



February 17, 1999

HOUSE BILL No. 1572

DIGEST OF HB 1572 (Updated February 16, 1999 2:02 pm - DI 101)

Citations Affected: IC 8-1.

Synopsis: Indiana utility regulatory commission procedures. Gives the Indiana utility regulatory commission (IURC) discretion to require a formal public hearing on a petition or complaint filed concerning a rate change request by a utility. (Current law requires the IURC to hold a public hearing on any such petition or complaint.) Allows the IURC to adopt rules or issue orders that establish regulatory procedures or standards governing a public or municipally owned utility that: (1) serves less than 5,000 customers; (2) primarily provides retail service to customers; (3) does not serve extensively another utility. Reconciles substantive and technical conflicts between statutes enacted by the 1997 general assembly concerning the jurisdiction of the IURC over local water companies. Modifies terms used in the statute. Elaborates on the process for contesting procedures for withdrawal from commission jurisdiction and for petitioning to return to commission
(Continued next page)

Effective: Upon passage; July 1, 1999.

Crooks, Stilwell

January 21, 1999, read first time and referred to Committee on Commerce and Economic Development.
February 16, 1999, amended, reported — Do Pass.

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jurisdiction. Repeals obsolete definitions and makes conforming changes. Prohibits the IURC from billing or collecting a public utility fee that equals \$50 or less under the current system that bases fees on a fraction of a public utility's gross revenue.

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February 17, 1999

First Regular Session 111th General Assembly (1999)

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 1998 General Assembly.

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HOUSE BILL No. 1572

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 8-1-2-61.5 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 61.5. (a) An order
3 affecting rates of service may be entered by the commission without a
4 formal public hearing in the case of any public or municipally owned
5 utility that:
6 (1) serves less than five thousand (5,000) customers;
7 (2) primarily provides retail service to customers; and
8 (3) does not serve extensively another utility.
9 (b) The commission ~~shall~~ **may** require a formal public hearing on
10 any petition or complaint filed under this section concerning a rate
11 change request by a utility upon its own motion or upon motion of any
12 of the following:
13 (1) The utility consumer counselor.
14 (2) A public or municipal corporation.
15 (3) Ten (10) individuals, firms, limited liability companies,

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1 corporations, or associations.

2 (4) Ten (10) complainants of any class described in this
3 subsection.

4 (c) A not-for-profit water utility must include in its petition a
5 statement as to whether it has an outstanding indebtedness to the
6 federal government. When an indebtedness is shown to exist, the
7 commission shall require a formal hearing, unless the utility also has
8 included in its filing written consent from the agency of the federal
9 government with which the utility has outstanding indebtedness for the
10 utility to obtain an order affecting its rates from the commission
11 without a formal hearing.

12 **(d) Notwithstanding any other law, the commission may:**

13 **(1) on its own motion; or**

14 **(2) at the request of:**

15 **(A) the utility consumer counselor;**

16 **(B) a utility described in subsection (a);**

17 **(C) ten (10) individuals, firms, limited liability companies,**
18 **corporations, or associations; or**

19 **(D) ten (10) complainants of any class described in this**
20 **subsection;**

21 **adopt a rule under IC 4-22-2, or issue an order in a specific**
22 **proceeding, providing for the development, investigation, testing,**
23 **and use of regulatory procedures or generic standards with respect**
24 **to utilities described in subsection (a) or their services.**

25 **(e) The commission may adopt a rule or enter an order under**
26 **subsection (d) only if it finds, after notice and hearing, that the**
27 **proposed regulatory procedures or standards are in the public**
28 **interest and promote at least one (1) of the following:**

29 **(1) Utility cost minimalization to the extent that a utility's**
30 **quality of service or facilities are not diminished.**

31 **(2) A more accurate evaluation by the commission of a**
32 **utility's physical or financial conditions or needs.**

33 **(3) A less costly regulatory procedure for a utility, its**
34 **consumers, or the commission.**

