



Reprinted
April 3, 2019

ENGROSSED HOUSE BILL No. 1347

DIGEST OF HB 1347 (Updated April 2, 2019 3:03 pm - DI 101)

Citations Affected: IC 8-1.5.

Synopsis: Municipally owned utilities. Provides that all rates, charges, and other fees for services rendered by a municipally owned utility (other than services rendered by a municipally owned sewer utility or by a department of public utilities for a consolidated city) to property occupied by someone other than the owner are payable by the person occupying the property if the account or other customer or billing records maintained by the utility for the property indicate that: (1) the
(Continued next page)

Effective: Upon passage.

Burton, Smaltz, Soliday, Candelaria Reardon

(SENATE SPONSORS — SANDLIN, TAYLOR G, RANDOLPH LONNIE M)

January 14, 2019, read first time and referred to Committee on Utilities, Energy and Telecommunications.

February 14, 2019, amended, reported — Do Pass.

February 18, 2019, read second time, ordered engrossed. Engrossed.

February 19, 2019, read third time, passed. Yeas 83, nays 11.

SENATE ACTION

March 4, 2019, read first time and referred to Committee on Utilities.

March 25, 2019, reported favorably — Do Pass.

April 2, 2019, read second time, amended, ordered engrossed.

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Digest Continued

property is occupied by someone other than the owner; and (2) the person occupying the property is responsible for paying the rates, charges, and fees. Provides that upon applying for utility service from a municipally owned utility, the person occupying the property shall provide the utility with the name and contact information of the owner or manager of the property. Provides that rates, charges, and fees assessed by a municipally owned utility with respect to property occupied by someone other than the owner do not constitute a lien against the property. Specifies that these provisions do not: (1) prohibit a municipal legislative body from imposing any requirement to: (A) ensure payment by; or (B) the creditworthiness of; the person occupying the property; or (2) abrogate or limit the authority of the owner of a multi-unit building to engage in electrical submetering.

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First Regular Session of the 121st General Assembly (2019)

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 2018 Regular and Special Session of the General Assembly.

ENGROSSED HOUSE BILL No. 1347

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

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

- 1 SECTION 1. IC 8-1.5-3-8, AS AMENDED BY P.L.172-2009,
2 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 UPON PASSAGE]: Sec. 8. (a) A municipality owning a utility under
4 this chapter shall furnish reasonably adequate services and facilities.
5 (b) The rates and charges made by a municipality for a service
6 rendered or to be rendered, either directly or in connection therewith,
7 must be nondiscriminatory, reasonable, and just.
8 (c) "Reasonable and just rates and charges for services" means rates
9 and charges that produce sufficient revenue to:
10 (1) pay all the legal and other necessary expenses incident to the
11 operation of the utility, including:
12 (A) maintenance costs;
13 (B) operating charges;
14 (C) upkeep;
15 (D) repairs;

