



January 25, 2022

SENATE BILL No. 273

DIGEST OF SB 273 (Updated January 20, 2022 7:22 pm - DI 101)

Citations Affected: IC 8-1; IC 8-1.5.

Synopsis: Financing of water and wastewater utility assets. Provides that the IURC may approve periodic tracking mechanisms for water or wastewater utilities to permit such utilities to recover the following: (1) Changes in property taxes. (2) With respect to customers located within the geographic boundaries of local units of government, incremental costs of operation and maintenance resulting from policies or ordinances that are adopted by those local units and that the IURC determines to be unusual but not necessarily unreasonable. Requires the IURC to adopt rules to define what is unreasonable with respect to road cut permits and other specifications or policies established by a local unit that imposes costs on water or wastewater utilities. Amends the statute concerning wholesale water sales between small water utilities by increasing from 5,000 to 8,000 the threshold number of customers served by a water utility (as either a purchaser or supplier) for purposes of the statute. Amends the statute governing infrastructure improvement charges for water or wastewater utilities as follows: (1) Specifies that an "eligible infrastructure improvement" includes: (A) a project to relocate existing utility plant, including projects to accommodate the construction, reconstruction, or improvement of a highway, street, or road; and (B) a project that does not increase revenues by connecting to new customers, even if the project provides greater available capacity with respect to an eligible utility's distribution or collection plant. (2) Sets forth distinctions for public utilities, municipally owned utilities, and not-for-profit utilities with respect to: (A) costs that are eligible for recovery under the statute; (B)

(Continued next page)

Effective: July 1, 2022.

Koch

January 10, 2022, read first time and referred to Committee on Utilities.
January 24, 2022, amended, reported favorably — Do Pass.

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Digest Continued

the factors the IURC may consider in determining the amount of allowable cost recovery; and (C) the resetting of the adjustment amount after a base rate case. (3) Specifies that the limitation restricting total adjustment revenues to 10% of an eligible utility's most recently approved base revenue level does not apply with respect to property taxes associated with eligible infrastructure improvements. Amends provisions in the Indiana Code chapter concerning a utility company's acquisition of an offered water or wastewater utility, by providing that the rates charged by the acquiring utility company are not considered to increase unreasonably as a result of the acquisition if the net original cost of the acquired assets does not exceed 2% of the acquiring utility company's net original cost rate base as determined in the acquiring utility's most recent general rate case, plus any adjustments to the rate base resulting from: (1) an infrastructure improvement charge; or (2) an adjustment rider for service enhancement improvement costs; that have occurred after the rate case. Makes a similar change to the Indiana Code section concerning the sale of a municipally owned utility's nonsurplus utility property.

SB 273—LS 6852/DI 101



January 25, 2022

Second Regular Session of the 122nd General Assembly (2022)

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 2021 Regular Session of the General Assembly.

SENATE BILL No. 273

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 8-1-2-42, AS AMENDED BY P.L.136-2018,
2 SECTION 44, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2022]: Sec. 42. (a) No change shall be made in any schedule,
4 including schedules of joint rates, except upon thirty (30) days notice
5 to the commission, and approval by the commission, and all such
6 changes shall be plainly indicated upon existing schedules or by filing
7 new schedules in lieu thereof thirty (30) days prior to the time the same
8 are to take effect. The commission may prescribe a shorter time within
9 which a change may be made. A public, municipally owned, or
10 cooperatively owned utility may not file a request for a general increase
11 in its basic rates and charges within fifteen (15) months after the filing
12 date of its most recent request for a general increase in its basic rates
13 and charges, except that the commission may order a more timely
14 increase if:
15 (1) the requested increase relates to a different type of utility
16 service;
17 (2) the commission finds that the utility's financial integrity or

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1 service reliability is threatened; or

2 (3) the increase is based on:

3 (A) a rate structure previously approved by the commission; or

4 (B) orders of federal courts or federal regulatory agencies
5 having jurisdiction over the utility.

6 The phrase "general increase in basic rates and charges" does not
7 include changes in rates related solely to the cost of fuel or to the cost
8 of purchased gas or purchased electricity or adjustments in accordance
9 with tracking provisions approved by the commission. **In addition to
10 other tracking provisions the commission finds appropriate, the
11 commission may approve periodic tracking mechanisms for water
12 utilities and wastewater utilities to permit recovery of changes in
13 property taxes. The commission may also approve periodic
14 tracking mechanisms calculated to recover from customers located
15 within the geographic boundaries of local units of government the
16 incremental costs of operation and maintenance of water utilities
17 and wastewater utilities resulting from policies or ordinances that
18 are adopted by those local units and that the commission
19 determines to be unusual but not necessarily unreasonable under
20 section 101 of this chapter. The commission shall adopt rules under
21 IC 4-22-2, including emergency rules in the manner provided by
22 IC 4-22-2-37.1, to define what is unreasonable with respect to road
23 cut permits and other specifications or policies established by a
24 local unit that imposes costs on water or wastewater utilities.**

