

HOUSE BILL No. 1404

DIGEST OF INTRODUCED BILL

Citations Affected: IC 8-1-2-123; IC 8-1.5-3-4; IC 36-9.

Synopsis: Water service disconnections. Provides that a water or sewer utility: (1) may not discontinue water service or sewage disposal service at the residence of a customer at which an unemancipated minor less than 18 years of age resides; and (2) must provide the customer an opportunity to enter into a reasonable amortization agreement to pay any delinquent balance on the customer's account.

Effective: Upon passage.

Pack

January 14, 2021, read first time and referred to Committee on Utilities, Energy and Telecommunications.



First Regular Session of the 122nd General Assembly (2021)

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 2020 Regular Session of the General Assembly.

HOUSE BILL No. 1404



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 8-1-2-123 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE
3 UPON PASSAGE]: **Sec. 123. (a) As used in this section, "water or
4 sewer utility" has the meaning set forth in section 1.2 of this
5 chapter.**
6 **(b) Except as provided in subsection (e), and notwithstanding
7 any other law, a water or sewer utility may not discontinue water
8 service or sewage disposal service provided by the water or sewer
9 utility to a residence in which an individual who is:**
10 **(1) less than eighteen (18) years of age; and**
11 **(2) not an emancipated minor;**
12 **resides.**
13 **(c) A water or sewer utility shall provide a residential customer:**
14 **(1) whose residence is described in subsection (b); and**
15 **(2) whose account for water service or sewage disposal service
16 provided by the water or sewer utility to the residence is
17 delinquent;**



1 **an opportunity to enter into a reasonable amortization agreement**
 2 **with the water or sewer utility to pay the delinquent account. Such**
 3 **an amortization agreement must provide the customer with an**
 4 **adequate opportunity to apply for and receive the benefits of any**
 5 **public assistance available to the customer. An amortization**
 6 **agreement under this subsection is subject to amendment on**
 7 **request of the customer if there is a change in the customer's**
 8 **financial circumstances.**

9 **(d) The commission may establish a reasonable rate of interest**
 10 **that a water or sewer utility may charge on the unpaid balance of**
 11 **a delinquent account described in subsection (c). A rate of interest**
 12 **established under this subsection may not exceed the rate**
 13 **established by the commission under section 34.5 of this chapter.**

14 **(e) This section does not prohibit disconnection of water service**
 15 **or sewer service at a residence if the disconnection:**

16 **(1) is for purposes of repairs or alterations necessary for**
 17 **continuance or resumption of water service or sewage**
 18 **disposal service at the residence; and**

19 **(2) continues only for the amount of time necessary to**
 20 **complete the repairs or alterations.**

21 **(f) The commission shall adopt rules under IC 4-22-2 to carry**
 22 **out the provisions of this section.**

23 SECTION 2. IC 8-1.5-3-4, AS AMENDED BY P.L.257-2019,
 24 SECTION 77, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 25 UPON PASSAGE]: Sec. 4. (a) The board has general supervisory
 26 powers over the utilities under its control, with responsibility for the
 27 detailed supervision of each utility to be vested in its superintendent,
 28 who is responsible to the board for the business and technical operation
 29 of the utility. The board shall:

30 (1) fix the number and compensation of employees;

31 (2) adopt rules governing the appointment of employees including
 32 making proper classifications and rules to:

33 (A) determine the eligibility of applicants;

34 (B) determine by competitive examination the relative fitness
 35 of applicants for positions;

36 (C) establish eligible lists arranged according to the ratings
 37 secured;

38 (D) provide for the appointment of those having the highest
 39 ratings; and

40 (E) provide for the promotion of employees;

41 (3) subject to IC 36-4-9-2, appoint a superintendent or manager
 42 of each utility under its control who is responsible to the board for



