

# SENATE BILL No. 381

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 8-1-2.3.

**Synopsis:** Service areas of electric utilities. Amends the statute concerning electricity suppliers' service area assignments to provide new procedures by which a municipally owned electric utility may petition the utility regulatory commission (IURC) to change the municipally owned electric utility's assigned service area to include all or part of an area annexed by the municipality. Provides that the new procedures apply to petitions filed with the IURC after June 30, 2014. Requires the IURC, after the filing of a petition, to: (1) hold a public hearing on the question of whether the municipally owned electric utility's service area should be changed to include all or part of the annexed area; (2) consider specified factors with respect to the effects of the change sought by the municipally owned electric utility in the service area of each affected incumbent electricity supplier; and (3) issue an order as to whether the municipally owned electric utility's assigned service area should be changed. Provides that the IURC's order: (1) must include specific findings as to each of the factors considered; and (2) may provide that all, none, or any part of the annexed area sought to be included in the municipally owned electric utility's assigned service area shall be so included.

**Effective:** July 1, 2014.

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January 14, 2014, read first time and referred to Committee on Utilities.

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Second Regular Session 118th General Assembly (2014)

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 2013 Regular Session and 2013 First Regular Technical Session of the General Assembly.

# SENATE BILL No. 381



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 8-1-2.3-5 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 5. Effect of  
3 Incorporation, Annexation, Consolidation or Merger. After January 1,  
4 1979, the inclusion by incorporation, annexation, consolidation, or  
5 merger of any part of the assigned service area of an electricity supplier  
6 does not impair or affect the rights of an electricity supplier to continue  
7 to solely furnish and extend retail electric service throughout any part  
8 of its assigned service area, except as provided in section 6 **or** 7 of this  
9 chapter.

10 SECTION 2. IC 8-1-2.3-6 IS AMENDED TO READ AS  
11 FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 6. The boundaries of  
12 the assigned service areas of electricity suppliers may not be changed  
13 except under any one (1) of the following circumstances:  
14 (1) **Except as provided in section 7 of this chapter with respect**  
15 **to a petition that is described in this subdivision and filed with**  
16 **the commission after June 30, 2014**, if a municipality which



1 owns and operates an electric utility system furnishing retail  
2 electric service to the public annexes an area beyond the assigned  
3 service area of its municipally owned electric utility, the  
4 municipally owned electric utility may petition the commission to  
5 change the assigned service area of the municipally owned  
6 electric utility to include the annexed area according to the  
7 following procedures:

8 (A) The municipally owned electric utility shall file its petition  
9 with the commission not later than sixty (60) days after the  
10 annexation becomes effective. The petition must include a  
11 certified copy of the annexation ordinance, which serves as  
12 conclusive evidence that the area has been lawfully annexed  
13 and is part of the municipality. After the filing of a petition  
14 under this subdivision, the commission shall promptly enter an  
15 order changing the assigned service area facet maps of the  
16 municipally owned electric utility and incumbent electricity  
17 suppliers to include the annexed area within the assigned  
18 service area of the municipally owned electric utility and  
19 giving the right to serve and immediate possession to the  
20 municipally owned electric utility. The commission order is  
21 enforceable in court pending an appeal of that order. An  
22 appellant from a court order enforcing a commission order  
23 under this subdivision is not entitled to a stay of the court  
24 order pending appeal. However, this subdivision does not  
25 apply to incorporations, consolidations, mergers, or  
26 annexations that are under IC 36-4-3-4(a)(3), IC 36-4-3-4(b),  
27 IC 36-4-3-4(h), or IC 36-4-3-4.1 or that are not contiguous  
28 under IC 36-4-3-13(b) or IC 36-4-3-13(c).

