

HOUSE BILL No. 1551

DIGEST OF INTRODUCED BILL

Citations Affected: IC 8-1.

Synopsis: Water supply development and sustainability costs. Authorizes a public utility that provides water utility service to petition the utility regulatory commission (commission) for approval of a plan to develop a future source of water supply. Requires the commission to approve the plan if the commission finds that the proposed future source of supply is reasonably needed within the utility's timetable for providing reasonably adequate service. Provides that, after the utility's plan is approved, the commission shall, for ratemaking purposes, add the costs incurred by the utility in developing the future source of water supply to the value of the water utility's property even though the source of supply is not yet used and useful in the provision of service. Authorizes a water or wastewater utility to petition the commission for an adjustment to its rate schedules in an amount that will provide for recovery of costs incurred by the utility for "sustainability improvements" (which include complying with federal or local environmental requirements, replacing lead service lines owned by customers, and installing or replacing plant or equipment to further health, safety, or environmental protection). Requires a utility to obtain the commission's approval of its plan for sustainability improvements in certain cases. Authorizes the office of the utility consumer counselor to submit a report on the utility's petition to the commission. Requires the commission to conduct a hearing on the utility's petition and to issue its order not later than 60 days after the petition is filed.

Effective: July 1, 2017.

VanNatter

January 23, 2017, read first time and referred to Committee on Utilities, Energy and Telecommunications.



First Regular Session of the 120th General Assembly (2017)

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 2016 Regular Session of the General Assembly.

HOUSE BILL No. 1551

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 8-1-2-23.5 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2017]: **Sec. 23.5. (a) A public utility that provides water utility**
4 **service may file a petition with the commission to seek approval of**
5 **a plan to develop a future source of water supply. The public utility**
6 **seeking the approval shall submit evidence of:**
7 (1) **the public utility's timetable for the development of the**
8 **future source of supply;**
9 (2) **the cost of the source of supply;**
10 (3) **the need for a new source of supply within the public**
11 **utility's timetable;**
12 (4) **the availability of alternatives to the proposed source of**
13 **supply; and**
14 (5) **the need to secure property rights to preserve and protect**
15 **the planned future source of supply.**
16 **The commission shall approve the public utility's plan if the**
17 **commission finds that the proposed future source of supply is**



1 reasonably needed within the public utility's timetable for the
2 provision of reasonably adequate service.

3 (b) In general rate cases following approval of a public utility's
4 plan under this section, the commission shall, for ratemaking
5 purposes, add to the value of the public utility's property under
6 section 6 of this chapter the public utility's actual cost incurred for
7 the land, studies, development costs, and construction in
8 developing a future source of water supply even though the source
9 of supply is not yet used and useful in the provision of service.

10 SECTION 2. IC 8-1-31.6 IS ADDED TO THE INDIANA CODE
11 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
12 JULY 1, 2017]:

13 **Chapter 31.6. Sustainability Projects for Water and Wastewater**
14 **Utilities**

15 **Sec. 1.** As used in this chapter, "commission" refers to the
16 Indiana utility regulatory commission created by IC 8-1-1-2.

17 **Sec. 2.** As used in this chapter, "eligible sustainability
18 improvements" means new used and useful sustainability
19 improvements that:

20 (1) do not increase revenues by connecting to new customers;
21 and

22 (2) either:

23 (A) for a public utility:

24 (i) are in service; and

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

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

28 (i) were put in service or approved by the commission for
29 funding after the utility's pro forma test year in its most
30 recent general rate case; and

31 (ii) are not subject to another rate adjustment
32 mechanism.

33 **Sec. 3.** As used in this chapter, "federally mandated
34 requirement" means a requirement that the commission
35 determines is imposed on a water or wastewater utility by the
36 federal government or the state government in connection with any
37 of the following:

38 (1) The federal Water Pollution Control Act (33 U.S.C. 1251
39 et seq.).

40 (2) The federal Safe Drinking Water Act (42 U.S.C. 300f et
41 seq.).

42 (3) Any other law, order, or regulation administered by the



1 United States Environmental Protection Agency, the United
 2 States Army Corps of Engineers, the department of
 3 environmental management, or the department of natural
 4 resources.

