

# HOUSE BILL No. 1206

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 8-1-2.7.

**Synopsis:** Voting by small water and wastewater utilities. Amends as follows the statute setting forth the procedures by which certain small water or wastewater utilities may withdraw from and return to the jurisdiction of the Indiana utility regulatory commission (IURC): (1) Authorizes a member or shareholder of the utility to cast a vote by secret absentee ballot on the question of the IURC's jurisdiction over the utility. (2) Provides that the notice of the meeting on the question of the IURC's jurisdiction over the utility must be sent not less than 45 days (instead of 30 days, under current law) before the meeting and must include: (A) instructions for how a member or shareholder who wishes to cast a vote by absentee ballot may request an absentee ballot; (B) a statement that a request for an absentee ballot precludes a member or shareholder from voting in person at the meeting held on the question of withdrawal from the IURC's jurisdiction; (C) instructions for returning or delivering an absentee ballot; and (D) the deadline for returning an absentee ballot, which must be: (i) not earlier than 10 calendar days; and (ii) not later than five calendar days; before the meeting on the question, along with information as to when an absentee ballot will be considered received by the board. (3) Provides that the 5% quorum required for members or shareholders to transact business and to take official action regarding the question of the IURC's jurisdiction over the utility includes votes cast by absentee ballot. (4) Provides that if: (A) a utility successfully withdraws from the IURC's jurisdiction; (B) after the withdrawal, a referendum is held on the question of the utility returning to the IURC's jurisdiction; and (C) less than a majority of the votes cast are in favor of returning to the  
(Continued next page)

**Effective:** Upon passage.

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## Meltzer

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January 9, 2024, read first time and referred to Committee on Utilities, Energy and Telecommunications.

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Digest Continued

IURC's jurisdiction; another referendum on the question of returning to the IURC's jurisdiction may not be conducted for two years (instead of four years, under current law) following the date of the meeting at which the vote is conducted. (5) Makes conforming changes.



Second Regular Session of the 123rd General Assembly (2024)

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 2023 Regular Session of the General Assembly.

# HOUSE BILL No. 1206



A BILL FOR AN ACT to amend the Indiana Code concerning utilities.

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

1 SECTION 1. IC 8-1-2.7-5 IS AMENDED TO READ AS  
 2 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. **(a)** The  
 3 referendum must be conducted at a special meeting called by the board.  
 4 Written notice of the meeting must be sent to every member or  
 5 shareholder of the withdrawing utility and to the secretary of the  
 6 commission not less than ~~thirty (30)~~ **forty-five (45)** days before the  
 7 date of the meeting. The notice must contain the following information:  
 8 (1) The place, date, and hour of the meeting.  
 9 (2) The purpose of the meeting, including an explanation of what  
 10 the withdrawal from commission jurisdiction entails.  
 11 (3) The fact that no proxies will be permitted.  
 12 **(4) A statement that a member or shareholder may cast a vote**  
 13 **by secret absentee ballot.**  
 14 **(b) The notice provided under subsection (a) must include:**  
 15 **(1) instructions for how a member or shareholder who wishes**



1 to cast a vote by absentee ballot may request an absentee  
2 ballot;

3 (2) a statement that a request for an absentee ballot precludes  
4 a member or shareholder from voting in person at the  
5 meeting held on the question of withdrawal from the  
6 commission's jurisdiction;

7 (3) instructions that a member or shareholder voting by  
8 absentee ballot must:

9 (A) return the absentee ballot by United States mail; or

10 (B) deliver the absentee ballot in person to the offices of the  
11 utility; and

12 (4) the deadline for returning or delivering an absentee ballot,  
13 which must be:

14 (A) not earlier than ten (10) calendar days; and

15 (B) not later than five (5) calendar days;

16 before the meeting on the question of withdrawal, along with  
17 information as to when an absentee ballot will be considered  
18 received by the board.

19 (c) The form of an absentee ballot authorized by this section  
20 must be as follows:

21  YES, I want to withdraw from the jurisdiction of the  
22 commission.

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

25 (d) An absentee ballot authorized by this section must not:

26 (1) require a member or shareholder to include the member's  
27 or shareholder's name on the absentee ballot or to sign the  
28 absentee ballot; or

29 (2) be marked with any number or identifier that can be  
30 traced to the member or shareholder;

31 so as to compromise the confidentiality of the member's or  
32 shareholder's vote.

33 SECTION 2. IC 8-1-2.7-6 IS AMENDED TO READ AS  
34 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6. A quorum  
35 consisting of not less than five percent (5%) of the members or  
36 shareholders must:

37 (1) be present at the meeting; or

38 (2) vote by absentee ballot;

39 to transact business and to take official action regarding the jurisdiction  
40 question.

