

Second Regular Session of the 121st General Assembly (2020)

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 2019 Regular Session of the General Assembly.

SENATE ENROLLED ACT No. 343

AN ACT to amend the Indiana Code concerning utilities.

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

SECTION 1. IC 5-1.5-1-8, AS AMENDED BY P.L.189-2018, SECTION 27, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 8. "Qualified entity" means:

- (1) a political subdivision (as defined in IC 36-1-2-13);
- (2) a state educational institution;
- (3) a leasing body (as defined in IC 5-1-1-1(a));
- (4) a not-for-profit utility (as defined in IC 8-1-2-125);
- (5) any rural electric membership corporation organized under IC 8-1-13;
- (6) any corporation that was organized in 1963 under Acts 1935, c. 157 and that engages in the generation and transmission of electric energy;
- (7) any ~~telephone~~ **communications** cooperative corporation formed under IC 8-1-17;
- (8) any commission, authority, or authorized body of any qualified entity;
- (9) any organization, association, or trust with members, participants, or beneficiaries that are all individually qualified entities;
- (10) any commission, authority, or instrumentality of the state;
- (11) any other participant (as defined in IC 5-1.2-2-54);
- (12) a charter school established under IC 20-5.5 (before its

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repeal) or IC 20-24 that is not a qualified entity under IC 5-1.4-1-10;

(13) a volunteer fire department (as defined in IC 36-8-12-2); or

(14) a development authority (as defined in IC 36-7.6-1-8).

SECTION 2. IC 8-1-3-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 6. All rules, practices, installations, and services prescribed, approved, or required by the commission shall be in force and shall be prima facie reasonable unless finally found otherwise by the court of appeals or by the supreme court if the cause is transferred to and decided by that court. However, pending the appeal as in this chapter provided, any municipally owned utility, public utility, rural electric membership corporation, or rural ~~telephone~~ **communications cooperative association corporation** whose rate or rates are affected by the decision, ruling, or order appealed from shall have the right to collect the rate or rates as fixed by said decision, ruling, or order, or the former rate, whichever is higher in amount, and such municipally owned utility, public utility, corporation, or association shall refund the difference to each consumer or contract customer if such difference be not sustained upon appeal. However, pending the appeal as in this chapter provided, the court of appeals, upon good cause shown by verified petition, may authorize and permit, but not require, any common or contract carrier whose rate or rates are affected by the decision, ruling, or order appealed from, to collect the rate or rates published and in effect or the rate or rates sought to be put into effect, immediately prior to the commencement of the proceeding before the commission, subject to such provisions for bond or escrow as the court shall provide to protect the interest of all parties of record before the court.

SECTION 3. IC 8-1-17-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 1. This chapter may be known and referred to as the "Rural ~~Telephone~~ **Communications** Cooperative Act".

SECTION 4. IC 8-1-17-2, AS AMENDED BY P.L.136-2018, SECTION 73, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 2. Any number of natural persons not less than eleven (11) may, by executing, filing, and recording articles of incorporation as provided in this chapter, form a cooperative corporation, not organized for pecuniary profit, for the purpose of:

(1) if ~~such the~~ corporation ~~be is~~ local in its scope, promoting and encouraging the fullest possible use of ~~telephone~~ **communications** service in Indiana by making ~~telephone~~ **communications** service and educational services incident to



telephone communications service available to inhabitants of rural areas of Indiana at the lowest cost consistent with sound economy and prudent management of the business of the cooperative corporation; or

(2) if ~~such the~~ corporation ~~be is~~ general in its scope, furnishing engineering, financial, accounting, and/or educational services, incident to **telephone communications** service.

SECTION 5. IC 8-1-17-2.1, AS AMENDED BY P.L.27-2006, SECTION 40, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 2.1. (a) If the requirements of subsection (b) are met, a local cooperative telephone corporation formed under Acts 1935, c.157 is considered to ~~have been~~ **be a communications cooperative corporation** formed under this chapter and is subject to its requirements and not the requirements of IC 23-7-1.1 (before its repeal August 1, 1991) or IC 23-17.

(b) A local cooperative telephone corporation described in subsection (a) shall amend its articles of incorporation in accordance with IC 23-7-1.1 (before its repeal August 1, 1991) or IC 23-17 to conform to the requirements of this chapter and shall submit a copy of its amended articles to the commission for approval. After examining the articles, the commission shall approve the amended articles if they conform to the requirements of this chapter. The commission may approve the amended articles without conducting a hearing. The secretary of state may not issue a certificate of amendment before the commission approves the amended articles under this subsection.

(c) The certificate of public convenience and necessity or certificate of territorial authority previously issued to a local cooperative telephone corporation described in subsection (a) shall serve as the certificate required under section 6 of this chapter (before its repeal July 1, 2009).