25 (b) No schedule of rates, tolls, and charges of a public, municipally
26 owned, or cooperatively owned utility which includes or authorizes any
27 changes in charges based upon costs is effective without the approval
28 of the commission. Before the commission approves any changes in the
29 schedule of rates, tolls, and charges of an electric utility, which
30 generates and sells electricity, based upon the cost of fuel to generate
31 electricity or upon the cost of fuel included in the cost of purchased
32 electricity, the utility consumer counselor shall examine the books and
33 records of the public, municipally owned, or cooperatively owned
34 generating utility to determine the cost of fuel upon which the proposed
35 charges are based. In addition, before such a fuel cost charge becomes
36 effective, the commission shall hold a summary hearing on the sole
37 issue of the fuel charge. The utility consumer counselor shall conduct
38 the utility consumer counselor's review and make a report to the
39 commission within twenty (20) days after the utility's request for the
40 fuel cost charge is filed. The commission shall hold the summary
41 hearing and issue its order within twenty (20) days after it receives the
42 utility consumer counselor's report. The provisions of this section and



1 sections 39, 43, 54, 55, 56, 59, 60, and 61 of this chapter concerning
 2 the filing, printing, and changing of rate schedules and the time
 3 required for giving notice of hearing and requiring publication of notice
 4 do not apply to such a fuel cost charge or such a summary hearing.

5 (c) Regardless of the pendency of any request for a fuel cost charge
 6 by any electric utility, the books and records pertaining to the cost of
 7 fuel of all public, municipally owned, or cooperatively owned utilities
 8 that generate electricity shall be examined by the utility consumer
 9 counselor not less often than quarterly, and the books and records of all
 10 electric nongenerating public, municipally owned, or cooperatively
 11 owned utilities shall be examined by the utility consumer counselor not
 12 less often than annually. The utility consumer counselor shall provide
 13 the commission with a report as to the examination of said books and
 14 records within a reasonable time following said examination. The
 15 utility consumer counselor may, if appropriate, request of the
 16 commission a reduction or elimination of the fuel cost charge. Upon
 17 such request, the commission shall hold a hearing forthwith in the
 18 manner provided in sections 58, 59, and 60 of this chapter.

19 (d) An electric generating utility may apply for a change in its fuel
 20 charge not more often than each three (3) months. When such
 21 application is filed the petitioning utility shall show to the commission
 22 its cost of fuel to generate electricity and the cost of fuel included in the
 23 cost of purchased electricity, for the period between its last order from
 24 the commission approving fuel costs in its basic rates and the latest
 25 month for which actual fuel costs are available. The petitioning utility
 26 shall also estimate its average fuel costs for the three (3) calendar
 27 months subsequent to the expiration of the twenty (20) day period
 28 allowed the commission in subsection (b). The commission shall
 29 conduct a formal hearing solely on the fuel cost charge requested in the
 30 petition subject to the notice requirements of IC 8-1-1-8 and shall grant
 31 the electric utility the requested fuel cost charge if it finds that:

32 (1) the electric utility has made every reasonable effort to acquire
 33 fuel and generate or purchase power or both so as to provide
 34 electricity to its retail customers at the lowest fuel cost reasonably
 35 possible;

36 (2) the actual increases in fuel cost through the latest month for
 37 which actual fuel costs are available since the last order of the
 38 commission approving basic rates and charges of the electric
 39 utility have not been offset by actual decreases in other operating
 40 expenses;

41 (3) the fuel adjustment charge applied for will not result in the
 42 electric utility earning a return in excess of the return authorized



1 by the commission in the last proceeding in which the basic rates
2 and charges of the electric utility were approved. However,
3 subject to section 42.3 of this chapter, if the fuel charge applied
4 for will result in the electric utility earning a return in excess of
5 the return authorized by the commission, in the last proceeding in
6 which basic rates and charges of the electric utility were
7 approved, the fuel charge applied for will be reduced to the point
8 where no such excess of return will be earned; and

9 (4) the utility's estimate of its prospective average fuel costs for
10 each such three (3) calendar months are reasonable after taking
11 into consideration:

12 (A) the actual fuel costs experienced by the utility during the
13 latest three (3) calendar months for which actual fuel costs are
14 available; and

15 (B) the estimated fuel costs for the same latest three (3)
16 calendar months for which actual fuel costs are available.

17 (e) Should the commission at any time determine that an emergency
18 exists that could result in an abnormal change in fuel costs, it may, in
19 order to protect the public from the adverse effects of such change
20 suspend the provisions of subsection (d) as to the utility or utilities
21 affected by such an emergency and initiate such procedures as may be
22 necessary to protect both the public and the utility from harm. The
23 commission shall lift the suspension when it is satisfied the emergency
24 no longer exists.

25 (f) Any change in the fuel cost charge granted by the commission
26 under the provisions of this section shall be reflected in the rates
27 charged by the utility in the same manner as any other changes in rates
28 granted by the commission in a case approving the basic rates and
29 charges of the utility. However, the utility may file the change as a
30 separate amendment to its rate schedules with a reasonable reference
31 in the amendment that such charge is applicable to all of its filed rate
32 schedules.

