

Adopted	Rejected
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COMMITTEE REPORT

YES:	11
NO:	0

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:*

- 1 Page 1, delete lines 1 through 7.
- 2 Page 2, line 1, delete "Upon good cause shown, the" and insert
- 3 "The".
- 4 Page 2, line 1, strike "shall" and insert "**may**".
- 5 Page 3, between lines 1 and 2, begin a new paragraph and insert:
- 6 "SECTION 3. IC 8-1-2.7-1.3, AS ADDED BY P.L.80-1997,
- 7 SECTION 2, AND P.L.82-1997, SECTION 2, IS CORRECTED AND
- 8 AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON
- 9 PASSAGE]: Sec. 1.3. (a) This chapter applies to *eligible water or*
- 10 *sewer utilities a-*
- 11 *(1) nonprofit public water utility;*
- 12 *(2) nonprofit public sewage utility serving an unincorporated*
- 13 *area of a county; and*
- 14 *(3) legal entity providing only sewage service to a nonprofit*
- 15 *public sewage utility;*
- 16 **the following:**

- 1 **(1) A public utility established to provide water service that is:**
 2 **(A) privately owned and serves less than three hundred**
 3 **(300) customers;**
 4 **(B) a not-for-profit utility (as defined by IC 8-1-2-125(a));**
 5 **or**
 6 **(C) a cooperative corporation exempt from state and**
 7 **federal income taxation.**
- 8 **(2) A public utility established to provide sewage disposal**
 9 **service (as defined in IC 8-1-2-89(a)(1)) that holds a certificate**
 10 **of territorial authority as required by IC 8-1-2-89, and that is:**
 11 **(A) privately owned and serves less than three hundred**
 12 **(300) customers;**
 13 **(B) a not-for-profit utility (as defined in IC 8-1-2-125(a));**
 14 **or**
 15 **(C) a cooperative corporation exempt from state and**
 16 **federal income taxation.**
- 17 **(3) Except as provided in subsection (b), a legal entity**
 18 **providing only sewage treatment service to a not-for-profit**
 19 **sewage disposal company.**

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

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

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

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

36 SECTION 6. IC 8-1-2.7-1.7, AS ADDED BY P.L.80-1997,
 37 SECTION 5, AND P.L.82-1997, SECTION 5, IS CORRECTED AND
 38 AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON

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

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

12 SECTION 7. IC 8-1-2.7-2, AS ADDED BY P.L.80-1997, SECTION
 13 6, AND P.L.82-1997, SECTION 6, IS CORRECTED AND
 14 AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON
 15 PASSAGE]: Sec. 2. **(a)** This chapter provides the exclusive statutory
 16 manner for ~~an eligible water or sewer a nonprofit~~ utility **described in**
 17 **section 1.3(a)(1) or 1.3(a)(2) of this chapter** to withdraw from the
 18 jurisdiction of the commission for the approval of the following:

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

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

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

38 SECTION 8. IC 8-1-2.7-3, AS AMENDED BY P.L.80-1997,

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

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

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

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

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

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

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

37 Only those members *or shareholders* present at the meeting are eligible
 38 to vote, and proxy votes are not permitted. Each member *or*

1 *shareholder* present is entitled to one (1) vote on the question of
 2 withdrawal from commission jurisdiction. If a majority of members *or*
 3 *shareholders* present vote in favor of the *eligible water or sewer*
 4 *nonprofit* utility withdrawing from commission jurisdiction, the
 5 withdrawal becomes effective thirty (30) days after the date of the vote.
 6 If less than a majority of the members *or shareholders* present vote in
 7 favor of withdrawal from commission jurisdiction, the *eligible water*
 8 *or sewer nonprofit* utility is prohibited from seeking withdrawal for two
 9 (2) years following the date of the vote.

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

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

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

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

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

1 **so requires.**

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

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

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

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

25 **(d) If two (2) or more utilities described in section 1.3(a)(1) or**
26 **1.3(a)(2) of this chapter propose to consolidate, and at least one (1),**
27 **but not all of the utilities have withdrawn from commission**
28 **jurisdiction, then the following apply:**

- 29 **(1) For purposes of the consolidation, all of the utilities are**
30 **under the commission's jurisdiction.**
31 **(2) The new corporation that is formed as a result of the**
32 **consolidation is under the commission's jurisdiction for all**
33 **purposes and must fully comply with this chapter in order to**
34 **withdraw from commission jurisdiction.**

35 **(e) If two (2) or more utilities described in section 1.3(a)(1)(C)**
36 **or 1.3(a)(2)(C) of this chapter propose to consolidate, and all of the**
37 **cooperatives have withdrawn from commission jurisdiction, the**
38 **new utility continues to operate outside the commission's**

1 **jurisdiction under the terms of this section.**

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

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

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

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

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

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

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

- 36 (1) Rates and charges.
 37 (2) Stocks, bonds, notes, or other evidence of indebtedness.
 38 (3) Rules.

1 (4) The annual report filing requirement.

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

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

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

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

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

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

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

20 (5) An affidavit, signed by all the members of the board of
21 directors, stating that all of the requirements of this chapter have
22 been met.

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

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

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

1 **(1) parties aggrieved by the decision to withdraw from**
 2 **commission jurisdiction; or**
 3 **(2) other interested parties;**
 4 **must file an action in the circuit or superior court with jurisdiction**
 5 **in the county where the utility has its principal office.**

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

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

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

- 16 (1) one hundred (100); or
 - 17 (2) more than fifty percent (50%);
- 18 of the utility's customers file, individually or collectively, a **verified**
 19 petition ~~or petitions~~ with the commission and prove that the public
 20 interest requires the commission to revoke or limit the withdrawal from
 21 the jurisdiction of the commission.

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

24 Page 3, after line 7, begin a new paragraph and insert:
 25 "SECTION 21. THE FOLLOWING ARE REPEALED
 26 [EFFECTIVE UPON PASSAGE]: IC 8-1-2.7-1.2; IC 8-1-2.7-1.5;
 27 IC 8-1-2.7-8.

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

- 1 Renumber all SECTIONS consecutively.
 (Reference is to HB 1572 as introduced.)

and when so amended that said bill do pass.

Representative Bottorff