- 1 the business and technical operation of the utility; the board shall
 2 make the appointment on the basis of fitness to manage the
 3 particular utility to which ~~he~~ **the superintendent or manager** is
 4 to be assigned, taking into account ~~his~~ **the individual's** executive
 5 ability and ~~his~~ knowledge of the utility industry;
- 6 (4) subject to IC 36-4-9-12, hire attorneys when required for the
 7 operation of the utility;
- 8 (5) hire professional or expert personnel when required for the
 9 operation of the utility;
- 10 (6) submit a budget of its financial needs for the next year in the
 11 detail required by the municipal legislative body;
- 12 (7) recommend to the legislative body reasonable and just rates
 13 and charges for services to the patrons of each utility;
- 14 (8) appropriate, lease, rent, purchase, and hold all real and
 15 personal property of the utility;
- 16 (9) enter upon lands for the purpose of surveying or examining
 17 the land to determine the location of any plant or appurtenances;
- 18 (10) award contracts for:
- 19 (A) the purchase of capital equipment;
- 20 (B) the construction of capital improvements; or
- 21 (C) other property or purposes that are necessary for the full
 22 and efficient construction, management, and operation of each
 23 utility;
- 24 (11) adopt rules for the safe, economical, and efficient
 25 management and protection of each utility;
- 26 (12) deposit at least weekly with the municipal fiscal officer all
 27 money collected from each utility to be kept in a separate fund
 28 subject to the order of the board; and
- 29 (13) make monthly reports to the fiscal officer of the receipts and
 30 disbursements of money belonging to each utility and an annual
 31 report of the condition of the utility.
- 32 (b) The board may purchase by contract electricity, water, gas,
 33 power, or any other commodity or service for the purpose of furnishing
 34 the commodity or service to the patrons of the municipally owned
 35 utility or to the municipality itself.
- 36 (c) If the board wants to purchase the commodity or service from a
 37 public utility and the parties cannot agree on a rate or charge to be paid
 38 for it, either party may apply to the commission or other appropriate
 39 state or federal regulatory agency to establish a fair and reasonable rate
 40 or charge to be paid for the commodity or service.
- 41 (d) **Except as provided in IC 8-1-2-123**, the board may discontinue
 42 water service by a waterworks to:



1 (1) a water consumer; or

2 (2) any property;

3 upon failure by the water consumer or the property owner to pay
4 charges legally due for sewer or sewage disposal plant service.
5 However, the water service may not be discontinued for nonpayment
6 of sewer or sewage disposal plant service charges until the charges
7 have been due and unpaid for at least the time fixed by the board
8 governing the sewer or sewage disposal plant service.

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

17 SECTION 3. IC 36-9-23-6 IS AMENDED TO READ AS
18 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6. (a) The board
19 may enter into all contracts or agreements necessary or incidental to the
20 performance of its duties and the execution of its powers under this
21 chapter. However, the board may not obligate itself or the municipality
22 beyond the extent to which money has been or may be provided under
23 this chapter.

24 (b) A contract relating to the financing of the acquisition or
25 construction of any sewage works, or to any trust indenture authorized
26 by this chapter, is not effective until it is approved by the municipal
27 legislative body.

28 (c) A contract or an agreement with any contractor or contractors for
29 labor, equipment, or materials shall be let and entered into under the
30 statutes governing the letting of contracts by agencies of municipalities.

31 (d) The board or any public utility (as defined in IC 8-1-6-3)
32 contracting with the board for the treatment, purification, or disposal
33 in a sanitary manner of liquid and solid waste, sewage, night soil, or
34 industrial waste may contract with a water utility furnishing water
35 service to users or property served in the municipality or by the public
36 utility to do the following:

37 (1) Ascertain the amount of water consumed.

38 (2) Compute the amount of the charge to be billed for sewer
39 services to each user or property served.

40 (3) Bill and collect the amounts due for sewer services.

41 (4) **Except as provided in IC 8-1-2-123**, discontinue water
42 service to delinquent sewer users.



1 A contract under this subsection is enforceable without the approval of
2 the Indiana utility regulatory commission.

3 (e) The procedures in IC 36-9-25-11.5(a) through
4 IC 36-9-25-11.5(e) apply to the discontinuance of water service to a
5 delinquent sewer user under a contract between the board and a water
6 utility described in subsection (d).

7 SECTION 4. IC 36-9-25-11, AS AMENDED BY P.L.257-2019,
8 SECTION 163, IS AMENDED TO READ AS FOLLOWS
9 [EFFECTIVE UPON PASSAGE]: Sec. 11. (a) In connection with its
10 duties, the board may fix fees for the treatment and disposal of sewage
11 and other waste discharged into the sewerage system, collect the fees,
12 and establish and enforce rules governing the furnishing of and
13 payment for sewage treatment and disposal service. The fees must be
14 just and equitable and shall be paid by any user of the sewage works
15 and, except as otherwise provided in an ordinance provision described
16 in subsection (l), the owner of every lot, parcel of real property, or
17 building that is connected with and uses the sewage works of the
18 district by or through any part of the sewerage system. This section
19 applies to owners of property that is partially or wholly exempt from
20 taxation, as well as owners of property subject to full taxation.

21 (b) The board may change fees from time to time. The fees, together
22 with the taxes levied under this chapter, must at all times be sufficient
23 to produce revenues sufficient to pay operation, maintenance, and
24 administrative expenses, to pay the principal and interest on bonds as
25 they become due and payable, and to provide money for the revolving
26 fund authorized by this chapter.

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

40 (d) A copy of the schedule of the fees shall be kept on file in the
41 office of the board and must be open to inspection by all interested
42 parties. The fees established for any class of users or property served



1 shall be extended to cover any additional premises thereafter served
 2 that fall within the same class, without the necessity of hearing or
 3 notice.