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- 1 (E) depreciation;
- 2 (F) interest charges on bonds or other obligations, including
- 3 leases; and
- 4 (G) costs associated with the acquisition of utility property
- 5 under IC 8-1.5-2;
- 6 (2) provide a sinking fund for the liquidation of bonds or other
- 7 obligations, including leases;
- 8 (3) provide a debt service reserve for bonds or other obligations,
- 9 including leases, in an amount established by the municipality,
- 10 not to exceed the maximum annual debt service on the bonds or
- 11 obligations or the maximum annual lease rentals;
- 12 (4) provide adequate money for working capital;
- 13 (5) provide adequate money for making extensions and
- 14 replacements to the extent not provided for through depreciation
- 15 in subdivision (1); and
- 16 (6) provide money for the payment of any taxes that may be
- 17 assessed against the utility.
- 18 (d) It is the intent of this section that the rates and charges produce
- 19 an income sufficient to maintain the utility property in a sound physical
- 20 and financial condition to render adequate and efficient service. Rates
- 21 and charges too low to meet these requirements are unlawful.
- 22 (e) The board may recommend to the municipal legislative body
- 23 rates and charges sufficient to include a reasonable return on the utility
- 24 plant of the municipality.
- 25 (f) Rates and charges established under this section are subject to
- 26 the approval of:
- 27 (1) the municipal legislative body by ordinance; and
- 28 (2) the commission, in accordance with the procedures set forth
- 29 in IC 8-1-2.
- 30 The commission shall approve rates and charges that are sufficient, in
- 31 addition to the cash revenue requirements set forth in subsection (c), to
- 32 include a reasonable return on the utility plant of the municipality if the
- 33 legislative body so elects.
- 34 (g) Except for a municipally owned utility taxed under IC 6-1.1-8-3,
- 35 the commission shall approve rates and charges sufficient to
- 36 compensate the municipality for taxes that would be due the
- 37 municipality on the utility property were it privately owned. These rates
- 38 and charges in lieu of taxes may be transferred to the municipal general
- 39 fund, if the legislative body so elects.
- 40 (h) The commission shall grant a request that an increase in rates
- 41 and charges not be effective until after the occurrence of a future event
- 42 if the legislative body so requests.



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

8 (j) **This subsection does not apply to services rendered by a**
 9 **sewage works that is subject to IC 36-9-23 or to IC 36-9-25. This**
 10 **subsection also does not apply to services rendered by a**
 11 **department of public utilities created by IC 8-1-11.1 or to services**
 12 **rendered by a utility company owned, operated, or held in trust by**
 13 **a consolidated city. This subsection applies to property that is**
 14 **served by a municipally owned utility and that is occupied by**
 15 **someone other than the owner of the property. Upon applying for**
 16 **utility service from a municipally owned utility for property**
 17 **subject to this subsection, the person occupying the property shall**
 18 **provide the municipally owned utility with the name and contact**
 19 **information of the owner or manager of the property. Subject to**
 20 **subsection (k), all rates, charges, and other fees for services**
 21 **rendered by a municipally owned utility to a property that is**
 22 **subject to this subsection are payable by the person occupying the**
 23 **property if the account or other customer or billing records**
 24 **maintained by the municipally owned utility for the property**
 25 **indicate that:**

26 (1) **the property is occupied by someone other than the owner;**
 27 **and**

28 (2) **the person occupying the property is responsible for**
 29 **paying the rates, charges, and fees assessed for the services**
 30 **rendered by the municipally owned utility with respect to the**
 31 **property.**

32 **Rates, charges, and fees assessed for services rendered by a**
 33 **municipally owned utility with respect to property occupied by**
 34 **someone other than the owner of the property do not constitute a**
 35 **lien against the property.**

36 (k) **With respect to property that is served by a municipally**
 37 **owned utility and that is occupied by someone other than the**
 38 **owner of the property, subsection (j) does not:**

39 (1) **prohibit a municipal legislative body from imposing any:**
 40 (A) **requirement for a deposit to ensure payment by the**
 41 **person occupying the property of the rates, charges, and**
 42 **fees assessed for the services rendered by the municipally**



1 **owned utility with respect to the property; or**
2 **(B) other requirement to ensure the creditworthiness of the**
3 **person occupying the property as the account holder or**
4 **customer with respect to the property;**
5 **that the municipal legislative body may lawfully impose; or**
6 **(2) abrogate or limit the authority of the owner of a multi-unit**
7 **building to engage in electrical submetering under**
8 **IC 8-1-2-36.5, subject to:**
9 **(A) the owner's qualification to engage in submetering**
10 **under IC 8-1-2-36.5 and 170 IAC 4-5; and**
11 **(B) the owner's compliance with the requirements for**
12 **submetering set forth in IC 8-1-2-36.5 and 170 IAC 4-5.**
13 **SECTION 2. An emergency is declared for this act.**