41 SECTION 3. IC 8-1-2.7-7 IS AMENDED TO READ AS  
42 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 7. The board shall



1 distribute secret written ballots to the members or shareholders present  
2 at the meeting. The form of the ballots must be as follows:

3  YES, I want to withdraw from the jurisdiction of the  
4 commission.

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

6 ~~Only those members or shareholders present at the meeting are eligible~~  
7 ~~to vote, and proxy votes are not permitted.~~ Each member or shareholder  
8 ~~present~~ is entitled to one (1) vote, **either in person at the meeting or**  
9 **by absentee ballot**, on the question of withdrawal from commission  
10 jurisdiction. **Proxy votes may not be permitted.** If a majority of  
11 **voting** members or shareholders ~~present~~ vote in favor of the utility  
12 withdrawing from commission jurisdiction, the withdrawal becomes  
13 effective thirty (30) days after the date of the **meeting at which the**  
14 **vote is conducted.** If less than a majority of the **voting** members or  
15 shareholders ~~present~~ vote in favor of withdrawal from commission  
16 jurisdiction, the utility is prohibited from seeking withdrawal for two  
17 (2) years following the date of the **meeting at which the vote is**  
18 **conducted.**

19 SECTION 4. IC 8-1-2.7-10 IS AMENDED TO READ AS  
20 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 10. (a) If a utility  
21 successfully withdraws from commission jurisdiction, the board of  
22 directors shall, within five (5) days of the meeting, send written  
23 confirmation to the secretary of the commission containing the  
24 following information:

25 (1) The total membership or number of shareholders of the utility.

26 (2) The total number of **members or shareholders**:

27 (A) present at the meeting; and

28 (B) **voting by absentee ballot.**

29 (3) The vote totals both for and against withdrawal.

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

31 (5) An affidavit, signed by all of the members of the board of  
32 directors, stating that all of the requirements of this chapter have  
33 been met.

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

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

41 (d) Whenever two (2) or more utilities described in section 1.3(a)(1)  
42 or 1.3(a)(2) of this chapter propose to consolidate, and at least one (1),



1 but not all of the utilities have withdrawn from commission  
2 jurisdiction, then the following apply:

3 (1) For purposes of the consolidation, all of the utilities are under  
4 the commission's jurisdiction.

5 (2) The new corporation that is formed as a result of the  
6 consolidation is under the commission's jurisdiction for all  
7 purposes and must fully comply with this chapter in order to  
8 withdraw from commission jurisdiction.

9 (e) If two (2) or more utilities described in section 1.3(a)(1)(C) or  
10 1.3(a)(2)(C) of this chapter propose to consolidate, and all of the  
11 cooperatives have withdrawn from commission jurisdiction, the new  
12 utility continues to operate outside the commission's jurisdiction under  
13 the terms of this section.

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

17 SECTION 5. IC 8-1-2.7-12 IS AMENDED TO READ AS  
18 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 12. If a utility  
19 returns to commission jurisdiction, the commission assumes  
20 jurisdiction **over the following** thirty (30) days after the date of the  
21 **meeting at which the vote over the following is conducted:**

- 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 If less than a majority of the **voting** members or shareholders **present**  
27 vote in favor of returning to commission jurisdiction, a referendum on  
28 the question may not be conducted for ~~four (4)~~ **two (2)** years following  
29 the date of the **meeting at which the vote is conducted.**

30 SECTION 6. IC 8-1-2.7-13 IS AMENDED TO READ AS  
31 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 13. If a utility  
32 attempts to return to commission jurisdiction, the board of directors  
33 shall, within five (5) days following the meeting, send written  
34 confirmation to the secretary of the commission containing the  
35 following information:

- 36 (1) The total membership or number of shareholders of the utility.  
37 (2) The total number of **members or shareholders:**  
38 **(A) present at the meeting; and**  
39 **(B) voting by absentee ballot.**  
40 (3) The vote totals both for and against the return.  
41 (4) Written verification of notice of the meeting.  
42 (5) An affidavit, signed by all the members of the board of



1 directors, stating that all of the requirements of this chapter have  
2 been met.

3 SECTION 7. IC 8-1-2.7-14.5 IS AMENDED TO READ AS  
4 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 14.5. (a) This  
5 section applies when a utility fails to follow the procedures provided in  
6 this chapter for withdrawal from or return to the commission's  
7 jurisdiction.

8 (b) To contest compliance with this chapter:  
9 (1) parties aggrieved by the decision to withdraw from **or return**  
10 **to** commission jurisdiction; or  
11 (2) other interested parties;  
12 must file an action in the circuit or superior court with jurisdiction in  
13 the county where the utility has its principal office.

14 (c) An action filed under this section must be filed not later than  
15 thirty (30) days after the date of the **meeting at which the** vote  
16 regarding commission jurisdiction over the utility **is conducted.**

17 SECTION 8. **An emergency is declared for this act.**