33 (g) No schedule of rates, tolls, and charges of a public, municipally
34 owned, or cooperatively owned gas utility that includes or authorizes
35 any changes in charges based upon gas costs is effective without the
36 approval of the commission except those rates, tolls, and charges
37 contained in schedules that contain specific provisions for changes in
38 gas costs or the cost of gas that have previously been approved by the
39 commission. Gas costs or cost of gas may include the gas utility's costs
40 for gas purchased by it from pipeline suppliers, costs incurred for
41 leased gas storage and related transportation, costs for supplemental
42 and substitute gas supplies, costs incurred for exploration and



1 development of its own sources of gas supplies and other expenses
2 relating to gas costs as shall be approved by the commission. Changes
3 in a gas utility's rates, tolls, and charges based upon changes in its gas
4 costs shall be made in accordance with the following:

5 (1) Before the commission approves any changes in the schedule
6 of rates, tolls, and charges of a gas utility based upon the cost of
7 the gas, the utility consumer counselor may examine the books
8 and records of the public, municipally owned, or cooperatively
9 owned gas utility to determine the cost of gas upon which the
10 proposed changes are based. In addition, before such an
11 adjustment to the gas cost charge becomes effective, the
12 commission shall hold a summary hearing on the sole issue of the
13 gas cost adjustment. The utility consumer counselor shall conduct
14 the utility consumer counselor's review and make a report to the
15 commission within thirty (30) days after the utility's request for
16 the gas cost adjustment is filed. The commission shall hold the
17 summary hearing and issue its order within thirty (30) days after
18 it receives the utility consumer counselor's report. The provisions
19 of this section and sections 39, 43, 54, 55, 56, 59, 60, and 61 of
20 this chapter concerning the filing, printing, and changing of rate
21 schedules and the time required for giving notice of hearing and
22 requiring publication of notice do not apply to such a gas cost
23 adjustment or such a summary hearing.

24 (2) Regardless of the pendency of any request for a gas cost
25 adjustment by any gas utility, the books and records pertaining to
26 cost of gas of all public, municipally owned, or cooperatively
27 owned gas utilities shall be examined by the utility consumer
28 counselor not less often than annually. The utility consumer
29 counselor shall provide the commission with a report as to the
30 examination of said books and records within a reasonable time
31 following said examination. The utility consumer counselor may,
32 if appropriate, request of the commission a reduction or
33 elimination of the gas cost adjustment. Upon such request, the
34 commission shall hold a hearing forthwith in the manner provided
35 in sections 58, 59, and 60 of this chapter.

36 (3) A gas utility may apply for a change in its gas cost charge not
37 more often than each three (3) months. When such application is
38 filed, the petitioning utility shall show to the commission its cost
39 of gas for the period between its last order from the commission
40 approving gas costs in its basic rates and the latest month for
41 which actual gas costs are available. The petitioning utility shall
42 also estimate its average gas costs for a recovery period of not less



1 than the three (3) calendar months subsequent to the expiration of
2 the thirty (30) day period allowed the commission in subdivision
3 (1). The commission shall conduct a summary hearing solely on
4 the gas cost adjustment requested in the petition subject to the
5 notice requirements of IC 8-1-1-8 and may grant the gas utility the
6 requested gas cost charge if it finds that:

7 (A) the gas utility has made every reasonable effort to acquire
8 long term gas supplies so as to provide gas to its retail
9 customers at the lowest gas cost reasonably possible;

10 (B) the pipeline supplier or suppliers of the gas utility has
11 requested or has filed for a change in the costs of gas pursuant
12 to the jurisdiction and procedures of a duly constituted
13 regulatory authority;

14 (C) the gas cost adjustment applied for will not result, in the
15 case of a public utility, in its earning a return in excess of the
16 return authorized by the commission in the last proceeding in
17 which the basic rates and charges of the public utility were
18 approved; however, subject to section 42.3 of this chapter, if
19 the gas cost adjustment applied for will result in the public
20 utility earning a return in excess of the return authorized by the
21 commission in the last proceeding in which basic rates and
22 charges of the gas utility were approved, the gas cost
23 adjustment applied for will be reduced to the point where no
24 such excess of return will be earned; and

25 (D) the utility's estimate of its prospective average gas costs
26 for each such future recovery period is reasonable and gives
27 effect to:

28 (i) the actual gas costs experienced by the utility during the
29 latest recovery period for which actual gas costs are
30 available; and

31 (ii) the actual gas costs recovered by the adjustment of the
32 same recovery period.

33 (4) Should the commission at any time determine that an
34 emergency exists that could result in an abnormal change in gas
35 costs, it may, in order to protect the public or the utility from the
36 adverse effects of such change suspend the provisions of
37 subdivision (3) as to the utility or utilities affected by such an
38 emergency and initiate such procedures as may be necessary to
39 protect both the public and the utility from harm. The commission
40 shall lift the suspension when it is satisfied the emergency no
41 longer exists.

42 (5) Any change in the gas cost charge granted by the commission



1 under the provisions of this section shall be reflected in the rates
 2 charged by the utility in the same manner as any other changes in
 3 rates granted by the commission in a case approving the basic
 4 rates and charges of the utility. However, the utility may file the
 5 change as a separate amendment to its rate schedules with a
 6 reasonable reference in the amendment that such charge is
 7 applicable to all of its filed rate schedules.

