



Reprinted
March 4, 1999

HOUSE BILL No. 1572

DIGEST OF HB 1572 (Updated March 3, 1999 2:44 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.) 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 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.

Effective: Upon passage; July 1, 1999.

Crooks, Stilwell, Botorff

January 21, 1999, read first time and referred to Committee on Commerce and Economic Development.

February 16, 1999, amended, reported — Do Pass.

March 3, 1999, read second time, amended, ordered engrossed. Placed back on second reading for purpose of amendment.

March 4, 1999, reread second time, amended, ordered engrossed.

HB 1572—LS 7732/DI 101+



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March 4, 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 SECTION 2. IC 8-1-2-103 IS AMENDED TO READ AS
13 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 103. (a) No public
14 utility, or agent or officer thereof, or officer of any municipality
15 constituting a public utility, as defined in this chapter, may charge,
16 demand, collect, or receive from any person a greater or less
17 compensation for any service rendered or to be rendered, or for any
18 service in connection therewith, than that prescribed in the published
19 schedules or tariffs then in force or established as provided herein, or
20 than it charges, demands, collects, or receives from any other person
21 for a like and contemporaneous service. A person who recklessly
22 violates this subsection commits a Class A misdemeanor.

23 (b) Notwithstanding subsection (a) of this section, if a city of less
24 than twenty thousand (20,000) in population according to the most
25 recent federal decennial census, constituting a public water utility, and
26 acting as a public utility prior to May 1, 1913, either as such city, or by
27 any commercial association, chamber of commerce, or committee with
28 the consent of such city, entered into any agreement with any person
29 engaged in manufacturing any articles of commerce to furnish free
30 water for a certain limited time as an inducement to such person so
31 engaged in manufacturing to locate the establishment or manufacturing
32 plant of such person within such city, such city may carry out such
33 agreement to furnish free water to such person for the period of time
34 remaining, as stipulated in such contract. This chapter does not prohibit
35 any public utility from supplying or furnishing free service or service
36 at special rates to any municipality, or any institution or agency of such
37 municipality, in cases where the supplying or furnishing of such free
38 service or service at special rates is stipulated in any provision of the
39 franchise under which such public utility was operating before May 16,
40 1919, or, in the event that such franchise shall have been surrendered,
41 from supplying or furnishing such free service or service at special
42 rates until such time as the franchise would have expired had it not



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1 been surrendered under this chapter; and it shall be the duty of any
 2 utility operating under any franchise, stipulating for free service or
 3 service at special rates to municipality, or any institution or agency of
 4 such municipality, to furnish such free service or service at special
 5 rates.

6 (c) This subsection applies to a public utility that provides water for
 7 public fire protection services in both a county containing a
 8 consolidated city and in portions of counties that are adjacent to the
 9 county containing a consolidated city. This subsection applies
 10 throughout the territory served by the public utility. In the case of a
 11 public utility furnishing water and beginning on January 1, 1994, the
 12 charges for the production, storage, transmission, sale and delivery, or
 13 furnishing of water for public fire protection purposes shall be included
 14 in the basic rates of the customers of the public utility. However, the
 15 construction cost of any fire hydrant installed after December 31, 1993,
 16 at the request of a municipality, township, county, or other
 17 governmental unit shall be paid for by or on behalf of the municipality,
 18 township, county, or other governmental unit. The change in the
 19 recovery of current revenue authorized by this section shall be reflected
 20 in a new schedule of rates to be filed with the commission at least thirty
 21 (30) days before the time the new schedule of rates is to take effect.
 22 The new schedule of rates shall:

- 23 (1) eliminate fire protection charges billed directly to
 24 governmental units, other than charges for the construction cost
 25 for new hydrants installed after December 31, 1993; and
 26 (2) increase the rates charged each customer of the utility, based
 27 on equivalent meter size, by an amount equal to:
 28 (A) the revenues lost from the elimination of such fire
 29 protection charges; divided by
 30 (B) the current number of equivalent five-eighths (5/8) inch
 31 meters.