35 **(4) Increased utility management efficiency that is beneficial**
36 **to consumers.**

37 SECTION 2. IC 8-1-2.7-1.3, AS ADDED BY P.L.80-1997,
38 SECTION 2, AND P.L.82-1997, SECTION 2, IS CORRECTED AND
39 AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON
40 PASSAGE]: Sec. 1.3. (a) This chapter applies to *eligible water or*
41 *sewer utilities* ~~or~~

42 ~~(1) nonprofit public water utility;~~

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1 (2) *nonprofit public sewage utility serving an unincorporated*
 2 *area of a county; and*

3 (3) *legal entity providing only sewage service to a nonprofit*
 4 *public sewage utility.*

5 **the following:**

6 **(1) A public utility established to provide water service that is:**

7 **(A) privately owned and serves less than three hundred**
 8 **(300) customers;**

9 **(B) a not-for-profit utility (as defined by IC 8-1-2-125(a));**
 10 **or**

11 **(C) a cooperative corporation exempt from state and**
 12 **federal income taxation.**

13 **(2) A public utility established to provide sewage disposal**
 14 **service (as defined in IC 8-1-2-89(a)(1)) that holds a certificate**
 15 **of territorial authority as required by IC 8-1-2-89, and that is:**

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

18 **(B) a not-for-profit utility (as defined in IC 8-1-2-125(a));**
 19 **or**

20 **(C) a cooperative corporation exempt from state and**
 21 **federal income taxation.**

22 **(3) Except as provided in subsection (b), a legal entity**
 23 **providing only sewage treatment service to a not-for-profit**
 24 **sewage disposal company.**

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

27 SECTION 3. IC 8-1-2.7-1.4 IS AMENDED TO READ AS
 28 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1.4. As used in this
 29 chapter, "members" of a ~~nonprofit~~ **not-for-profit water or** sewage
 30 disposal company ~~or a not-for-profit sewage disposal corporation~~ and
 31 "shareholders" of a privately owned water or sewage disposal company
 32 shall also include the customers of that utility.

33 SECTION 4. IC 8-1-2.7-1.6 IS ADDED TO THE INDIANA CODE
 34 AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE
 35 UPON PASSAGE]: **Sec. 1.6. (a) As used in this chapter, "sewage**
 36 **treatment provider" means a legal entity that provides only sewage**
 37 **treatment service to a not-for-profit sewage disposal company.**

38 **(b) As used in this chapter, "sewage treatment recipient" means**
 39 **a not-for-profit sewage disposal company that receives sewage**
 40 **treatment service from another legal entity.**

41 SECTION 5. IC 8-1-2.7-1.7, AS ADDED BY P.L.80-1997,
 42 SECTION 5, AND P.L.82-1997, SECTION 5, IS CORRECTED AND



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1 AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON
2 PASSAGE]: Sec. 1.7. A legal entity that contracts with a nonprofit
3 public sewage utility to provide only (a) **This section does not apply**
4 **to a sewage treatment service to the nonprofit public sewer utility**
5 **provider that is not otherwise** subject to the jurisdiction of the
6 commission, regardless of whether the nonprofit public *sewer sewage*
7 *utility* is subject to the jurisdiction of the commission.

8 (b) **When a sewage treatment provider contracts to provide only**
9 **sewage treatment service to a sewage treatment recipient, the**
10 **sewage treatment provider is not subject to the jurisdiction of the**
11 **commission, regardless of whether the sewage treatment recipient**
12 **is subject to the jurisdiction of the commission.**

13 SECTION 6. IC 8-1-2.7-2, AS ADDED BY P.L.80-1997, SECTION
14 6, AND P.L.82-1997, SECTION 6, IS CORRECTED AND
15 AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON
16 PASSAGE]: Sec. 2. (a) This chapter provides the exclusive statutory
17 manner for *an eligible water or sewer a nonprofit utility* **described in**
18 **section 1.3(a)(1) or 1.3(a)(2) of this chapter** to withdraw from the
19 jurisdiction of the commission for the approval of the following:

- 20 (1) Rates and charges.
- 21 (2) Stocks, bonds, notes, or other evidence of indebtedness.
- 22 (3) Rules.
- 23 (4) The annual report filing requirement.
- 24 (5) *Operating and territorial authority for an eligible nonprofit*
25 *sewage disposal company or cooperative. Any other eligible*
26 *sewer utility may not withdraw from the jurisdiction of the*
27 *commission concerning operating and territorial authority.*

28 (b) *Notwithstanding any other provision in this article, any eligible*
29 *sewer utility a sewage disposal company described in section*
30 **1.3(a)(2) of this chapter shall not initiate operations or provide**
31 *service or seek commission authority to do so within a territory for*
32 *which the commission has granted operating and territorial authority*
33 *to any other entity, which has not been revoked.*

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

39 SECTION 7. IC 8-1-2.7-3, AS AMENDED BY P.L.80-1997,
40 SECTION 7, AND P.L.82-1997, SECTION 7, IS CORRECTED AND
41 AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON
42 PASSAGE]: Sec. 3. *An eligible water or sewer A nonprofit utility*

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1 **described in section 1.3(a)(1) or 1.3(a)(2) of this chapter** that
 2 proposes to withdraw from the jurisdiction of the commission must first
 3 obtain approval from its members *or shareholders*.

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

12 SECTION 9. IC 8-1-2.7-5, AS AMENDED BY P.L.80-1997,
 13 SECTION 9, AND P.L.82-1997, SECTION 9, IS CORRECTED AND
 14 AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON
 15 PASSAGE]: Sec. 5. The referendum must be conducted at a special
 16 meeting called by the board. Written notice of the meeting must be sent
 17 to every member *or shareholder* of the *eligible water or sewer*
 18 *nonprofit withdrawing* utility and to the secretary of the commission
 19 not less than thirty (30) days before the date of the meeting. The notice
 20 must contain the following information:

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

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

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

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

34 Only those members *or shareholders* present at the meeting are eligible
 35 to vote, and proxy votes are not permitted. Each member *or*
 36 *shareholder* present is entitled to one (1) vote on the question of
 37 withdrawal from commission jurisdiction. If a majority of members *or*
 38 *shareholders* present vote in favor of the *eligible water or sewer*
 39 *nonprofit* utility withdrawing from commission jurisdiction, the
 40 withdrawal becomes effective thirty (30) days after the date of the vote.
 41 If less than a majority of the members *or shareholders* present vote in
 42 favor of withdrawal from commission jurisdiction, the *eligible water*

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1 ~~or sewer nonprofit~~ utility is prohibited from seeking withdrawal for two
2 (2) years following the date of the vote.

3 SECTION 11. IC 8-1-2.7-9, AS AMENDED BY P.L.80-1997,
4 SECTION 12, AND P.L.82-1997, SECTION 12, IS CORRECTED
5 AND AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON
6 PASSAGE]: Sec. 9. (a) *Except as provided under section 15 of this*
7 *chapter, when an eligible water or sewer a nonprofit* utility
8 successfully withdraws from commission jurisdiction, the commission
9 does not have authority to regulate the following:

- 10 (1) Rates and charges.
11 (2) Stocks, bonds, notes, or other evidence of indebtedness.
12 (3) Rules.
13 (4) The annual report filing requirement.
14 (5) ~~Operating and territorial authority for an eligible nonprofit~~
15 ~~sewage disposal company or cooperative. Any other eligible~~
16 ~~sewer utility may not withdraw from the jurisdiction of the~~
17 ~~commission concerning operating and territorial authority.~~

18 (b) *An eligible water or sewer* **When the number of patrons**
19 **served by a withdrawn utility that withdraws from commission**
20 **jurisdiction that has less than three hundred (300) patrons does not**
21 **become subject to the commission's jurisdiction even though the**
22 **number of patrons exceeds three hundred (300) patrons after the**
23 **withdrawal: described in section 1.3(a)(1)(A) or 1.3(a)(2)(A) of this**
24 **chapter reaches five thousand (5,000), the utility:**

