this section may:

(1) not exceed:

(A) the commission's actual costs in administering this



- 1                    **section; or**  
 2                    **(B) seven hundred fifty dollars (\$750);**  
 3                    **whichever is less; and**  
 4                    **(2) be assessed against the party against whom a decision is**  
 5                    **rendered under this section.**  
 6                    SECTION 6. IC 8-1-30.3-5, AS AMENDED BY P.L.229-2019,  
 7                    SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 8                    UPON PASSAGE]: Sec. 5. (a) This section applies if:  
 9                    (1) a utility company acquires property from an offered utility in  
 10                    a transaction involving a willing buyer and a willing seller; and  
 11                    (2) at least one (1) utility company described in subdivision (1) is  
 12                    subject to the jurisdiction of the commission under this article.  
 13                    (b) Subject to subsection (c), there is a rebuttable presumption that  
 14                    a cost differential is reasonable.  
 15                    (c) If the acquisition:  
 16                    (1) is made under IC 8-1.5-2-6.1, and to the extent the purchase  
 17                    price does not exceed the appraised value as determined under  
 18                    IC 8-1.5-2-5; **or**  
 19                    (2) **is not made under IC 8-1.5-2-6.1, and to the extent the**  
 20                    **purchase price does not exceed the appraised value as**  
 21                    **determined under section 5.5 of this chapter;**  
 22                    the purchase price is considered reasonable for purposes of subsection  
 23                    (d) and any resulting cost differential is considered reasonable.  
 24                    (d) Before closing on the acquisition, the utility company that  
 25                    acquires the utility property may petition the commission to include  
 26                    any cost differential as part of its rate base in future rate cases. The  
 27                    commission shall approve the petition if the commission finds the  
 28                    following:  
 29                    (1) The utility property is used and useful to the offered utility in  
 30                    providing water service, wastewater service, or both water and  
 31                    wastewater service.  
 32                    (2) The offered utility is too small to capture economies of scale  
 33                    or has failed to furnish or maintain adequate, efficient, safe, and  
 34                    reasonable service and facilities.  
 35                    (3) The utility company will improve economies of scale or, if  
 36                    otherwise needed, make reasonable and prudent improvements to  
 37                    the offered utility's plant, the offered utility's operations, or both,  
 38                    so that customers of the offered utility will receive adequate,  
 39                    efficient, safe, and reasonable service.  
 40                    (4) The acquisition of the utility property is the result of a mutual  
 41                    agreement made at arms length.  
 42                    (5) The actual purchase price of the utility property is reasonable.



(6) The utility company and the offered utility are not affiliated and share no ownership interests.

(7) The rates charged by the utility company will not increase unreasonably in future general rate cases solely as a result of acquiring the utility property from the offered utility. For purposes of this subdivision, the rates and charges will not increase unreasonably in future general rate cases so long as the net original cost proposed to be recorded under subsection (f) is not greater than two percent (2%) of the acquiring utility's net original cost rate base as determined in the acquiring utility's most recent general rate case. If the amount proposed to be recorded under subsection (f) is greater than two percent (2%) of the acquiring utility's net original cost rate base as determined in the acquiring utility's most recent general rate case, the commission shall proceed to determine whether the rates charged by the utility company will increase unreasonably in future general rate cases solely as a result of acquiring the utility property from the offered utility and, in making the determination, may consider evidence of:

(A) the anticipated dollar value increase; and

(B) the increase as a percentage of the average bill.

(8) The cost differential will be added to the utility company's rate base to be amortized as an addition to expense over a reasonable time with corresponding reductions in the rate base.

(e) In connection with its petition under subsection (d), the acquiring utility company shall provide the following:

(1) Notice to customers of the acquiring utility company that a petition has been filed with the commission under this chapter. The notice provided under this subdivision must include the cause number assigned to the petition. Notice under this subdivision may be provided to customers in a billing insert.

(2) Notice to the office of the utility consumer counselor.

(3) A statement of known infrastructure, environmental, or other issues affecting the offered utility, and the process for determining reasonable and prudent improvements upon completing the acquisition.

(f) In a proceeding under subsection (d), the commission shall issue its final order not later than two hundred ten (210) days after the filing of the petitioner's case in chief. If the commission grants the petition, the commission's order shall authorize the acquiring utility company to make accounting entries recording the acquisition and that reflect:

(1) the full purchase price;





(2) incidental expenses; and  
 (3) other costs of acquisition;  
 as the net original cost of the utility plant in service assets being  
 acquired, allocated in a reasonable manner among appropriate utility  
 plant in service accounts.

SECTION 7. IC 8-1-30.3-5.5 IS ADDED TO THE INDIANA  
 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
 [EFFECTIVE UPON PASSAGE]: **Sec. 5.5. (a) For purposes of this  
 section, an individual, or the company employing the individual, is  
 qualified to perform an appraisal if the individual is:**

- (1) an engineer registered under IC 25-31; or**
- (2) an appraiser licensed under IC 25-34.1-8.**

**(b) For purposes of this section, an individual performing an  
 appraisal, or the company employing the individual, is  
 disinterested if:**

- (1) the fee for the appraisal services is fixed before the  
 individual performs the appraisal;**
  - (2) the individual is not an employee of one (1) of the parties  
 to the acquisition;**
  - (3) the individual is not a state or municipal employee; and**
  - (4) the:**
    - (A) individual; and**
    - (B) company, if applicable;**
- do not have affiliated interests (as defined in IC 8-1-2-49) in  
 one (1) of the parties to the acquisition.**