32 This change in the recovery of public fire protection costs shall not be
 33 considered to be a general increase in basic rates and charges of the
 34 public utility and is not subject to the notice and hearing requirements
 35 applicable to general rate proceedings. The commission shall approve
 36 the new schedule of rates that are to be effective January 1, 1994.

37 (d) This subsection applies to a public utility or a municipally
 38 owned water utility that is not subject to subsection (c). Except as
 39 provided in subsection (e), in the case of a public utility or municipally
 40 owned water utility furnishing water, if the governing body of the
 41 governmental unit with the greatest number of customers of the utility
 42 adopts an ordinance providing that costs shall be recovered under this



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1 subsection, the charges for the production, storage, transmission, sale
 2 and delivery, or furnishing of water for public fire protection purposes
 3 shall be included in the basic rates of all customers of the utility **on a**
 4 **basis that is proportional to such fire protection charges incurred**
 5 **within an individual customer's governmental unit.** However, on or
 6 after a date specified in the ordinance, the construction cost of any fire
 7 hydrant installed at the request of a municipality, township, county, or
 8 other governmental unit that adopts an ordinance under this subsection
 9 shall be paid for by or on behalf of the municipality, township, county,
 10 or other governmental unit. The change in the recovery of current
 11 revenue authorized by the ordinance shall be reflected in a new
 12 schedule of rates **for each governmental unit served by the utility** to
 13 be filed with the commission at least thirty (30) days before the time
 14 the new schedule of rates is to take effect. ~~The A~~ new schedule of rates
 15 shall:

16 (1) eliminate fire protection charges billed directly to ~~the~~
 17 governmental ~~units; unit~~, other than charges for the construction
 18 cost for new hydrants installed on and after the date specified in
 19 the ordinance; and

20 (2) increase the rates charged each customer of the utility **in the**
 21 **governmental unit**, based on equivalent meter size, by an amount
 22 equal to:

23 (A) the revenues lost from the elimination of such fire
 24 protection charges **in the customer's governmental unit**;
 25 divided by

26 (B) the current number of equivalent five-eighths (5/8) inch
 27 meters **in the customer's governmental unit.**

28 This change in the recovery of public fire protection costs shall not be
 29 considered to be a general increase in basic rates and charges of the
 30 utility and is not subject to the notice and hearing requirements
 31 applicable to general rate proceedings. The commission shall approve
 32 the new schedule of rates that are to be effective on a date specified in
 33 the ordinance. **However, the commission may not approve the new**
 34 **schedule of rates unless the new schedule of rates reflect an**
 35 **increase in basic rates that is proportional to the fire protection**
 36 **charges actually incurred within the governmental unit, as**
 37 **required in subdivision (2).**

38 (e) This subsection applies to a municipally owned water utility in
 39 a city having a population of more than forty-three thousand (43,000)
 40 but less than forty-three thousand seven hundred (43,700). The city
 41 may adopt a plan to recover costs as described in subsection (d)
 42 without passing an ordinance, if the plan applies only to customers of

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1 the utility residing in a county having a population of more than two
 2 hundred thousand (200,000) but less than three hundred thousand
 3 (300,000). If the city wishes to adopt such a plan, the city shall file a
 4 new schedule of rates with the commission, but is not subject to
 5 commission approval of the rates.

