

Second Regular Session of the 123rd General Assembly (2024)

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 2023 Regular Session of the General Assembly.

SENATE ENROLLED ACT No. 5

AN ACT to amend the Indiana Code concerning utilities.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 8-1-31.6-2, AS AMENDED BY P.L.15-2019, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. As used in this chapter, "customer lead service line improvement" means an expenditure that is:

- (1) related to ~~(A)~~ a lead service line, ~~or (B)~~ **a including any galvanized steel service line that is or has been connected to any upstream component made of lead or of an unknown material, that is** owned by a customer of a water utility;
- (2) made by a water utility; and
- (3) related to a water utility's plan to replace lead service lines within or connected to the water utility's system, including lines owned by the customer and lines owned by the water utility.

SECTION 2. IC 8-1-31.6-4, AS AMENDED BY P.L.137-2020, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. **(a)** As used in this chapter, "water utility" means:

- (1) a public utility (as defined in IC 8-1-2-1(a)); or
 - (2) a municipally owned utility (as defined in IC 8-1-2-1(h));
- that provides water service to the public, and that is under the commission's authority with respect to rates and charges.

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(b) For purposes of this chapter, a municipally owned utility includes a utility company owned, operated, or held in trust by a consolidated city.

SECTION 3. IC 8-1-31.6-6, AS AMENDED BY P.L.32-2021, SECTION 17, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6. **(a) As used in this section, "occupant", with respect to any:**

- (1) building;**
- (2) structure; or**
- (3) dwelling;**

that is served by a lead service line, means a person in actual possession of and residing in or occupying the building, structure, or dwelling.

(b) As used in this section, "owner", with respect to any:

- (1) building;**
- (2) structure; or**
- (3) dwelling;**

that is served by a lead service line, means a person who has legal title to the building, structure, or dwelling, as indicated by the property tax records of the county in which the property is located, or by the account or other customer or billing records maintained by the water utility with respect to the property, regardless of whether the person is in actual possession of and residing in or occupying the building, structure, or dwelling.

(a) (c) Before a water utility is authorized to include customer lead service line improvements as eligible infrastructure improvements for purposes of IC 8-1-31, for a public utility, or for purposes of this chapter, for a municipally owned utility, the commission must first approve the water utility's plan for the replacement of the customer owned portion of the lead service lines within or connected to the water utility's system. The water utility's plan must address the following:

- (1) The availability of grants or low interest loans and how the water utility plans to use available grants or low interest loans to help the water utility finance or reduce the cost of the customer lead service line improvements for the water utility and the water utility's customers, including any arrangements for the customer to receive available grants or financing directly.**
- (2) A description of how the replacement of customer owned lead service lines will be accomplished in conjunction with distribution system infrastructure replacement projects.**
- (3) The estimated savings in costs per service line that would be realized by the water utility replacing the customer owned portion**



of the lead service lines versus the anticipated replacement costs if customers were required to replace the customer owned portion of the lead service lines.

(4) The number of lead mains and lead service lines estimated to be part of the water utility's system.

(5) A range for the number of customer owned lead service lines estimated to be replaced annually.

(6) A range for the total feet of lead mains estimated to be replaced annually.

(7) The water utility's proposal for addressing the costs of unusual site restoration work necessitated by structures or improvements located above the customer owned portion of the lead service lines.

(8) The water utility's proposal for

~~(A) communicating with the customer the availability of the water utility's plan to replace the customer owned portion of the lead service line in conjunction with the water utility's replacement of the utility owned portion of the lead service line. and~~

~~(B) documenting the customer's consent or lack of consent to replace the customer owned portion of the lead service line.~~

(9) The water utility's proposal concerning whether the water utility or the customer will be responsible for future replacement or repair of the portion of the new service line corresponding to the previous customer owned lead service line.

(10) The estimated total cost to replace all customer owned portions of the lead service lines within or connected to the water utility's system and an estimated range for the annual cost to be incurred by the water utility under the water utility's plan.

