

January 23, 1998

SENATE BILL No. 231

DIGEST OF SB0231 (Updated January 20, 1998 12:12 pm - DI 75)

Citations Affected: IC 8-1-2.7.

Synopsis: Indiana utility regulatory commission jurisdiction. Reconciles P.L.80-1997 and P.L.82-1997, both of which amended IC 8-1-2.7, but in substantively different ways. Adds definitions of "sewage treatment provider" and "sewage treatment recipient". Adds more detail to the applicability of the chapter. Replaces the term "nonprofit" with "not-for-profit" throughout the chapter. Replaces references to "sewer utility" with references to "sewage disposal company". Elaborates on the process for contesting procedures for withdrawal from commission jurisdiction and for petitioning to return to commission jurisdiction. Repeals definitions of "eligible water or sewer utility" and "nonprofit utility" and makes conforming changes.

Effective: Upon passage.

Lewis, Mills

January 8, 1998, read first time and referred to Committee on Commerce and Consumer Affairs.
January 22, 1998, reported favorably — Do Pass.

SB 231—LS 6903/DI 78+



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January 23, 1998

Second Regular Session 110th General Assembly (1998)

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 1997 General Assembly.

SENATE BILL No. 231

A BILL FOR AN ACT to amend the Indiana Code concerning utilities and transportation.

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

1 SECTION 1. IC 8-1-2.7-1.1 IS ADDED TO THE INDIANA CODE
2 AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE
3 UPON PASSAGE]: **Sec. 1.1. (a) "Sewage treatment provider", as**
4 **used in this chapter, means a legal entity that provides only sewage**
5 **treatment service to a not-for-profit sewage disposal company.**

6 **(b) "Sewage treatment recipient", as used in this chapter, means**
7 **a not-for-profit sewage disposal company that receives sewage**
8 **treatment service from another legal entity.**

9 SECTION 2. IC 8-1-2.7-1.3, AS ADDED BY P.L.80-1997,
10 SECTION 2, AND P.L.82-1997, SECTION 2, IS CORRECTED AND
11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON
12 PASSAGE]: **Sec. 1.3. (a) This chapter applies to *eligible water or***
13 ***sewer utilities*: *or* the following:**

14 **(1) *nonprofit* A public water utility established to provide water**
15 **service that is:**

16 **(A) privately owned and serves less than three hundred**
17 **(300) customers;**

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- 1 **(B) a not-for-profit utility (as defined in IC 8-1-2-125(a));**
 2 **or**
 3 **(C) a cooperative corporation exempt from state and**
 4 **federal income taxation.**

5 (2) *nonprofit public sewage utility serving an unincorporated*
 6 *area of a county; and A public utility established to provide*
 7 *sewage disposal service (as defined in IC 8-1-2-89(a)(1)) that*
 8 *is:*

- 9 **(A) privately owned and serves less than three hundred**
 10 **(300) customers;**
 11 **(B) a not-for-profit utility, as defined by IC 8-1-2-125(a);**
 12 **or**
 13 **(C) a cooperative corporation exempt from state and**
 14 **federal income taxation.**

15 (3) **Except as provided in subsection (b), a legal entity**
 16 *providing only sewage treatment service to a nonprofit public*
 17 **not-for-profit sewage utility disposal company.**

18 **(b) Subsection (a)(3) does not include a sewage treatment**
 19 **provider that is otherwise subject to the commission's jurisdiction.**

20 SECTION 3. IC 8-1-2.7-1.4, AS ADDED BY P.L.82-1997,
 21 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 22 UPON PASSAGE]: Sec. 1.4. As used in this chapter, "members" of a
 23 **nonprofit not-for-profit water or** sewage disposal company **or a**
 24 **not-for-profit sewage disposal corporation** and "shareholders" of a
 25 privately owned water or sewage disposal company shall also include
 26 the customers of that utility.

27 SECTION 4. IC 8-1-2.7-1.7, AS ADDED BY P.L.80-1997,
 28 SECTION 5, AND P.L.82-1997, SECTION 5, IS CORRECTED AND
 29 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON
 30 PASSAGE]: Sec. 1.7. **(a) This section does not apply to a sewage**
 31 **treatment provider that is otherwise subject to the commission's**
 32 **jurisdiction.**

33 **(b) When a legal entity that sewage treatment provider** contracts
 34 with a *nonprofit public sewage sewer utility* to provide only sewage
 35 treatment service to *the nonprofit public sewer utility* **a sewage**
 36 **treatment recipient, the sewage treatment provider** is not subject to
 37 the jurisdiction of the commission, regardless of whether the *nonprofit*
 38 **public sewage treatment recipient sewer utility** is subject to the
 39 jurisdiction of the commission.