6 (f) In the case of a change in the method of recovering public fire
 7 protection costs under an ordinance adopted under subsection (d):

8 (1) on or after July 1, 1997, a customer of the utility located
 9 outside the limits of a municipality whose property is not located
 10 within one thousand (1,000) feet of a fire hydrant (measured from
 11 the hydrant to the nearest point on the property line of the
 12 customer) must be excluded from the increase in rates attributable
 13 to the change and must not be included in the number of
 14 equivalent five-eighths (5/8) inch meters for purposes of
 15 subsection (d)(2)(B); or

16 (2) before July 1, 1997, the commission may:

17 (A) in the context of a general rate proceeding initiated by the
 18 utility; or

19 (B) upon petition of:

20 (i) the utility;

21 (ii) the governmental unit that passed the ordinance; or

22 (iii) an affected customer;

23 prospectively exclude public fire protection costs from the rates
 24 charged to customers located outside the limits of any
 25 municipality whose property is not located within one thousand
 26 (1,000) feet of a fire hydrant (measured from the hydrant to the
 27 nearest point on the property line of the customer) if the
 28 commission authorizes a simultaneous increase in the rates of the
 29 utility's other customers to the extent necessary to prevent a loss
 30 of revenues to the utility.

31 An increase in the rates of the utility's other customers under
 32 subdivision (2) may not be construed to be a general increase in basic
 33 rates and charges of the utility and is not subject to the hearing
 34 requirements applicable to general rate proceedings. This subsection
 35 does not prohibit the commission from adopting different methods of
 36 public fire protection cost recovery for unincorporated areas after
 37 notice and hearing within the context of a general rate proceeding or
 38 other appropriate proceeding.

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

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1 sewer utilities a:

2 (1) *nonprofit public water utility;*

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

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

7 **the following:**

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

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

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

21 **or**

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

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

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

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

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

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



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

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

15 SECTION 7. IC 8-1-2.7-2, AS ADDED BY P.L.80-1997, SECTION
 16 6, AND P.L.82-1997, SECTION 6, IS CORRECTED AND
 17 AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON
 18 PASSAGE]: Sec. 2. **(a)** This chapter provides the exclusive statutory
 19 manner for ~~an eligible water or sewer a nonprofit~~ utility **described in**
 20 **section 1.3(a)(1) or 1.3(a)(2) of this chapter** to withdraw from the
 21 jurisdiction of the commission for the approval of the following:

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

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

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

41 SECTION 8. IC 8-1-2.7-3, AS AMENDED BY P.L.80-1997,
 42 SECTION 7, AND P.L.82-1997, SECTION 7, IS CORRECTED AND

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1 AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON
2 PASSAGE]: Sec. 3. *An eligible water or sewer* A *nonprofit* utility
3 **described in section 1.3(a)(1) or 1.3(a)(2) of this chapter** that
4 proposes to withdraw from the jurisdiction of the commission must first
5 obtain approval from its members *or shareholders*.

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

14 SECTION 10. IC 8-1-2.7-5, AS AMENDED BY P.L.80-1997,
15 SECTION 9, AND P.L.82-1997, SECTION 9, IS CORRECTED AND
16 AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON
17 PASSAGE]: Sec. 5. The referendum must be conducted at a special
18 meeting called by the board. Written notice of the meeting must be sent
19 to every member *or shareholder* of the *eligible water or sewer*
20 *nonprofit withdrawing* utility and to the secretary of the commission
21 not less than thirty (30) days before the date of the meeting. The notice
22 must contain the following information:

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

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

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

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

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

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1 If less than a majority of the members *or shareholders* present vote in
 2 favor of withdrawal from commission jurisdiction, the *eligible water*
 3 *or sewer nonprofit* utility is prohibited from seeking withdrawal for two
 4 (2) years following the date of the vote.

