

Second Regular Session 120th General Assembly (2018)

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 2017 Regular Session of the General Assembly.

SENATE ENROLLED ACT No. 156

AN ACT to amend the Indiana Code concerning utilities.

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

SECTION 1. IC 8-1-13-8, AS AMENDED BY P.L.171-2017, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2018]: Sec. 8. (a) A corporation may issue to its members certificates of membership and each member shall be entitled to only one (1) vote at any regular or special meeting of the corporation.

(b) Meetings of members may be held at such place as may be provided in the by-laws. An annual meeting of the members shall be held at such time as may be provided by the by-laws. Special meetings may be called by the president, by the board of directors, by a petition signed by not less than one-twentieth (1/20) of all the members, or by such other officers or persons as may be provided in the articles of incorporation or the by-laws.

(c) Written, printed, or electronic 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 sixty (60) days before the date of the meeting, personally, by mail, or electronically, 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 the member's address as it appears on the records of the

SEA 156



corporation, with postage thereon prepaid. If transmitted electronically, the notice is considered delivered when transmitted to the electronic mail address or other address provided by the member for electronic communications. Notice of meetings of members may be waived in writing.

(d) Unless otherwise provided in the articles of incorporation, one-fiftieth (1/50) of **the total of** all the corporation's members **who either:**

- (1) ~~who~~ are present in person at any meeting of members; or
- (2) ~~who, in accordance with~~ **as authorized under** subsection (f), cast votes before **the date of** any meeting of members;

of which meeting notice shall have been given as provided in subsection (c), shall constitute a quorum for the transaction of business at such meeting.

(e) Except as otherwise specifically provided in this chapter, a majority vote of ~~those~~ **the total number of** members **who either:**

- (1) are **present in person and** voting at; or
- (2) **as authorized under subsection (f), cast votes before the date of;**

any regular meeting, or at **or before the date of** 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 directors, or otherwise, as the case may be. Provided, that if more than two (2) persons are running for election as a director from the same district then the person receiving the most votes shall be elected.

(f) A corporation may include a provision in the corporation's articles of incorporation or in the corporation's bylaws to allow any votes cast:

- (1) after notice of a meeting is provided in accordance with subsection (c); and
- (2) before **the date of** a meeting of the members;

whether cast in person, by a ~~written ballot mailed to the corporation's mail, office;~~ or by electronic ballot, to count toward the quorum requirement set forth in subsection (d) or toward any quorum requirement lawfully established in the corporation's articles of incorporation or in the corporation's bylaws.

SECTION 2. IC 8-1-13-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2018]: Sec. 16. (a) Any corporation created under the provisions of this chapter may enter into an agreement for the consolidation or merger of such a corporation with:

- (1) any other corporation organized under this chapter; or
- (2) any mutual benefit corporation that was organized before 1964

SEA 156



under Acts 1935, c. 157, that engages in the generation, transmission, or distribution of electric energy.

(b) An agreement under subsection (a) must set forth the terms and conditions of the consolidation or merger, the name of the proposed consolidated or merged corporation, the number of its directors, not less than five (5), the time of the annual election and the names of the persons, not less than five (5), to be directors upon completing the consolidation or merger. The agreement must specify the terms the directors will serve. A corporation organized under this chapter shall duly call and hold a meeting of its members, as provided in section 8 of this chapter, at which the proposal of such consolidation or merger shall be presented. A mutual benefit corporation must approve the merger in accordance with IC 23-17-19-3. With respect to such a merger, the agreement may provide that the surviving corporation may have one (1) or more members that are incorporated under the laws of a state other than Indiana. If at each such meeting, the aforesaid agreement is approved by a resolution duly adopted and receiving the affirmative vote of at least a majority of ~~all~~ the **total number of** members of the respective corporation **who either are present and voting at the meeting or, as authorized under section 8(f) of this chapter, cast a vote before the date of the meeting**, the directors named in the agreement shall subscribe and acknowledge articles conforming substantially to the original articles of incorporation, except that it shall be entitled and endorsed "Articles of consolidation (merger) of _____" (the blank space being filled in with the names of the corporations being consolidated or merged) and shall state:

- (1) The names of the corporations being consolidated or merged.
- (2) The name of the consolidated or merged corporation.
- (3) The other items required or permitted to be stated in original articles of incorporation.