8 SECTION 2. IC 8-1-2-61.6 IS AMENDED TO READ AS
 9 FOLLOWS [EFFECTIVE JULY 1, 2022]: Sec. 61.6. (a) This section
 10 applies to water utilities that serve less than ~~five eight thousand (5,000)~~
 11 **(8,000)** customers.

12 (b) As used in this section, "purchaser" means a water utility that
 13 buys water from another water utility on a wholesale basis.

14 (c) As used in this section, "supplier" means a water utility that
 15 provides water to another water utility on a wholesale basis.

16 (d) As used in this section, "water utility" means:

- 17 (1) an investor owned water utility;
- 18 (2) a municipally owned water utility;
- 19 (3) a conservancy district (as described in IC 14-33); or
- 20 (4) a nonprofit water utility.

21 (e) Notwithstanding section 42 of this chapter, whenever a supplier
 22 petitions the commission for a change in rates or charges that affect its
 23 wholesale rates, the supplier shall notify each of its wholesale
 24 customers by United States registered mail. The notice must include
 25 the cause number assigned to the supplier's petition.

26 (f) Upon notification by the supplier, the purchaser of a wholesale
 27 water supply may notify the secretary of the commission of its intent to
 28 monitor its supplier's cause. The commission shall then provide a copy
 29 of the supplier's prehearing conference order upon its approval to the
 30 purchaser.

31 (g) If the purchaser requests simultaneous rate relief for its cost of
 32 water in conjunction with the relief requested by its supplier, the
 33 purchaser shall complete and file forms prescribed by the commission
 34 within fourteen (14) days of the supplier's case in chief.

35 (h) After the purchaser has filed the forms as described in
 36 subsection (g), the commission may provide rate relief to the purchaser
 37 simultaneously with an order approved for its supplier.

38 SECTION 3. IC 8-1-30.3-5, AS AMENDED BY P.L.160-2020,
 39 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 40 JULY 1, 2022]: Sec. 5. (a) This section applies if:

- 41 (1) a utility company acquires property from an offered utility in
 42 a transaction involving a willing buyer and a willing seller; and



- 1 (2) at least one (1) utility company described in subdivision (1) is
 2 subject to the jurisdiction of the commission under this article.
- 3 (b) Subject to subsection (c), there is a rebuttable presumption that
 4 a cost differential is reasonable.
- 5 (c) If the acquisition:
 6 (1) is made under IC 8-1.5-2-6.1, and to the extent the purchase
 7 price does not exceed the appraised value as determined under
 8 IC 8-1.5-2-5; or
 9 (2) is not made under IC 8-1.5-2-6.1, and to the extent the
 10 purchase price does not exceed the appraised value as determined
 11 under section 5.5 of this chapter;
 12 the purchase price is considered reasonable for purposes of subsection
 13 (d) and any resulting cost differential is considered reasonable.
- 14 (d) Before closing on the acquisition, the utility company that
 15 acquires the utility property may petition the commission to include
 16 any cost differential as part of its rate base in future rate cases. The
 17 commission shall approve the petition if the commission finds the
 18 following:
 19 (1) The utility property is used and useful to the offered utility in
 20 providing water service, wastewater service, or both water and
 21 wastewater service.
 22 (2) The offered utility is too small to capture economies of scale
 23 or has failed to furnish or maintain adequate, efficient, safe, and
 24 reasonable service and facilities.
 25 (3) The utility company will improve economies of scale or, if
 26 otherwise needed, make reasonable and prudent improvements to
 27 the offered utility's plant, the offered utility's operations, or both,
 28 so that customers of the offered utility will receive adequate,
 29 efficient, safe, and reasonable service.
 30 (4) The acquisition of the utility property is the result of a mutual
 31 agreement made at arms length.
 32 (5) The actual purchase price of the utility property is reasonable.
 33 (6) The utility company and the offered utility are not affiliated
 34 and share no ownership interests.
 35 (7) The rates charged by the utility company will not increase
 36 unreasonably in future general rate cases solely as a result of
 37 acquiring the utility property from the offered utility. For purposes
 38 of this subdivision, the rates and charges will not increase
 39 unreasonably in future general rate cases so long as the net
 40 original cost proposed to be recorded under subsection (f) is not
 41 greater than two percent (2%) of the acquiring utility's net original
 42 cost rate base as determined in the acquiring utility's most recent



1 general rate case, **plus any adjustments to the rate base under**
 2 **IC 8-1-31 and IC 8-1-31.7 that have occurred after the rate**
 3 **case.** If the amount proposed to be recorded under subsection (f)
 4 is greater than two percent (2%) of the acquiring utility's net
 5 original cost rate base as determined in the acquiring utility's most
 6 recent general rate case, **plus any adjustments to the rate base**
 7 **under IC 8-1-31 and IC 8-1-31.7 that have occurred after the**
 8 **rate case,** the commission shall proceed to determine whether the
 9 rates charged by the utility company will increase unreasonably
 10 in future general rate cases solely as a result of acquiring the
 11 utility property from the offered utility and, in making the
 12 determination, may consider evidence of:

13 (A) the anticipated dollar value increase; and

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

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

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

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

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

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

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

35 (1) the full purchase price;

36 (2) incidental expenses; and

37 (3) other costs of acquisition;