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

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

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

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

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

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

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

9 **(b) If a utility successfully withdraws from commission**
 10 **jurisdiction, the utility is not required to pay the public utility fee**
 11 **imposed under IC 8-1-6.**

12 **(c) Notwithstanding any other provision of this chapter, a utility**
 13 **described in section 1.3(a)(2) of this chapter that has withdrawn**
 14 **from commission jurisdiction remains subject to commission**
 15 **jurisdiction with regard to the requirements of IC 8-1-2-89(f).**

16 **(d) If two (2) or more utilities described in section 1.3(a)(1) or**
 17 **1.3(a)(2) of this chapter propose to consolidate, and at least one (1),**
 18 **but not all of the utilities have withdrawn from commission**
 19 **jurisdiction, then the following apply:**

- 20 (1) For purposes of the consolidation, all of the utilities are
- 21 under the commission's jurisdiction.
- 22 (2) The new corporation that is formed as a result of the
- 23 consolidation is under the commission's jurisdiction for all
- 24 purposes and must fully comply with this chapter in order to
- 25 withdraw from commission jurisdiction.

26 **(e) If two (2) or more utilities described in section 1.3(a)(1)(C)**
 27 **or 1.3(a)(2)(C) of this chapter propose to consolidate, and all of the**
 28 **cooperatives have withdrawn from commission jurisdiction, the**
 29 **new utility continues to operate outside the commission's**
 30 **jurisdiction under the terms of this section.**

31 **(f) The commission's approval is not required for consolidation**
 32 **of two (2) or more utilities that have all withdrawn from**
 33 **commission jurisdiction.**

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

- 41 (1) at least fifteen percent (15%) of the members *or shareholders*;
- 42 or

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

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

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

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

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

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

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

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



- 1 (3) The vote totals both for and against the return.
- 2 (4) Written verification of notice of the meeting.
- 3 (5) An affidavit, signed by all the members of the board of
- 4 directors, stating that all of the requirements of this chapter have
- 5 been met.

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

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

21 (b) **To contest compliance with this chapter:**
 22 (1) **parties aggrieved by the decision to withdraw from**
 23 **commission jurisdiction; or**
 24 (2) **other interested parties;**
 25 **must file an action in the circuit or superior court with jurisdiction**
 26 **in the county where the utility has its principal office.**

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

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

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

- 37 (1) one hundred (100); or
 - 38 (2) more than fifty percent (50%);
- 39 of the utility's customers file, individually or collectively, a **verified**
 40 **petition** ~~or petitions~~ with the commission and prove that the public
 41 interest requires the commission to revoke or limit the withdrawal from
 42 the jurisdiction of the commission.

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

SECTION 20. IC 8-1-6-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 4. A public utility fee is imposed upon each public utility subject to the provisions of this chapter equal to .0015 of its gross revenue for the preceding calendar year. **The commission may not bill or collect a public utility fee that does not exceed fifty dollars (\$50) or less under this calculation.**

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. [EFFECTIVE UPON PASSAGE] **(a) An ordinance adopted under IC 8-1-2-103(d), as amended by this act, before the effective date of this act is void with respect to charges to customers.**

(b) This section expires January 1, 2000.

SECTION 23. [EFFECTIVE UPON PASSAGE] **(a) As used in this SECTION, "commission" refers to the Indiana utility regulatory commission.**

(b) Before December 31, 1999, the commission shall establish a written procedure to implement rate changes approved by the commission under IC 8-1-2-103(d), as amended by this act. The procedure shall include a method of reimbursing customers who are charged rates in excess of those permitted by IC 8-1-2-103(d), as amended by this act.

(c) This SECTION expires December 31, 2000.

SECTION 24. 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."**

Renumber 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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HOUSE MOTION

Mr. Speaker: I move that House Bill 1572 be amended to read as follows:

Page 2, delete lines 12 through 36.

(Reference is to HB 1572 as printed February 17, 1999.)

CROOKS

HOUSE MOTION

Mr. Speaker: I move that House Bill 1572 be returned to the second reading calender forthwith for the purpose of amendment.

CROOKS

HOUSE MOTION

Mr. Speaker: I move that House Bill 1572 be amended to read as follows:

Page 2, between lines 36 and 37, begin a new paragraph and insert:

"SECTION 2. IC 8-1-2-103 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 103. (a) No public utility, or agent or officer thereof, or officer of any municipality constituting a public utility, as defined in this chapter, may charge, demand, collect, or receive from any person a greater or less compensation for any service rendered or to be rendered, or for any service in connection therewith, than that prescribed in the published schedules or tariffs then in force or established as provided herein, or than it charges, demands, collects, or receives from any other person for a like and contemporaneous service. A person who recklessly violates this subsection commits a Class A misdemeanor.

