

SENATE MOTION

MADAM PRESIDENT:

I move that Engrossed House Bill 1018 be amended to read as follows:

- 1 Delete the title and insert the following:
2 A BILL FOR AN ACT to amend the Indiana Code concerning water
3 utilities.
4 Page 1, between the enacting clause and line 1, begin a new
5 paragraph and insert:
6 "SECTION 1. IC 8-1-2.7-1.3 IS AMENDED TO READ AS
7 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 1.3. (a) This chapter
8 applies to the following:
9 (1) A public utility established to provide water service that is:
10 (A) privately owned and serves less than three hundred (300)
11 customers;
12 (B) a not-for-profit utility (as defined by IC 8-1-2-125(a)); **or**
13 (C) a cooperative corporation exempt from state and federal
14 income taxation; **or**
15 **(D) a conservancy district (as described in IC 14-33).**
16 (2) A public utility established to provide sewage disposal service
17 (as defined in IC 8-1-2-89(a)(1)) that holds a certificate of
18 territorial authority as required by IC 8-1-2-89, and that is:
19 (A) privately owned and serves less than three hundred (300)
20 customers;
21 (B) a not-for-profit utility (as defined in IC 8-1-2-125(a)); or
22 (C) a cooperative corporation exempt from state and federal
23 income taxation.
24 (3) Except as provided in subsection (b), a legal entity providing
25 only sewage treatment service to a not-for-profit sewage disposal
26 company.
27 (b) Subsection (a)(3) does not include a sewage treatment provider
28 that is otherwise subject to the commission's jurisdiction.
29 SECTION 2. IC 8-1-2.7-1.4 IS AMENDED TO READ AS
30 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 1.4. As used in this

1 chapter:

- 2 (1) "members" of a not-for-profit water or sewage disposal
- 3 company; ~~and~~
- 4 (2) "shareholders" of a privately owned water or sewage disposal
- 5 company; ~~and~~
- 6 (3) "**freeholders**" of a conservancy district (as described in
- 7 **IC 14-33**); ~~shall~~

8 also include the customers of ~~that~~ **the utility or district.**

9 SECTION 3. IC 8-1-2.7-3 IS AMENDED TO READ AS
10 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 3. A utility described
11 in section 1.3(a)(1) or 1.3(a)(2) of this chapter that proposes to
12 withdraw from the jurisdiction of the commission must first obtain
13 approval from its members, ~~or~~ shareholders, **or freeholders.**

14 SECTION 4. IC 8-1-2.7-4 IS AMENDED TO READ AS
15 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 4. The board of
16 directors of a utility described in section 1.3(a)(1) or 1.3(a)(2) of this
17 chapter must conduct a referendum among its members, ~~or~~
18 shareholders, **or freeholders** to determine whether the members, ~~or~~
19 shareholders, **or freeholders** approve the withdrawal from commission
20 jurisdiction.

21 SECTION 5. IC 8-1-2.7-5 IS AMENDED TO READ AS
22 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 5. The referendum
23 must be conducted at a special meeting called by the board. Written
24 notice of the meeting must be sent to every member, ~~or~~ shareholder, **or**
25 **freeholder** of the withdrawing utility and to the secretary of the
26 commission not less than thirty (30) days before the date of the meeting.
27 The notice must contain the following information:

- 28 (1) The place, date, and hour of the meeting.
- 29 (2) The purpose of the meeting, including an explanation of what
- 30 the withdrawal from commission jurisdiction entails.
- 31 (3) The fact that no proxies will be permitted.

32 SECTION 6. IC 8-1-2.7-6 IS AMENDED TO READ AS
33 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 6. A quorum consisting
34 of not less than five percent (5%) of the members, ~~shareholders,~~ **or**
35 **freeholders** must be present at the meeting to transact business and to
36 take official action regarding the jurisdiction question.

37 SECTION 7. IC 8-1-2.7-7 IS AMENDED TO READ AS
38 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 7. The board shall
39 distribute secret written ballots to the members, ~~or~~ shareholders, **or**
40 **freeholders** present at the meeting. The form of the ballots must be as
41 follows:

42 YES, I want to withdraw from the jurisdiction of the
43 commission.

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

45 Only those members, ~~or~~ shareholders, **or freeholders** present at the
46 meeting are eligible to vote, and proxy votes are not permitted. Each

1 member, **or** shareholder, **or freeholder** present is entitled to one (1)
 2 vote on the question of withdrawal from commission jurisdiction. If a
 3 majority of members, **or** shareholders, **or freeholders** present vote in
 4 favor of the utility withdrawing from commission jurisdiction, the
 5 withdrawal becomes effective thirty (30) days after the date of the vote.
 6 If less than a majority of the members, **or** shareholders, **or freeholders**
 7 present vote in favor of withdrawal from commission jurisdiction, the
 8 utility is prohibited from seeking withdrawal for two (2) years following
 9 the date of the vote.

