

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.

HOUSE ENROLLED ACT No. 1223

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

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

SECTION 1. IC 8-1-13-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 3. The following terms whenever used or referred to in this chapter have the following meanings, unless a different meaning clearly appears from the context:

- (a) "Corporation" means a corporation formed under this chapter.
- (b) "Municipality" means any county, city, or town of this state.
- (c) "Person" or "inhabitant" means natural persons, firms, associations, corporations, limited liability companies, business trusts, partnerships, and bodies politic.
- (d) "Energy" means all electric energy no matter how generated or produced.
- (e) "System" means any plant, works, system, facilities, or properties, together with all parts thereof and appurtenances thereto, used or useful in the furnishing of services.
- (f) "Obligations" means negotiable bonds, interim certificates or receipts, notes, debentures, and all other evidences of indebtedness, either issued or the payment thereof assumed by the corporation.

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(g) "Law" means any law of this state.

(h) "Federal agency" means the United States of America, the President of the United States of America, the federal emergency administrator of public works and any other authority, agency, or instrumentality of the United States of America, heretofore or hereafter created.

(i) "Acquire" means construction, obtaining by purchase, lease, devise, or gift, the exercise of the right of eminent domain in the manner provided by law for the exercise thereof, or other mode of acquisition.

(j) "Improve" means to construct, reconstruct, improve, extend, enlarge, alter, better, or repair.

(k) "Board" means board of directors of a corporation formed under this chapter.

(l) "Member" means each person signing the articles of incorporation of a corporation and each person admitted to membership therein pursuant to law or the corporation's bylaws.

(m) "Service" or "services" means the furnishing of energy or other utility services incidental to development, operation, or maintenance of utility infrastructure and the rendering of related engineering, financial, accounting, economic **development**, or community development **services**, or educational services **and related materials or equipment** assisting in the establishment and maintenance of better communication between corporations and their members, or any of the same.

(n) As used in this chapter, the word "territory" when modified by the phrase "already being served with energy by any public or municipally owned utility" shall not be construed to include territory served by an electric distribution line or lines:

(1) acquired prior to March 1, 1980, from a public or municipally owned utility by a corporation formed or admitted to do business in this state under this chapter; or

(2) acquired on or after March 1, 1980, from a public or municipally owned utility by such a corporation;

if the Indiana utility regulatory commission, after public hearing, finds that public convenience and necessity would be best served by, and authorizes, such acquisition, and if the electric distribution line or lines, together with all other facilities proposed to be purchased, have a reproduction cost new, less depreciation, of not more than three hundred thousand dollars (\$300,000) and are not located in whole or in part in any city or town having a population in excess of one thousand five hundred (1,500); however, the dollar and population

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limitations do not apply if the acquisition is agreed to in all respects by all affected electricity suppliers and is approved by the commission.

(o) As used in this chapter, "commission" refers to the Indiana utility regulatory commission.

SECTION 2. IC 8-1-13-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 6. (a) Each corporation formed under this chapter shall have a board of directors that constitutes the governing body of the corporation. The directors must be members, **or if the corporation's bylaws so provide, a member's officers, directors, or partners, or the owner of a member that is a sole proprietorship may be directors** of the corporation. ~~and; other than those~~ **Directors other than those** named in ~~its~~ **the** corporation's articles of incorporation shall be elected by the members entitled to vote for the directors. Unless the bylaws of the corporation provide otherwise, the directors shall be elected annually. The bylaws may provide that:

- (1) the directors may hold office for any stated period not exceeding three (3) years;
- (2) the directors be elected so that the terms of only part of the directors expire at any one time; and
- (3) only enough directors to succeed those whose terms are about to expire are elected in any year.

(b) The bylaws may provide that the territory where the members of the corporation reside be apportioned into districts and prescribe the procedure by which the members residing in any one (1) district may nominate a director.

(c) The bylaws may specify a fair remuneration for the time actually spent by its officers, directors, and members of its executive committee in the performance of their duties and provide that the remuneration be paid to the officers, directors, and members of the executive committee. The officers, directors, and members of the executive committee are entitled to reimbursement for expenses incurred in the performance of their duties whether or not the bylaws provide that they be remunerated for their time spent in the performance of those duties. The board shall annually designate and elect those officers it considers necessary.

