

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.

HOUSE ENROLLED ACT No. 1206

AN ACT to amend the Indiana Code concerning utilities.

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

SECTION 1. IC 8-1-2.7-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. (a) This chapter provides the exclusive statutory manner for a utility described in section 1.3(a)(1) or 1.3(a)(2) of this chapter to withdraw from the jurisdiction of the commission for the approval of the following:

- (1) Rates and charges.
- (2) Stocks, bonds, notes, or other evidence of indebtedness.
- (3) Rules.
- (4) The annual report filing requirement.

(b) Notwithstanding any other provision in this article, a sewer disposal company described in section 1.3(a)(2) of this chapter shall not initiate operations or provide service or seek commission authority to do so within a territory for which the commission has granted operating and territorial authority to any other entity, which has not been revoked.

(c) A sewage disposal company described in section 1.3(a)(2) of this chapter that has withdrawn from commission jurisdiction under this chapter shall offer service to all customers within the territory for which the commission has granted the utility territorial authority.

(d) A sewage disposal company described in section 1.3(a)(2) of this chapter that is subject to the commission's jurisdiction under IC 8-1-1.9-5(e)(2) for having been issued more than one (1)

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enforcement order (as defined in IC 8-1-1.9-5(c)) within the time specified in IC 8-1-1.9-5(e)(2) may not seek to withdraw from the commission's jurisdiction under this chapter during the rate regulation period set forth in IC 8-1-1.9-5(e)(2).

SECTION 2. IC 8-1-2.7-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. **(a)** The referendum must be conducted at a special meeting called by the board. Written notice of the meeting must be sent to every member or shareholder of the withdrawing utility and to the secretary of the commission not less than ~~thirty (30)~~ **forty-five (45)** days before the date of the meeting. The notice must contain the following information:

- (1) The place, date, and hour of the meeting.
- (2) The purpose of the meeting, including an explanation of what the withdrawal from commission jurisdiction entails.
- (3) The fact that no proxies will be permitted.
- (4) A statement that a member or shareholder may cast a vote by secret absentee ballot.**

(b) The notice provided under subsection (a) must include:

- (1) instructions for how a member or shareholder who wishes to cast a vote by absentee ballot may request an absentee ballot;**
- (2) a statement that a request for an absentee ballot precludes a member or shareholder from voting in person at the meeting held on the question of withdrawal from the commission's jurisdiction;**
- (3) instructions that a member or shareholder voting by absentee ballot must:**
 - (A) return the absentee ballot by United States mail; or**
 - (B) deliver the absentee ballot in person to the offices of the utility; and**
- (4) the deadline for returning or delivering an absentee ballot, which must be:**
 - (A) not earlier than ten (10) calendar days; and**
 - (B) not later than five (5) calendar days;****before the meeting on the question of withdrawal, along with information as to when an absentee ballot will be considered received by the board.**

(c) The form of an absentee ballot authorized by this section must be as follows:

- YES, I want to withdraw from the jurisdiction of the commission.**
- NO, I want to remain under the jurisdiction of the**



commission.

(d) An absentee ballot authorized by this section must not:

(1) require a member or shareholder to include the member's or shareholder's name on the absentee ballot or to sign the absentee ballot; or

(2) be marked with any number or identifier that can be traced to the member or shareholder;

so as to compromise the confidentiality of the member's or shareholder's vote.

SECTION 3. IC 8-1-2.7-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6. A quorum consisting of not less than five percent (5%) of the members **or shareholders** must:

(1) be present at the meeting; or

(2) vote by absentee ballot;

to transact business and to take official action regarding the jurisdiction question.

SECTION 4. IC 8-1-2.7-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 7. The board shall distribute secret written ballots to the members or shareholders present at the meeting. The form of the ballots must be as follows:

YES, I want to withdraw from the jurisdiction of the commission.

NO, I want to remain under the jurisdiction of the commission.