COMMITTEE REPORT

Mr. Speaker: Your Committee on Utilities, Energy and Telecommunications, to which was referred House Bill 1347, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 4, delete lines 5 through 42, begin a new paragraph and insert:

"SECTION 2. IC 36-9-23-32, AS AMENDED BY P.L.196-2014, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 32. (a) Except as otherwise provided in a provision included in an ordinance under section 25(f)(3) of this chapter, fees assessed against real property under this chapter or under any statute repealed by IC 19-2-5-30 (repealed September 1, 1981) constitute a lien against the property assessed. The lien is superior to all other liens except tax liens. Except as provided in subsections (b) and (c), the lien attaches when notice of the lien is filed in the county recorder's office under section 33 of this chapter.

(b) A fee is not enforceable as a lien against a subsequent owner of property unless the lien for the fee was recorded with the county recorder before the conveyance to the subsequent owner. If the property is conveyed before the lien can be filed, the municipality shall notify the person who owned the property at the time the fee became payable. The notice must inform the person that payment, including penalty fees for delinquencies, is due not more than fifteen (15) days after the date of the notice. If payment is not received within one hundred eighty (180) days after the date of the notice, the amount due may be expensed as a bad debt loss.

(c) Except as otherwise provided in a provision included in an ordinance under section 25(f)(3) of this chapter, **and subject to subsection (e)**, a lien attaches against real property occupied by someone other than the owner only if the utility notifies the owner not later than twenty (20) days after the time the utility fees become sixty (60) days delinquent. A notice sent to the owner under this subsection must be sent by first class mail or by certified mail, return receipt requested (or an equivalent service permitted under IC 1-1-7-1) to:

- (1) the owner of record of real property with a single owner; or
- (2) at least one (1) of the owners of real property with multiple owners;

at the last address of the owner for the property as indicated in the records of the county auditor on the date of the notice of the delinquency, or to another address specified by the owner, in a written

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notice to the utility, at which the owner requests to receive a notice of delinquency under this subsection. The cost of sending notice under this subsection is an administrative cost that may be billed to the owner.

(d) The municipality shall release:

- (1) liens filed with the county recorder after the recorded date of conveyance of the property; and
- (2) delinquent fees incurred by the seller;

upon receipt of a verified demand in writing from the purchaser. The demand must state that the delinquent fees were not incurred by the purchaser as a user, lessee, or previous owner, and that the purchaser has not been paid by the seller for the delinquent fees.

(e) This subsection applies to real property that is occupied by someone other than the owner and with respect to which fees assessed under this chapter become sixty (60) days delinquent after June 30, 2019. Except as otherwise provided in a provision included in an ordinance under section 25(f)(3) of this chapter, a lien attaches to real property subject to this subsection only if the utility provides notice of the delinquency to:

- (1) the owner, in the manner prescribed in subsection (c); and**
- (2) any first lien mortgage holder of record, by first class mail or by certified mail, return receipt requested (or an equivalent service permitted under IC 1-1-7-1);**

not later than twenty (20) days after the time the utility fees become sixty (60) days delinquent. The cost of sending notice under this subsection is an administrative cost that may be billed to the owner.

SECTION 3. IC 36-9-25-11, AS AMENDED BY P.L.196-2014, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 11. (a) In connection with its duties, the board may fix fees for the treatment and disposal of sewage and other waste discharged into the sewerage system, collect the fees, and establish and enforce rules governing the furnishing of and payment for sewage treatment and disposal service. The fees must be just and equitable and shall be paid by any user of the sewage works and, except as otherwise provided in an ordinance provision described in subsection (1), the owner of every lot, parcel of real property, or building that is connected with and uses the sewage works of the district by or through any part of the sewerage system. This section applies to owners of property that is partially or wholly exempt from taxation, as well as owners of property subject to full taxation.

(b) The board may change fees from time to time. The fees, together



with the taxes levied under this chapter, must at all times be sufficient to produce revenues sufficient to pay operation, maintenance, and administrative expenses, to pay the principal and interest on bonds as they become due and payable, and to provide money for the revolving fund authorized by this chapter.