**(c) An appraisal under section 5(c)(2) of this chapter must be  
 performed by three (3) qualified and disinterested appraisers,  
 including:**

- (1) at least one (1) appraiser qualified under subsection (a)(1);**
- and**
- (2) at least one (1) appraiser qualified under subsection (a)(2).**

**(d) If the three (3) appraisers performing an appraisal for  
 purposes of section 5(c)(2) of this chapter cannot agree as to an  
 appraised value, the appraisal is sufficient for purposes of section  
 5(c)(2) of this chapter if the appraisal is signed by two (2) of the  
 appraisers.**

SECTION 8. IC 34-57-1-1, AS AMENDED BY P.L.196-2014,  
 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 UPON PASSAGE]: **Sec. 1. This chapter applies to:**

- (1) any controversy existing between two (2) or more parties  
 which might be the subject of a suit at law, except as otherwise  
 provided in section 2 of this chapter; and**



(2) arbitration under IC 36-4-3-21.1 concerning services provided by a municipal utility to properties located ~~outside the corporate boundaries of the municipality.~~ **in the unincorporated area of a county.**

SECTION 9. IC 36-4-3-21 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 21. (a) In lieu of annexing contiguous territory or in cases not involving annexation, the executive and the proper administrative agency of a municipality, with the consent of the municipal legislative body, may enter into contracts with the owners or lessees of designated property in the vicinity of the municipality **within the unincorporated area of a county**, providing for the payment or contribution of money to the municipality for municipal or public purposes specified in the contract. **The unincorporated area of a county does not include property that was in an unincorporated part of a township that reorganized with a municipality under IC 36-1.5 to become a part of the resulting reorganized municipality. A contract entered into with the owners or lessees of designated property located within the boundaries of another municipality is void.** The payments under the contract may be:

(1) related to or in consideration of municipal services or benefits received or to be received by the property owners or lessees;

(2) in lieu of taxes that might be levied on annexation of the designated property; or

(3) wholly unrelated to municipal services or benefits to or potential tax impositions on the designated property.

(b) Any other political subdivision that has taxing power in respect to the designated property or is entitled to share in the property taxes assessed and collected by the municipality may:

(1) join in a contract under this section; or

(2) enter into a separate agreement with the municipality, providing for the division and distribution of contract payments made under this section and for the receipt of a share of those payments by the municipal authority.

(c) A contract under this section may be entered into for the term agreed to by the municipality and the property owners or lessees, but that term may not exceed:

(1) fifteen (15) continuous years under one (1) contract if the municipality is a consolidated or second class city; or

(2) four (4) continuous years under one (1) contract if the municipality is not a consolidated or second class city.

(d) A contract under this section continues in effect for its full term



unless it is:

- (1) induced by fraud of the property owners or lessees;
- (2) grossly and corruptly improvident on the part of the municipality; or
- (3) terminated or reduced in duration by agreement of the municipality and the property owners or lessees.

(e) A contract under this section may provide that during its effective term, the designated property of the contracting owners or lessees is not subject to annexation by the municipality.

**(f) This subsection applies only to a contract under this section that satisfies all of the following:**

- (1) The contract is in effect on June 30, 2020.**
- (2) The designated property subject to the contract is located within the boundaries of a municipality.**

**Notwithstanding subsection (a) and subject to subsection (d), a contract continues in effect after June 30, 2020, only for the remainder of the contract's unexpired term. A contract may not be extended or renewed after June 30, 2020. Any provision of a contract that allows the contract to be automatically renewed or extended for a subsequent term or period after June 30, 2020, is void.**

SECTION 10. IC 36-4-3-21.1, AS ADDED BY P.L.196-2014, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 21.1. **(a) This section does not apply to a contract under section 21(f) of this chapter.**

**(b) This section applies if:**

- (1) one (1) or more contracts were entered into under section 21(a)(1) of this chapter between:

(A) the executive and an administrative agency of a municipality; and

(B) the owners or lessees of properties located ~~outside the corporate boundaries of the municipality; in the unincorporated area of a county;~~

concerning the provision of municipal utility services in the area in which the properties referred to in clause (B) are located;

(2) the contracts have expired;

(3) the area in which the properties referred to in subdivision (1)(B) are located has not been annexed into the municipality; and

(4) the parties have not agreed:

(A) to an extension of the contracts referred to in subdivision (1); or

(B) to enter into new contracts under section 21(a)(1) of this



1 chapter.

2 ~~(b)~~ **(c)** In a situation described in subsection ~~(a)~~: **(b)**:

3 (1) municipal utility services to the properties referred to in  
4 subsection ~~(a)(1)(B)~~ **(b)(1)(B)** may not be terminated, except for  
5 nonpayment of the compensation due under subdivision (2); and  
6 (2) as a condition of continuing to receive municipal utility  
7 services, the owners or lessees of the properties referred to in  
8 subsection ~~(a)(1)(B)~~ **(b)(1)(B)** must continue to pay the rate  
9 charged for the municipal utility services under the expired  
10 contracts, including any payment or contribution of money to the  
11 municipality provided for in the expired contracts under section  
12 21(a) of this chapter;

13 for the period specified in subsection ~~(c)(1)~~ **(d)(1)** or until the  
14 occurrence of one (1) of the events set forth in subsection ~~(c)(2)~~: **(d)(2)**.