(c) Articles of consolidation or merger under this section or a certified copy or copies thereof shall be filed in the office of the secretary of state and thereupon the proposed consolidated or merged corporation, under its designated name, shall be and constitute a body corporate with all the powers of a corporation as originally formed hereunder. In the case of a merger of a corporation organized under this chapter and a mutual benefit corporation, IC 23-17-19-5 applies.

SECTION 3. IC 8-1-17-3, AS AMENDED BY P.L.7-2015, SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2018]: Sec. 3. As used in this chapter, the following terms have the following meanings unless a different meaning clearly appears from the context:

SEA 156



- (1) "Acquire" means to obtain by construction, purchase, lease, devise, gift, eminent domain, or by any other lawful means.
- (2) "Board" means the board of directors of a cooperative corporation.
- (3) "Cooperative corporation" means a corporation formed under this chapter.
- (4) "Facilities based local exchange carrier" has the meaning set forth in IC 8-1-32.4-5.
- (5) "General cooperative corporation" means a cooperative corporation formed to render services to local cooperative corporations.
- (6) "Improve" includes construct, reconstruct, extend, enlarge, alter, better, or repair.
- (7) "Local cooperative corporation" means a cooperative corporation formed to render telephone services within Indiana.
- (8) "Member" includes each individual signing the articles of incorporation of a cooperative corporation and each person admitted to membership of the cooperative corporation under law ~~or~~ **and** the corporation's bylaws.
- (9) "Obligations" includes negotiable bonds, notes, debentures, interim certificates or receipts, and other evidences of indebtedness, either issued or the payment of which is assumed by a cooperative corporation.
- (10) "Person" or "inhabitant" includes an individual, a firm, an association, a corporation, a limited liability company, a business trust, and a partnership.
- (11) "Service" or "services", when not accompanied by the word "telephone", means construction, engineering, financial, accounting, or educational services incidental to telephone service.
- (12) "System" includes any plant, works, system, facilities, or properties, together with all parts of and appurtenances to the plant, works, system, facilities, or properties, used or useful in telephone service.
- (13) "Telephone facilities" includes all buildings, plants, works, structures, improvements, fixtures, apparatus, materials, supplies, machinery, tools, implements, poles, posts, crossarms, conduits, ducts, underground or overhead lines, wires, cables, exchanges, switches, desks, testboards, frames, racks, motors, generators, batteries, and other items of central office equipment, paystations, protectors, instruments, connections, and appliances, office furniture and equipment, work equipment, and all other property



used in connection with the provision of telephone and other telecommunications services.

(14) "Telephone service" refers to telecommunications service (as defined in 47 U.S.C. 153) provided by a telephone cooperative corporation. The term includes all facilities or systems used in the rendition of the service.

SECTION 4. IC 8-1-17-9, AS AMENDED BY P.L.14-2006, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2018]: 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 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, **or electronic** 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)~~ **sixty (60)** days before the date of the meeting, either personally, ~~or~~ by mail, **or electronically**, by or at the direction of 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 the member's address as it appears on the records of the cooperative corporation, with postage prepaid. **If transmitted electronically, the notice is considered delivered when transmitted to the electronic mail address or other address provided by the member for electronic communications.** Notice of meetings of members may be waived in writing.

(d) Unless otherwise provided in the articles of incorporation, two percent (2%) of **the total of all the cooperative corporation's members of the cooperative corporation who either:**

- (1) are present in person at any meeting of members; or**
- (2) as authorized under subsection (g), cast votes before the date of any meeting of members;**

of which meeting notice shall have been given as provided in subsection (c), shall constitute a quorum for the transaction of business



at such meeting.

(e) Except as provided in subsection (f), a majority vote of ~~those the~~ **total number of** members who **either:**

- (1) are present in person and voting at; or**
- (2) as authorized under subsection (g), cast votes before the date of;**

any regular meeting, or at **or before the date of** 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 directors or officers, or otherwise, as the case may be.