40 SECTION 5. IC 8-1-2.7-2, AS AMENDED BY P.L.80-1997,
 41 SECTION 6, AND P.L.82-1997, SECTION 6, IS CORRECTED AND
 42 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON

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1 PASSAGE]: Sec. 2. (a) This chapter provides the exclusive statutory
 2 manner for *a nonprofit an eligible water or sewer utility* **a utility**
 3 **described in section 1.3(a)(1) and 1.3(a)(2) of this chapter** to
 4 withdraw from the jurisdiction of the commission for the approval of
 5 the following:

- 6 (1) Rates and charges.
- 7 (2) Stocks, bonds, notes, or other evidence of indebtedness.
- 8 (3) Rules.
- 9 (4) The annual report filing requirement.
- 10 (5) Operating and territorial authority for *an eligible nonprofit a*
 11 **not-for-profit sewage disposal company or a cooperative**
 12 **sewage disposal company.**

13 (b) *Any other eligible sewer utility* **A privately owned sewage**
 14 **disposal company withdrawing from jurisdiction under this chapter**
 15 *may not withdraw from the jurisdiction of the commission concerning*
 16 *operating and territorial authority.*

17 (c) *Notwithstanding any other provision in this article, any eligible*
 18 **sewer utility a sewage disposal company shall not initiate operations**
 19 *or provide service or seek commission authority to do so within a*
 20 *territory for which the commission has granted operating and*
 21 *territorial authority to any other entity, which has not been revoked.*

22 SECTION 6. IC 8-1-2.7-3, AS AMENDED BY P.L.80-1997,
 23 SECTION 7, AND P.L.82-1997, SECTION 7, IS CORRECTED AND
 24 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON
 25 PASSAGE]: Sec. 3. *A nonprofit An eligible water or sewer utility*
 26 **described in section 1.3(a)(1) or 1.3(a)(2)** that proposes to withdraw
 27 from the jurisdiction of the commission must first obtain approval from
 28 its members *or shareholders.*

29 SECTION 7. IC 8-1-2.7-4, AS AMENDED BY P.L.80-1997,
 30 SECTION 8, AND P.L.82-1997, SECTION 8, IS CORRECTED AND
 31 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON
 32 PASSAGE]: Sec. 4. The board of directors of a *nonprofit an eligible*
 33 *water or sewer utility* **described in section 1.3(a)(1) or 1.3(a)(2)** must
 34 conduct a referendum among its members *or shareholders* to determine
 35 whether the members *or shareholders* approve the withdrawal from
 36 commission jurisdiction.

37 SECTION 8. IC 8-1-2.7-5, AS AMENDED BY P.L.80-1997,
 38 SECTION 9, AND P.L.82-1997, SECTION 9, IS CORRECTED AND
 39 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON
 40 PASSAGE]: Sec. 5. The referendum must be conducted at a special
 41 meeting called by the board. Written notice of the meeting must be sent
 42 to every member *or shareholder* of the *nonprofit eligible water or*

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1 ~~sewer withdrawing~~ utility and to the secretary of the commission not
 2 less than thirty (30) days before the date of the meeting. The notice
 3 must contain the following information:

- 4 (1) The place, date, and hour of the meeting.
 5 (2) The purpose of the meeting, including an explanation of what
 6 the withdrawal from commission jurisdiction entails.
 7 (3) The fact that no proxies will be permitted.

8 SECTION 9. IC 8-1-2.7-7, AS AMENDED BY P.L.80-1997,
 9 SECTION 10, AND P.L.82-1997, SECTION 10, IS CORRECTED
 10 AND IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON
 11 PASSAGE]: Sec. 7. The board shall distribute secret written ballots to
 12 the members *or shareholders* present at the meeting. The form of the
 13 ballots must be as follows:

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

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

17 Only those members *or shareholders* present at the meeting are eligible
 18 to vote, and proxy votes are not permitted. Each member *or*
 19 *shareholder* present is entitled to one (1) vote on the question of
 20 withdrawal from commission jurisdiction. If a majority of members *or*
 21 *shareholders* present vote in favor of the *nonprofit eligible water or*
 22 ~~sewer~~ utility withdrawing from commission jurisdiction, the
 23 withdrawal becomes effective thirty (30) days after the date of the vote.
 24 If less than a majority of the members *or shareholders* present vote in
 25 favor of withdrawal from commission jurisdiction, the *nonprofit*
 26 *eligible water or sewer* utility is prohibited from seeking withdrawal
 27 for two (2) years following the date of the vote.

