

HOUSE BILL No. 1426

DIGEST OF INTRODUCED BILL

Citations Affected: IC 4-6; IC 8-1.

Synopsis: IURC fining authority. Allows the Indiana utility regulatory commission (IURC) to impose a civil penalty of up to \$5,000 on a public utility providing energy services if the public utility violates or fails to comply with any: (1) utility law; or (2) rate or service requirement imposed by the IURC. Allows the IURC to impose an additional penalty of up to \$10,000 if the violation or failure to comply demonstrates a willful disregard by the public utility of the public utility's duty to remedy the violation or a willful failure to comply. Specifies that a suit to recover or collect a forfeiture or penalty imposed by the IURC must be brought by the IURC or, at the IURC's option, by the attorney general. Provides that if the IURC acts independently of the attorney general to recover or collect a forfeiture or penalty, the IURC may, subject to the approval of the governor and the budget agency, contract with outside counsel to prosecute the suit or assist the IURC in prosecuting the suit.

Effective: July 1, 2015.

Dvorak

January 14, 2015, read first time and referred to Committee on Utilities, Energy and Telecommunications.



First Regular Session of the 119th General Assembly (2015)

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 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

HOUSE BILL No. 1426

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 4-6-3-2, AS AMENDED BY P.L.136-2012,
2 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2015]: Sec. 2. (a) The attorney general shall have charge of
4 and direct the prosecution of all civil actions that are brought in the
5 name of the state of Indiana or any state agency.
6 (b) In no instance under this section shall the state or a state agency
7 be required to file a bond.
8 (c) This section does not affect the authority of prosecuting
9 attorneys to prosecute civil actions.
10 (d) This section does not affect the authority of the inspector general
11 to prosecute a civil action under IC 4-2-7-6 for the recovery of any of
12 the following:
13 (1) Funds misappropriated, diverted, missing, or unlawfully
14 gained.
15 (2) A civil penalty imposed by the state ethics commission under



1 IC 4-2-6-12.

2 (e) The attorney general may bring an action to collect unpaid
3 registration fees owed by a commercial dog broker or a commercial
4 dog breeder under IC 15-21.

5 **(f) This section does not affect the authority of the Indiana**
6 **utility regulatory commission, at the commission's option, to act**
7 **independently under IC 8-1-2-115 to recover or collect a forfeiture**
8 **or penalty.**

9 SECTION 2. IC 4-6-5-3 IS AMENDED TO READ AS FOLLOWS
10 [EFFECTIVE JULY 1, 2015]: Sec. 3. **(a)** No agency, except as
11 provided in this chapter, shall have any right to name, appoint, employ,
12 or hire any attorney or special or general counsel to represent it or
13 perform any legal service in behalf of such agency and the state without
14 the written consent of the attorney general.

15 **(b) This section does not affect the authority of the Indiana**
16 **utility regulatory commission, at the commission's option, to act**
17 **independently under IC 8-1-2-115 to recover or collect a forfeiture**
18 **or penalty.**

19 SECTION 3. IC 8-1-1-11 IS AMENDED TO READ AS FOLLOWS
20 [EFFECTIVE JULY 1, 2015]: Sec. 11. **Subject to IC 8-1-2-115(b)**, the
21 commission is authorized to employ such counsel or attorneys,
22 engineers, administrative law judges, experts, clerks, accountants and
23 other assistants as it may deem necessary, at such rates of
24 compensation as it may determine upon, subject, however, to the
25 approval of the governor.

26 SECTION 4. IC 8-1-2-109 IS AMENDED TO READ AS
27 FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 109. **(a) This section**
28 **does not apply to:**

29 **(1) a public utility that owns, operates, manages, or controls**
30 **any plant or equipment in Indiana for the production,**
31 **transmission, delivery, or furnishing of heat, light, or power;**
32 **or**

33 **(2) a department of public utilities created under IC 8-1-11.1.**

34 **(b)** A public utility that violates this chapter, or fails to perform any
35 duty enjoined upon it, for which a penalty is not otherwise provided,
36 commits a Class B infraction.

37 SECTION 5. IC 8-1-2-109.1 IS ADDED TO THE INDIANA CODE
38 AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY
39 1, 2015]: Sec. 109.1. **(a) This section does not apply when a public**
40 **utility's violation or failure to comply under subsection (d) is**
41 **caused by circumstances beyond the control of the public utility,**
42 **including any of the following:**