- 25 (1) **becomes subject to the annual report filing requirement**
26 **described in IC 8-1-2-16; and**
27 (2) **shall immediately notify the commission of the number of**
28 **patrons served by the utility.**

29 **Upon receiving notice under subdivision (2), the commission may**
30 **reassert jurisdiction over the utility, in whole or in part, after**
31 **notice and hearing if the commission finds that the public interest**
32 **so requires.**

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

- 41 (1) *The total membership or number of shareholders of the*
42 *eligible water or sewer nonprofit utility.*

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- 1 (2) The total number present at the meeting.
 2 (3) The vote totals both for and against withdrawal.
 3 (4) Written verification of notice of the meeting.
 4 (5) An affidavit, signed by all of the members of the board of
 5 directors, stating that all of the requirements of this chapter have
 6 been met.
- 7 **(b) If a utility successfully withdraws from commission**
 8 **jurisdiction, the utility is not required to pay the public utility fee**
 9 **imposed under IC 8-1-6.**
- 10 **(c) Notwithstanding any other provision of this chapter, a utility**
 11 **described in section 1.3(a)(2) of this chapter that has withdrawn**
 12 **from commission jurisdiction remains subject to commission**
 13 **jurisdiction with regard to the requirements of IC 8-1-2-89(f).**
- 14 **(d) If two (2) or more utilities described in section 1.3(a)(1) or**
 15 **1.3(a)(2) of this chapter propose to consolidate, and at least one (1),**
 16 **but not all of the utilities have withdrawn from commission**
 17 **jurisdiction, then the following apply:**
- 18 (1) For purposes of the consolidation, all of the utilities are
 19 under the commission's jurisdiction.
- 20 (2) The new corporation that is formed as a result of the
 21 consolidation is under the commission's jurisdiction for all
 22 purposes and must fully comply with this chapter in order to
 23 withdraw from commission jurisdiction.
- 24 **(e) If two (2) or more utilities described in section 1.3(a)(1)(C)**
 25 **or 1.3(a)(2)(C) of this chapter propose to consolidate, and all of the**
 26 **cooperatives have withdrawn from commission jurisdiction, the**
 27 **new utility continues to operate outside the commission's**
 28 **jurisdiction under the terms of this section.**
- 29 **(f) The commission's approval is not required for consolidation**
 30 **of two (2) or more utilities that have all withdrawn from**
 31 **commission jurisdiction.**
- 32 SECTION 13. IC 8-1-2.7-11, AS AMENDED BY P.L.80-1997,
 33 SECTION 14, AND P.L.82-1997, SECTION 14, IS CORRECTED
 34 AND AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON
 35 PASSAGE]: Sec. 11. (a) Whenever the members *or shareholders* of *an*
 36 *eligible water or sewer a nonprofit* utility desire to return to
 37 commission jurisdiction, they must petition the commission. A petition
 38 signed by:
- 39 (1) at least fifteen percent (15%) of the members *or shareholders*;
 40 or
 41 (2) the board of directors of the *eligible water or sewer nonprofit*
 42 utility;

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

7 YES, I want to return to the jurisdiction of the commission.

8 NO, I want to remain outside of the jurisdiction of the
 9 commission.

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

14 SECTION 14. IC 8-1-2.7-12, AS AMENDED BY P.L.80-1997,
 15 SECTION 15, AND P.L.82-1997, SECTION 15, IS CORRECTED
 16 AND AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON
 17 PASSAGE]: Sec. 12. If *an eligible water or sewer a nonprofit* utility
 18 returns to commission jurisdiction, the commission assumes
 19 jurisdiction thirty (30) days after the date of the vote over the
 20 following:

21 (1) Rates and charges.