(d) Subsection (a) applies to a local telephone cooperative corporation as of the date the secretary of state issues a certificate of amendment under IC 23-7-1.1-26 (before its repeal August 1, 1991) or IC 23-17-17.

(e) The local cooperative telephone corporation shall record the amended articles of incorporation in the county where the local cooperative telephone corporation has its principal office.

SECTION 6. IC 8-1-17-2.2 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: **Sec. 2.2. (a) A telephone cooperative corporation formed under this chapter before July 1, 2020, is, after June 30, 2020:**

(1) considered to be a communications cooperative



corporation; and
 (2) subject to this chapter;
 as if the telephone cooperative corporation were formed under this chapter after June 30, 2020.

(b) After June 30, 2020, a reference in a statute, rule, or other document to a telephone cooperative corporation formed under this chapter is considered a reference to a communications cooperative corporation formed under this chapter.

SECTION 7. IC 8-1-17-3, AS AMENDED BY P.L.49-2018, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 3. As used in this chapter, the following terms have the following meanings unless a different meaning clearly appears from the context:

- (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) **"Communications 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, fibers, 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 communications services.**
- (4) **"Communications service":**
 - (A) has the meaning set forth in IC 8-1-32.5-3; and
 - (B) includes all facilities or systems used in the rendition of the service.
- (5) "Cooperative corporation" means a corporation formed under this chapter.
- (6) "Facilities based local exchange carrier" has the meaning set forth in IC 8-1-32.4-5.
- (7) "General cooperative corporation" means a cooperative corporation formed to render services to local cooperative corporations.
- (8) "Improve" includes construct, reconstruct, extend, enlarge, alter, better, or repair.
- (9) "Local cooperative corporation" means a cooperative corporation formed to render telephone **communications** services



within Indiana.

(10) "Local exchange service" has the meaning set forth in IC 8-1-32.4-8.

~~(8)~~ **(11) "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 and the corporation's bylaws.

~~(9)~~ **(12) "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)~~ **(13) "Person" or "inhabitant"** includes an individual, a firm, an association, a corporation, a limited liability company, a business trust, and a partnership.

~~(11)~~ **(14) "Service" or "services"**, when not accompanied by the word "telephone", **"communications"**, means construction, engineering, financial, accounting, or educational services incidental to **telephone communications** service.

~~(12)~~ **(15) "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 communications** 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 8. IC 8-1-17-5, AS AMENDED BY P.L.27-2006, SECTION 42, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 5. (a) The individuals executing the articles of incorporation of a local cooperative corporation shall be residents of the area in which the operations of the cooperative corporation are to be conducted and shall be persons desirous of using **telephone**

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communications service to be furnished by the cooperative corporation.

(b) The individuals executing the articles of incorporation of a general cooperative corporation shall be members or prospective members of one (1) or more local cooperative corporations which are prospective members of such general cooperative corporation.

(c) The articles shall be executed in at least six (6) originals and shall be acknowledged by the subscribers before an officer authorized by law to take acknowledgments of deeds. When so acknowledged, three (3) originals of said articles shall be submitted to the commission. At the time the articles of incorporation are filed, an application for a certificate of territorial authority under IC 8-1-32.5 shall be filed with the commission if the applicant will operate as a local cooperative corporation. The application shall be executed by one (1) or more of the individuals executing the articles and shall comply with the requirements of IC 8-1-32.5-6, as applicable.

(d) Upon the receipt of any articles of incorporation and application for a certificate of territorial authority, the commission shall conduct the review required under IC 8-1-32.5-8. If the applicant is a local cooperative corporation **and is applying for a certificate of territorial authority to provide local exchange service**, the commission shall give written notice, by United States registered mail, of the filing of the application to each facilities based local exchange carrier operating in territory contiguous to the area in which the cooperative corporation proposes to render ~~telephone~~ **communications** service. The commission shall use the record maintained by the commission under IC 8-1-32.5-13 to determine which facilities based local exchange carriers are entitled to notice under this subsection.

(e) If the commission, after conducting the review required by IC 8-1-32.5-8 and any hearing allowed under IC 8-1-32.5-9, determines that the applicant meets the requirements for the issuance of a certificate of territorial authority under IC 8-1-32.5-8, the commission shall:

- (1) issue a certificate of territorial authority under IC 8-1-32.5;
- and
- (2) enter an order approving the organization of the cooperative corporation and the proposed articles of incorporation.