29 (B) Not later than thirty (30) days after filing a petition under  
30 this subdivision, the municipally owned electric utility shall  
31 determine for each affected incumbent electricity supplier and  
32 pay to that supplier an amount not less than the value of all the  
33 electric utility property of the incumbent electricity supplier  
34 that is devoted to furnishing retail electric service within the  
35 additional assigned service area at its then reproduction cost  
36 new depreciated value. In addition, the municipally owned  
37 electric utility shall pay the incumbent electricity supplier  
38 severance damages in an amount equal to:

39 (i) the value of the incumbent electricity supplier's  
40 distribution and substation facilities dedicated to and located  
41 within the annexed area or relocated by reason of the  
42 annexation or an amount equal to two and one-half (2 1/2)



1 times the incumbent electricity supplier's gross revenues  
 2 from electricity sales in the annexed area during the twelve  
 3 (12) month period immediately preceding the date the  
 4 annexation ordinance became effective, whichever is  
 5 greater; plus

6 (ii) if additional permanent service locations or service  
 7 accounts are established in the annexed area during the five  
 8 (5) year period beginning on the effective date of the  
 9 annexation ordinance, one-tenth of one cent (\$0.001) for  
 10 each kilowatt hour of electricity sold to each of those  
 11 permanent service locations or service accounts for sales  
 12 that occur during a five (5) year period beginning on the  
 13 date each service location or service account is established,  
 14 up to a maximum of one hundred seventy thousand  
 15 (170,000) kilowatt hours per service account or service  
 16 location for each monthly billing period.

17 However, the municipally owned electric utility is not required  
 18 to pay severance damages under item (ii) if, at the time each  
 19 annual payment otherwise would accrue, it is purchasing all of  
 20 its requirements for electric power and energy, except for  
 21 generation directly provided by the municipally owned electric  
 22 utility or by a customer, from the incumbent electricity  
 23 supplier. Severance damages must be paid not later than thirty  
 24 (30) days after the end of each calendar year in which  
 25 severance damages have accrued. The municipally owned  
 26 electric utility and incumbent electricity suppliers shall  
 27 cooperate to calculate the amount of any severance damages  
 28 and shall furnish to each other all information and records  
 29 reasonably necessary for the determination and verification of  
 30 severance damages. If the municipally owned electric utility  
 31 and incumbent electricity suppliers cannot agree on the  
 32 amount of severance damages the municipally owned electric  
 33 utility is to pay, the commission shall determine the amount  
 34 and order payment in accordance with this clause. Not later  
 35 than twenty (20) days after making a payment, the municipally  
 36 owned electric utility shall certify to the commission and to  
 37 any affected incumbent electricity supplier that it has paid the  
 38 amounts required under this clause.

39 (C) If the municipally owned electric utility fails to make a  
 40 payment under clause (B), an affected incumbent electricity  
 41 supplier may, not later than sixty (60) days after the payment  
 42 is due and after giving the municipally owned electric utility



1 reasonable notice of and an opportunity to cure the defect, file  
 2 with the commission a petition alleging that a payment due  
 3 under clause (B) has not been made. If the commission finds  
 4 after notice and hearing that any payments owed to the  
 5 incumbent electricity supplier have not been timely and fully  
 6 paid, the commission shall order the municipally owned  
 7 electric utility to pay:

8 (i) the delinquent payments by a date determined by the  
 9 commission;

10 (ii) accrued interest at the rate set forth in IC 24-4.6-1-102;  
 11 and

12 (iii) the incumbent electricity supplier's costs of filing and  
 13 prosecuting a petition under this clause.

14 If the commission finds against the incumbent electricity  
 15 supplier, it shall order the incumbent electricity supplier to pay  
 16 the costs incurred by the municipally owned electric utility in  
 17 defending against the incumbent electricity supplier's petition.

18 (D) A certified copy of a final commission order that:

19 (i) determines and orders the payment of severance damages  
 20 under clause (B); or

21 (ii) orders the payment of delinquent payments, interest, and  
 22 costs under clause (C);

23 may be filed with the clerk of the circuit or superior court of  
 24 any county in which part or all of the annexed area is located.

25 A commission order that is filed in a court under this clause  
 26 may be enforced and executed in the same manner as if it were  
 27 a final judgment of that court.