22 (2) Stocks, bonds, notes, or other evidence of indebtedness.

23 (3) Rules.

24 (4) The annual report filing requirement.

25 ~~(5) Operating and territorial authority for an eligible sewer utility.~~

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

30 SECTION 15. IC 8-1-2.7-13, AS AMENDED BY P.L.80-1997,
 31 SECTION 16, AND P.L.82-1997, SECTION 16, IS CORRECTED
 32 AND AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON
 33 PASSAGE]: Sec. 13. If *an eligible water or sewer a nonprofit* utility
 34 attempts to return to commission jurisdiction, the board of directors
 35 shall, within five (5) days following the meeting, send written
 36 confirmation to the secretary of the commission containing the
 37 following information:

38 (1) The total membership *or number of shareholders* of the
 39 *eligible water or sewer nonprofit* utility.

40 (2) The total number present at the meeting.

41 (3) The vote totals both for and against the return.

42 (4) Written verification of notice of the meeting.



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1 (5) An affidavit, signed by all the members of the board of
 2 directors, stating that all of the requirements of this chapter have
 3 been met.

4 SECTION 16. IC 8-1-2.7-14, AS AMENDED BY P.L.80-1997,
 5 SECTION 17, AND P.L.82-1997, SECTION 17, IS CORRECTED
 6 AND AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON
 7 PASSAGE]: Sec. 14. When *an eligible water or sewer a nonprofit*
 8 utility returns to commission jurisdiction, the commission may order
 9 the *eligible water or sewer nonprofit* utility to file an annual report of
 10 the operation of its plant for each of the three (3) calendar years
 11 immediately preceding its return to commission jurisdiction on a form
 12 prescribed by the commission.

13 SECTION 17. IC 8-1-2.7-14.5 IS ADDED TO THE INDIANA
 14 CODE AS A NEW SECTION TO READ AS FOLLOWS
 15 [EFFECTIVE UPON PASSAGE]: **Sec. 14.5. (a) This section applies**
 16 **when a utility fails to follow the procedures provided in this**
 17 **chapter for withdrawal from or return to the commission's**
 18 **jurisdiction.**

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

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

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

25 (c) **An action filed under this section must be filed not later than**
 26 **thirty (30) days after the date of the vote regarding commission**
 27 **jurisdiction over the utility.**

28 SECTION 18. IC 8-1-2.7-15 IS AMENDED TO READ AS
 29 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 15. (a) **This**
 30 **section applies after a utility has properly withdrawn from**
 31 **commission jurisdiction under this chapter.**

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

- 35 (1) one hundred (100); or
 36 (2) more than fifty percent (50%);

37 of the utility's customers file, individually or collectively, a **verified**
 38 **petition or petitions** with the commission and prove that the public
 39 interest requires the commission to revoke or limit the withdrawal from
 40 the jurisdiction of the commission.

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



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1 SECTION 19. IC 8-1-6-4 IS AMENDED TO READ AS FOLLOWS
2 [EFFECTIVE JULY 1, 1999]: Sec. 4. A public utility fee is imposed
3 upon each public utility subject to the provisions of this chapter equal
4 to .0015 of its gross revenue for the preceding calendar year. **The**
5 **commission may not bill or collect a public utility fee that does not**
6 **exceed fifty dollars (\$50) or less under this calculation.**

7 SECTION 20. THE FOLLOWING ARE REPEALED [EFFECTIVE
8 UPON PASSAGE]: IC 8-1-2.7-1.2; IC 8-1-2.7-1.5; IC 8-1-2.7-8.

9 SECTION 21. **An emergency is declared for this act.**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Commerce and Economic Development, to which was referred House Bill 1572, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, delete lines 1 through 7.

Page 2, line 1, delete "Upon good cause shown, the" and insert "The".

Page 2, line 1, strike "shall" and insert "**may**".