(b) Notwithstanding subsection (a) of this section, if a city of less than twenty thousand (20,000) in population according to the most recent federal decennial census, constituting a public water utility, and acting as a public utility prior to May 1, 1913, either as such city, or by any commercial association, chamber of commerce, or committee with the consent of such city, entered into any agreement with any person engaged in manufacturing any articles of commerce to furnish free water for a certain limited time as an inducement to such person so engaged in manufacturing to locate the establishment or manufacturing

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plant of such person within such city, such city may carry out such agreement to furnish free water to such person for the period of time remaining, as stipulated in such contract. This chapter does not prohibit any public utility from supplying or furnishing free service or service at special rates to any municipality, or any institution or agency of such municipality, in cases where the supplying or furnishing of such free service or service at special rates is stipulated in any provision of the franchise under which such public utility was operating before May 16, 1919, or, in the event that such franchise shall have been surrendered, from supplying or furnishing such free service or service at special rates until such time as the franchise would have expired had it not been surrendered under this chapter; and it shall be the duty of any utility operating under any franchise, stipulating for free service or service at special rates to municipality, or any institution or agency of such municipality, to furnish such free service or service at special rates.

(c) This subsection applies to a public utility that provides water for public fire protection services in both a county containing a consolidated city and in portions of counties that are adjacent to the county containing a consolidated city. This subsection applies throughout the territory served by the public utility. In the case of a public utility furnishing water and beginning on January 1, 1994, the charges for the production, storage, transmission, sale and delivery, or furnishing of water for public fire protection purposes shall be included in the basic rates of the customers of the public utility. However, the construction cost of any fire hydrant installed after December 31, 1993, at the request of a municipality, township, county, or other governmental unit shall be paid for by or on behalf of the municipality, township, county, or other governmental unit. The change in the recovery of current revenue authorized by this section shall be reflected in a new schedule of rates to be filed with the commission at least thirty (30) days before the time the new schedule of rates is to take effect. The new schedule of rates shall:

- (1) eliminate fire protection charges billed directly to governmental units, other than charges for the construction cost for new hydrants installed after December 31, 1993; and
- (2) increase the rates charged each customer of the utility, based on equivalent meter size, by an amount equal to:
 - (A) the revenues lost from the elimination of such fire protection charges; divided by
 - (B) the current number of equivalent five-eighths (5/8) inch meters.



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This change in the recovery of public fire protection costs shall not be considered to be a general increase in basic rates and charges of the public utility and is not subject to the notice and hearing requirements applicable to general rate proceedings. The commission shall approve the new schedule of rates that are to be effective January 1, 1994.

(d) This subsection applies to a public utility or a municipally owned water utility that is not subject to subsection (c). Except as provided in subsection (e), in the case of a public utility or municipally owned water utility furnishing water, if the governing body of the governmental unit with the greatest number of customers of the utility adopts an ordinance providing that costs shall be recovered under this subsection, the charges for the production, storage, transmission, sale and delivery, or furnishing of water for public fire protection purposes shall be included in the basic rates of all customers of the utility **on a basis that is proportional to such fire protection charges incurred within an individual customer's governmental unit**. However, on or after a date specified in the ordinance, the construction cost of any fire hydrant installed at the request of a municipality, township, county, or other governmental unit that adopts an ordinance under this subsection shall be paid for by or on behalf of the municipality, township, county, or other governmental unit. The change in the recovery of current revenue authorized by the ordinance shall be reflected in a new schedule of rates **for each governmental unit served by the utility** to be filed with the commission at least thirty (30) days before the time the new schedule of rates is to take effect. ~~The A~~ new schedule of rates shall:

- (1) eliminate fire protection charges billed directly to ~~the governmental units; unit,~~ other than charges for the construction cost for new hydrants installed on and after the date specified in the ordinance; and
- (2) increase the rates charged each customer of the utility **in the governmental unit**, based on equivalent meter size, by an amount equal to:
 - (A) the revenues lost from the elimination of such fire protection charges **in the customer's governmental unit**; divided by
 - (B) the current number of equivalent five-eighths (5/8) inch meters **in the customer's governmental unit**.