5 **Sec. 4.** As used in this chapter, "locally mandated requirement"
 6 means a requirement that the commission determines is imposed
 7 by a municipal council or county executive under IC 8-1-2-101.

8 **Sec. 5.** As used in this chapter, "pretax return" means the
 9 revenues necessary for a public utility to:

10 (1) produce net operating income equal to the utility's
 11 weighted cost of capital multiplied by the net original cost of
 12 capital incurred for an eligible sustainability improvement;
 13 and

14 (2) pay state and federal income taxes applicable to such
 15 income.

16 **Sec. 6. (a)** As used in this chapter, "sustainability costs" means
 17 costs that a water or wastewater utility incurs in connection with
 18 an eligible sustainability improvement, including the following:

19 (1) Depreciation expenses.

20 (2) Operation and maintenance expenses.

21 (3) For a municipally owned utility, extensions and
 22 replacements to the extent not provided for through
 23 depreciation, in the manner provided for in IC 8-1.5-3-8.

24 (4) For a municipally owned utility, debt service on funds
 25 borrowed to pay for eligible sustainability improvements.

26 (5) Property taxes to be paid by the water or wastewater
 27 utility based upon the first assessment date following the
 28 placement in service of the eligible sustainability
 29 improvement.

30 (6) For a public utility, pretax return.

31 (b) The term does not include fines or penalties assessed against
 32 or imposed on a water or wastewater utility for violating laws,
 33 regulations, or consent decrees related to a federally mandated
 34 requirement or a locally mandated requirement.

35 **Sec. 7.** As used in this chapter, "sustainability improvement"
 36 means an expenditure that is:

37 (1) made by a water or wastewater utility; and

38 (2) related to:

39 (A) direct or indirect compliance with one (1) or more
 40 federally mandated requirements;

41 (B) a water utility's plan to replace the part of lead service
 42 lines owned by the customer;



1 (C) direct or indirect compliance with one (1) or more
2 locally mandated requirements;

3 (D) installation of new plant or equipment that is not
4 replacement plant or equipment and which the commission
5 determines is reasonable and appropriate to further
6 health, safety, or environmental protection for customers,
7 employees, or the public; or

8 (E) replacement of plant or equipment to maintain existing
9 health, safety or environmental protection for customers,
10 employees, or the public.

11 Sec. 8. As used in this chapter, "water or wastewater utility"
12 means:

13 (1) a public utility (as defined in IC 8-1-2-1(a));

14 (2) a municipally owned utility (as defined in IC 8-1-2-1(h));
15 or

16 (3) a not-for-profit utility (as defined in IC 8-1-2-125(a));

17 that provides water or wastewater service to the public.

18 Sec. 9. (a) Before a water or wastewater utility may seek a
19 periodic rate adjustment under section 13 of this chapter, the water
20 or wastewater utility must first obtain approval from the
21 commission of the water or wastewater utility plan for the
22 sustainability improvement or sustainability improvements
23 proposed by the water or wastewater utility, except as provided in
24 subsection (e). To seek approval of its plan, the water or
25 wastewater utility must file with the commission a petition and a
26 case in chief including supporting information described in section
27 10, 11, or 12 of this chapter, as applicable.

28 (b) After holding a properly noticed public hearing, the
29 commission shall approve the water or wastewater utility's plan
30 under this section if the commission makes the required findings
31 under section 10, 11, or 12 of this chapter, as applicable.

32 (c) The commission shall issue its final order on the petition filed
33 under subsection (a) not later than two hundred ten (210) days
34 after the filing of the water or wastewater utility's case in chief.

35 (d) A water or wastewater utility may have more than one (1)
36 plan, and a water or wastewater utility may file separate petitions
37 for separate plans.

38 (e) A water or wastewater utility is not required to seek
39 approval of a plan in order to seek a periodic rate adjustment
40 under section 13 of this chapter for eligible sustainability
41 improvements that are described in section 7(2)(E) of this chapter.

