February 10, 1999

SENATE BILL No. 584

DIGEST OF SB0584 (Updated February 9, 1999 10:03 am - DI 75)

Citations Affected: IC 8-1.

Synopsis: Utility regulatory commission jurisdiction. Reconciles substantive and technical conflicts between statutes enacted by the 1997 general assembly concerning the jurisdiction of the Indiana utility regulatory commission 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.

Effective: Upon passage.

Lewis, Mills

January 21, 1999, read first time and referred to Committee on Commerce and Consumer Affairs.
February 9, 1999, reported favorably — Do Pass.

C o p y

February 10, 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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SENATE BILL No. 584

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:

SECTION 1. IC 8-1-2.7-1.3 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.

SECTION 2. 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 3. 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 4. IC 8-1-2.7-1.7 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 5. IC 8-1-2.7-2 AND P.L.82-1997, SECTION 6, IS

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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 commission concerning operating and territorial authority.*~~

(b) *Notwithstanding any other provision in this article,* ~~*any eligible*~~ **a** *sewer* ~~*utility*~~ **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 6. IC 8-1-2.7-3 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 7. IC 8-1-2.7-4 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 8. IC 8-1-2.7-5 AND P.L.82-1997, SECTION 9, IS CORRECTED AND AMENDED TO READ AS FOLLOWS

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[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 9. IC 8-1-2.7-7 AND P.L.82-1997, SECTION 10, IS CORRECTED 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 10. IC 8-1-2.7-9 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*~~

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~~*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

(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 11. IC 8-1-2.7-10 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) Whenever 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:

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(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 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 12. IC 8-1-2.7-11 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 13. IC 8-1-2.7-12 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

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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 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 14. IC 8-1-2.7-13 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 15. IC 8-1-2.7-14, AS AMENDED 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 16. 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

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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 jurisdiction over the utility.

SECTION 17. 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.

SECTION 18. 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 19. **An emergency is declared for this act.**

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SENATE MOTION

Mr. President: I move that Senator Mills be added as second author of Senate Bill 584.

LEWIS

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COMMITTEE REPORT

Mr. President: The Senate Committee on Commerce and Consumer Affairs, to which was referred Senate Bill No. 584, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to Senate Bill 584 as introduced.)

MILLS, Chairperson

Committee Vote: Yeas 6, Nays 0.

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