(f) This subsection applies to an election for a director of a cooperative corporation held after March 20, 2006. A cooperative corporation may provide in the corporation's bylaws that if more than two (2) persons run for election as a director from the same district, the person receiving the most votes is elected, regardless of whether that person receives a majority of the total votes cast by those members **who either:**

- (1) are present in person and voting at; or**
- (2) as authorized under subsection (g), cast votes before the date of;**

the meeting at which the election occurs, **with respect to the particular district.**

(g) A cooperative corporation may include a provision in the cooperative corporation's articles of incorporation or in the cooperative corporation's bylaws to allow any votes cast:

- (1) after notice of a meeting of members is provided in accordance with subsection (c); and**
- (2) before the date of the meeting of members;**

whether cast in person, by mail, or by electronic ballot, to count toward the quorum requirement set forth in subsection (d) or toward any quorum requirement lawfully established in the cooperative corporation's articles of incorporation or in the cooperative corporation's bylaws.

SECTION 5. IC 8-1-17-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2018]: Sec. 12. Each cooperative corporation is hereby vested with all powers necessary or requisite for the accomplishment of its corporate purpose and capable of being delegated by the general assembly of the state of Indiana; and no enumeration of particular powers hereby granted shall be construed to impair any general grant of power ~~herein~~ **contained in this chapter**, nor to limit any such grant to a power or powers of the same class or classes as those so enumerated.

SEA 156



SECTION 6. IC 8-1-17-14, AS AMENDED BY P.L.27-2006, SECTION 44, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2018]: Sec. 14. A local cooperative corporation may not sell, lease, exchange, mortgage, pledge, or otherwise sell all, or substantially all, of its property unless the transaction is authorized by a resolution duly adopted at a meeting of the corporation's members duly called and held as provided in section 9 of this chapter. The resolution must receive the affirmative vote of at least three-fourths (3/4) of the **total number of the** corporation's members who **either:**

- (1) are present **in person and voting** at the meeting; or
- (2) **as authorized under section 9(g) of this chapter, cast a vote before the date of the meeting;**

and the affirmative vote of at least three-fourths (3/4) of the corporation's directors who are present at a meeting of the board of directors duly called and held as provided in the corporation's bylaws.

SECTION 7. IC 8-1-17-18.2, AS ADDED BY P.L.3-2008, SECTION 72, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2018]: Sec. 18.2. (a) Any two (2) or more cooperative corporations created under this chapter and operating or authorized to operate in contiguous territory may enter into an agreement for the consolidation of the cooperative corporations, which agreement shall be submitted for the review of the commission in the manner provided for in section 5 of this chapter. The agreement must set forth the terms and conditions of the consolidation, the name of the proposed consolidated cooperative corporation, the number of its directors, not less than three (3), the time of the annual election, and the names of the persons, not less than three (3), to be directors until the first annual meeting. Each cooperative corporation participating in the consolidation shall call and hold a meeting of its members as provided in section 9 of this chapter, at which the proposal of the consolidation shall be presented. If at each meeting the consolidation agreement is approved by a resolution duly adopted and receiving the affirmative vote of at least three-fourths (3/4) of the **total number of** members who **either attend each and vote at the meeting or, as authorized under section 9(g) of this chapter, cast a vote before the date of the meeting,** the directors named in the agreement shall subscribe and acknowledge articles conforming substantially to the original articles of incorporation. The new articles shall be entitled and endorsed "Articles of Consolidation of _____" (the blank space being filled in with the names of the cooperative corporations being consolidated) and must state:

- (1) the names of the cooperative corporations being consolidated;



- (2) the name of the consolidated cooperative corporation;
- (3) a statement that each consolidating cooperative corporation agrees to the consolidation;
- (4) the names and addresses of the directors of the new cooperative corporation; and
- (5) the terms and conditions of the consolidation and the mode of carrying the consolidation into effect, including the manner in which members of the consolidating cooperative corporations may or shall become members of the new cooperative corporation.

The new articles of incorporation may contain any provisions not inconsistent with this chapter that are necessary or advisable for the conduct of the business of the new cooperative corporation.

(b) If the commission approves the articles of consolidation under section 5 of this chapter, the articles of consolidation or a certified copy or copies of the articles shall be filed, together with the attached copy of the order of the commission under section 5(e)(2) of this chapter, in the same place as the original articles of incorporation. Upon the filings required under section 5(g) of this chapter, the proposed consolidated cooperative corporation, under its designated name, is a body corporate with all the powers of a cooperative corporation as originally formed under this chapter.