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

41 SECTION 4. IC 8-1-31-5, AS AMENDED BY P.L.91-2017,
 42 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE



1 JULY 1, 2022]: Sec. 5. As used in this chapter, "eligible infrastructure
 2 improvements" means **projects that:**

3 **(1) are:**

4 **(A) new ~~used and useful~~ water or wastewater utility**
 5 **distribution or collection plant projects; ~~that:~~ or**

6 **(B) projects to relocate existing utility plant, including**
 7 **projects to relocate utility plant or equipment to**
 8 **accommodate the construction, reconstruction, or**
 9 **improvement of a highway, street, or road (as defined in**
 10 **IC 8-23-1-23), including projects under IC 8-25;**

11 **(~~†~~) (2) do not increase revenues by connecting to new customers,**
 12 **even if the projects provide greater available capacity with**
 13 **respect to an eligible utility's distribution or collection plant;**
 14 **and**

15 **(~~2~~) (3) either:**

16 **(A) for a public utility:**

17 **(i) are in service **and used and useful;** and**

18 **(ii) were not included in the public utility's rate base in its**
 19 **most recent general rate case; or**

20 **(B) for a municipally owned or not-for-profit utility:**

21 **(i) are ~~in service;~~ **or will be extensions or replacements of****
 22 **projects described in subdivision (1), as described in**
 23 **section 5.5(2)(B) or 5.5(3)(B) of this chapter, as**
 24 **applicable;**

25 **(ii) were not included on the utility's balance sheet as plant**
 26 **in service in the utility's most recent general rate case; and**

27 **(iii) are not ~~subject to infrastructure improvements that~~**
 28 **are being recovered or have been recovered through**
 29 **rates or another rate adjustment mechanism.**

30 SECTION 5. IC 8-1-31-5.5, AS AMENDED BY P.L.212-2015,
 31 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 32 JULY 1, 2022]: Sec. 5.5. As used in this chapter, "infrastructure
 33 improvement costs" means the following:

34 **(1) For a public utility:**

35 **(A) depreciation expenses; and**

36 **(B) property taxes to be paid by the public utility based**
 37 **upon the first assessment date following placement in**
 38 **service; and**

39 **(C) pretax return;**

40 **associated with eligible infrastructure improvements.**

41 **(2) The following for a municipally owned utility:**

42 **(A) debt service and Depreciation expenses. associated with**



- 1 eligible infrastructure improvements.
- 2 **(B) Adequate money for making extensions and**
- 3 **replacements of eligible infrastructure improvements to**
- 4 **the extent not provided for through depreciation, as**
- 5 **provided in IC 8-1.5-3-8(c).**
- 6 **(C) Debt service on funds borrowed to pay for eligible**
- 7 **infrastructure improvements.**
- 8 **(D) To the extent applicable, property taxes to be paid by**
- 9 **the municipally owned utility based upon the first**
- 10 **assessment date following placement in service of eligible**
- 11 **infrastructure improvements.**
- 12 (3) **The following** for a not-for-profit utility:
- 13 **(A) Debt service associated with on funds borrowed to pay**
- 14 **for eligible infrastructure improvements.**
- 15 **(B) Adequate money for making extensions and**
- 16 **replacements of eligible infrastructure improvements.**
- 17 **(C) To the extent applicable, property taxes to be paid by**
- 18 **the not-for-profit utility based upon the first assessment**
- 19 **date following placement in service of eligible**
- 20 **infrastructure improvements.**

21 SECTION 6. IC 8-1-31-11.5, AS ADDED BY P.L.212-2015,
 22 SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 23 JULY 1, 2022]: Sec. 11.5. In determining the amount of allowable
 24 recovery of infrastructure improvement costs for a municipally owned
 25 utility, the commission may consider the following factors:

- 26 **(1) Adequate money for making extensions and replacements**
- 27 **of eligible infrastructure improvements, to the extent not**
- 28 **provided for through depreciation, as provided in**
- 29 **IC 8-1.5-3-8(c).**
- 30 ~~(1)~~ **(2) Debt service on funds borrowed to pay for eligible**
- 31 **infrastructure improvements.**
- 32 ~~(2)~~ **(3) Depreciation expenses on eligible infrastructure**
- 33 **improvements based on the same rate or rates of depreciation**
- 34 **approved by the commission for the calculation of depreciation in**
- 35 **the utility's most recent rate case.**
- 36 ~~(3)~~ **(4) Other components that the commission considers**
- 37 **appropriate.**

38 SECTION 7. IC 8-1-31-11.6, AS ADDED BY P.L.212-2015,
 39 SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 40 JULY 1, 2022]: Sec. 11.6. In determining the amount of allowable
 41 recovery of infrastructure improvement costs for a not-for-profit utility,
 42 the commission may consider the following factors:



1 **(1) Adequate money for making extensions and replacements**
 2 **of eligible infrastructure improvements.**

3 ~~(1)~~ **(2)** Debt service on funds borrowed to pay for eligible
 4 infrastructure improvements.

5 ~~(2)~~ **(3)** Other components that the commission considers
 6 appropriate.