Page 3, between lines 1 and 2, begin a new paragraph and insert:

"SECTION 3. IC 8-1-2.7-1.3, AS ADDED BY P.L.80-1997, SECTION 2, AND P.L.82-1997, SECTION 2, IS CORRECTED AND AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1.3. (a) This chapter applies to *eligible water or sewer utilities* ~~a:~~

~~(1) nonprofit public water utility;~~

~~(2) nonprofit public sewage utility serving an unincorporated area of a county; and~~

~~(3) legal entity providing only sewage service to a nonprofit public sewage utility.~~

the following:

(1) A public utility established to provide water service that is:

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

(B) a not-for-profit utility (as defined by IC 8-1-2-125(a));
or

(C) a cooperative corporation exempt from state and federal income taxation.

(2) A public utility established to provide sewage disposal service (as defined in IC 8-1-2-89(a)(1)) that holds a certificate of territorial authority as required by IC 8-1-2-89, and that is:

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

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

(C) a cooperative corporation exempt from state and federal income taxation.

(3) Except as provided in subsection (b), a legal entity providing only sewage treatment service to a not-for-profit sewage disposal company.

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



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SECTION 4. IC 8-1-2.7-1.4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1.4. As used in this chapter, "members" of a ~~nonprofit not-for-profit water or~~ sewage disposal company or a ~~not-for-profit sewage disposal corporation~~ and "shareholders" of a privately owned water or sewage disposal company shall also include the customers of that utility.

SECTION 5. IC 8-1-2.7-1.6 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec. 1.6. (a) As used in this chapter, "sewage treatment provider" means a legal entity that provides only sewage treatment service to a not-for-profit sewage disposal company.**

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

SECTION 6. IC 8-1-2.7-1.7, AS ADDED BY P.L.80-1997, SECTION 5, AND P.L.82-1997, SECTION 5, IS CORRECTED AND AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1.7. ~~A legal entity that contracts with a nonprofit public sewage utility to provide only~~ **(a) This section does not apply to a sewage treatment service to the nonprofit public sewer utility provider that is not otherwise** subject to the jurisdiction of the commission. ~~regardless of whether the nonprofit public sewer sewage utility is subject to the jurisdiction of the commission.~~

(b) When a sewage treatment provider contracts to provide only sewage treatment service to a sewage treatment recipient, the sewage treatment provider is not subject to the jurisdiction of the commission, regardless of whether the sewage treatment recipient is subject to the jurisdiction of the commission.

SECTION 7. IC 8-1-2.7-2, AS ADDED BY P.L.80-1997, SECTION 6, AND P.L.82-1997, SECTION 6, IS CORRECTED AND AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. **(a) This chapter provides the exclusive statutory manner for *an eligible water or sewer a nonprofit* 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.
- (5) ~~Operating and territorial authority for an eligible nonprofit sewage disposal company or cooperative. Any other eligible sewer utility may not withdraw from the jurisdiction of the~~



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commission concerning operating and territorial authority.

(b) *Notwithstanding any other provision in this article, any eligible sewer utility a sewage 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.**

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

SECTION 9. IC 8-1-2.7-4, AS AMENDED BY P.L.80-1997, SECTION 8, AND P.L.82-1997, SECTION 8, IS CORRECTED AND AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4. The board of directors of *an eligible water or sewer a nonprofit* utility **described in section 1.3(a)(1) or 1.3(a)(2) of this chapter** must conduct a referendum among its members **or shareholders** to determine whether the members *or shareholders* approve the withdrawal from commission jurisdiction.

SECTION 10. IC 8-1-2.7-5, AS AMENDED BY P.L.80-1997, SECTION 9, AND P.L.82-1997, SECTION 9, IS CORRECTED AND AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. 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 *eligible water or sewer nonprofit* **withdrawing** utility and to the secretary of the commission not less than thirty (30) 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.