- 1 (1) Customer provided equipment.
 2 (2) A negligent act or omission of a customer.
 3 (3) An unavoidable casualty.
 4 (4) An act of God.
- 5 (b) As used in this section, "public utility" means every
 6 corporation, company, partnership, limited liability company,
 7 individual, or association of individuals, or their lessees, trustees,
 8 or receivers appointed by a court, that may own, operate, manage,
 9 or control any plant or equipment in Indiana for the production,
 10 transmission, delivery, or furnishing of heat, light, or power. The
 11 term includes a department of public utilities created under
 12 IC 8-1-11.1. The term does not include:
 13 (1) a municipality or political subdivision;
 14 (2) a rural electric membership corporation organized or
 15 operating under IC 8-1-13; or
 16 (3) a corporation organized under IC 23-17 that is an electric
 17 cooperative and that has at least one (1) member that is a
 18 corporation organized under IC 8-1-13.
- 19 (c) A public utility and every officer of a public utility shall
 20 comply with every order or rule of the commission made under this
 21 chapter.
- 22 (d) Except as otherwise provided in this chapter, if the
 23 commission finds, after notice and hearing, that a public utility has
 24 violated this chapter or failed after due notice to comply with:
 25 (1) a standard of service established by commission rule; or
 26 (2) a rate or service requirement of a final and unappealable
 27 order of the commission;
 28 the commission may order the public utility to pay a civil penalty
 29 of not more than five thousand dollars (\$5,000) for each violation
 30 or failure to comply.
- 31 (e) Notwithstanding subsection (d), if the commission finds after
 32 notice and hearing that a public utility's violation or failure to
 33 comply demonstrates, by a continuing pattern of conduct, a willful
 34 disregard by the public utility of the public utility's obligation to
 35 remedy the violation or a willful failure to comply, the commission
 36 may impose an additional civil penalty of not more than ten
 37 thousand dollars (\$10,000) for each violation or failure to comply.
- 38 (f) The commission shall consider the following when
 39 determining the appropriateness of the imposition or amount of a
 40 civil penalty:
 41 (1) The size of the public utility.
 42 (2) The gravity of the violation or failure to comply.



- 1 **(3) The good faith of the public utility in attempting to:**
 2 **(A) remedy the violation; or**
 3 **(B) achieve compliance after receiving notification of the**
 4 **violation or failure to comply.**
 5 **(4) The effect of the civil penalty on the public utility's**
 6 **financial ability to provide adequate and reliable service.**
 7 **(5) If the public utility is a nonprofit company:**
 8 **(A) the effect of the penalty on the company's members**
 9 **and their capitalization of the company; and**
 10 **(B) whether the act or omission causing the violation or**
 11 **failure to comply was approved or requested by the**
 12 **company's members.**

13 **In the order imposing the civil penalty, the commission shall make**
 14 **specific findings with respect to the factors described in**
 15 **subdivisions (1) through (5).**

16 **(g) A public utility may not be subject to both a civil penalty**
 17 **under this section and a negotiated penalty under a commission**
 18 **approved settlement agreement for the same violation or failure to**
 19 **comply. If the commission approves a settlement agreement that**
 20 **includes penalties or remedies for noncompliance with specific**
 21 **provisions of the settlement agreement, the penalties under this**
 22 **section do not apply to those instances of noncompliance during the**
 23 **life of the settlement agreement.**

24 **(h) Notwithstanding section 112 of this chapter, a civil penalty**
 25 **imposed under this section for each violation or failure to comply**
 26 **by a public utility may not be multiplied or increased because of**
 27 **the number of customers affected or the length of time service is**
 28 **affected. Only one (1) violation or failure to comply per day may**
 29 **be attributed to a public utility as a result of a particular condition,**
 30 **system outage, storm, act, omission, event, decision, or other cause**
 31 **occurring on that day.**

32 **(i) A civil penalty recovered under this section shall be paid into**
 33 **the state general fund.**

34 **(j) Upon the motion of a public utility, the commission shall stay**
 35 **the effect or enforcement of an order under this section pending an**
 36 **appeal, if the public utility posts a bond that complies with Rule 18**
 37 **of the Indiana Rules of Appellate Procedure.**

38 **SECTION 6. IC 8-1-2-115 IS AMENDED TO READ AS**
 39 **FOLLOWS [EFFECTIVE JULY 1, 2015]: Sec. 115. (a) The**
 40 **commission shall inquire into any neglect or violation of the statutes of**
 41 **this state or the ordinances of any city or town by any public utility**
 42 **doing business therein, or by the officers, agents, or employees thereof,**



1 or by any person operating the plant of any public utility, and shall
 2 have the power, and it shall be ~~its~~ **the commission's** duty, to enforce
 3 the provisions of this chapter, as well as all other laws, relating to
 4 public utilities. Any forfeiture or penalty provided in this chapter shall
 5 be recovered, and suit therein shall be brought **by the commission or,**
 6 **at the commission's option, by the attorney general** in the name of
 7 the state of Indiana in ~~the circuit or superior court where the public~~
 8 ~~utility has its principal place of business.~~ **a court that has jurisdiction.**
 9 Complaint for the collection of any such forfeiture may be made by the
 10 commission or any member thereof, and, when so made, the action so
 11 commenced shall be prosecuted by the **commission or, at the**
 12 **commission's option, by the attorney general.** ~~counsel.~~

13 **(b) If the commission acts independently of the attorney general**
 14 **under subsection (a) to bring a suit to recover or collect a**
 15 **forfeiture or penalty under this chapter, the commission may,**
 16 **subject to the approval of the governor and the budget agency,**
 17 **contract with one (1) or more attorneys who are not members of**
 18 **the commission's regular staff to prosecute the suit or assist the**
 19 **commission in prosecuting the suit. An attorney contracted by the**
 20 **commission under this section must be employed:**

21 **(1) at the salary; and**
 22 **(2) for the length of time;**
 23 **approved by the governor and the budget agency for the particular**
 24 **case.**