7 SECTION 8. IC 8-1-31-13, AS AMENDED BY P.L.137-2020,
 8 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 9 JULY 1, 2022]: Sec. 13. (a) The commission may not approve a
 10 petition filed under section 8 or 10 of this chapter to the extent it would
 11 produce total adjustment revenues exceeding ten percent (10%) of the
 12 eligible utility's base revenue level approved by the commission in the
 13 eligible utility's most recent general rate proceeding.

14 (b) Subsection (a) does not apply to:

15 **(1) infrastructure improvement costs associated with eligible**
 16 **infrastructure improvements that are placed in service due to the**
 17 **construction, reconstruction, or improvement of a highway, street,**
 18 **or road (as defined in IC 8-23-1-23), including projects under**
 19 **IC 8-25; or**

20 **(2) property taxes associated with eligible infrastructure**
 21 **improvements.**

22 SECTION 9. IC 8-1-31-14, AS AMENDED BY P.L.212-2015,
 23 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 24 JULY 1, 2022]: Sec. 14. An adjustment amount proposed under section
 25 8 of this chapter may be calculated based on a reasonable estimate of
 26 ~~sales meter size~~ **meter size** in the period in which the charge will be in effect. At
 27 the end of each twelve (12) month period following the date on which
 28 the commission initially approves an adjustment amount for an eligible
 29 utility following the eligible utility's most recent general rate case, and
 30 using procedures approved by the commission, the eligible utility shall
 31 reconcile the difference between adjustment revenues and
 32 infrastructure improvement costs during that period and recover or
 33 refund the difference, as appropriate, through additional adjustments.

34 SECTION 10. IC 8-1-31-15, AS AMENDED BY P.L.212-2015,
 35 SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 36 JULY 1, 2022]: Sec. 15. ~~An eligible~~ **A public** utility for which the
 37 commission has approved a petition under section 8 or 10 of this
 38 chapter shall file revised rate schedules resetting the adjustment
 39 amount if new basic rates and charges become effective for the ~~eligible~~
 40 **public** utility following a commission order authorizing a general
 41 increase in rates and charges that includes in the **public** utility's rate
 42 base eligible infrastructure improvements reflected in the adjustment



1 amount.

2 SECTION 11. IC 8-1-31-15.5 IS ADDED TO THE INDIANA
3 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
4 [EFFECTIVE JULY 1, 2022]: **Sec. 15.5. (a) This section applies only**
5 **to an eligible utility that is:**

6 (1) a municipally owned utility; or

7 (2) a not-for-profit utility.

8 (b) **An eligible utility's adjustment amount approved under**
9 **section 8 or 10 of this chapter shall be reset to zero (0) upon the**
10 **approval of new basic rates and charges for the eligible utility by**
11 **the commission in a general rate case that results in the inclusion**
12 **of eligible infrastructure improvements in the eligible utility's basic**
13 **rates and charges.**

14 SECTION 12. IC 8-1.5-2-6.1, AS AMENDED BY P.L.229-2019,
15 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
16 JULY 1, 2022]: Sec. 6.1. (a) This section applies to a municipality that
17 adopts an ordinance under section 5(d) of this chapter after March 28,
18 2016.

19 (b) Before a municipality may proceed to sell or otherwise dispose
20 of all or part of its nonsurplus utility property under an ordinance
21 adopted under section 5(d) of this chapter, the municipality and the
22 prospective purchaser must obtain the approval of the commission
23 under this section.

24 (c) As part of the sale or disposition of the property, the
25 municipality and the prospective purchaser may include terms and
26 conditions that the municipality and the prospective purchaser consider
27 to be equitable to the existing utility customers of:

28 (1) the municipality's municipally owned utility; and

29 (2) the prospective purchaser;

30 as applicable.

31 (d) The commission shall approve the sale or disposition of the
32 property according to the terms and conditions proposed by the
33 municipality and the prospective purchaser if the commission finds that
34 the sale or disposition according to the terms and conditions proposed
35 is in the public interest. For purposes of this section, the purchase price
36 of the municipality's nonsurplus utility property shall be considered
37 reasonable if it does not exceed the appraised value set forth in the
38 appraisal required under section 5 of this chapter.

39 (e) The following apply to the commission's determination under
40 subsection (d) as to whether the proposed sale or disposition according
41 to the proposed terms and conditions is in the public interest:

42 (1) If:

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1 (A) the prospective purchaser petitions the commission under
 2 IC 8-1-30.3-5(d); and
 3 (B) the commission approves the prospective purchaser's
 4 petition;
 5 the proposed sale or disposition is considered to be in the public
 6 interest.
 7 (2) If subdivision (1) does not apply and subject to subsection (h),
 8 the commission shall consider the extent to which the proposed
 9 terms and conditions of the proposed sale or disposition would
 10 require the existing utility customers of either the prospective
 11 purchaser or the municipality's municipally owned utility, as
 12 applicable, to pay rates that would subsidize utility service to the
 13 other party's existing customers. For purposes of this subdivision,
 14 the proposed terms and conditions will not result in rates that
 15 would subsidize service to other customers if the amount to be
 16 recorded as net original cost under subsection (f) is not greater
 17 than two percent (2%) of the prospective purchaser's net original
 18 cost rate base as determined in the prospective purchaser's most
 19 recent general rate case, **plus any adjustments to the rate base**
 20 **under IC 8-1-31 and IC 8-1-31.7 that have occurred after the**
 21 **rate case.** If the amount to be recorded is greater than two percent
 22 (2%), the commission shall proceed to determine whether:
 23 (A) the proposed terms and conditions would result in a
 24 subsidy described in this subdivision; and
 25 (B) the subsidy would cause the proposed terms and
 26 conditions of the proposed sale or disposition not to be in the
 27 public interest.
 28 The commission shall calculate the amount of the subsidy that
 29 would result and shall set forth in an order under this section such
 30 changes to the proposed terms and conditions as the commission
 31 considers appropriate to address the subsidy. The prospective
 32 purchaser and the municipality shall each have thirty (30) days
 33 from the date of the commission's order setting forth the
 34 commission's changes to either accept or reject the changes. If
 35 either party rejects the commission's changes, the proposed sale
 36 or disposition is considered not to be in the public interest.
 37 (3) In reviewing the proposed terms and conditions of the
 38 proposed sale or disposition under either subdivision (1) or (2),
 39 the commission shall consider the financial, managerial, and
 40 technical ability of the prospective purchaser to provide the utility
 41 service required after the proposed sale or disposition.
 42 (4) In reviewing the proposed terms and conditions of the



- 1 proposed sale or disposition under either subdivision (1) or (2),
 2 the commission shall accept as reasonable the valuation of the
 3 nonsurplus utility property determined through an appraisal and
 4 review under section 5 of this chapter.
- 5 (f) As part of an order approving a sale or disposition of property
 6 under this section, the commission shall, without regard to amounts
 7 that may be recorded on the books and records of the municipality and
 8 without regard to any grants or contributions previously received by the
 9 municipality, provide that for ratemaking purposes, the prospective
 10 purchaser shall record as the net original cost rate base an amount
 11 equal to:
- 12 (1) the full purchase price;
 - 13 (2) incidental expenses; and
 - 14 (3) other costs of acquisition;
- 15 allocated in a reasonable manner among appropriate utility plant in
 16 service accounts.
- 17 (g) The commission shall issue a final order under this section not
 18 later than two hundred ten (210) days after the filing of the parties' case
 19 in chief.
- 20 (h) In reviewing a proposed sale or disposition under subsection (e),
 21 the commission shall determine whether the factors set forth in
 22 IC 8-1-30.3-5(d) are satisfied as applied to the proposed sale or
 23 disposition of the municipality's nonsurplus municipally owned utility
 24 property for purposes of section 5(m) of this chapter. If the commission
 25 determines that the factors set forth in IC 8-1-30.3-5(d):
- 26 (1) are satisfied as applied to the proposed sale or disposition,
 27 section 5(g) through 5(k) of this chapter does not apply to the
 28 municipality's ordinance adopted under section 5(d) of this
 29 chapter; or
 - 30 (2) are not satisfied as applied to the proposed sale or disposition:
 - 31 (A) section 5(g) through 5(k) of this chapter applies to the
 32 municipality's ordinance adopted under section 5(d) of this
 33 chapter; and
 - 34 (B) the question as to whether the sale or disposition should be
 35 made must be submitted to the voters of the municipality at a
 36 special or general election if at least the number of the
 37 registered voters of the municipality set forth in section 5(h) of
 38 this chapter sign and present a petition to the legislative body
 39 opposing the sale or disposition, in accordance with section
 40 5(g) through 5(k) of this chapter.
- 41 However, notwithstanding this subsection, in reviewing a proposed sale
 42 or disposition under subsection (e)(2), the commission may not



1 condition its approval of the proposed sale or disposition on whether
2 the factors set forth in IC 8-1-30.3-5(d) are satisfied or on any other
3 factors except those provided for in subsection (e)(2), (e)(3), and (e)(4).



COMMITTEE REPORT

Madam President: The Senate Committee on Utilities, to which was referred Senate Bill No. 273, 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 2, line 11, delete "tracking provisions to permit a utility to" and insert **"periodic tracking mechanisms for water utilities and wastewater utilities to permit recovery of changes in property taxes. The commission may also approve periodic tracking mechanisms calculated to recover from customers located within the geographic boundaries of local units of government the incremental costs of operation and maintenance of water utilities and wastewater utilities resulting from policies or ordinances that are adopted by those local units and that the commission determines to be unusual but not necessarily unreasonable under section 101 of this chapter. The commission shall adopt rules under IC 4-22-2, including emergency rules in the manner provided by IC 4-22-2-37.1, to define what is unreasonable with respect to road cut permits and other specifications or policies established by a local unit that imposes costs on water or wastewater utilities."**

Page 2, delete lines 12 through 13.

Page 7, between lines 26 and 27, begin a new paragraph and insert: "SECTION 3. IC 8-1-30.3-5, AS AMENDED BY P.L.160-2020, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: 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

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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, **plus any adjustments to the rate base under IC 8-1-31 and IC 8-1-31.7 that have occurred after the 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, **plus any adjustments to the rate base under IC 8-1-31 and IC 8-1-31.7 that have occurred after the 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."

Page 8, line 14, after "through" insert "**rates or**".

Page 10, line 12, delete "equivalent sized meters" and insert "**meter size**".