28 SECTION 10. IC 8-1-2.7-9, AS AMENDED BY P.L.80-1997,
 29 SECTION 12, AND P.L.82-1997, SECTION 12, IS CORRECTED
 30 AND IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON
 31 PASSAGE]: Sec. 9. ~~When a nonprofit~~ (a) *Except as provided under*
 32 *section 15 of this chapter, when an eligible water or sewer a* utility
 33 successfully withdraws from commission jurisdiction, the commission
 34 does not have authority to regulate the following:

- 35 (1) Rates and charges.
 36 (2) Stocks, bonds, notes, or other evidence of indebtedness.
 37 (3) Rules.
 38 (4) The annual report filing requirement.
 39 (5) Operating and territorial authority *for an eligible nonprofit a*
 40 **not-for-profit sewage disposal company or a cooperative**
 41 **sewage disposal company. Any other eligible sewer utility A**
 42 **privately owned sewage disposal company withdrawing under**



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1 **this chapter** may not withdraw from the jurisdiction of the
2 commission concerning operating and territorial authority.

3 (b) *An eligible water or sewer* A utility that withdraws from
4 commission jurisdiction **under this chapter** that has less than three
5 hundred (300) patrons does not become subject to the commission's
6 jurisdiction even though the number of patrons exceeds three hundred
7 (300) patrons after the withdrawal.

8 SECTION 11. IC 8-1-2.7-10, AS AMENDED BY P.L.80-1997,
9 SECTION 13, AND P.L.82-1997, SECTION 13, IS CORRECTED
10 AND IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON
11 PASSAGE]: Sec. 10. If a *nonprofit an eligible water or sewer* utility
12 successfully withdraws from commission jurisdiction, the board of
13 directors shall, within five (5) days of the meeting, send written
14 confirmation to the secretary of the commission containing the
15 following information:

- 16 (1) The total membership *of the nonprofit* or number of
17 shareholders of the *eligible water or sewer* utility.
18 (2) The total number present at the meeting.
19 (3) The vote totals both for and against withdrawal.
20 (4) Written verification of notice of the meeting.
21 (5) An affidavit, signed by all of the members of the board of
22 directors, stating that all of the requirements of this chapter have
23 been met.

24 SECTION 12. IC 8-1-2.7-11, AS AMENDED BY P.L.80-1997,
25 SECTION 14, AND P.L.82-1997, SECTION 14, IS CORRECTED
26 AND IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON
27 PASSAGE]: Sec. 11. (a) Whenever the members *of a nonprofit* or
28 shareholders of an *eligible water or sewer* a utility desire to return to
29 commission jurisdiction, they must petition the commission. A petition
30 signed by:

- 31 (1) at least fifteen percent (15%) of the members *or shareholders*;
32 or
33 (2) the board of directors of the *nonprofit eligible water or sewer*
34 utility;

35 must first be submitted to the commission, informing that body of the
36 *nonprofit eligible water or sewer* utility's intent to conduct a
37 referendum concerning the return to commission jurisdiction. The
38 procedures outlined in sections 2 through 8 7 of this chapter must be
39 followed when conducting a referendum under this section, except that
40 the form of the ballots must be as follows:

- 41 YES, I want to return to the jurisdiction of the commission.
42 NO, I want to remain outside of the jurisdiction of the

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1 commission.

2 (b) The question of returning to commission jurisdiction may not be
3 submitted to the members *or shareholders* within four (4) years after
4 the date the *nonprofit eligible water or sewer* utility withdrew from
5 commission jurisdiction.