This change in the recovery of public fire protection costs shall not be considered to be a general increase in basic rates and charges of the utility and is not subject to the notice and hearing requirements applicable to general rate proceedings. The commission shall approve

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the new schedule of rates that are to be effective on a date specified in the ordinance. **However, the commission may not approve the new schedule of rates unless the new schedule of rates reflect an increase in basic rates that is proportional to the fire protection charges actually incurred within the governmental unit, as required in subdivision (2).**

(e) This subsection applies to a municipally owned water utility in a city having a population of more than forty-three thousand (43,000) but less than forty-three thousand seven hundred (43,700). The city may adopt a plan to recover costs as described in subsection (d) without passing an ordinance, if the plan applies only to customers of the utility residing in a county having a population of more than two hundred thousand (200,000) but less than three hundred thousand (300,000). If the city wishes to adopt such a plan, the city shall file a new schedule of rates with the commission, but is not subject to commission approval of the rates.

(f) In the case of a change in the method of recovering public fire protection costs under an ordinance adopted under subsection (d):

(1) on or after July 1, 1997, a customer of the utility located outside the limits of a municipality whose property is not located within one thousand (1,000) feet of a fire hydrant (measured from the hydrant to the nearest point on the property line of the customer) must be excluded from the increase in rates attributable to the change and must not be included in the number of equivalent five-eighths (5/8) inch meters for purposes of subsection (d)(2)(B); or

(2) before July 1, 1997, the commission may:

(A) in the context of a general rate proceeding initiated by the utility; or

(B) upon petition of:

(i) the utility;

(ii) the governmental unit that passed the ordinance; or

(iii) an affected customer;

prospectively exclude public fire protection costs from the rates charged to customers located outside the limits of any municipality whose property is not located within one thousand (1,000) feet of a fire hydrant (measured from the hydrant to the nearest point on the property line of the customer) if the commission authorizes a simultaneous increase in the rates of the utility's other customers to the extent necessary to prevent a loss of revenues to the utility.

An increase in the rates of the utility's other customers under



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subdivision (2) may not be construed to be a general increase in basic rates and charges of the utility and is not subject to the hearing requirements applicable to general rate proceedings. This subsection does not prohibit the commission from adopting different methods of public fire protection cost recovery for unincorporated areas after notice and hearing within the context of a general rate proceeding or other appropriate proceeding."

Page 10, between lines 8 and 9, begin a new paragraph and insert:

"SECTION 21. [EFFECTIVE UPON PASSAGE] (a) An ordinance adopted under IC 8-1-2-103(d), as amended by this act, before the effective date of this act is void with respect to charges to customers.

(b) This section expires January 1, 2000.

SECTION 22. [EFFECTIVE UPON PASSAGE] (a) As used in this SECTION, "commission" refers to the Indiana utility regulatory commission.

(b) Before December 31, 1999, the commission shall establish a written procedure to implement rate changes approved by the commission under IC 8-1-2-103(d), as amended by this act. The procedure shall include a method of reimbursing customers who are charged rates in excess of those permitted by IC 8-1-2-103(d), as amended by this act.

(c) This SECTION expires December 31, 2000."

Re-number all SECTIONS consecutively.

(Reference is to HB 1572 as printed February 17, 1999, and as amended on motion of Representative Crooks adopted March 3, 1999.)

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