



February 16, 2024

ENGROSSED HOUSE BILL No. 1206

DIGEST OF HB 1206 (Updated February 15, 2024 9:54 am - DI 119)

Citations Affected: IC 8-1.

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) Specifies that a sewage disposal company that is subject to the jurisdiction of the IURC for having been issued more than one enforcement order from the department of environmental management (department) may not seek to withdraw from the IURC's jurisdiction during the rate regulation period prescribed in the statute setting forth various requirements with respect to wastewater utilities that have been issued one or more enforcement orders by the department. (2) 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. (3) Provides that notice of the meeting on the question of the IURC's jurisdiction over the utility must be sent not less than 45 days
(Continued next page)

Effective: Upon passage.

Meltzer, Zimmerman

(SENATE SPONSOR — KOCH)

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

January 18, 2024, amended, reported — Do Pass.

January 22, 2024, read second time, ordered engrossed. Engrossed.

January 23, 2024, read third time, passed. Yeas 94, nays 1.

SENATE ACTION

February 5, 2024, read first time and referred to Committee on Utilities.

February 15, 2024, reported favorably — Do Pass.

EH 1206—LS 6863/DI 101



Digest Continued

(instead of 30 days, under current law) before the meeting and must include: (A) instructions regarding 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. (4) 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. (5) 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 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. (6) Makes conforming changes.



February 16, 2024

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.

ENGROSSED 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 8-1-2.7-2 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. (a) This chapter
3 provides the exclusive statutory manner for a utility described in
4 section 1.3(a)(1) or 1.3(a)(2) of this chapter to withdraw from the
5 jurisdiction of the commission for the approval of the following:
6 (1) Rates and charges.
7 (2) Stocks, bonds, notes, or other evidence of indebtedness.
8 (3) Rules.
9 (4) The annual report filing requirement.
10 (b) Notwithstanding any other provision in this article, a sewer
11 disposal company described in section 1.3(a)(2) of this chapter shall
12 not initiate operations or provide service or seek commission authority
13 to do so within a territory for which the commission has granted
14 operating and territorial authority to any other entity, which has not
15 been revoked.

EH 1206—LS 6863/DI 101



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

5 (d) **A sewage disposal company described in section 1.3(a)(2) of**
 6 **this chapter that is subject to the commission's jurisdiction under**
 7 **IC 8-1-1.9-5(e)(2) for having been issued more than one (1)**
 8 **enforcement order (as defined in IC 8-1-1.9-5(c)) within the time**
 9 **specified in IC 8-1-1.9-5(e)(2) may not seek to withdraw from the**
 10 **commission's jurisdiction under this chapter during the rate**
 11 **regulation period set forth in IC 8-1-1.9-5(e)(2).**

12 SECTION 2. IC 8-1-2.7-5 IS AMENDED TO READ AS
 13 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. (a) The
 14 referendum must be conducted at a special meeting called by the board.
 15 Written notice of the meeting must be sent to every member or
 16 shareholder of the withdrawing utility and to the secretary of the
 17 commission not less than ~~thirty (30)~~ **forty-five (45)** days before the
 18 date of the meeting. The notice must contain the following information:

- 19 (1) The place, date, and hour of the meeting.
 20 (2) The purpose of the meeting, including an explanation of what
 21 the withdrawal from commission jurisdiction entails.
 22 (3) The fact that no proxies will be permitted.
 23 **(4) A statement that a member or shareholder may cast a vote**
 24 **by secret absentee ballot.**
 25 **(b) The notice provided under subsection (a) must include:**
 26 **(1) instructions for how a member or shareholder who wishes**
 27 **to cast a vote by absentee ballot may request an absentee**
 28 **ballot;**
 29 **(2) a statement that a request for an absentee ballot precludes**
 30 **a member or shareholder from voting in person at the**
 31 **meeting held on the question of withdrawal from the**
 32 **commission's jurisdiction;**
 33 **(3) instructions that a member or shareholder voting by**
 34 **absentee ballot must:**
 35 **(A) return the absentee ballot by United States mail; or**
 36 **(B) deliver the absentee ballot in person to the offices of the**
 37 **utility; and**
 38 **(4) the deadline for returning or delivering an absentee ballot,**
 39 **which must be:**
 40 **(A) not earlier than ten (10) calendar days; and**
 41 **(B) not later than five (5) calendar days;**
 42 **before the meeting on the question of withdrawal, along with**