(c) Fees may not be established until a public hearing has been held at which all the users of the sewage works and owners of property served or to be served by the works, including interested parties, have had an opportunity to be heard concerning the proposed fees. After introduction of the resolution fixing fees, and before they are finally adopted, notice of the hearing setting forth the proposed schedule of fees shall be given by publication in accordance with IC 5-3-1. After the hearing the resolution establishing fees, either as originally introduced or as amended, shall be passed and put into effect. However, fees related to property that is subject to full taxation do not take effect until they have been approved by ordinance of the municipal legislative body or, in the case of a district described in section 3(b)(2) of this chapter, under section 11.3 of this chapter.

(d) A copy of the schedule of the fees shall be kept on file in the office of the board and must be open to inspection by all interested parties. The fees established for any class of users or property served shall be extended to cover any additional premises thereafter served that fall within the same class, without the necessity of hearing or notice.

(e) A change of fees may be made in the same manner as fees were originally established. However, if a change is made substantially pro rata for all classes of service, hearing or notice is not required, but approval of the change by ordinance of the municipal legislative body is required, and, in the case of a district described in section 3(b)(2) of this chapter, approval under section 11.3 of this chapter is required.

(f) If a fee established is not paid within thirty (30) days after it is due, the board may recover, in a civil action in the name of the municipality, the amount, together with a penalty of ten percent (10%) and a reasonable attorney's fee from:

- (1) the delinquent user; or
- (2) the owner of the property;

subject to any ordinance described in subsection (l).

(g) Except as otherwise provided in:

- (1) subsection (h);
- (2) **section 11.2(b) of this chapter;** or in
- (3) an ordinance provision described in subsection (l);

fees assessed against real property under this section also constitute a



lien against the property assessed. The lien attaches at the time of the filing of the notice of lien in the county recorder's office. The lien is superior to all other liens except tax liens, and shall be enforced and foreclosed in the same manner as is provided for liens under IC 36-9-23-33 and IC 36-9-23-34.

(h) A fee assessed against real property under this section constitutes a lien against the property assessed only when the fee is delinquent for no more than three (3) years from the day after the fee is due.

(i) In addition to the:

- (1) penalties under subsections (f) and (g); or
- (2) alternative penalty available under section 11.5 of this chapter;

a delinquent user may not discharge water into the public sewers and may have the property disconnected from the public sewers.

(j) The authority to establish a user fee under this section includes fees to recover the cost of construction of sewage works from industrial users as defined and required under federal statute or rule. Any industrial users' cost recovery fees may become a lien upon the real property and shall be collected in the manner provided by law. In addition, the imposition of the fees, the use of the amounts collected, and the criteria for the fees must be consistent with the regulations of the federal Environmental Protection Agency.

(k) The authority to establish a user fee under this section includes fees to recover the costs associated with providing financial assistance under section 42 of this chapter. A fee that is:

- (1) established under this subsection or any other law; and
- (2) used to provide financial assistance under section 42 of this chapter;

is considered just and equitable if the project for which the financial assistance is provided otherwise complies with the requirements of this chapter.

(l) For purposes of this subsection, "municipal legislative body" refers to the legislative body of each municipality in the district, in the case of a district described in section 3(b)(2) of this chapter. This subsection does not apply to a conservancy district established under IC 14-33 for the collection, treatment, and disposal of sewage and other liquid wastes. In an ordinance adopted under this chapter, the municipal legislative body may include one (1) or more of the following provisions with respect to property occupied by someone other than the owner of the property:

- (1) That fees for the services rendered by the sewerage system to



the property are payable by the person occupying the property. At the option of the municipal legislative body, the ordinance may include any:

(A) requirement for a deposit to ensure payment of the fees by the person occupying the property; or

(B) other requirement to ensure the creditworthiness of the person occupying the property as the account holder or customer with respect to the property;

that the municipal legislative body may lawfully impose.