28 (2) Upon mutual agreement of the affected electricity suppliers  
 29 and approval of the commission. If notice of a verified request for  
 30 a change of boundary lines by mutual agreement under this  
 31 subdivision is published in a newspaper of general circulation in  
 32 every county in which the boundary lines are located and an  
 33 affected electricity customer does not request a hearing within  
 34 twenty (20) days of the last date of publication, the commission  
 35 may approve the change without a hearing. The commission shall  
 36 approve a boundary line change under this subdivision unless the  
 37 commission finds, after a public hearing, that the change would  
 38 cause:

39 (A) duplication of electric utility facilities;

40 (B) waste of materials or resources; or

41 (C) uneconomic, inefficient, or inadequate electric service to  
 42 the public.



1 (3) In the case where a landowner owns a single tract of land that  
 2 is intersected by the boundary lines of two (2) or more assigned  
 3 service areas, and retail electric service can best be supplied by  
 4 only one (1) electricity supplier, or in the case where a customer  
 5 or customers are housed in a single structure or constitute a single  
 6 governmental, industrial, or institutional operation, and the  
 7 electricity suppliers involved are unable to agree which shall  
 8 furnish the electric service, any of the electricity suppliers may  
 9 submit the matter to the commission for its determination based  
 10 upon public convenience and necessity. If, after notice and  
 11 hearing, the commission determines that one (1) or more  
 12 electricity suppliers are to supply the required retail electric  
 13 service and the boundaries of an assigned service area are to be  
 14 changed, the assigned service area maps of the electricity  
 15 suppliers shall be changed to reflect the new boundaries.

16 SECTION 3. IC 8-1-2.3-7 IS ADDED TO THE INDIANA CODE  
 17 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 18 1, 2014]: **Sec. 7. (a) This section applies to a petition that is**  
 19 **described in subsection (b) and filed with the commission after**  
 20 **June 30, 2014. However, this section does not apply to**  
 21 **incorporations, consolidations, mergers, or annexations:**

22 (1) under IC 36-4-3-4(a)(3), IC 36-4-3-4(b), IC 36-4-3-4(h), or  
 23 IC 36-4-3-4.1; or

24 (2) that are not contiguous under IC 36-4-3-13(b) or  
 25 IC 36-4-3-13(c).

26 (b) If a municipality that owns and operates an electric utility  
 27 system furnishing retail electric service to the public annexes an  
 28 area beyond the assigned service area of the municipality's  
 29 municipally owned electric utility, the municipally owned electric  
 30 utility may petition the commission to change the municipally  
 31 owned electric utility's assigned service area to include all or part  
 32 of the annexed area according to the procedures set forth in this  
 33 section.

34 (c) A municipally owned electric utility that seeks to change the  
 35 municipally owned electric utility's assigned service area to include  
 36 all or part of the annexed area shall file with the commission a  
 37 petition described in subsection (b) not later than sixty (60) days  
 38 after the annexation becomes effective. The petition must include  
 39 a certified copy of the annexation ordinance, which serves as  
 40 conclusive evidence that the area has been lawfully annexed and is  
 41 part of the municipality. At the time of filing the petition, the  
 42 municipally owned electric utility shall send by certified mail a



1 written notice that complies with subsection (d) to the following:

2 (1) The record owner of each parcel of real property located  
3 in the annexed area that the municipally owned electric utility  
4 seeks to include in the municipally owned electric utility's  
5 service area, as indicated in the records of the appropriate  
6 county auditor.

7 (2) Each incumbent electricity supplier that furnishes retail  
8 electric service to the public in the annexed area that the  
9 municipally owned electric utility seeks to include in the  
10 municipally owned electric utility's service area.

11 (d) The written notice that a petitioning municipally owned  
12 electric utility must provide under subsection (c) must include the  
13 following:

14 (1) A statement that the municipally owned electric utility has  
15 filed with the commission a petition that requests that the  
16 municipally owned electric utility's assigned service area be  
17 changed to include all or part of the annexed area.

18 (2) A description of the annexed area that the municipally  
19 owned electric utility seeks to include in the municipally  
20 owned electric utility's service area.