(f) If the commission, after conducting the review required by IC 8-1-32.5-8 and any hearing allowed under IC 8-1-32.5-9, determines that the applicant does not meet the requirements for the issuance of a certificate of territorial authority under IC 8-1-32.5-8, the commission shall:

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- (1) request the applicant to provide additional information; or
 - (2) notify the applicant of the applicant's right to:
 - (A) appeal the commission's determination under IC 8-1-3; or
 - (B) file another application at a later date, without prejudice;
- under IC 8-1-32.5-8.

(g) If the commission approves the articles of incorporation under subsection (e), the cooperative corporation shall submit the following documents, along with two (2) copies of each, to the secretary of state for filing:

- (1) One (1) of the original articles of incorporation executed by the corporation under subsection (c).
- (2) A certified copy of the order of the commission under subsection (e)(2).
- (3) A certified copy of the certificate of territorial authority issued by the commission under subsection (e)(1).

If the secretary of state determines that the documents described in subdivisions (1) through (3) comply with law, the secretary of state shall endorse the documents and file one (1) set of the documents in the secretary of state's office and deliver the other two (2) sets, endorsed with the secretary of state's approval, to the incorporators. The incorporators shall record one (1) of the approved original or certified copies of the documents in the office of the recorder of the county in which the cooperative corporation has, or will have, its principal office.

(h) As soon as the provisions of this section have been complied with, the proposed cooperative corporation, described in the articles of incorporation recorded under subsection (g), under its designated name, is a body corporate.

SECTION 9. IC 8-1-17-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 10. (a) The corporate purpose of each local cooperative corporation shall be to render ~~telephone~~ **communications** service to its members and to such other persons in the specific instances as expressly provided in this chapter, and no person shall become or remain a member unless such person shall use ~~telephone~~ **communications** service supplied by such cooperative corporation and shall have complied with the terms and conditions in respect to membership contained in the bylaws of such cooperative corporation.

(b) A local cooperative corporation is one formed under this chapter for the purpose of furnishing ~~telephone~~ **communications** service to its patrons.

SECTION 10. IC 8-1-17-11, AS AMENDED BY P.L.136-2018, SECTION 74, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

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JULY 1, 2020]: Sec. 11. Any cooperative corporation to be formed under this chapter shall be either a general cooperative corporation or a local cooperative corporation.

(a) A general cooperative corporation is one formed under this chapter for the purpose of furnishing engineering, financial accounting, or educational services to its members or to persons expecting to form a local cooperative corporation, and having for its members only its incorporators or local cooperative corporations. It shall not render ~~telephone~~ **communications** service and the commission shall not allocate to it any territory for such purpose.

(b) A general cooperative corporation may be formed to have as members, and serve, local cooperative corporations in all, or certain named, counties of this state, not including any county previously named as part of the territory to be served by another general cooperative corporation then organized and existing, unless such other general cooperative corporation duly consents in writing, filed with the commission, to such inclusion.

(c) A general cooperative corporation, before obtaining the approval of its articles of incorporation, must prove to the commission that it has written consent to its incorporation signed by or on behalf of:

- (1) the local cooperative corporations then existing and contemplated to be members of the general cooperative corporation; and
- (2) the incorporated agricultural association or associations, including in its or their members at least one-third (1/3) of the members residing in the territory in which the general cooperative proposes to operate and reasonably anticipated to become members of local cooperative corporations which will become members of such general cooperative corporation.

Such signatures of said local cooperative corporations and of such agricultural associations shall be made by their respective presidents or vice presidents, and secretaries or assistant secretaries, and shall be supported by certified copies of resolutions authorizing the same and duly adopted by their boards of directors, respectively.

SECTION 11. IC 8-1-17-13, AS AMENDED BY P.L.27-2006, SECTION 43, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 13. A cooperative corporation may do any and all acts or things necessary or convenient for carrying out the purpose for which it was formed, including the following:

- (1) To sue and be sued.
- (2) To have a seal and alter the same at pleasure.
- (3) To acquire, hold, and dispose of property, real and personal,

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tangible and intangible, or any interest in the property and to pay in cash or credit, and to secure and procure payment of all or any part of the purchase price on the terms and conditions as the board shall determine.

(4) If it is a local cooperative corporation, to furnish, improve, and expand ~~telephone~~ **communications** service to its members, to governmental agencies and political subdivisions, and to other persons.

(5) If it is a local cooperative corporation, to construct, purchase, lease as lessee, or otherwise acquire, and to improve, expand, install, equip, maintain, and operate, and to sell, assign, convey, lease as lessor, mortgage, pledge, or otherwise dispose of or encumber ~~telephone~~ **communications** facilities or systems, lands, buildings, structures, plants and equipment, exchanges, and any other real or personal property, tangible or intangible which is necessary or appropriate to accomplish the purpose for which the local cooperative corporation is organized.

(6) To cease doing business and to dissolve and surrender its corporate franchise.