15 ~~(c)~~ **(d)** The municipal utility services shall continue to be provided  
16 to the properties referred to in subsection ~~(a)(1)(B)~~ **(b)(1)(B)** under the  
17 terms set forth in subsection ~~(b)~~: **(c)**:

18 (1) for a period of two (2) years from the date of expiration of the  
19 contracts, if none of the events set forth in subdivision (2)(A)  
20 through (2)(C) occurs within that period; or

21 (2) until one (1) of the following occurs:

22 (A) The executive and administrative agency of the  
23 municipality and the owners or lessees of the properties  
24 referred to in subsection ~~(a)(1)(B)~~ **(b)(1)(B)** enter into a new  
25 contract under section 21(a)(1) of this chapter.

26 (B) The area in which the properties referred to in subsection  
27 ~~(a)(1)(B)~~ **(b)(1)(B)** are located is annexed into the  
28 municipality.

29 (C) Subject to subsection ~~(c)~~; **(f)**, arbitration of the matter is  
30 initiated under subsection ~~(d)~~: **(e)**.

31 ~~(d)~~ **(e)** At any time within the period referred to in subsection ~~(c)(1)~~:  
32 **(d)(1)**:

33 (1) the executive and administrative agency of the municipality;  
34 and

35 (2) the owners or lessees of the properties referred to in  
36 subsection ~~(a)(1)(B)~~; **(b)(1)(B)**;

37 may initiate arbitration of the differences preventing the parties from  
38 entering into a new contract under section 21(a)(1) of this chapter. The  
39 arbitration shall be conducted under IC 34-57-1 by an arbitrator  
40 mutually chosen by the parties, and the award made by the arbitrator  
41 must establish reasonable and just terms of a new contract between the  
42 parties under section 21(a)(1) of this chapter, considering all relevant



factors. If either party fails or refuses to enter into a new contract under section 21(a)(1) of this chapter according to the terms of the award, the other party may commence legal action to enforce the award under IC 34-57-1-13.

~~(c)~~ **(f)** If arbitration is initiated under subsection ~~(d)~~ **(e)** before the expiration of the period referred to in subsection ~~(c)(1)~~; **(d)(1)**, but the arbitration is not concluded before the expiration of the period set forth in subsection ~~(c)(1)~~; **(d)(1)**, the municipal utility services shall continue to be provided to the properties referred to in subsection ~~(a)(1)(B)~~ **(b)(1)(B)** under the terms set forth in subsection ~~(b)~~ **(c)** until the arbitrator makes the award and the parties enter into a new contract under section 21(a)(1) of this chapter according to the terms of the award.

SECTION 11. IC 36-9-23-25.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 25.5. Notwithstanding any other provision of this chapter, a utility to which IC 8-1-2-61.9 applies is subject to the jurisdiction of the Indiana utility regulatory commission with respect to:**

- (1) rates and charges;**
- (2) stocks, bonds, notes, or other evidence of indebtedness;**
- (3) rules; and**
- (4) the annual report filing requirement.**

SECTION 12. IC 36-9-25-11.3, AS ADDED BY P.L.175-2006, SECTION 24, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 11.3. (a) This section applies to:

- (1) a board and district created under section 3(b)(2) of this chapter; and**
- (2) a board and district to which the following apply:**
  - (A) The district is within the jurisdiction of a department established under section 1(a)(2) of this chapter.**
  - (B) The district is under an order or party to an agreement with one (1) or more state or federal agencies to remediate environmental conditions.**

(b) For purposes of this section, "commission" refers to the Indiana utility regulatory commission created by IC 8-1-1-2.

(c) For purposes of this section, "fees" means fees:

- (1) for the treatment and disposal of sewage and other waste discharged into the sewer system of the district; and**
- (2) related to property that is subject to full taxation.**

(d) Fees do not take effect until the fees are:

- (1) approved by the board; and**



- 1 (2) either:
- 2 (A) approved in an ordinance adopted by the legislative body
- 3 of each municipality in the district; or
- 4 (B) established by the commission under this section.
- 5 (e) Not earlier than thirty (30) days after fees are approved under
- 6 subsection (d)(1), the board may petition the commission to establish
- 7 the fees under:
- 8 (1) the procedures set forth in IC 8-1-2; and
- 9 (2) subsection (f).
- 10 (f) The commission shall observe the following requirements when
- 11 establishing fees for a district:
- 12 (1) Fees must be sufficient to enable the district to furnish
- 13 reasonably adequate services and facilities.
- 14 (2) Fees for a service must be nondiscriminatory, reasonable, and
- 15 just and must produce sufficient revenue, together with taxes
- 16 levied under this chapter, to do the following:
- 17 (A) Pay all legal and other necessary expenses incident to the
- 18 operation of the utility, including the following:
- 19 (i) Maintenance costs.
- 20 (ii) Operating charges.
- 21 (iii) Upkeep.
- 22 (iv) Repairs.
- 23 (v) Depreciation.
- 24 (vi) Interest charges on bonds or other obligations, including
- 25 leases.
- 26 (B) Provide a sinking fund for the liquidation of bonds or other
- 27 obligations, including leases.
- 28 (C) Provide a debt service reserve for bonds or other
- 29 obligations, including leases, in an amount established by the
- 30 board. The amount may not exceed the maximum annual debt
- 31 service on the bonds or obligations or the maximum annual
- 32 lease rentals, if any.
- 33 (D) Provide adequate money for working capital.
- 34 (E) Provide adequate money for making extensions and
- 35 replacements to the extent not provided for through
- 36 depreciation in clause (A).
- 37 (F) Provide money for the payment of taxes that may be
- 38 assessed against the district.
- 39 (3) The fees charged by the district must produce an income
- 40 sufficient to maintain district property in a sound physical and
- 41 financial condition to render adequate and efficient service. Fees
- 42 may not be too low to meet these requirements.