42 Sec. 10. If the plan is for a sustainability improvement described



1 in section 7(2)(A) of this chapter, the commission must find that the
 2 proposed sustainability improvement will allow the water or
 3 wastewater utility to comply directly or indirectly with one (1) or
 4 more federally mandated requirements. The commission shall
 5 examine the following factors:

6 (1) The following, which must be set forth in the water or
 7 wastewater utility's case in chief filed in accordance with
 8 section 9 of this chapter:

9 (A) A description of the federally mandated requirements,
 10 including any consent decrees related to the federally
 11 mandated requirements, that the water or wastewater
 12 utility seeks to comply with through the proposed
 13 sustainability improvement.

14 (B) A description of the projected sustainability costs
 15 associated with the proposed sustainability improvement.

16 (C) A description of how the proposed sustainability
 17 improvement allows the water or wastewater utility to
 18 comply with the federally mandated requirements
 19 described by the water or wastewater utility under clause
 20 (A).

21 (D) Alternative plans that demonstrate that the proposed
 22 sustainability improvement is reasonable and necessary.

23 (2) Any other factors the commission considers relevant.

24 Sec. 11. If the plan is for a sustainability improvement described
 25 in section 7(2)(B) of this chapter, the commission must first
 26 approve the water or wastewater utility's plan for replacement of
 27 the customer owned portion of lead service lines. The water or
 28 wastewater utility's plan must address the following factors:

29 (1) The number of lead mains and lead service lines believed
 30 to be in the water or wastewater utility's system.

31 (2) The total number of customer owned lead service lines
 32 estimated to be replaced annually.

33 (3) The total feet of lead mains to be replaced annually.

34 (4) The utility's proposal for addressing the costs of unusual
 35 site restoration work due to structures or improvements
 36 located above the customer owned part of lead service lines.

37 (5) The utility's proposal for communicating with the
 38 customer the availability of the utility's plan to replace the
 39 customer owned part of the lead service line when the utility
 40 replaces the utility owned portion of the service line and
 41 documenting the customer's consent or lack of consent to
 42 replace the customer owned portion of the lead service line.



1 **(6) The utility's proposal regarding whether the utility or the**
 2 **customer is responsible for future replacement, repair, or**
 3 **replacement and repair of the part of the new service line**
 4 **corresponding to the previous customer owned lead service**
 5 **line.**

6 **(7) The expected total cost to replace all customer owned**
 7 **portions of lead service lines and the estimated annual cost to**
 8 **be incurred by the utility under its plan.**

9 **The commission shall approve the water or wastewater utility's**
 10 **plan if the commission finds the plan to be reasonable and in the**
 11 **public interest. In general rate cases following approval of the plan**
 12 **under this section, the commission shall, for ratemaking purposes,**
 13 **add to the value of the water or wastewater utility's property for**
 14 **purposes of IC 8-1-2-6 the water or wastewater utility's actual cost**
 15 **incurred in replacing the part of any lead service lines owned by**
 16 **the customer with a new service line and in removing the lead**
 17 **service line pursuant to the plan even though the service line is**
 18 **owned by the customer. For purposes of this chapter, such costs**
 19 **constitute sustainability costs.**

20 **Sec. 12. If the plan is for a sustainability improvement described**
 21 **in section 7(2)(C) of this chapter, the utility shall provide a copy of**
 22 **the municipal or county ordinance or determination setting forth**
 23 **the requirement and shall provide the utility's estimated cost to**
 24 **comply with the requirement. The commission shall review the**
 25 **reasonableness of the requirement pursuant to IC 8-1-2-101(a).**
 26 **Unless the commission finds the requirement to be unreasonable,**
 27 **the commission shall approve the plan for the sustainability**
 28 **improvement. The municipality or county that has adopted the**
 29 **requirement shall be provided notice of the proceedings.**

30 **Sec. 13. (a) A water or wastewater utility may file with the**
 31 **commission a petition establishing an adjustment rider to its rate**
 32 **schedules in an amount that will provide for recovery of**
 33 **sustainability costs. The adjustment rider shall be calculated as a**
 34 **fixed charge based upon equivalent meter size.**

35 **(b) At the time of its filing with the commission under this**
 36 **section, the water or wastewater utility shall serve a copy of its**
 37 **filing on the office of the utility consumer counselor.**

38 **(c) Publication of notice of the filing under this section is not**
 39 **required.**

40 **Sec. 14. (a) When a petition is filed under section 13 of this**
 41 **chapter, the commission shall conduct a hearing.**

42 **(b) The office of the utility consumer counselor may:**



1 (1) examine information of the water or wastewater utility to
2 confirm that:

3 (A) the eligible system improvements are in accordance
4 with sections 2 and 9 of this chapter; and

5 (B) the adjustment amount proposed under section 13(a)
6 of this chapter has been properly calculated; and

7 (2) submit a report to the commission not later than thirty
8 (30) days after the petition is filed.