21 (3) A statement identifying each incumbent electricity  
22 supplier that furnishes retail electric service to the public in  
23 the area described in subdivision (2) at the time the  
24 municipally owned electric utility's petition is filed.

25 (4) A statement that the commission will:

26 (A) hold a public hearing on the question of whether the  
27 municipally owned electric utility's assigned service area  
28 should be changed to include all or part of the area  
29 described in subdivision (2); and

30 (B) provide notice of the hearing in the manner and within  
31 the time specified in subsection (e).

32 (e) After the filing of a petition under this section, the  
33 commission shall hold a public hearing on, and may conduct the  
34 commission's own review concerning, the question of whether the  
35 municipally owned electric utility's assigned service area should be  
36 changed to include all or part of the annexed area. The hearing  
37 required by this subsection must be held not earlier than thirty (30)  
38 days and not later than sixty (60) days after the date the  
39 municipally owned electric utility's petition is filed with  
40 commission. Notwithstanding IC 8-1-1-8, the commission shall  
41 cause notice of the time and place of the hearing to be:

42 (1) published at least ten (10) days before the hearing in each



1 county that contains any part of the service area of:

2 (A) the municipally owned electric utility filing the petition  
3 under this section; and

4 (B) each incumbent electricity supplier that furnishes retail  
5 electric service to the public in the annexed area that the  
6 municipally owned electric utility seeks to include in the  
7 municipally owned electric utility's service area; and

8 (2) sent by certified mail at least ten (10) days before the date  
9 of the hearing to:

10 (A) the municipally owned electric utility filing the petition  
11 under this section;

12 (B) each incumbent electricity supplier that furnishes retail  
13 electric service to the public in the annexed area that the  
14 municipally owned electric utility seeks to include in the  
15 municipally owned electric utility's service area; and

16 (C) appropriate public agencies and political subdivisions,  
17 including all municipalities, whose jurisdiction includes the  
18 annexed area that the municipally owned electric utility  
19 seeks to include in the municipally owned electric utility's  
20 service area.

21 (f) The commission shall conduct the hearing required by  
22 subsection (e) at the time and place indicated in the commission's  
23 notice under subsection (e). At the hearing, each person entitled to  
24 notice under subsection (c) or (e) must be given the opportunity to  
25 be heard and present evidence on the question of whether the  
26 municipally owned electric utility's assigned service area should be  
27 changed to include all or part of the annexed area. After the  
28 hearing is concluded, the commission shall consider the evidence  
29 presented at the hearing, along with the findings of the  
30 commission's own review, if any, under subsection (e), and  
31 determine whether the municipally owned electric utility's assigned  
32 service area should be changed to include all or part of the annexed  
33 area. In making the determination required by this subsection, the  
34 commission shall consider the following with respect to each  
35 incumbent electricity supplier that furnishes retail electric service  
36 to the public in the annexed area that the municipally owned  
37 electric utility seeks to include in the municipally owned electric  
38 utility's service area:

39 (1) Whether public convenience and necessity require that the  
40 municipally owned electric utility's assigned service area be  
41 changed to include that part of the incumbent electricity  
42 supplier's assigned service area sought to be so included by





1 the municipally owned electric utility. In making the  
 2 determination required by this subdivision, the commission  
 3 shall consider whether the change sought would cause:

- 4 (A) duplication of electric utility facilities;  
 5 (B) waste of materials or resources; or  
 6 (C) uneconomic, inefficient, or inadequate electric service  
 7 to the public.

8 (2) Whether the municipally owned electric utility can provide  
 9 adequate retail electric service to all present customers and to  
 10 each known or reasonably likely future customer in the part  
 11 of the incumbent electricity supplier's assigned service area  
 12 described in subdivision (1). In making the determination  
 13 required by this subdivision, the commission shall consider  
 14 whether the municipally owned utility has adequate existing  
 15 facilities and capacity to provide adequate retail electric  
 16 service immediately in the part of the incumbent electric  
 17 utility's service area described in subdivision (1). In addition,  
 18 the commission may consider any of the following aspects of  
 19 the incumbent electricity supplier's operations or the  
 20 municipally owned electric utility's operations, to the extent  
 21 determinable and relevant to the inquiry:

- 22 (A) Technical, financial, and managerial capacity.  
 23 (B) Physical condition and capacity of the incumbent  
 24 electricity supplier's or the municipally owned electric  
 25 utility's electric utility facilities.  
 26 (C) Compliance with Indiana or federal law or the  
 27 commission's orders.  
 28 (D) Provision of service to customers.