1 (4) If the board petitions the commission under subsection (e), the  
2 fees established must produce a reasonable return on the sanitary  
3 district facilities.

4 (5) Fees other than fees established for a municipally owned  
5 utility taxed under IC 6-1.1-8-3 must be sufficient to compensate  
6 the municipality for taxes that would be due the municipality on  
7 the utility property located in the municipality if the property were  
8 privately owned.

9 (6) The commission must grant a request by the board to postpone  
10 an increase in fees until after the occurrence of a future event.

11 (g) The board may transfer fees in lieu of taxes established under  
12 subsection (f)(5) to the general fund of the appropriate municipality.

13 (h) Fees established by the commission under this section take  
14 effect to the same extent as if the fees were approved by an ordinance  
15 adopted by the legislative body of each municipality in the district.

16 SECTION 13. **An emergency is declared for this act.**



# COMMITTEE REPORT

Mr. Speaker: Your Committee on Utilities, Energy and Telecommunications, to which was referred House Bill 1131, 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:

Delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

and when so amended that said bill do pass.

(Reference is to HB 1131 as introduced.)

SOLIDAY

Committee Vote: yeas 12, nays 0.

## HOUSE MOTION

Mr. Speaker: I move that House Bill 1131 be amended to read as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 8-1-1.9-3, AS ADDED BY P.L.126-2018, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 3. As used in this chapter, "water or wastewater utility" means a ~~public~~ utility that provides water service, wastewater service, or both water service and wastewater service to the public.

SECTION 2. IC 8-1-1.9-4, AS ADDED BY P.L.126-2018, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 4. (a) Notwithstanding IC 8-1-2.7 and any other law under which a water or wastewater utility is exempt from or may withdraw from the jurisdiction of the commission, a water or wastewater utility that is organized as a legal entity after June 30, 2018, **or that directly or indirectly purchases, acquires, or becomes the owner of any of the property, stock, or bonds of any other utility,** is subject to the jurisdiction of the commission with respect to:

- (1) rates and charges;
- (2) stocks, bonds, notes, or other evidence of indebtedness;
- (3) rules; and
- (4) the annual report filing requirement;

**EH 1131—LS 6793/DI 101**





for the period of ten (10) years beginning on the day on which the water or wastewater utility is organized as a legal entity **or directly or indirectly purchases, acquires, or becomes the owner of any of the property, stock, or bonds of any other utility.**

(b) This section does not affect:

- (1) any statutes requiring or permitting a water or wastewater utility to petition the commission before providing service to the public; or
- (2) the commission's jurisdiction regarding statutes and petitions referred to in subdivision (1)."

Page 1, line 3, delete "to an agreement for a:" and insert **"to:**

- (1) a water main extension;**
- (2) a wastewater main extension; or**
- (3) an agreement that:**
  - (A) is for a water main extension or a wastewater main extension; and**
  - (B) is entered into after June 30, 2020, by a utility and the person requesting the extension."**

PAGE 1, delete lines 4 through 7.

Page 1, delete lines 11 through 17, begin a new paragraph and insert:

**"(c) With respect to any water main extension or wastewater main extension, a utility shall comply with the commission's rules governing water main extensions or wastewater main extensions, as applicable, including:**

- (1) 170 IAC 6-1.5, in the case of a water main extension; or**
  - (2) 170 IAC 8.5-4, in the case of a wastewater main extension;**
- as may be amended by the commission, regardless of whether the utility is subject to the jurisdiction of the commission for the approval of rates and charges. However, a utility is not required to comply with any provisions in the commission's main extension rules that require reporting to the commission.**

**(d) Disputes arising under this section may be submitted as informal complaints to the commission's consumer affairs division, in accordance with IC 8-1-2-34.5(b) and the commission's rules under 170 IAC 16, including provisions for referrals and appeals to the full commission, regardless of whether the person requesting the extension is a customer of the utility.**

**(e) The commission shall adopt by:**

- (1) order; or**
- (2) rule under IC 4-22-2;**

**other procedures not inconsistent with this section that the**



commission determines to be reasonable or necessary to administer this section. In adopting the rules under this section, the commission may adopt emergency rules in the manner provided by IC 4-22-2-37.1. Notwithstanding IC 4-22-2-37.1(g), an emergency rule adopted by the commission under this subsection and in the manner provided by IC 4-22-2-37.1 expires on the date on which a rule that supersedes the emergency rule is adopted by the commission under IC 4-22-2-24 through IC 4-22-2-36.

(f) If the commission determines that it requires additional staff to handle the volume of informal complaints submitted under this section, the commission may impose a fee under this section. Any fee charged by the commission under this section may:

(1) not exceed:

(A) the commission's actual costs in administering this section; or

(B) seven hundred fifty dollars (\$750);

whichever is less; and

(2) be assessed against the party against whom a decision is rendered under this section."

Page 2, delete lines 1 through 2.

Renumber all SECTIONS consecutively.

(Reference is to HB 1131 as printed January 17, 2020.)