- 1 information as to when an absentee ballot will be considered
 2 received by the board.
- 3 (c) The form of an absentee ballot authorized by this section
 4 must be as follows:
- 5 YES, I want to withdraw from the jurisdiction of the
 6 commission.
- 7 NO, I want to remain under the jurisdiction of the
 8 commission.
- 9 (d) An absentee ballot authorized by this section must not:
- 10 (1) require a member or shareholder to include the member's
 11 or shareholder's name on the absentee ballot or to sign the
 12 absentee ballot; or
- 13 (2) be marked with any number or identifier that can be
 14 traced to the member or shareholder;
- 15 so as to compromise the confidentiality of the member's or
 16 shareholder's vote.
- 17 SECTION 3. IC 8-1-2.7-6 IS AMENDED TO READ AS
 18 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6. A quorum
 19 consisting of not less than five percent (5%) of the members **or**
 20 **shareholders** must:
- 21 (1) be present at the meeting; **or**
- 22 (2) **vote by absentee ballot;**
- 23 to transact business and to take official action regarding the jurisdiction
 24 question.
- 25 SECTION 4. IC 8-1-2.7-7 IS AMENDED TO READ AS
 26 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 7. The board shall
 27 distribute secret written ballots to the members or shareholders present
 28 at the meeting. The form of the ballots must be as follows:
- 29 YES, I want to withdraw from the jurisdiction of the
 30 commission.
- 31 NO, I want to remain under the jurisdiction of the commission.
- 32 ~~Only those members or shareholders present at the meeting are eligible~~
 33 ~~to vote, and proxy votes are not permitted.~~ Each member or shareholder
 34 ~~present~~ is entitled to one (1) vote, **either in person at the meeting or**
 35 **by absentee ballot**, on the question of withdrawal from commission
 36 jurisdiction. **Proxy votes may not be permitted.** If a majority of
 37 **voting** members or shareholders ~~present~~ vote in favor of the utility
 38 withdrawing from commission jurisdiction, the withdrawal becomes
 39 effective thirty (30) days after the date of the **meeting at which the**
 40 **vote is conducted.** If less than a majority of the **voting** members or
 41 shareholders ~~present~~ vote in favor of withdrawal from commission
 42 jurisdiction, the utility is prohibited from seeking withdrawal for two



1 (2) years following the date of the **meeting at which the vote is**
 2 **conducted.**

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

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

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

11 (A) present at the meeting; **and**

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

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 jurisdiction,
 19 the utility is not required to pay the public utility fee imposed under
 20 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 from
 23 commission jurisdiction remains subject to commission jurisdiction
 24 with regard to the requirements of IC 8-1-2-89(f).

25 (d) Whenever two (2) or more utilities described in section 1.3(a)(1)
 26 or 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 under
 30 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) or
 36 1.3(a)(2)(C) of this chapter propose to consolidate, and all of the
 37 cooperatives have withdrawn from commission jurisdiction, the new
 38 utility continues to operate outside the commission's jurisdiction under
 39 the terms of this section.

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



1 SECTION 6. IC 8-1-2.7-12 IS AMENDED TO READ AS
 2 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 12. If a utility
 3 returns to commission jurisdiction, the commission assumes
 4 jurisdiction **over the following** thirty (30) days after the date of the
 5 **meeting at which the vote over the following is conducted:**

- 6 (1) Rates and charges.
- 7 (2) Stocks, bonds, notes, or other evidence of indebtedness.
- 8 (3) Rules.
- 9 (4) The annual report filing requirement.

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

14 SECTION 7. IC 8-1-2.7-13 IS AMENDED TO READ AS
 15 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 13. If a utility
 16 attempts to return to commission jurisdiction, the board of directors
 17 shall, within five (5) days following the meeting, send written
 18 confirmation to the secretary of the commission containing the
 19 following information:

- 20 (1) The total membership or number of shareholders of the utility.
- 21 (2) The total number of **members or shareholders:**
- 22 (A) present at the meeting; **and**
- 23 (B) **voting by absentee ballot.**
- 24 (3) The vote totals both for and against the return.
- 25 (4) Written verification of notice of the meeting.
- 26 (5) An affidavit, signed by all the members of the board of
 27 directors, stating that all of the requirements of this chapter have
 28 been met.

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

34 (b) To contest compliance with this chapter:

- 35 (1) parties aggrieved by the decision to withdraw from **or return**
 36 **to** commission jurisdiction; or
- 37 (2) other interested parties;

38 must file an action in the circuit or superior court with jurisdiction in
 39 the county where the utility has its principal office.

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



1 **SECTION 9. An emergency is declared for this act.**



COMMITTEE REPORT

Mr. Speaker: Your Committee on Utilities, Energy and Telecommunications, to which was referred House Bill 1206, 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, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 8-1-2.7-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. (a) This chapter provides the exclusive statutory manner for a 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.

(b) Notwithstanding any other provision in this article, a sewer 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.

(d) A sewage disposal company described in section 1.3(a)(2) of this chapter that is subject to the commission's jurisdiction under IC 8-1-1.9-5(e)(2) for having been issued more than one (1) enforcement order (as defined in IC 8-1-1.9-5(c)) within the time specified in IC 8-1-1.9-5(e)(2) may not seek to withdraw from the commission's jurisdiction under this chapter during the rate regulation period set forth in IC 8-1-1.9-5(e)(2)."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1206 as introduced.)

SOLIDAY

Committee Vote: yeas 12, nays 0.

EH 1206—LS 6863/DI 101



COMMITTEE REPORT

Madam President: The Senate Committee on Utilities, to which was referred House Bill No. 1206, 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 to HB 1206 as printed January 18, 2024.)

KOCH, Chairperson

Committee Vote: Yeas 9, Nays 0