SECTION 11. IC 8-1-2.7-7, AS AMENDED BY P.L.80-1997, SECTION 10, AND P.L.82-1997, SECTION 10, IS CORRECTED



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AND 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 on the question of withdrawal from commission jurisdiction. If a majority of members *or shareholders* present vote in favor of the *eligible water or sewer nonprofit* utility withdrawing from commission jurisdiction, the withdrawal becomes effective thirty (30) days after the date of the vote. If less than a majority of the members *or shareholders* present vote in favor of withdrawal from commission jurisdiction, the *eligible water or sewer nonprofit* utility is prohibited from seeking withdrawal for two (2) years following the date of the vote.

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

- (1) Rates and charges.
- (2) Stocks, bonds, notes, or other evidence of indebtedness.
- (3) Rules.
- (4) The annual report filing requirement.
- (5) *Operating and territorial authority for an eligible nonprofit sewage disposal company or cooperative. Any other eligible sewer utility may not withdraw from the jurisdiction of the commission concerning operating and territorial authority.*

(b) *An eligible water or sewer* **When the number of patrons served by a withdrawn utility that withdraws from commission jurisdiction that has less than three hundred (300) patrons does not become subject to the commission's jurisdiction even though the number of patrons exceeds three hundred (300) patrons after the withdrawal: described in section 1.3(a)(1)(A) or 1.3(a)(2)(A) of this chapter reaches five thousand (5,000), the utility:**

- (1) **becomes subject to the annual report filing requirement described in IC 8-1-2-16; and**



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(2) shall immediately notify the commission of the number of patrons served by the utility.

Upon receiving notice under subdivision (2), the commission may reassert jurisdiction over the utility, in whole or in part, after notice and hearing if the commission finds that the public interest so requires.

SECTION 13. IC 8-1-2.7-10, AS AMENDED BY P.L.80-1997, SECTION 13, AND P.L.82-1997, SECTION 13, IS CORRECTED AND AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 10. **(a) If an eligible water or sewer a nonprofit 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 following information:**

- (1) The total membership or number of shareholders of the eligible water or sewer nonprofit utility.**
- (2) The total number present at the meeting.**
- (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) If 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

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

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

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

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

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

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

- (1) Rates and charges.
- (2) Stocks, bonds, notes, or other evidence of indebtedness.
- (3) Rules.
- (4) The annual report filing requirement.
- (5) ~~Operating and territorial authority for an eligible sewer utility.~~

If less than a majority of the members *or shareholders* present vote in



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favor of returning to commission jurisdiction, a referendum on the question may not be conducted for four (4) years following the date of the vote.

SECTION 16. IC 8-1-2.7-13, AS AMENDED BY P.L.80-1997, SECTION 16, AND P.L.82-1997, SECTION 16, IS CORRECTED AND AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 13. If *an eligible water or sewer a nonprofit* 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 *eligible water or sewer nonprofit* utility.
- (2) The total number present at the meeting.
- (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 17. IC 8-1-2.7-14, AS AMENDED BY P.L.80-1997, SECTION 17, AND P.L.82-1997, SECTION 17, IS CORRECTED AND AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 14. When *an eligible water or sewer a nonprofit* utility returns to commission jurisdiction, the commission may order the *eligible water or sewer nonprofit* utility to file an annual report of the operation of its plant for each of the three (3) calendar years immediately preceding its return to commission jurisdiction on a form prescribed by the commission.

SECTION 18. IC 8-1-2.7-14.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION 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 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 vote regarding commission



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jurisdiction over the utility.

SECTION 19. IC 8-1-2.7-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 15. **(a) This section applies after a utility has properly withdrawn from commission jurisdiction under this chapter.**

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

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

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

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

Page 3, after line 7, begin a new paragraph and insert:

"SECTION 21. THE FOLLOWING ARE REPEALED [EFFECTIVE UPON PASSAGE]: IC 8-1-2.7-1.2; IC 8-1-2.7-1.5; IC 8-1-2.7-8.

SECTION 22. **An emergency is declared for this act."**

Re-number all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1572 as introduced.)

BOTTORFF, Chair

Committee Vote: yeas 11, nays 0.

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