SECTION 8. IC 8-1-17.5-10, AS AMENDED BY P.L.42-2011, SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2018]: Sec. 10. (a) If at each meeting of members at which a vote is taken on a plan of merger or consolidation, as required by section 9 of this chapter, the plan of merger or consolidation is approved by a resolution adopted and receiving the affirmative vote of at least a majority of the **total number of members who either:**

- (1) are present and voting at the meeting; or**
- (2) as authorized under:**
 - (A) IC 8-1-13-8(f);**
 - (B) IC 8-1-17-9(g); or**
 - (C) section 14(e) of this chapter;**

as applicable, cast a vote before the date of the meeting;

the directors of the surviving corporation or successor corporation, as identified in the plan of merger or consolidation, shall subscribe and acknowledge articles entitled and endorsed "Articles of merger (consolidation) of _____" (the blank space being filled in with the names of the corporations being merged or consolidated, as appropriate).

(b) The articles of merger or consolidation required by subsection



(a) must include the following:

- (1) The names of the corporations being merged or consolidated.
- (2) The name of the surviving corporation or successor corporation.
- (3) A statement that each merging or consolidating corporation agrees to the merger or consolidation.
- (4) The maximum number of directors for the surviving corporation or successor corporation, which number may not be less than three (3).
- (5) The names and addresses of the directors of the surviving corporation or successor corporation.
- (6) The terms and conditions of the merger or consolidation and the mode of carrying the merger or consolidation into effect, including the manner in which members of the merging or consolidating corporations may or shall become members of the surviving corporation or successor corporation.
- (7) The location of the surviving corporation's or successor corporation's principal office, along with the mailing address for the surviving corporation or successor corporation.
- (8) A specified period for the duration of the surviving corporation or successor corporation or a statement that the duration of the surviving corporation or successor corporation is to be perpetual.

(c) In addition to the items required by subsection (b), the articles of merger or consolidation required by subsection (a) may include:

- (1) provisions creating, defining, limiting, or regulating the powers of the surviving corporation or successor corporation; and
- (2) any other provision that:
 - (A) is not contrary to law;
 - (B) is contained in the plan of merger or consolidation approved by the respective memberships of the merging or consolidating corporations; and
 - (C) concerns the regulation of the business or conduct of the affairs of the surviving corporation or successor corporation.

(d) Subject to subsection (f), the articles of merger or consolidation, or one (1) or more certified copies of the articles of merger or consolidation, shall be filed in the office of the secretary of state. Upon filing with the secretary of state, the surviving corporation or successor corporation, under its designated name, constitutes a body corporate with all the powers of the merging or consolidating corporations as originally formed under:

- (1) IC 8-1-13;

SEA 156



(2) IC 8-1-17; or

(3) this chapter;

as applicable.

(e) Upon being filed with the secretary of state under subsection (d), the articles of merger or consolidation are considered the articles of incorporation of the surviving corporation or successor corporation, and the surviving corporation or successor corporation may subsequently amend the articles of incorporation in accordance with IC 23-17-17.

(f) At any time after a plan of merger or consolidation is approved by the respective memberships of the corporations that seek to merge or consolidate, as described in subsection (a), and before articles of merger or consolidation are filed with the secretary of state under subsection (d), the plan of merger or consolidation may be abandoned without further action by the respective memberships, boards of directors, or other persons who proposed or approved the plan of merger or consolidation for the corporations that sought to merge or consolidate. A plan of merger or consolidation that is abandoned under this subsection must be abandoned:

(1) in accordance with any procedure set forth for that purpose in the plan of merger or consolidation; or

(2) in the manner determined by the boards of directors of the corporations that sought to merge or consolidate, if a procedure described in subdivision (1) is not set forth in the plan of merger or consolidation.

SECTION 9. IC 8-1-17.5-14, AS ADDED BY P.L.18-2010, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2018]: Sec. 14. (a) A surviving corporation or successor corporation may issue to its members certificates of membership, and each member is entitled to only one (1) vote on each question or election at any regular or special meeting of the surviving corporation or successor corporation.

(b) Meetings of members may be held at any place provided for in the bylaws. An annual meeting of the members shall be held at the time provided for in the bylaws.

(c) Unless otherwise provided in the bylaws or articles of incorporation of the surviving corporation or successor corporation, the following apply:

(1) Special meetings may be called:

(A) by the board of directors;

(B) upon a petition signed by at least five percent (5%) of all the members; or



(C) by any other officers or persons as may be provided in the articles of incorporation or the bylaws.