6 SECTION 13. IC 8-1-2.7-12, AS AMENDED BY P.L.80-1997,
7 SECTION 15, AND P.L.82-1997, SECTION 15, IS CORRECTED
8 AND IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON
9 PASSAGE]: Sec. 12. If a *nonprofit an eligible water or sewer* utility
10 returns to commission jurisdiction, the commission assumes
11 jurisdiction thirty (30) days after the date of the vote over the
12 following:

- 13 (1) Rates and charges.
- 14 (2) Stocks, bonds, notes, or other evidence of indebtedness.
- 15 (3) Rules.
- 16 (4) The annual report filing requirement.
- 17 (5) Operating and territorial authority *for an eligible sewer utility*
18 **a not-for-profit sewage disposal company.**

19 If less than a majority of the members *or shareholders* present vote in
20 favor of returning to commission jurisdiction, a referendum on the
21 question may not be conducted for four (4) years following the date of
22 the vote.

23 SECTION 14. IC 8-1-2.7-13, AS AMENDED BY P.L.80-1997,
24 SECTION 16, AND P.L.82-1997, SECTION 16, IS CORRECTED
25 AND IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON
26 PASSAGE]: Sec. 13. If a *nonprofit an eligible water or sewer* utility
27 attempts to return to commission jurisdiction, the board of directors
28 shall, within five (5) days following the meeting, send written
29 confirmation to the secretary of the commission containing the
30 following information:

- 31 (1) The total membership *of the nonprofit or number of*
32 *shareholders of the eligible water or sewer* utility.
- 33 (2) The total number present at the meeting.
- 34 (3) The vote totals both for and against the return.
- 35 (4) Written verification of notice of the meeting.
- 36 (5) An affidavit, signed by all the members of the board of
37 directors, stating that all of the requirements of this chapter have
38 been met.

39 SECTION 15. IC 8-1-2.7-14, AS AMENDED BY P.L.80-1997,
40 SECTION 17, AND P.L.82-1997, SECTION 17, IS CORRECTED
41 AND IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON
42 PASSAGE]: Sec. 14. When a *nonprofit an eligible water or sewer*



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1 utility returns to commission jurisdiction, the commission may order
 2 the *nonprofit eligible water or sewer* utility to file an annual report of
 3 the operation of its plant for each of the three (3) calendar years
 4 immediately preceding its return to commission jurisdiction on a form
 5 prescribed by the commission.

6 SECTION 16. IC 8-1-2.7-14.5 IS ADDED TO THE INDIANA
 7 CODE AS A NEW SECTION TO READ AS FOLLOWS
 8 [EFFECTIVE UPON PASSAGE]: **Sec. 14.5. (a) This section applies**
 9 **when a utility fails to follow the procedures provided in this**
 10 **chapter for withdrawal from or return to the commission's**
 11 **jurisdiction.**

12 **(b) To contest compliance with this chapter:**

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

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

18 **(c) An action filed under this section must be filed not later than**
 19 **thirty (30) days after the date of the vote on withdrawal from**
 20 **commission jurisdiction.**

21 SECTION 17. IC 8-1-2.7-15, AS ADDED BY P.L.82-1997,
 22 SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 23 UPON PASSAGE]: **Sec. 15. (a) This section applies after a utility**
 24 **has properly and successfully withdrawn from commission**
 25 **jurisdiction.**

26 **(b) The commission shall revoke or limit the withdrawal from the**
 27 **jurisdiction of the commission of an eligible water or sewer a utility if**
 28 **the lesser of:**

- 29 **(1) one hundred (100); or**
 30 **(2) more than fifty percent (50%);**

31 **of the utility's customers file, individually or collectively, a verified**
 32 **petition or petitions with the commission and prove that the public**
 33 **interest requires the commission to revoke or limit the withdrawal from**
 34 **the jurisdiction of the commission.**

35 **(c) A petition may be filed with the commission under this**
 36 **section at any time following the withdrawal of the utility.**

37 SECTION 18. THE FOLLOWING ARE REPEALED [EFFECTIVE
 38 UPON PASSAGE]: IC 8-1-2.7-1.2; IC 8-1-2.7-1.5; IC 8-1-2.7-8.

39 SECTION 19. **An emergency is declared for this act.**

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SENATE MOTION

Mr. President: I move that Senator Mills be added as second author of Senate Bill 231.

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COMMITTEE REPORT

Mr. President: The Senate Committee on Commerce and Consumer Affairs, to which was referred Senate Bill 231, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to Senate Bill 231 as introduced.)

MILLS, Chairperson

Committee Vote: Yeas 6, Nays 0.

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