PRESSEL

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#### COMMITTEE REPORT

Madam President: The Senate Committee on Utilities, to which was referred House Bill No. 1131, 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:

Page 1, delete lines 1 through 17, begin a new paragraph and insert:

"SECTION 1. IC 8-1-1.9-3, AS ADDED BY P.L.126-2018, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 3. (a) As used in this chapter, "water or wastewater utility" means:

(1) a public utility that provides water service, wastewater service, or both water service and wastewater service to the public; or

(2) a municipally owned utility that provides water service to less than eight thousand (8,000) customers.

(b) The term does not include a municipal wastewater system."

EH 1131—LS 6793/DI 101



Page 2, delete lines 1 through 11, begin a new paragraph and insert:

"SECTION 2. IC 8-1-2-46.2, AS ADDED BY P.L.91-2017, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 46.2. (a) As used in this section, "water or wastewater utility" means a public utility, other than a not-for-profit utility, as defined in section 125(a) of this chapter, that provides water or wastewater service to the public.

(b) Notwithstanding any law or rule governing extension of service, a water or wastewater utility may, on a nondiscriminatory basis, extend service for economic development purposes or to rural areas without a deposit or other adequate assurance of performance from the customer, to the extent that the extension of service results in a positive contribution to the utility's overall cost of service over a twenty (20) year period. However, if the water or wastewater utility determines that the extension of service will not result in a positive contribution to the utility's overall cost of service over a twenty (20) year period, the water or wastewater utility may require a deposit or other adequate assurance of performance from:

- (1) the developer of the project; or
- (2) a local, regional, or state economic development organization.

(c) Subsection (d) applies if:

- (1) a county executive, a municipal legislative body, or, in Marion County, the county fiscal body, establishes an infrastructure development zone under IC 6-1.1-12.5-4; and
- (2) the county executive, municipal legislative body, or county fiscal body requests a public utility to extend water or wastewater utility service to the geographic territory established as the infrastructure development zone.

(d) A water or wastewater utility that receives a request described in subsection (c)(2) may file a petition with the commission seeking approval of the requested extension of service. If the commission approves the petition, in future general rate cases, the commission shall approve rate schedules that include a surcharge payable only by customers located in the geographic area within the jurisdiction of the governmental entity described in subsection (c), **including or, if requested by the governmental entity, only within** the geographic area established as an infrastructure development zone. The surcharge shall recover depreciation expense, weighted cost of capital, and federal and state income tax applicable to the extension of water or wastewater utility service."

Page 3, after line 22, begin a new paragraph and insert:

"SECTION 4. IC 8-1-30.3-5, AS AMENDED BY P.L.229-2019,



SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 5. (a) This section applies if:

- (1) a utility company acquires property from an offered utility in a transaction involving a willing buyer and a willing seller; and
- (2) at least one (1) utility company described in subdivision (1) is subject to the jurisdiction of the commission under this article.

(b) Subject to subsection (c), there is a rebuttable presumption that a cost differential is reasonable.

(c) If the acquisition:

(1) is made under IC 8-1.5-2-6.1, and to the extent the purchase price does not exceed the appraised value as determined under IC 8-1.5-2-5; **or**

**(2) is not made under IC 8-1.5-2-6.1, and to the extent the purchase price does not exceed the appraised value as determined under section 5.5 of this chapter;**

the purchase price is considered reasonable for purposes of subsection (d) and any resulting cost differential is considered reasonable.

(d) Before closing on the acquisition, the utility company that acquires the utility property may petition the commission to include any cost differential as part of its rate base in future rate cases. The commission shall approve the petition if the commission finds the following:

- (1) The utility property is used and useful to the offered utility in providing water service, wastewater service, or both water and wastewater service.
- (2) The offered utility is too small to capture economies of scale or has failed to furnish or maintain adequate, efficient, safe, and reasonable service and facilities.
- (3) The utility company will improve economies of scale or, if otherwise needed, make reasonable and prudent improvements to the offered utility's plant, the offered utility's operations, or both, so that customers of the offered utility will receive adequate, efficient, safe, and reasonable service.
- (4) The acquisition of the utility property is the result of a mutual agreement made at arms length.
- (5) The actual purchase price of the utility property is reasonable.
- (6) The utility company and the offered utility are not affiliated and share no ownership interests.
- (7) The rates charged by the utility company will not increase unreasonably in future general rate cases solely as a result of acquiring the utility property from the offered utility. For purposes of this subdivision, the rates and charges will not increase



unreasonably in future general rate cases so long as the net original cost proposed to be recorded under subsection (f) is not greater than two percent (2%) of the acquiring utility's net original cost rate base as determined in the acquiring utility's most recent general rate case. If the amount proposed to be recorded under subsection (f) is greater than two percent (2%) of the acquiring utility's net original cost rate base as determined in the acquiring utility's most recent general rate case, the commission shall proceed to determine whether the rates charged by the utility company will increase unreasonably in future general rate cases solely as a result of acquiring the utility property from the offered utility and, in making the determination, may consider evidence of:

- (A) the anticipated dollar value increase; and
- (B) the increase as a percentage of the average bill.

(8) The cost differential will be added to the utility company's rate base to be amortized as an addition to expense over a reasonable time with corresponding reductions in the rate base.