(7) If it is a local cooperative corporation, to construct, operate, and maintain its ~~telephone~~ **communications** facilities across or along any street or public highway, or over lands that are the property of this state or a political subdivision of the state. Before ~~telephone~~ **communications** facilities are constructed across or along a highway in the state highway system, the local cooperative corporation shall first obtain the permit of the Indiana department of transportation to do so, and the location and setting of the ~~telephone~~ **communications** facilities shall be approved by and subject to the supervision of the Indiana department of transportation. Before ~~telephone~~ **communications** facilities are constructed on or across land belonging to the state, the local cooperative corporation shall first obtain the permit of the department of state having charge of the lands to do so, and the location and setting of the ~~telephone~~ **communications** facilities shall be approved by and subject to the supervision of the department. The ~~telephone~~ **communications** facilities shall be erected and maintained so as not to interfere with the use and maintenance of the streets, highways, and lands, and no pole or appliance shall be located so as to interfere with the ingress or egress from any premises on the street or highway. Nothing in this section contained shall deprive the body having charge of the street or highway of the right to require the relocation of any pole



or appliance which may affect the proper use of the street or highway for public travel, for drainage, or for the repair, construction, or reconstruction of the street or highway. The local cooperative corporation shall restore the street, highway, or lands to their former condition or state as near as may be and shall not use the same in a manner to impair unnecessarily their usefulness or to injure the property of others.

(8) To accept gifts or grants of property, real or personal, from any person, municipality, or federal agency and to accept voluntary and uncompensated services.

(9) If it is a local cooperative corporation, to connect and interconnect its ~~telephone~~ **communications** facilities or systems with other ~~telephone~~ **communications** facilities or systems. A connection or interconnection shall be in a manner and according to specifications as will avoid interference with or hazards to existing ~~telephone~~ **communications** facilities or systems.

(10) To issue membership certificates.

(11) To borrow money and otherwise contract indebtedness, and to issue or guarantee notes, bonds, and other evidences of indebtedness and to secure the payment thereof by mortgage, pledge, or deed of trust of, or any other encumbrance upon, any or all of its then owned or after-acquired real or personal property, assets, franchises, or revenues.

(12) To make any and all contracts necessary or convenient for the full exercise of the powers in this chapter granted, including, without limiting the generality of the foregoing, contracts with any person, federal agency, municipality, or other corporation for the interconnection of ~~telephone~~ **communications** service; for the management and conduct of the business of the cooperative corporation; and for the fixing of the rates, fees, or charges for service rendered or to be rendered by the local cooperative corporation.

(13) To levy and collect reasonable fees, rents, tolls, and other charges for ~~telephone~~ **communications** service rendered.

(14) If it is a local cooperative corporation, to exercise the right of eminent domain in the manner provided by law for the exercise thereof by communications service providers (as defined in IC 8-1-2.6-13(b)).

(15) To adopt, amend, and repeal bylaws.

(16) If it is a local cooperative corporation, to become a member of a general cooperative corporation and if it is a general cooperative corporation, to have local cooperative corporations as



its members.

(17) To recover, after a period of two (2) years, any unclaimed stocks, dividends, capital credits, patronage refunds, utility deposits, membership fees, account balances, or book equities for which the owner cannot be found and are the result of distributable savings of the corporation returned to the members on a pro rata basis pursuant to section 20 of this chapter.

SECTION 12. IC 8-1-17-20, AS AMENDED BY P.L.27-2006, SECTION 48, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 20. (a) A local cooperative corporation shall be required to furnish reasonably adequate **telephone communications** services and facilities. The charge made by any local cooperative corporation for any service rendered or to be rendered, either directly or in connection with the service, shall be nondiscriminatory, reasonable, and just, and every discriminatory, unjust, or unreasonable charge for **telephone communications** service is prohibited and declared unlawful. Reasonable and just charges for **telephone communications** service within the meaning of this section are those charges that produce sufficient revenue to pay all legal and other necessary expense incident to the operation of the local cooperative corporation's system, including maintenance costs, operating charges, upkeep, repairs, interest charges on bonds or other obligations, to provide a sinking fund for the liquidation of bonds or other evidences of indebtedness, to provide adequate funds to be used as working capital, as well as funds for making extensions and replacements, and also for the payment of any taxes that may be assessed against the cooperative corporation or its property. Charges described in this section must produce an income sufficient to maintain the local cooperative corporation's property in sound physical and financial condition to render adequate and efficient service. Any rate too low to meet the foregoing requirements is unlawful. Revenues and receipts not needed for the purposes described in this section, or not needed in reserves for those purposes, shall be returned to the patrons on a pro rata basis according to the amounts paid by them for **telephone communications** service. Amounts returned under this section shall be either in cash or in abatement of current charges for **telephone communications** service, as the board may decide.