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

10 (f) If a fee established is not paid within the time fixed by the board,
 11 the board may recover, in a civil action in the name of the municipality,
 12 the amount, together with a penalty of ten percent (10%) and a
 13 reasonable attorney's fee from:

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

16 subject to any ordinance described in subsection (l).

17 (g) Except as otherwise provided in subsection (h) or in an
 18 ordinance provision described in subsection (l), fees assessed against
 19 real property under this section also constitute a lien against the
 20 property assessed. The lien attaches at the time of the filing of the
 21 notice of lien in the county recorder's office. The lien is superior to all
 22 other liens except tax liens, and shall be enforced and foreclosed in the
 23 same manner as is provided for liens under IC 36-9-23-33 and
 24 IC 36-9-23-34.

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

29 (i) **Except as provided in IC 8-1-2-123**, in addition to the:

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

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

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



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

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

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

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

19 (1) That fees for the services rendered by the sewerage system to
 20 the property are payable by the person occupying the property. At
 21 the option of the municipal legislative body, the ordinance may
 22 include any:

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

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

28 that the municipal legislative body may lawfully impose.

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

32 (A) Either the property owner or the person occupying the
 33 property gives to the board written notice that indicates that
 34 the person occupying the property is responsible for paying the
 35 fees with respect to the property and requests that the account
 36 or other customer or billing records maintained for the
 37 property be in the name of the person occupying the property.

38 At the option of the municipal legislative body, the ordinance
 39 may provide that a document that:

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

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



- 1 and
- 2 (iii) indicates that the person occupying the property is
- 3 responsible for paying the fees assessed by the board with
- 4 respect to the property;
- 5 serves as written notice for purposes of this clause.
- 6 (B) The account or other customer or billing records
- 7 maintained by the board for the property otherwise indicate
- 8 that:
- 9 (i) the property is occupied by someone other than the
- 10 owner; and
- 11 (ii) the person occupying the property is responsible for
- 12 paying the fees.
- 13 (C) The property owner or the person occupying the property
- 14 satisfies any other requirements or conditions that the
- 15 municipal legislative body includes in the ordinance.
- 16 (3) That fees assessed against the property for the services
- 17 rendered by the sewerage system to the property do not constitute
- 18 a lien against the property, notwithstanding subsection (g), and
- 19 subject to any requirements or conditions set forth in the
- 20 ordinance.

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

25 SECTION 5. IC 36-9-25-11.5, AS AMENDED BY P.L.257-2019,
 26 SECTION 165, IS AMENDED TO READ AS FOLLOWS
 27 [EFFECTIVE UPON PASSAGE]: Sec. 11.5. (a) **Except as provided**
 28 **in IC 8-1-2-123**, as an alternative to the penalties provided in section
 29 11 of this chapter, the board may require that the water utility providing
 30 water service to a delinquent user discontinue service until payment of
 31 all overdue user fees, together with any penalties provided in this
 32 section, are received by the municipality.

33 (b) If a fee established is not paid within the time fixed by the board,
 34 the board or its designee shall send notice to the delinquent user.

- 35 ~~stating:~~ **The notice must include the following:**
- 36 (1) The delinquent amount due, together with any penalty.
 - 37 (2) **Unless the user is a household described in IC 8-1-2-123(b)**
 38 **or a resident of a household described in IC 8-1-2-123(b), a**
 39 **statement that the user's** water service may be disconnected if
 40 the user continues not to pay the delinquency and any penalty. ~~and~~
 - 41 (3) The procedure for resolving disputed bills.

42 The municipality shall provide by ordinance a procedure for resolving



1 disputed bills that includes an opportunity for a delinquent user to meet
2 informally with designated personnel empowered to correct incorrect
3 charges. Payment of a disputed bill and penalties by a user does not
4 constitute a waiver of rights to subsequently claim and recover from the
5 municipality sums improperly charged to the user.

6 (c) **Except as provided in IC 8-1-2-123**, if the user fails to pay the
7 delinquent amount or otherwise resolve the charges as specified in
8 subsection (a), the board or its designee shall give written notice to the
9 water utility serving the user to discontinue water service to the
10 premises designated in the notice until notified otherwise. The notice
11 must identify the delinquent sewer user in enough detail to enable the
12 water utility to identify the water service connection that is to be
13 terminated. Upon receipt of the notice, the water utility shall disconnect
14 water service to the user.

15 (d) Water service may not be shut off under this section if a local
16 board of health has found and certified to the municipality that the
17 termination of water service will endanger the health of the user and
18 others in the municipality.

19 (e) The water utility that discontinues water service in accordance
20 with an order from the board or its designee does not incur any liability
21 except to the extent of its own negligence or improper conduct.

22 (f) If the water utility does not discontinue service within the time
23 fixed by the board after receiving notice from the municipality, the
24 utility is liable for any user fees incurred after receipt of notice to
25 discontinue water service and that are not collected from the user.

26 **SECTION 6. An emergency is declared for this act.**