(d) Notwithstanding the terms of a water utility's plan for the replacement of the customer owned portion of the lead service lines within or connected to the water utility's system, the following apply to the owner of a building, structure, or dwelling that is served by a customer owned lead service line within or connected to the water utility's system:

(1) Upon request by the water utility, the owner of a building, structure, or dwelling, other than a multi-family residential property that contains more than four (4) dwelling units, shall replace, or cause to be replaced, the customer owned portion of the lead service line by either of the following methods:

(A) Enrolling in the lead service line replacement program offered by the water utility and, after enrolling, allowing



the water utility or the water utility's agents to access the owner's property, at no cost to the water utility, to conduct the replacement in accordance with the water utility's plan.

(B) Replacing the customer owned portion of the lead service line through the owner's own agents or contractors and at the owner's own expense. If the owner elects to replace the customer owned portion of the lead service line under this clause, the replacement must be completed not later than forty-five (45) days after the water utility first communicates to the owner the availability of the water utility's program to replace the customer owned portion of the lead service line.

(2) If the owner of a building, structure, or dwelling, other than a multi-family residential property that contains more than four (4) dwelling units:

(A) does not enroll in the lead service line replacement program offered by the water utility;

(B) does not replace the customer owned portion of the lead service line through the owner's own agents or contractors and at the owner's own expense within the forty-five (45) day period described in subdivision (1)(B); or

(C) fails to communicate with or is nonresponsive to the water utility's attempted communications regarding the replacement of the customer owned portion of the lead service line;

the water utility or the water utility's agent may, after the expiration of the forty-five (45) day period described in subdivision (1)(B), enter the property to replace the customer owned portion of the lead service line without having obtained the permission of the owner with respect to the entry or the replacement. A water utility, including an agent of the water utility, that enters an owner's property and conducts a replacement under this subdivision shall be held harmless by and is not liable to the owner with respect to the entry or the replacement. If the property is occupied by an occupant other than the owner, and the occupant grants the water utility or the water utility's agent access to the property to conduct a replacement under this subdivision, the occupant shall also be held harmless by and is also not liable to the owner with respect to the entry or the replacement. Notwithstanding the



terms of the water utility's plan for the replacement of customer owned lead service lines, a water utility that conducts a replacement under this subdivision is not liable for any property restoration costs necessitated by the replacement and that exceed five hundred dollars (\$500). The owner is responsible for the completion and cost of any property restoration work necessitated by the replacement and exceeding the five hundred dollar (\$500) limit set forth in this subdivision. A water utility that enters an owner's property as permitted under this subdivision is not liable to the owner for any cost for access to, or for an easement on, the property.

(3) Upon request by the water utility, the owner of a multi-family residential property that contains more than four (4) dwelling units may elect to participate in the water utility's lead service line replacement program. An owner shall communicate to the water utility the owner's election to participate in the water utility's program under this subdivision not later than forty-five (45) days after receiving the water utility's request. If the owner does not communicate the owner's election to participate in the water utility's program within the forty-five (45) day period set forth in this subdivision, the owner, or any future owner of the property, is responsible for replacing the customer owned portion of the lead service line through the owner's own agents or contractors and at the owner's own expense.

(4) In any case in which the conditions set forth in subdivision (2) apply and in which the water utility attempts to avail itself of the remedies set forth in subdivision (2) but is prevented from doing so by the owner of the property, the water utility may, in accordance with state law and rules adopted by the commission, disconnect water service to the property. Before water service may be restored to the property, the owner must provide the water utility with proof that:

(A) the owner has enrolled in the water utility's lead service line replacement program under subdivision

(1)(A); or

(B) the customer owned service line has been replaced in accordance with subdivision (1)(B).