(b) As used in subsection (d), "financial assistance" means:

- (1) a loan or loan guarantee; or
- (2) a lien accommodation provided to secure a loan made by another lender;

including loans made by the Rural Electrification Administration of the

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United States Department of Agriculture (REA) or by the Rural Telephone Bank.

(c) As used in subsections (d) and (e), "REA borrower" means a corporation created under this chapter that is the recipient of financial assistance.

(d) In determining rates under this section, an REA borrower must charge rates sufficient to enable the REA borrower to:

- (1) satisfy its reasonable expenses and obligations; and
- (2) repay the full amount of any financial assistance and the interest thereon.

(e) So long as there remains any unpaid portion of any financial assistance associated with the property of an REA borrower, the rates of the REA borrower shall be set at a level sufficient to repay the financial assistance, regardless of the full or partial retirement of the property or any other change in the status of the property.

SECTION 13. IC 8-1-17-23, AS AMENDED BY P.L.27-2006, SECTION 49, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 23. (a) A cooperative corporation may amend its articles of incorporation to change its corporate name, to increase or reduce the number of its directors, or to change any other provisions set forth in the articles. However, any change of location of the principal office shall be effected in the manner set forth in section 24 of this chapter. An amendment under this section may be accomplished by filing articles of amendment, along with any notice of change required under IC 8-1-32.5-12, with the commission. The articles of amendment shall be entitled and endorsed "Articles of Amendment of _____" (the blank space being filled in with the name of the cooperative corporation) and must include the following:

- (1) The name of the cooperative corporation, and if it has been changed, the name under which it was originally incorporated.
- (2) The date of filing the articles of incorporation in each public office where filed.
- (3) Whether the statement of counties within which the corporation's operations are to be conducted is to be changed, and if so a new statement of the counties in which the corporation will operate.
- (4) An affidavit, signed by the officer executing the articles of amendment, stating that the provisions of this section were complied with.

(b) The amended articles shall be subscribed in the name of the cooperative corporation by the appropriate officers of the cooperative corporation, who shall make and annex an affidavit stating that they

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have been authorized to execute and file the amended articles by a resolution duly adopted at a meeting of the cooperative corporation duly called and held as provided in section 9 of this chapter. If by any amendment to the articles of incorporation, the territory proposed to be served by the cooperative corporation is to be increased or decreased, the appropriate officers of the cooperative corporation shall submit to the commission:

- (1) an application for a new certificate of territorial authority under IC 8-1-32.5-6; or
- (2) a notice of change under IC 8-1-32.5-12(7), as allowed by the commission.

(c) Upon receipt of an application or a notice of change under subsection (b), the commission shall conduct the review required under IC 8-1-32.5-8. If the applicant is a local cooperative corporation **and will provide local exchange service under the new certificate of territorial authority**, the commission shall give written notice of the proposed change in the corporation's territory to each facilities based local exchange carrier operating in contiguous territory in the manner provided in section 5 of this chapter. If the commission, after conducting the review required by IC 8-1-32.5-8 and any hearing allowed under IC 8-1-32.5-9, determines that the amended articles and the application or notice of change under IC 8-1-32.5 are accurate, complete, and properly verified, the commission shall:

- (1) issue a new or amended certificate under IC 8-1-32.5 that reflects the increase or decrease in the territory served by the corporation; and
- (2) enter an order approving the amended articles of the cooperative corporation.

(d) If the commission, after conducting the review required by IC 8-1-32.5-8 and any hearing allowed under IC 8-1-32.5-9, determines that the amended articles or an application or notice of change under IC 8-1-32.5 **are is** inaccurate, incomplete, or not properly verified, the commission shall:

- (1) request the corporation to provide additional information; or
- (2) notify the corporation of the corporation's right to:
 - (A) appeal the commission's determination under IC 8-1-3; or
 - (B) file the amended articles or an application or notice of change under IC 8-1-32.5 at a later date, without prejudice;

under IC 8-1-32.5-8.

(e) An amendment increasing or decreasing the territory to be served by a cooperative corporation shall not be filed in the office of the secretary of state or of any county recorder unless there is attached



to the amendment a certified copy of an order of the commission under subsection (c)(2). The amended articles shall be filed in the same places as the original articles of incorporation and upon filing the amendment shall be considered to have been effected.