10 SECTION 8. IC 8-1-2.7-10 IS AMENDED TO READ AS
 11 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 10. (a) If a utility
 12 successfully withdraws from commission jurisdiction, the board of
 13 directors shall, within five (5) days of the meeting, send written
 14 confirmation to the secretary of the commission containing the
 15 following information:

- 16 (1) The total membership or number of shareholders **or**
 17 **freeholders** of the utility.
- 18 (2) The total number present at the meeting.
- 19 (3) The vote totals both for and against withdrawal.
- 20 (4) Written verification of notice of the meeting.
- 21 (5) An affidavit, signed by all of the members of the board of
 22 directors, stating that all of the requirements of this chapter have
 23 been met.

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

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

31 (d) Whenever two (2) or more utilities described in section 1.3(a)(1)
 32 or 1.3(a)(2) of this chapter propose to consolidate, and at least one (1),
 33 but not all of the utilities have withdrawn from commission jurisdiction,
 34 then the following apply:

- 35 (1) For purposes of the consolidation, all of the utilities are under
 36 the commission's jurisdiction.
- 37 (2) The new corporation that is formed as a result of the
 38 consolidation is under the commission's jurisdiction for all
 39 purposes and must fully comply with this chapter in order to
 40 withdraw from commission jurisdiction.

41 (e) If two (2) or more utilities described in section 1.3(a)(1)(C) or
 42 1.3(a)(2)(C) of this chapter propose to consolidate, and all of the
 43 cooperatives have withdrawn from commission jurisdiction, the new
 44 utility continues to operate outside the commission's jurisdiction under
 45 the terms of this section.

46 (f) The commission's approval is not required for consolidation of

1 two (2) or more utilities that have all withdrawn from commission
2 jurisdiction.

3 SECTION 9. IC 8-1-2.7-11 IS AMENDED TO READ AS
4 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 11. (a) Whenever the
5 members, ~~or~~ shareholders, **or freeholders** of a utility desire to return to
6 commission jurisdiction, they must petition the commission. A petition
7 signed by:

8 (1) at least fifteen percent (15%) of the members, ~~or~~ shareholders,
9 **or freeholders**; or

10 (2) the board of directors of the utility;

11 must first be submitted to the commission, informing that body of the
12 utility's intent to conduct a referendum concerning the return to
13 commission jurisdiction. The procedures outlined in sections 2 through
14 7 of this chapter must be followed when conducting a referendum under
15 this section, except that the form of the ballots must be as follows:

16 YES, I want to return to the jurisdiction of the commission.

17 NO, I want to remain outside of the jurisdiction of the
18 commission.

19 (b) The question of returning to commission jurisdiction may not be
20 submitted to the members, ~~or~~ shareholders, **or freeholders** within four
21 (4) years after the date the utility withdrew from commission
22 jurisdiction.

23 SECTION 10. IC 8-1-2.7-12 IS AMENDED TO READ AS
24 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 12. If a utility returns
25 to commission jurisdiction, the commission assumes jurisdiction thirty
26 (30) days after the date of the vote over the following:

27 (1) Rates and charges.

28 (2) Stocks, bonds, notes, or other evidence of indebtedness.

29 (3) Rules.

30 (4) The annual report filing requirement.

31 If less than a majority of the members, ~~or~~ shareholders, **or freeholders**
32 present vote in favor of returning to commission jurisdiction, a
33 referendum on the question may not be conducted for four (4) years
34 following the date of the vote.

35 SECTION 11. IC 8-1-2.7-13 IS AMENDED TO READ AS
36 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 13. If a utility attempts
37 to return to commission jurisdiction, the board of directors shall, within
38 five (5) days following the meeting, send written confirmation to the
39 secretary of the commission containing the following information:

40 (1) The total membership or number of shareholders **or**
41 **freeholders** of the utility.

42 (2) The total number present at the meeting.

43 (3) The vote totals both for and against the return.

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

45 (5) An affidavit, signed by all the members of the board of
46 directors, stating that all of the requirements of this chapter have

- 1 been met."
- 2 Renumber all SECTIONS consecutively.
(Reference is to EHB 1018 as printed February 8, 2006.)

Senator HERSHMAN