(2) Written, ~~or~~ printed, **or electronic** notice stating the place, date, and time of a meeting of members and, in the case of a special meeting, each purpose for which the meeting is called, shall be delivered not less than ten (10) days or more than ~~thirty (30)~~ **sixty (60)** days before the date of the meeting, either personally, ~~or~~ by mail, **or electronically**, by or at the direction of the officers or persons calling the meeting, to each member of record entitled to vote at the meeting. If mailed, the notice is considered delivered when deposited in the United States mail in a sealed envelope addressed to the member at the member's address as it appears on the records of the surviving corporation or successor corporation, with postage prepaid. **If transmitted electronically, the notice is considered delivered when transmitted to the electronic mail address or other address provided by the member for electronic communications.** Notice of meetings of members may be waived in writing.

(3) **Unless otherwise provided in the articles of incorporation,** two percent (2%) of the **total of all members who either:**

(A) are present in person at any meeting of members; or

(B) as authorized under subsection (e), cast votes before the date of any meeting of members;

for which notice has been given as provided in subdivision (2) constitutes a quorum for the transaction of business at the meeting.

(4) **Except as provided in subsection (d) or as otherwise specifically provided in this chapter,** a majority vote of ~~those~~ **the total number of members who either:**

(A) are present in person and voting at; or

(B) as authorized under subsection (e), cast votes before the date of;

any regular meeting, or at **or before the date of** any special meeting called at least in part for the purpose of the vote, is necessary for the taking of any action, the adoption of any resolution, or the election of any directors or officers, as applicable.

(d) As provided in section 12(c)(4) of this chapter, the bylaws or articles of incorporation of the surviving corporation or successor corporation may provide that if more than two (2) persons run for election as a director from the same district, the person receiving the most votes is elected, regardless of whether that person receives a



majority of the total votes cast by those members **who either:**

- (1) are present in person and voting at; or**
- (2) as authorized under subsection (e), cast votes before the date of;**

the meeting at which the election occurs, **with respect to the particular district.**

(e) A surviving corporation or successor corporation may include a provision in the corporation's articles of incorporation or in the corporation's bylaws to allow any votes cast:

- (1) after notice of a meeting of members is provided in accordance with subsection (c)(2); and**
- (2) before the date of the meeting of members;**

whether cast in person, by mail, or by electronic ballot, to count toward the quorum requirement set forth in subsection (c)(3) or toward any quorum requirement lawfully established in the surviving corporation's or successor corporation's articles of incorporation or in the surviving corporation's or successor corporation's bylaws.

SECTION 10. IC 8-1-17.5-15, AS ADDED BY P.L.18-2010, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2018]: Sec. 15. A person may not become or remain a member of a surviving corporation or successor corporation formed under this chapter unless the person:

- (1) uses ~~retail electric service~~ energy, or communications, service or other services** supplied by the surviving corporation or successor corporation; and
- (2) complies with the terms and conditions:**
 - (A) concerning membership; and**
 - (B) set forth in the bylaws or articles of incorporation of the surviving corporation or successor corporation.**

SECTION 11. IC 8-1-17.5-19, AS AMENDED BY P.L.42-2011, SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2018]: Sec. 19. A surviving corporation or successor corporation formed under this chapter may not sell, lease, exchange, mortgage, pledge, or otherwise sell all, or substantially all, of the surviving corporation's or successor corporation's property unless the transaction is authorized by a resolution adopted at a meeting of the surviving corporation's or successor corporation's members duly called and held as provided in section 14 of this chapter. Unless otherwise provided in the surviving corporation's or successor corporation's bylaws or articles of incorporation, the resolution must receive the affirmative vote of:

SEA 156



- (1) at least a majority of the **total number of the** surviving corporation's or successor corporation's members who **either:**
 - (A) are present **in person and voting** at the meeting held under this section; **or**
 - (B) **as authorized under section 14(e) of this chapter, cast a vote before the date of the meeting;** and
- (2) at least a majority of the corporation's directors who are present at a meeting of the board of directors called and held as provided in the surviving corporation's or successor corporation's bylaws or articles of incorporation.



President of the Senate

President Pro Tempore

Speaker of the House of Representatives

Governor of the State of Indiana

Date: _____ Time: _____

SEA 156