SECTION 14. IC 8-1-17-25, AS AMENDED BY P.L.27-2006, SECTION 51, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 25. (a) Any cooperative corporation may dissolve by filing in the office of the secretary of state articles of dissolution entitled and endorsed "Articles of Dissolution of _____" (the blank space being filled in with the name of the cooperative corporation). The articles of dissolution shall state the following:

- (1) The name of the cooperative corporation, and if the cooperative corporation is a corporation resulting from a consolidation as provided in this chapter, the names of the original cooperative corporations.
- (2) The date of filing of the articles of incorporation in the office of secretary of state and, if the cooperative corporation is a corporation resulting from a consolidation as provided in this chapter, the dates on which the articles of incorporation of the original cooperative corporations were filed in the office of secretary of state.
- (3) That the cooperative corporation elects to dissolve.
- (4) The name and post office address of each of its directors, and the name, title, and post office address of each of its officers.

The articles shall be subscribed and acknowledged by the appropriate officers of the cooperative corporation who shall make and annex an affidavit stating that they have been authorized to execute and file the articles by a resolution duly adopted by the members of the cooperative corporation at a meeting duly called and held as provided in section 9 of this chapter. Articles of dissolution or a certified copy or copies of the articles shall be filed in the same places as original articles of incorporation. If the dissolving corporation is a local cooperative corporation, any certificate of territorial authority issued under IC 8-1-32.5 shall be relinquished, and the appropriate officers of the corporation shall notify the commission of the relinquishment under IC 8-1-32.5-12(5).

(b) Upon the filings required by subsection (a), the cooperative corporation is dissolved. However, the cooperative corporation shall continue for the purpose of paying, satisfying, and discharging any existing liabilities or obligations and collecting or liquidating its assets, and doing all other acts required to adjust and wind up its business affairs, and may sue and be sued in its corporate name. Any assets



remaining after all liabilities and obligations of the cooperative corporation have been satisfied and discharged shall be refunded pro rata to the patrons, their assignees, personal representatives, heirs, or legatees, who have paid for **telephone communications** service rendered by the cooperative corporation within the five (5) year period immediately preceding the dissolution. Any assets not refunded within the two (2) year period after the dissolution is completed shall pass to and become the property of the state.

SECTION 15. IC 8-1-17-26, AS AMENDED BY P.L.27-2006, SECTION 52, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 26. (a) Any foreign corporation organized as a nonprofit corporation for the purpose of making **telephone communications** service available to the inhabitants of rural areas may be admitted to do business in Indiana and shall have the same powers, restrictions, and liabilities as a cooperative corporation organized under this chapter. Whenever a foreign corporation desires to be admitted to operate in Indiana, it shall file with the commission an application for a certificate of territorial authority under IC 8-1-32.5. The appropriate officers of the corporation shall attach to the application a copy of the articles of incorporation of the foreign corporation, and all amendments to the articles, duly authenticated by the proper officer of the state in which the corporation is incorporated. Upon receipt of the application and the articles of incorporation, the commission shall conduct the review required under IC 8-1-32.5-8. **If the foreign corporation is applying for a certificate of territorial authority to provide local exchange service**, the commission shall give written notice of the filing of the application to each facilities based local exchange carrier operating in contiguous territory in the manner provided in section 5 of this chapter.

(b) If the commission, after conducting the review required by IC 8-1-32.5-8 and any hearing allowed under IC 8-1-32.5-9, determines that the foreign corporation meets the requirements for the issuance of a certificate of territorial authority under IC 8-1-32.5, the commission shall enter an order granting a certificate of territorial authority under IC 8-1-32.5 for the proposed operations of the foreign corporation in Indiana and shall attach a copy of the order, duly certified by the secretary of the commission, to each original application filed with the commission and deliver the applications and orders to the petitioner.

(c) If the commission, after conducting the review required by IC 8-1-32.5-8 and any hearing allowed under IC 8-1-32.5-9, determines that the foreign corporation does not meet the requirements for the issuance of a certificate of territorial authority under IC 8-1-32.5, the



commission shall:

- (1) request the foreign corporation to provide additional information; or
- (2) notify the foreign corporation of the foreign corporation's right to:

- (A) appeal the commission's determination under IC 8-1-3; or
- (B) file another application at a later date, without prejudice; under IC 8-1-32.5-8.

(d) If the commission issues a certificate of territorial authority under subsection (b), the foreign corporation shall present to the secretary of state all sets of authenticated copies of its articles of incorporation, the original applications under IC 8-1-32.5, and the order of the commission under subsection (b), together with any application for admission to do business in Indiana that the secretary of state may require, and shall tender to the secretary of state six dollars and fifty cents (\$6.50) to cover the secretary of state's fees under this subsection. If the secretary of state approves the documents submitted, the secretary of state shall endorse the secretary of state's approval upon each of the documents, file one (1) copy in the secretary of state's office, return the remaining copies to the foreign corporation, and issue to the foreign corporation a certificate of admission to do business in Indiana. Before the foreign corporation may do any business in Indiana, it shall file in the office of the recorder of each county in Indiana in which it will make ~~telephone~~ **communications** service available one (1) set of the documents bearing the approval of the secretary of state under this subsection.