Page 10, after line 42, begin a new paragraph and insert:

"SECTION 12. IC 8-1.5-2-6.1, AS AMENDED BY P.L.229-2019, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: Sec. 6.1. (a) This section applies to a municipality that adopts an ordinance under section 5(d) of this chapter after March 28, 2016.

(b) Before a municipality may proceed to sell or otherwise dispose of all or part of its nonsurplus utility property under an ordinance adopted under section 5(d) of this chapter, the municipality and the prospective purchaser must obtain the approval of the commission under this section.

(c) As part of the sale or disposition of the property, the municipality and the prospective purchaser may include terms and conditions that the municipality and the prospective purchaser consider



to be equitable to the existing utility customers of:

- (1) the municipality's municipally owned utility; and
- (2) the prospective purchaser;

as applicable.

(d) The commission shall approve the sale or disposition of the property according to the terms and conditions proposed by the municipality and the prospective purchaser if the commission finds that the sale or disposition according to the terms and conditions proposed is in the public interest. For purposes of this section, the purchase price of the municipality's nonsurplus utility property shall be considered reasonable if it does not exceed the appraised value set forth in the appraisal required under section 5 of this chapter.

(e) The following apply to the commission's determination under subsection (d) as to whether the proposed sale or disposition according to the proposed terms and conditions is in the public interest:

(1) If:

(A) the prospective purchaser petitions the commission under IC 8-1-30.3-5(d); and

(B) the commission approves the prospective purchaser's petition;

the proposed sale or disposition is considered to be in the public interest.

(2) If subdivision (1) does not apply and subject to subsection (h), the commission shall consider the extent to which the proposed terms and conditions of the proposed sale or disposition would require the existing utility customers of either the prospective purchaser or the municipality's municipally owned utility, as applicable, to pay rates that would subsidize utility service to the other party's existing customers. For purposes of this subdivision, the proposed terms and conditions will not result in rates that would subsidize service to other customers if the amount to be recorded as net original cost under subsection (f) is not greater than two percent (2%) of the prospective purchaser's net original cost rate base as determined in the prospective purchaser's most recent general rate case, **plus any adjustments to the rate base under IC 8-1-31 and IC 8-1-31.7 that have occurred after the rate case.** If the amount to be recorded is greater than two percent (2%), the commission shall proceed to determine whether:

(A) the proposed terms and conditions would result in a subsidy described in this subdivision; and

(B) the subsidy would cause the proposed terms and conditions of the proposed sale or disposition not to be in the



public interest.

The commission shall calculate the amount of the subsidy that would result and shall set forth in an order under this section such changes to the proposed terms and conditions as the commission considers appropriate to address the subsidy. The prospective purchaser and the municipality shall each have thirty (30) days from the date of the commission's order setting forth the commission's changes to either accept or reject the changes. If either party rejects the commission's changes, the proposed sale or disposition is considered not to be in the public interest.

(3) In reviewing the proposed terms and conditions of the proposed sale or disposition under either subdivision (1) or (2), the commission shall consider the financial, managerial, and technical ability of the prospective purchaser to provide the utility service required after the proposed sale or disposition.

(4) In reviewing the proposed terms and conditions of the proposed sale or disposition under either subdivision (1) or (2), the commission shall accept as reasonable the valuation of the nonsurplus utility property determined through an appraisal and review under section 5 of this chapter.

(f) As part of an order approving a sale or disposition of property under this section, the commission shall, without regard to amounts that may be recorded on the books and records of the municipality and without regard to any grants or contributions previously received by the municipality, provide that for ratemaking purposes, the prospective purchaser shall record as the net original cost rate base an amount equal to:

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

allocated in a reasonable manner among appropriate utility plant in service accounts.

(g) The commission shall issue a final order under this section not later than two hundred ten (210) days after the filing of the parties' case in chief.

(h) In reviewing a proposed sale or disposition under subsection (e), the commission shall determine whether the factors set forth in IC 8-1-30.3-5(d) are satisfied as applied to the proposed sale or disposition of the municipality's nonsurplus municipally owned utility property for purposes of section 5(m) of this chapter. If the commission determines that the factors set forth in IC 8-1-30.3-5(d):

- (1) are satisfied as applied to the proposed sale or disposition,



section 5(g) through 5(k) of this chapter does not apply to the municipality's ordinance adopted under section 5(d) of this chapter; or

(2) are not satisfied as applied to the proposed sale or disposition:

(A) section 5(g) through 5(k) of this chapter applies to the municipality's ordinance adopted under section 5(d) of this chapter; and

(B) the question as to whether the sale or disposition should be made must be submitted to the voters of the municipality at a special or general election if at least the number of the registered voters of the municipality set forth in section 5(h) of this chapter sign and present a petition to the legislative body opposing the sale or disposition, in accordance with section 5(g) through 5(k) of this chapter.

However, notwithstanding this subsection, in reviewing a proposed sale or disposition under subsection (e)(2), the commission may not condition its approval of the proposed sale or disposition on whether the factors set forth in IC 8-1-30.3-5(d) are satisfied or on any other factors except those provided for in subsection (e)(2), (e)(3), and (e)(4)."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 273 as introduced.)

KOCH, Chairperson

Committee Vote: Yeas 8, Nays 0.