(e) In connection with its petition under subsection (d), the acquiring utility company shall provide the following:

- (1) Notice to customers of the acquiring utility company that a petition has been filed with the commission under this chapter. The notice provided under this subdivision must include the cause number assigned to the petition. Notice under this subdivision may be provided to customers in a billing insert.
- (2) Notice to the office of the utility consumer counselor.
- (3) A statement of known infrastructure, environmental, or other issues affecting the offered utility, and the process for determining reasonable and prudent improvements upon completing the acquisition.

(f) In a proceeding under subsection (d), the commission shall issue its final order not later than two hundred ten (210) days after the filing of the petitioner's case in chief. If the commission grants the petition, the commission's order shall authorize the acquiring utility company to make accounting entries recording the acquisition and that reflect:

- (1) the full purchase price;
- (2) incidental expenses; and
- (3) other costs of acquisition;

as the net original cost of the utility plant in service assets being acquired, allocated in a reasonable manner among appropriate utility plant in service accounts.

SECTION 5. IC 8-1-30.3-5.5 IS ADDED TO THE INDIANA

**EH 1131—LS 6793/DI 101**



CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: **Sec. 5.5. (a) For purposes of this section, an individual, or the company employing the individual, is qualified to perform an appraisal if the individual is:**

- (1) an engineer registered under IC 25-31; or**
- (2) an appraiser licensed under IC 25-34.1-8.**

**(b) For purposes of this section, an individual performing an appraisal, or the company employing the individual, is disinterested if:**

- (1) the fee for the appraisal services is fixed before the individual performs the appraisal;**
  - (2) the individual is not an employee of one (1) of the parties to the acquisition;**
  - (3) the individual is not a state or municipal employee; and**
  - (4) the:**
    - (A) individual; and**
    - (B) company, if applicable;**
- do not have affiliated interests (as defined in IC 8-1-2-49) in one (1) of the parties to the acquisition.**

**(c) An appraisal under section 5(c)(2) of this chapter must be performed by three (3) qualified and disinterested appraisers, including:**

- (1) at least one (1) appraiser qualified under subsection (a)(1); and**
- (2) at least one (1) appraiser qualified under subsection (a)(2).**

**(d) If the three (3) appraisers performing an appraisal for purposes of section 5(c)(2) of this chapter cannot agree as to an appraised value, the appraisal is sufficient for purposes of section 5(c)(2) of this chapter if the appraisal is signed by two (2) of the appraisers.**

SECTION 6. IC 34-57-1-1, AS AMENDED BY P.L.196-2014, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: **Sec. 1. This chapter applies to:**

- (1) any controversy existing between two (2) or more parties which might be the subject of a suit at law, except as otherwise provided in section 2 of this chapter; and**
- (2) arbitration under IC 36-4-3-21.1 concerning services provided by a municipal utility to properties located ~~outside the corporate boundaries of the municipality.~~ in the unincorporated area of a county.**

SECTION 7. IC 36-4-3-21 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: **Sec. 21. (a) In lieu of**



annexing contiguous territory or in cases not involving annexation, the executive and the proper administrative agency of a municipality, with the consent of the municipal legislative body, may enter into contracts with the owners or lessees of designated property in the vicinity of the municipality **within the unincorporated area of a county**, providing for the payment or contribution of money to the municipality for municipal or public purposes specified in the contract. **The unincorporated area of a county does not include property that was in an unincorporated part of a township that reorganized with a municipality under IC 36-1.5 to become a part of the resulting reorganized municipality. A contract entered into with the owners or lessees of designated property located within the boundaries of another municipality is void.** The payments under the contract may be:

- (1) related to or in consideration of municipal services or benefits received or to be received by the property owners or lessees;
  - (2) in lieu of taxes that might be levied on annexation of the designated property; or
  - (3) wholly unrelated to municipal services or benefits to or potential tax impositions on the designated property.
- (b) Any other political subdivision that has taxing power in respect to the designated property or is entitled to share in the property taxes assessed and collected by the municipality may:
- (1) join in a contract under this section; or
  - (2) enter into a separate agreement with the municipality, providing for the division and distribution of contract payments made under this section and for the receipt of a share of those payments by the municipal authority.
- (c) A contract under this section may be entered into for the term agreed to by the municipality and the property owners or lessees, but that term may not exceed:
- (1) fifteen (15) continuous years under one (1) contract if the municipality is a consolidated or second class city; or
  - (2) four (4) continuous years under one (1) contract if the municipality is not a consolidated or second class city.
- (d) A contract under this section continues in effect for its full term unless it is:
- (1) induced by fraud of the property owners or lessees;
  - (2) grossly and corruptly improvident on the part of the municipality; or
  - (3) terminated or reduced in duration by agreement of the municipality and the property owners or lessees.



(e) A contract under this section may provide that during its effective term, the designated property of the contracting owners or lessees is not subject to annexation by the municipality.

**(f) This subsection applies only to a contract under this section that satisfies all of the following:**

**(1) The contract is in effect on June 30, 2020.**

**(2) The designated property subject to the contract is located within the boundaries of a municipality.**

**Notwithstanding subsection (a) and subject to subsection (d), a contract continues in effect after June 30, 2020, only for the remainder of the contract's unexpired term. A contract may not be extended or renewed after June 30, 2020. Any provision of a contract that allows the contract to be automatically renewed or extended for a subsequent term or period after June 30, 2020, is void.**

SECTION 8. IC 36-4-3-21.1, AS ADDED BY P.L.196-2014, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 21.1. **(a) This section does not apply to a contract under section 21(f) of this chapter.**

~~(a)~~ **(b)** This section applies if:

(1) one (1) or more contracts were entered into under section 21(a)(1) of this chapter between:

(A) the executive and an administrative agency of a municipality; and

(B) the owners or lessees of properties located ~~outside the corporate boundaries of the municipality; in the unincorporated area of a county;~~

concerning the provision of municipal utility services in the area in which the properties referred to in clause (B) are located;

(2) the contracts have expired;

(3) the area in which the properties referred to in subdivision (1)(B) are located has not been annexed into the municipality; and

(4) the parties have not agreed:

(A) to an extension of the contracts referred to in subdivision (1); or

(B) to enter into new contracts under section 21(a)(1) of this chapter.