SECTION 16. IC 29-1-17-12, AS AMENDED BY P.L.2-2008, SECTION 69, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 12. (a) If after reasonable search, satisfactory to the court, there shall be no known heir of the decedent, all of ~~his~~ **the decedent's** net estate not disposed of by will shall be ordered paid to the state treasurer to become a part of the common school fund, subject to the further provisions of this section.

(b) If any heir, distributee, advisee, or claimant cannot be found after reasonable search, satisfactory to the court, the personal representative shall sell the share of the estate to which ~~he~~ **the heir, distributee, advisee, or claimant** is entitled, pursuant to an order of court first obtained, and pay the proceeds to the clerk of the court for use and benefit of the person or persons thereafter determined to be entitled thereto according to law.

(c) When the personal representative shall pay any money to the state treasurer or clerk of the court pursuant to this section, ~~he~~ **the**

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personal representative shall take a receipt therefor and file it with the court with the other receipts filed in the proceeding. Such receipt shall be sufficient to discharge the personal representative in the same manner and to the same extent as though such distribution or payment were made to a distributee or claimant entitled thereto.

(d) The moneys received by the state treasurer pursuant to the provisions of this section shall be paid to the person entitled on proof of ~~his~~ **the person's** right thereto or in the case of an absentee, to the receiver of such absentee's property, or, if the state treasurer refuses or fails to pay because ~~he~~ **the state treasurer** is doubtful as to ~~his~~ **the state treasurer's** duties in the premises, such person may apply to the court in which the estate was administered, whereupon the court upon notice to the state treasurer may determine the person entitled thereto and order the treasurer to pay the same accordingly. No interest shall be allowed thereon and such distributee or claimant shall pay all costs and expenses incident to the proceedings. If such proceeds are not paid or no application is made to the court within seven (7) years after such payment to the state treasurer, no recovery thereof shall be had.

(e) This section does not apply to stocks, dividends, capital credits, patronage refunds, utility deposits, membership fees, account balances, or book equities for which the owner cannot be found and that are the result of distributable savings of a rural electric membership corporation formed under IC 8-1-13, a rural ~~telephone~~ **communications** cooperative corporation formed under IC 8-1-17, or an agricultural cooperative association formed under IC 15-12-1.

SECTION 17. IC 30-4-3-37, AS ADDED BY P.L.6-2010, SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 37. (a) If a beneficiary of a trust cannot be found after a reasonable search, the trustee may file a petition setting out the facts of the unsuccessful search. The court may order the trustee to sell the shares of the trust to which the beneficiary is entitled and to pay the proceeds to the clerk of the court. The clerk shall hold the proceeds for the use and benefit of the person or persons thereafter determined by law to be entitled to the proceeds.

(b) If a trustee pays any money to the clerk of the court under this section, the trustee shall file a receipt with the court. Filing the receipt is sufficient to discharge the trustee in the same manner and to the same extent as though the trustee had paid or distributed the appropriate share of the trust to the unlocated beneficiary.

(c) This section does not apply to stocks, dividends, capital credits, patronage, refunds, utility deposits, membership fees, account balances, or book equities for which the owner cannot be found that are the result

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of distributable savings of a rural electric membership corporation formed under IC 8-1-13, a rural ~~telephone~~ **communications** cooperative corporation formed under IC 8-1-17, or an agricultural cooperative association formed under IC 15-12-1.

SECTION 18. IC 32-28-3-1, AS AMENDED BY P.L.146-2008, SECTION 674, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 1. (a) A contractor, a subcontractor, a mechanic, a lessor leasing construction and other equipment and tools, whether or not an operator is also provided by the lessor, a journeyman, a laborer, or any other person performing labor or furnishing materials or machinery, including the leasing of equipment or tools, for:

- (1) the erection, alteration, repair, or removal of:
 - (A) a house, mill, manufactory, or other building; or
 - (B) a bridge, reservoir, system of waterworks, or other structure;
- (2) the construction, alteration, repair, or removal of a walk or sidewalk located on the land or bordering the land, a stile, a well, a drain, a drainage ditch, a sewer, or a cistern; or
- (3) any other earth moving operation;

may have a lien as set forth in this section.

(b) A person described in subsection (a) may have a lien separately or jointly:

- (1) upon the house, mill, manufactory, or other building, bridge, reservoir, system of waterworks, or other structure, sidewalk, walk, stile, well, drain, drainage ditch, sewer, cistern, or earth:
 - (A) that the person erected, altered, repaired, moved, or removed; or
 - (B) for which the person furnished materials or machinery of any description; and
- (2) on the interest of the owner of the lot or parcel of land:
 - (A) on which the structure or improvement stands; or
 - (B) with which the structure or improvement is connected;

to the extent of the value of any labor done or the material furnished, or both, including any use of the leased equipment and tools.