29 (3) The effects that including the part of the incumbent  
 30 electricity supplier's assigned service area described in  
 31 subdivision (1) in the municipally owned electric utility's  
 32 service area would have on the rates paid for retail electric  
 33 service by:

- 34 (A) present customers and known or reasonably likely  
 35 future customers receiving retail electric service in the part  
 36 of the incumbent electricity supplier's assigned service  
 37 area described in subdivision (1); and  
 38 (B) present customers and known or reasonably likely  
 39 future customers receiving retail electric service in any  
 40 part of the incumbent electricity supplier's assigned service  
 41 area outside the area described in subdivision (1).

42 (4) The effects that including the part of the incumbent



1 electricity supplier's assigned service area described in  
 2 subdivision (1) in the municipally owned electric utility's  
 3 service area would have on the reliability and service quality  
 4 of retail electric service provided to:

5 (A) present customers and known or reasonably likely  
 6 future customers receiving retail electric service in the part  
 7 of the incumbent electricity supplier's assigned service  
 8 area described in subdivision (1); and

9 (B) present customers and known or reasonably likely  
 10 future customers receiving retail electric service in any  
 11 part of the incumbent electricity supplier's assigned service  
 12 area outside the area described in subdivision (1).

13 (g) After considering all the evidence and the factors set forth in  
 14 subsection (f), and not later than one hundred twenty (120) days  
 15 after the date the municipally owned electric utility's petition is  
 16 filed with the commission under this section, the commission shall  
 17 issue an order as to whether the municipally owned electric utility's  
 18 assigned service area should be changed to include all or part of  
 19 the annexed area. The commission shall include in the  
 20 commission's order specific findings as to each of the factors set  
 21 forth in subsection (f) with respect to each incumbent electricity  
 22 supplier that furnishes retail electric service to the public in the  
 23 annexed area sought to be included in the municipally owned  
 24 electric utility's assigned service area. The order may provide that  
 25 all, none, or any part of the annexed area sought to be included in  
 26 the municipally owned electric utility's assigned service area shall  
 27 be so included. If the commission's order provides that all or any  
 28 part of the annexed area sought to be included in the municipally  
 29 owned electric utility's assigned service area shall be so included:

30 (1) the commission shall grant to the municipally owned  
 31 electric utility in the commission's order the right to serve,  
 32 and the immediate possession of:

33 (A) all of the annexed area; or

34 (B) the part of the annexed area that the commission  
 35 orders to be included in the municipally owned electric  
 36 utility's assigned service area;

37 as applicable; and

38 (2) subject to subsection (h), not later than thirty (30) days  
 39 after the date of the commission's order, the municipally  
 40 owned electric utility shall proceed to determine and pay to  
 41 each affected incumbent electricity supplier:

42 (A) an amount not less than the value of all the electric



1            **utility property of the incumbent electricity supplier that**  
2            **is devoted to furnishing retail electric service within the**  
3            **additional assigned service area at its then reproduction**  
4            **cost new depreciated value, as prescribed by section**  
5            **6(1)(B) of this chapter; and**  
6            **(B) severance damages in the amount, at the times, and in**  
7            **the manner prescribed by section 6(1)(B) of this chapter.**  
8            **Payments under this subdivision are subject to the remedies**  
9            **and enforcement procedures set forth in section 6(1)(C) and**  
10           **6(1)(D) of this chapter.**  
11           **(h) An order of the commission under this section is enforceable**  
12           **in court pending an appeal of the order. An appellant from a court**  
13           **order enforcing a commission order under this section is not**  
14           **entitled to a stay of the court order pending appeal.**