(2) That the fees for the services rendered by the sewerage system to the property are payable by the person occupying the property if one (1) of the following conditions is satisfied:

(A) Either the property owner or the person occupying the property gives to the board written notice that indicates that the person occupying the property is responsible for paying the fees with respect to the property and requests that the account or other customer or billing records maintained for the property be in the name of the person occupying the property. At the option of the municipal legislative body, the ordinance may provide that a document that:

(i) is executed by the property owner and the person occupying the property;

(ii) identifies the person occupying the property by name; and

(iii) indicates that the person occupying the property is responsible for paying the fees assessed by the board with respect to the property;

serves as written notice for purposes of this clause.

(B) The account or other customer or billing records maintained by the board for the property otherwise indicate that:

(i) the property is occupied by someone other than the owner; and

(ii) the person occupying the property is responsible for paying the fees.

(C) The property owner or the person occupying the property satisfies any other requirements or conditions that the municipal legislative body includes in the ordinance.

(3) That fees assessed against the property for the services rendered by the sewerage system to the property do not constitute a lien against the property, notwithstanding subsection (g), and subject to any requirements or conditions set forth in the



ordinance.

This subsection may not be construed to prohibit a municipal legislative body from including in an ordinance adopted under this chapter any other provision that the municipal legislative body considers appropriate.

SECTION 4. IC 36-9-25-11.2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 11.2. **(a)** If a fee established under section 11 of this chapter is not paid within thirty (30) days after it is due, a copy of any notice of delinquency sent to a delinquent user who is a tenant must be sent to the owner of the property occupied by the tenant at the latest address of the owner as shown on the property tax records of the county in which the property is located.

(b) This subsection applies to real property that is occupied by someone other than the owner and with respect to which fees established under section 11 of this chapter become sixty (60) days delinquent after June 30, 2019. Except as otherwise provided in section 11(h) of this chapter or in a provision included in an ordinance under section 11(l)(3) of this chapter, a lien attaches to real property subject to this subsection only if the board provides notice of the delinquency to any first lien mortgage holder of record, by first class mail or by certified mail, return receipt requested (or an equivalent service permitted under IC 1-1-7-1), not later than twenty (20) days after the time the fees become sixty (60) days delinquent. The cost of sending notice under this subsection is an administrative cost that may be billed to the owner of the property."

Page 5, delete lines 1 through 10.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1347 as introduced.)

SOLIDAY

Committee Vote: yeas 10, nays 0.

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COMMITTEE REPORT

Madam President: The Senate Committee on Utilities, to which was referred House Bill No. 1347, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is to HB 1347 as printed February 15, 2019.)

MERRITT, Chairperson

Committee Vote: Yeas 8, Nays 2

SENATE MOTION

Madam President: I move that Engrossed House Bill 1347 be amended to read as follows:

Page 3, line 9, after "IC 36-9-25." insert "**This subsection also does not apply to services rendered by a department of public utilities created by IC 8-1-11.1 or to services rendered by a utility company owned, operated, or held in trust by a consolidated city.**".

(Reference is to EHB 1347 as printed March 26, 2019.)

SANDLIN

SENATE MOTION

Madam President: I move that Engrossed House Bill 1347 be amended to read as follows:

Page 3, line 12, after "property." insert "**Upon applying for utility service from a municipally owned utility for property subject to this subsection, the person occupying the property shall provide the municipally owned utility with the name and contact information of the owner or manager of the property.**".

(Reference is to EHB 1347 as printed March 26, 2019.)

SANDLIN



SENATE MOTION

Madam President: I move that Engrossed House Bill 1347 be amended to read as follows:

Page 4, delete lines 5 through 42.

Delete pages 5 through 8.

Page 9, delete lines 1 through 23.

Re-number all SECTIONS consecutively.

(Reference is to EHB 1347 as printed March 26, 2019.)

LEISING