SECTION 3. IC 8-1-17-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 6. At the time the commission approves the articles of incorporation of any cooperative corporation, it shall issue to it, and place on file a duplicate of, a certificate of public convenience and necessity accurately describing the territory within which such cooperative corporation shall be authorized to operate. Thereafter, such territory may be changed by a new certificate issued

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and filed by the commission:

- (1) to harmonize with the result of proceedings pursuant to section 21(c) of this chapter, or any other statute empowering the commission to determine the territory within which any telephone company or cooperative may operate; or
- (2) to harmonize with findings made by the commission upon petition for change of territory signed by the ~~president and secretary~~ **appropriate officers** of the cooperative corporation, accompanied by a certified copy of a resolution authorizing the same duly adopted by its board of directors and also by a map showing clearly both the old and the proposed new territory and filed with the commission.

Such findings as to a local cooperative corporation shall be made only after the commission ascertains whether such petition proposed a change in such territory as will affect territory being served by any other cooperative corporation or any telephone company.

SECTION 4. IC 8-1-17-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 7. (a) Each cooperative corporation formed under this chapter shall have a board of directors, which board shall constitute the governing body of the cooperative corporation. The directors of a local cooperative corporation must be members, **or if the cooperative corporation's bylaws so provide, a member's officers, directors, or partners, or the owner of a member that is a sole proprietorship may be directors** of the same and, ~~except as cooperative corporation. Directors other than those named in its cooperative corporation's~~ **articles of incorporation** ~~directors of any cooperative corporation~~ shall be elected by its members.

(b) Unless the bylaws of the cooperative corporation provide otherwise, such directors shall be elected annually. The bylaws may provide that the directors may hold office for any stated period not exceeding three (3) years, and be so elected that the terms of only part of such directors shall expire at any one (1) time and that only enough directors to succeed those whose terms are about to expire need be elected in any year.

(c) The bylaws may provide that the area in which the members of the cooperative corporation reside shall be apportioned into districts and prescribe the procedure by which the members residing in any one (1) district may nominate a director.

(d) The bylaws may specify a fair remuneration for the time actually spent by its officers, directors, and members of its executive committee in the performance of their duties as such and provide that the same be paid them respectively. The officers, directors, and members of the

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executive committee shall be entitled to reimbursement for expenses incurred by them in the performance of their duties whether or not the bylaws provide that they be remunerated for their time spent in such performance.

(e) The board shall annually **designate and** elect a ~~president, a vice president, a secretary, and a treasurer. The president and vice president shall be elected from the members of the board of directors. those officers it considers necessary.~~

SECTION 5. IC 8-1-17-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 9. (a) A cooperative corporation may issue to its members certificates of membership and each member shall be entitled to only one (1) vote on each question or election at any regular or special meetings of the cooperative corporation.

(b) Meetings of members may be held at such place as may be provided in the bylaws. An annual meeting of the members shall be held at such time as may be provided by the bylaws. Special meetings may be called ~~by the president~~; by the board of directors, by a petition signed by not less than five percent (5%) of all the members, or by such other officers or persons as may be provided in the articles of incorporation or by the bylaws.

(c) Written or printed notice stating the place, day, and hour of the meeting of members, and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered not less than ten (10) nor more than thirty (30) days before the date of the meeting, either personally or by mail, by or at the direction of the ~~president or the secretary, or the~~ officers or persons calling the meeting, to each member of record entitled to vote at such meeting. If mailed, such notice shall be deemed to be delivered when deposited in the United States mails in a sealed envelope addressed to the member at his address as it appears on the records of the cooperative corporation, with postage prepaid. Notice of meetings of members may be waived in writing.

(d) Unless otherwise provided in the articles of incorporation, two percent (2%) of all the members of the cooperative corporation present in person at any meeting of members, of which meeting notice shall have been given as provided in the foregoing subdivision (c) of this section, shall constitute a quorum for the transaction of business at such meeting.

(e) A majority vote of those members who are present in person at any regular meeting, or at any special meeting of the members called for that purpose, shall be necessary for the taking of any action, adoption of any resolution, or the election of any officers, or otherwise,

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as the case may be.

SECTION 6. IC 8-1-17-23 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 23. (a) A cooperative corporation may amend its articles of incorporation to change its corporate name, to increase or reduce the number of its directors, or change any other provisions therein; provided, that any change of location of the principal office may be effected in the manner set forth in section 24 of this chapter, and further provided that no cooperative corporation shall amend its articles of incorporation to embody therein any purpose, power, or provision which would not be authorized if its original articles of incorporation, including such additional or changed purpose, power, or provision, were offered for filing at the time articles under this section are offered. Such amendment may be accomplished by filing articles of amendment which shall be entitled and endorsed "Articles of Amendment of _____" (the blank space being filled in with the name of the cooperative corporation) and state:

- (1) The name of the cooperative corporation, and if it has been changed, the name under which it was originally incorporated.
- (2) The date of filing the articles of incorporation in each public office where filed.
- (3) Whether the statement of counties within which its operations are to be conducted is to be changed, and if so the new statement of such counties.
- (4) The ~~president or vice president~~ **officer** executing such articles of amendment shall make and annex thereto an affidavit stating that the provisions of this section in respect to the amendment set forth in such articles were complied with.