~~(b)~~ **(c)** In a situation described in subsection ~~(a)~~: **(b)**:

(1) municipal utility services to the properties referred to in subsection ~~(a)~~~~(1)~~~~(B)~~ **(b)(1)(B)** may not be terminated, except for nonpayment of the compensation due under subdivision (2); and

(2) as a condition of continuing to receive municipal utility





services, the owners or lessees of the properties referred to in subsection ~~(a)(1)(B)~~ **(b)(1)(B)** must continue to pay the rate charged for the municipal utility services under the expired contracts, including any payment or contribution of money to the municipality provided for in the expired contracts under section 21(a) of this chapter;

for the period specified in subsection ~~(c)(1)~~ **(d)(1)** or until the occurrence of one (1) of the events set forth in subsection ~~(c)(2)~~ **(d)(2)**.

~~(c)~~ **(d)** The municipal utility services shall continue to be provided to the properties referred to in subsection ~~(a)(1)(B)~~ **(b)(1)(B)** under the terms set forth in subsection ~~(b)~~ **(c)**:

(1) for a period of two (2) years from the date of expiration of the contracts, if none of the events set forth in subdivision (2)(A) through (2)(C) occurs within that period; or

(2) until one (1) of the following occurs:

(A) The executive and administrative agency of the municipality and the owners or lessees of the properties referred to in subsection ~~(a)(1)(B)~~ **(b)(1)(B)** enter into a new contract under section 21(a)(1) of this chapter.

(B) The area in which the properties referred to in subsection ~~(a)(1)(B)~~ **(b)(1)(B)** are located is annexed into the municipality.

(C) Subject to subsection ~~(c)~~ **(f)**, arbitration of the matter is initiated under subsection ~~(d)~~ **(e)**.

~~(d)~~ **(e)** At any time within the period referred to in subsection ~~(c)(1)~~ **(d)(1)**:

(1) the executive and administrative agency of the municipality; and

(2) the owners or lessees of the properties referred to in subsection ~~(a)(1)(B)~~ **(b)(1)(B)**;

may initiate arbitration of the differences preventing the parties from entering into a new contract under section 21(a)(1) of this chapter. The arbitration shall be conducted under IC 34-57-1 by an arbitrator mutually chosen by the parties, and the award made by the arbitrator must establish reasonable and just terms of a new contract between the parties under section 21(a)(1) of this chapter, considering all relevant factors. If either party fails or refuses to enter into a new contract under section 21(a)(1) of this chapter according to the terms of the award, the other party may commence legal action to enforce the award under IC 34-57-1-13.

~~(c)~~ **(f)** If arbitration is initiated under subsection ~~(d)~~ **(e)** before the expiration of the period referred to in subsection ~~(c)(1)~~ **(d)(1)**, but the



arbitration is not concluded before the expiration of the period set forth in subsection ~~(c)(1)~~; **(d)(1)**, the municipal utility services shall continue to be provided to the properties referred to in subsection ~~(a)(1)(B)~~ **(b)(1)(B)** under the terms set forth in subsection ~~(b)~~ **(c)** until the arbitrator makes the award and the parties enter into a new contract under section 21(a)(1) of this chapter according to the terms of the award."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1131 as reprinted January 28, 2020.)

MERRITT, Chairperson

Committee Vote: Yeas 11, Nays 0.

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#### SENATE MOTION

Madam President: I move that Engrossed House Bill 1131 be amended to read as follows:

Replace the effective date in each SECTION with "[EFFECTIVE UPON PASSAGE]".

Page 2, between lines 31 and 32, begin a new paragraph and insert:

"SECTION 3. IC 8-1-2-61.9 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE UPON PASSAGE]: **Sec. 61.9. (a) As used in this section, "utility" means a municipally owned utility (as defined in IC 8-1-2-1(h)) that provides water service or wastewater service, or both, to the public.**

**(b) This section applies only to a utility that on January 1, 2020, provides water service, wastewater service, or both, to property that satisfies all of the following:**

**(1) The property is not located within the municipality that owns or operates the utility.**

**(2) The property was in an unincorporated part of a township that reorganized with a municipality under IC 36-1.5 to become a part of the resulting reorganized municipality.**

**(c) Notwithstanding IC 8-1-2.7 and any other law under which a water or wastewater utility is exempt from or may withdraw from the jurisdiction of the commission, a utility to which this section applies is subject to the jurisdiction of the commission with**

EH 1131—LS 6793/DI 101



respect to:

- (1) rates and charges;
- (2) stocks, bonds, notes, or other evidence of indebtedness;
- (3) rules; and
- (4) the annual report filing requirement.

However, a utility to which this section applies may impose and collect rates and charges existing on February 1, 2020, until the rates and charges are replaced by rates and charges determined under the rate case required by subsection (d).