~~Only those members or shareholders present at the meeting are eligible to vote, and proxy votes are not permitted.~~ Each member or shareholder present is entitled to one (1) vote, **either in person at the meeting or by absentee ballot**, on the question of withdrawal from commission jurisdiction. **Proxy votes may not be permitted.** If a majority of **voting** members or shareholders ~~present~~ vote in favor of the utility withdrawing from commission jurisdiction, the withdrawal becomes effective thirty (30) days after the date of the **meeting at which the vote is conducted**. If less than a majority of the **voting** members or shareholders ~~present~~ vote in favor of withdrawal from commission jurisdiction, the utility is prohibited from seeking withdrawal for two (2) years following the date of the **meeting at which the vote is conducted**.

SECTION 5. IC 8-1-2.7-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 10. (a) If a utility successfully withdraws from commission jurisdiction, the board of directors shall, within five (5) days of the meeting, send written confirmation to the secretary of the commission containing the

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following information:

- (1) The total membership or number of shareholders of the utility.
 - (2) The total number **of members or shareholders:**
 - (A) present at the meeting; **and**
 - (B) **voting by absentee ballot.**
 - (3) The vote totals both for and against withdrawal.
 - (4) Written verification of notice of the meeting.
 - (5) An affidavit, signed by all of the members of the board of directors, stating that all of the requirements of this chapter have been met.
- (b) If a utility successfully withdraws from commission jurisdiction, the utility is not required to pay the public utility fee imposed under IC 8-1-6.
- (c) Notwithstanding any other provision of this chapter, a utility described in section 1.3(a)(2) of this chapter that has withdrawn from commission jurisdiction remains subject to commission jurisdiction with regard to the requirements of IC 8-1-2-89(f).
- (d) Whenever two (2) or more utilities described in section 1.3(a)(1) or 1.3(a)(2) of this chapter propose to consolidate, and at least one (1), but not all of the utilities have withdrawn from commission jurisdiction, then the following apply:
- (1) For purposes of the consolidation, all of the utilities are under the commission's jurisdiction.
 - (2) The new corporation that is formed as a result of the consolidation is under the commission's jurisdiction for all purposes and must fully comply with this chapter in order to withdraw from commission jurisdiction.
- (e) If two (2) or more utilities described in section 1.3(a)(1)(C) or 1.3(a)(2)(C) of this chapter propose to consolidate, and all of the cooperatives have withdrawn from commission jurisdiction, the new utility continues to operate outside the commission's jurisdiction under the terms of this section.
- (f) The commission's approval is not required for consolidation of two (2) or more utilities that have all withdrawn from commission jurisdiction.
- SECTION 6. IC 8-1-2.7-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 12. If a utility returns to commission jurisdiction, the commission assumes jurisdiction **over the following** thirty (30) days after the date of the **meeting at which the vote over the following is conducted:**
- (1) Rates and charges.
 - (2) Stocks, bonds, notes, or other evidence of indebtedness.

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(3) Rules.

(4) The annual report filing requirement.

If less than a majority of the **voting** members or shareholders **present** vote in favor of returning to commission jurisdiction, a referendum on the question may not be conducted for ~~four (4)~~ **two (2)** years following the date of the **meeting at which the vote is conducted**.

SECTION 7. IC 8-1-2.7-13 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 13. If a utility attempts to return to commission jurisdiction, the board of directors shall, within five (5) days following the meeting, send written confirmation to the secretary of the commission containing the following information:

- (1) The total membership or number of shareholders of the utility.
- (2) The total number of **members or shareholders**:
 - (A) present at the meeting; **and**
 - (B) **voting by absentee ballot**.
- (3) The vote totals both for and against the return.
- (4) Written verification of notice of the meeting.
- (5) An affidavit, signed by all the members of the board of directors, stating that all of the requirements of this chapter have been met.

SECTION 8. IC 8-1-2.7-14.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 14.5. (a) This section applies when a utility fails to follow the procedures provided in this chapter for withdrawal from or return to the commission's jurisdiction.

(b) To contest compliance with this chapter:

- (1) parties aggrieved by the decision to withdraw from **or return to** commission jurisdiction; or
- (2) other interested parties;

must file an action in the circuit or superior court with jurisdiction in the county where the utility has its principal office.

(c) An action filed under this section must be filed not later than thirty (30) days after the date of the **meeting at which the vote regarding commission jurisdiction over the utility is conducted**.

SECTION 9. **An emergency is declared for this act.**



Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Governor of the State of Indiana

Date: _____ Time: _____

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