9 (c) The commission shall hold the hearing and issue its order not
10 later than sixty (60) days after the petition is filed.

11 (d) If the commission finds that a petition filed under section 13
12 of this chapter complies with the requirements of this chapter, the
13 commission shall enter an order approving the petition.

14 Sec. 15. A water or wastewater utility may, but is not required
15 to, file a petition for a change in its initial adjustment amount not
16 more often than one (1) time every twelve (12) months.

17 Sec. 16. A water or wastewater utility's adjustment rider
18 approved under a petition filed under section 13 or 15 of this
19 chapter shall be reset to zero (0) upon approval of new basic rates
20 and charges for the water or wastewater utility by the commission
21 in a general rate case.

22 Sec. 17. (a) In determining an appropriate pretax return for a
23 public utility, the commission may consider the following factors:

24 (1) The current state and federal income tax rates.

25 (2) The water or wastewater utility's actual regulatory capital
26 structure.

27 (3) The actual cost rates for the water or wastewater utility's
28 long term debt and preferred stock.

29 (4) The water or wastewater utility's cost of common equity.

30 (5) Other components that the commission considers
31 appropriate.

32 (b) The cost of common equity to be used in the calculation of
33 the charge must be the most recent determination by the
34 commission in a general rate proceeding of the water or
35 wastewater utility. If the commission finds that the last
36 determination in a general rate proceeding of the water or
37 wastewater utility is no longer representative of current conditions,
38 the commission may make a new determination of the common
39 equity cost rate for use in determining the charge, after notice and
40 hearing. The most recent prior determination must be used
41 pending any redetermination.

42 Sec. 18. In determining the amount of allowable recovery of



1 sustainability costs for a water or wastewater utility that is a
 2 municipally owned utility, the commission may consider the
 3 following factors:

4 (1) Debt service on funds borrowed to pay for eligible
 5 sustainability improvements.

6 (2) Depreciation expenses on eligible sustainability
 7 improvements based on the same rate or rates of depreciation
 8 approved by the commission for the calculation of
 9 depreciation in the utility's most recent rate case.

10 (3) Other components that the commission considers
 11 appropriate.

12 **Sec. 19.** In determining the amount of allowable recovery of
 13 sustainability costs for a not-for-profit utility, the commission may
 14 consider the following factors:

15 (1) Debt service on funds borrowed to pay for eligible
 16 sustainability improvements.

17 (2) Other components that the commission considers
 18 appropriate.

19 **Sec. 20. (a)** An adjustment amount proposed under section 13 of
 20 this chapter may be calculated based on a reasonable estimate of
 21 equivalent meters in the period in which the charge will be in
 22 effect.

23 (b) At the end of each twelve (12) month period following the
 24 date on which the commission initially approves an adjustment
 25 amount for a water or wastewater utility following the water or
 26 wastewater utility's most recent general rate case, and using
 27 procedures approved by the commission, the water or wastewater
 28 utility shall:

29 (1) reconcile the difference between revenues pursuant to the
 30 adjustment rider and sustainability costs during that period;
 31 and

32 (2) recover or refund the difference, as appropriate, through
 33 additional adjustments to the adjustment rider.

34 **Sec. 21. (a)** Water or wastewater utilities that are not regulated
 35 by the commission:

36 (1) may, on a voluntary basis, institute a plan for
 37 sustainability improvements; and

38 (2) may adjust their rates to recover sustainability costs.

39 (b) In order for a water utility that is not regulated by the
 40 commission to be eligible for financing available through the
 41 Indiana finance authority established by IC 4-4-11-4, the water
 42 utility must develop and implement a plan for lead service line



1 replacement consistent with section 11 of this chapter.
2 Sec. 22. The commission shall adopt rules under IC 4-22-2 to
3 implement this chapter.