(d) A utility to which this section applies must file a rate case with the commission before July 1, 2020."

Page 10, after line 8, begin a new paragraph and insert:

"SECTION 10. IC 36-9-23-25.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 25.5. Notwithstanding any other provision of this chapter, a utility to which IC 8-1-2-61.9 applies is subject to the jurisdiction of the Indiana utility regulatory commission with respect to:**

- (1) rates and charges;
- (2) stocks, bonds, notes, or other evidence of indebtedness;
- (3) rules; and
- (4) the annual report filing requirement.

SECTION 11. **An emergency is declared for this act."**

Renumber all SECTIONS consecutively.

(Reference is to EHB 1131 as printed February 25, 2020.)

FORD J.D.

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## SENATE MOTION

Madam President: I move that Engrossed House Bill 1131 be amended to read as follows:

Replace the effective date in each SECTION with "[EFFECTIVE UPON PASSAGE]".

Page 1, line 3, delete "(a)".

Page 1, delete line 9.

Page 1, between lines 9 and 10, begin a new paragraph and insert:

"SECTION 2. IC 8-1-1.9-4, AS ADDED BY P.L.126-2018, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 4. (a) Notwithstanding IC 8-1-2.7 and any other law under which a water or wastewater utility is exempt from or**

**EH 1131—LS 6793/DI 101**



may withdraw from the jurisdiction of the commission, a water or wastewater utility that is organized ~~as a legal entity~~ after June 30, 2018, is subject to the jurisdiction of the commission with respect to:

- (1) rates and charges;
- (2) stocks, bonds, notes, or other evidence of indebtedness;
- (3) rules; and
- (4) the annual report filing requirement;

for the period of ten (10) years beginning on the day on which the water or wastewater utility is organized. ~~as a legal entity.~~

(b) This section does not affect:

- (1) any statutes requiring or permitting a water or wastewater utility to petition the commission before providing service to the public; or
- (2) the commission's jurisdiction regarding statutes and petitions referred to in subdivision (1)."

Page 10, after line 8, begin a new paragraph and insert:

"SECTION 10. IC 36-9-25-11.3, AS ADDED BY P.L.175-2006, SECTION 24, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 11.3. (a) This section applies to:

- (1) a board and district created under section 3(b)(2) of this chapter; **and**
- (2) **a board and district to which the following apply:**
  - (A) **The district is within the jurisdiction of a department established under section 1(a)(2) of this chapter.**
  - (B) **The district is under an order or party to an agreement with one (1) or more state or federal agencies to remediate environmental conditions.**

(b) For purposes of this section, "commission" refers to the Indiana utility regulatory commission created by IC 8-1-1-2.

(c) For purposes of this section, "fees" means fees:

- (1) for the treatment and disposal of sewage and other waste discharged into the sewer system of the district; and
- (2) related to property that is subject to full taxation.

(d) Fees do not take effect until the fees are:

- (1) approved by the board; and
- (2) either:
  - (A) approved in an ordinance adopted by the legislative body of each municipality in the district; or
  - (B) established by the commission under this section.

(e) Not earlier than thirty (30) days after fees are approved under subsection (d)(1), the board may petition the commission to establish the fees under:



- (1) the procedures set forth in IC 8-1-2; and
- (2) subsection (f).
- (f) The commission shall observe the following requirements when establishing fees for a district:
  - (1) Fees must be sufficient to enable the district to furnish reasonably adequate services and facilities.
  - (2) Fees for a service must be nondiscriminatory, reasonable, and just and must produce sufficient revenue, together with taxes levied under this chapter, to do the following:
    - (A) Pay all legal and other necessary expenses incident to the operation of the utility, including the following:
      - (i) Maintenance costs.
      - (ii) Operating charges.
      - (iii) Upkeep.
      - (iv) Repairs.
      - (v) Depreciation.
      - (vi) Interest charges on bonds or other obligations, including leases.
    - (B) Provide a sinking fund for the liquidation of bonds or other obligations, including leases.
    - (C) Provide a debt service reserve for bonds or other obligations, including leases, in an amount established by the board. The amount may not exceed the maximum annual debt service on the bonds or obligations or the maximum annual lease rentals, if any.
    - (D) Provide adequate money for working capital.
    - (E) Provide adequate money for making extensions and replacements to the extent not provided for through depreciation in clause (A).
    - (F) Provide money for the payment of taxes that may be assessed against the district.
  - (3) The fees charged by the district must produce an income sufficient to maintain district property in a sound physical and financial condition to render adequate and efficient service. Fees may not be too low to meet these requirements.
  - (4) If the board petitions the commission under subsection (e), the fees established must produce a reasonable return on the sanitary district facilities.
  - (5) Fees other than fees established for a municipally owned utility taxed under IC 6-1.1-8-3 must be sufficient to compensate the municipality for taxes that would be due the municipality on the utility property located in the municipality if the property were



privately owned.

(6) The commission must grant a request by the board to postpone an increase in fees until after the occurrence of a future event.

(g) The board may transfer fees in lieu of taxes established under subsection (f)(5) to the general fund of the appropriate municipality.

(h) Fees established by the commission under this section take effect to the same extent as if the fees were approved by an ordinance adopted by the legislative body of each municipality in the district.

**SECTION 11. An emergency is declared for this act."**

Renumber all SECTIONS consecutively.

(Reference is to EHB 1131 as printed February 25, 2020.)

GARTEN