(5) In the case of any:

(A) building;

(B) structure; or



(C) dwelling;

that the water utility has determined, in accordance with any applicable law, to be abandoned or unserviceable, the water utility may disconnect water service to the property and require the owner, or any future owner, of the property to install a new service line through the owner's own agents or contractors and at the owner's own expense.

(6) The provisions set forth in this subsection may be incorporated into a water utility's plan that has been previously approved by the commission under this section. A water utility that incorporates the provisions set forth in this subsection into a previously approved plan is not required to obtain any additional approval from the commission with respect to the incorporated provisions.

~~(b)~~ **(e)** The commission shall approve a water utility's plan if the commission finds the plan to be reasonable and in the public interest. Subject to subsection ~~(c)~~; **(f)**, in general rate cases following the approval of a public utility's plan, the commission shall for ratemaking purposes add to the value of the public utility's property for purposes of IC 8-1-2-6 the actual costs incurred by the public utility in replacing the customer owned portion of the lead service lines and in removing customer owned lead service lines from service in accordance with the public utility's plan, notwithstanding the continued ownership of the service line by the customer.

~~(c)~~ **(f)** To the extent a water utility incurs an annual cost under the water utility's plan in excess of the range set forth in subsection ~~(a)~~~~(10)~~ **(c)(10)** and approved by the commission under subsection ~~(b)~~; **(e)**, the additional costs are not eligible for the ratemaking treatment provided for in this section or in section 7, 8, or 10 of this chapter.

SECTION 4. IC 8-1-31.6-7, AS AMENDED BY P.L.137-2020, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 7. Subject to section ~~6(c)~~ **6(f)** of this chapter, **in the case of a water utility that is a public utility**, upon the commission's approval of a ~~public~~ **the water** utility's plan under section 6 of this chapter, the water utility may include the actual costs incurred by the ~~public water~~ utility in connection with completing customer lead service line improvements that:

(1) have been placed in service; and

(2) have not been included in the ~~public water~~ utility's rate base in the ~~public water~~ utility's most recent general rate case;

as eligible infrastructure improvements for purposes of IC 8-1-31. For purposes of the revenue limitation calculation under IC 8-1-31-13,

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infrastructure improvement costs associated with customer lead service line improvements shall not be counted as adjustment revenues in determining whether the water utility's total adjustment revenues exceed ten percent (10%) of the water utility's base revenue level approved in the water utility's most recent general rate case.

SECTION 5. IC 8-1-31.6-8, AS ADDED BY P.L.137-2020, SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 8. Subject to section ~~6(e)~~ **6(f)** of this chapter, **in the case of a water utility that is a municipally owned utility**, upon the commission's approval of the **water** utility's plan under section 6 of this chapter, ~~a municipally owned the water~~ utility may include in the **water** utility's rates the costs for customer lead service line improvements that:

- (1) are made, or are to be made, by a ~~municipally owned the water~~ utility;
- (2) do not increase revenues by connecting to new customers, even though the plant or equipment may provide the ~~municipally owned water~~ utility with available capacity greater than the available capacity provided to the customer before the line improvements;
- (3) are or will be an extension or replacement consistent with section 9 of this chapter; and
- (4) were not included on the **water** utility's balance sheet as plant in service in the **water** utility's most recent general rate case.

SECTION 6. IC 34-30-2.1-77.5 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 77.5. IC 8-1-31.6-6 (Concerning a water utility, or an occupant other than the owner of real property, that enters real property (or grants access to the property, in the case of an occupant) served by a customer owned lead service line to replace the customer owned lead service line after the owner's failure to replace, or cause to be replaced, the customer owned lead service line).**

SECTION 7. IC 34-31-2-1.5 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1.5. IC 8-1-31.6-6 (Concerning a water utility for any property restoration costs that are necessitated by the replacement of customer owned lead service lines on a property owner's property).**

SECTION 8. **An emergency is declared for this act.**



President of the Senate

President Pro Tempore

Speaker of the House of Representatives

Governor of the State of Indiana

Date: _____ Time: _____

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