(b) Such articles shall be subscribed in the name of the cooperative corporation by the ~~president or vice president~~, and by the ~~secretary or the assistant secretary~~, **appropriate officers of the cooperative corporation** who shall make and annex an affidavit stating that they have been authorized to execute and file such articles by a resolution duly adopted at a meeting of the cooperative corporation duly called and held as provided in section 9 of this chapter. If by any such amendment to articles of incorporation, the territory proposed to be served by the cooperative corporation is to be increased or decreased, the articles of amendment, together with a petition executed by the ~~president, or vice president~~, and by the ~~secretary or the assistant secretary~~ **appropriate officers** of the cooperative corporation and praying for the permission of the commission shall be submitted to the commission. Thereupon, the commission shall set said petition for public hearing and shall give notice of the time and place thereof one

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(1) time in at least one (1) newspaper published in each of the counties in which lies any of the territory proposed to be added or omitted by such amendment, which publication shall be at least ten (10) days before such hearing. The cost of publication shall be paid by the petitioner when filing such petition. Also written notice of the time and place of such hearing shall be mailed to each telephone company operating in contiguous territory in the manner provided in section 5 of this chapter. Any interested person may appear, personally or by attorney, at such hearing and aid or oppose the prayer of the petition. After such hearing, the commission shall grant or deny the petition and make its order accordingly. No amendment increasing or decreasing the territory to be served by such cooperative corporation shall be filed in the office of the secretary of state or of any county recorder unless there be attached thereto a certified copy of an order of the commission consenting to such increase or decrease. Such articles shall be filed in the same places as the original articles of incorporation and thereupon the amendment shall be deemed to have been effected.

SECTION 7. IC 8-1-17-24 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 24. A cooperative corporation formed hereunder may change the location of its principal office by filing in the office of the secretary of state a certificate reciting such change of principal office and setting forth the resolution by its board of directors authorizing such change and stating the time and place of its adoption, which certificate shall be executed and acknowledged by the **appropriate officers of the cooperative corporation's president or vice-president corporation** with the corporate seal attached and attested by the ~~secretary or assistant secretary~~ **appropriate officer of the cooperative corporation**.

SECTION 8. IC 8-1-17-25 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 25. Any cooperative corporation may dissolve by filing in the office of the secretary of state articles of dissolution which shall be entitled and endorsed "Articles of Dissolution of _____" (the blank space being filled in with the name of the cooperative corporation) and shall state:

- (a) (1) The name of the cooperative corporation, and if such cooperative corporation is a corporation resulting from the consolidation as provided in this chapter, the names of the original cooperative corporations.
- (b) (2) The date of filing of the articles of incorporation in the office of secretary of state and, if such cooperative corporation is a corporation resulting from a consolidation as provided in this chapter, the dates on which the articles of incorporation of the

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original cooperative corporations were filed in the office of secretary of state.

(c) (3) That the cooperative corporation elects to dissolve.

(d) (4) The name and post office address of each of its directors, and the name, title, and post office address of each of its officers.

Such articles shall be subscribed and acknowledged by the ~~president or a vice president and the secretary or an assistant secretary~~, **appropriate officers of the cooperative corporation** who shall make and annex an affidavit stating that they have been authorized to execute and file such articles by a resolution duly adopted by the members of the cooperative corporation at a meeting thereof duly called and held as provided in section 9 of this chapter. Articles of dissolution or a certified copy or copies thereof shall be filed in the same places as original articles of incorporation, and thereupon the cooperative corporation shall be deemed to be dissolved. Such cooperative corporation shall continue for the purpose of paying, satisfying, and discharging any existing liabilities or obligations and collecting or liquidating its assets, and doing all other acts required to adjust and wind up its business affairs, and may sue and be sued in its corporate name. Any assets remaining after all liabilities and obligations of the cooperative corporation have been satisfied and discharged shall be refunded pro rata to the patrons, their assignees, personal representatives, heirs, or legatees, who shall have paid for telephone service rendered by the cooperative corporation, within a five (5) year period next preceding such dissolution. Any assets not so refunded within a two (2) year period after such dissolution is completed shall pass to and become the property of the state of Indiana.

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