(c) All claims for wages of mechanics and laborers employed in or about a shop, mill, wareroom, storeroom, manufactory or structure, bridge, reservoir, system of waterworks or other structure, sidewalk, walk, stile, well, drain, drainage ditch, cistern, or any other earth moving operation shall be a lien on all the:

- (1) machinery;
- (2) tools;

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- (3) stock;
- (4) material; or
- (5) finished or unfinished work;

located in or about the shop, mill, wareroom, storeroom, manufactory or other building, bridge, reservoir, system of waterworks, or other structure, sidewalk, walk, stile, well, drain, drainage ditch, sewer, cistern, or earth used in a business.

(d) If the person, firm, limited liability company, or corporation described in subsection (a) or (c) is in failing circumstances, the claims described in this section shall be preferred debts whether a claim or notice of lien has been filed.

(e) Subject to subsection (f), a contract:

- (1) for the construction, alteration, or repair of a Class 2 structure (as defined in IC 22-12-1-5);
- (2) for the construction, alteration, or repair of an improvement on the same real estate auxiliary to a Class 2 structure (as defined in IC 22-12-1-5);

(3) for the construction, alteration, or repair of property that is:

(A) owned, operated, managed, or controlled by a:

- (i) public utility (as defined in IC 8-1-2-1);
- (ii) municipally owned utility (as defined in IC 8-1-2-1);
- (iii) joint agency (as defined in IC 8-1-2.2-2);
- (iv) rural electric membership corporation formed under IC 8-1-13-4;
- (v) rural ~~telephone~~ **communications** cooperative corporation formed under IC 8-1-17; or
- (vi) not-for-profit utility (as defined in IC 8-1-2-125);

regulated under IC 8; and

(B) intended to be used and useful for the production, transmission, delivery, or furnishing of heat, light, water, telecommunications services, or power to the public; or

(4) to prepare property for Class 2 residential construction;

may include a provision or stipulation in the contract of the owner and principal contractor that a lien may not attach to the real estate, building, structure or any other improvement of the owner.

(f) A contract containing a provision or stipulation described in subsection (e) must meet the requirements of this subsection to be valid against subcontractors, mechanics, journeymen, laborers, or persons performing labor upon or furnishing materials or machinery for the property or improvement of the owner. The contract must:

- (1) be in writing;
- (2) contain specific reference by legal description of the real

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estate to be improved;

(3) be acknowledged as provided in the case of deeds; and

(4) be filed and recorded in the recorder's office of the county in which the real estate, building, structure, or other improvement is situated not more than five (5) days after the date of execution of the contract.

A contract containing a provision or stipulation described in subsection (e) does not affect a lien for labor, material, or machinery supplied before the filing of the contract with the recorder.

(g) Upon the filing of a contract under subsection (f), the recorder shall:

(1) record the contract at length in the order of the time it was received in books provided by the recorder for that purpose;

(2) index the contract in the name of the:

(A) contractor; and

(B) owner;

in books kept for that purpose; and

(3) collect a fee for recording the contract as is provided for the recording of deeds and mortgages.

(h) A person, firm, partnership, limited liability company, or corporation that sells or furnishes on credit any material, labor, or machinery for the alteration or repair of an owner occupied single or double family dwelling or the appurtenances or additions to the dwelling to:

(1) a contractor, subcontractor, mechanic; or

(2) anyone other than the occupying owner or the owner's legal representative;

must furnish to the occupying owner of the parcel of land where the material, labor, or machinery is delivered a written notice of the delivery or work and of the existence of lien rights not later than thirty (30) days after the date of first delivery or labor performed. The furnishing of the notice is a condition precedent to the right of acquiring a lien upon the lot or parcel of land or the improvement on the lot or parcel of land.

(i) A person, firm, partnership, limited liability company, or corporation that sells or furnishes on credit material, labor, or machinery for the original construction of a single or double family dwelling for the intended occupancy of the owner upon whose real estate the construction takes place to a contractor, subcontractor, mechanic, or anyone other than the owner or the owner's legal representatives must:

(1) furnish the owner of the real estate:

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- (A) as named in the latest entry in the transfer books described in IC 6-1.1-5-4 of the county auditor; or
 - (B) if IC 6-1.1-5-9 applies, as named in the transfer books of the township assessor (if any) or the county assessor;
- with a written notice of the delivery or labor and the existence of lien rights not later than sixty (60) days after the date of the first delivery or labor performed; and
- (2) file a copy of the written notice in the recorder's office of the county not later than sixty (60) days after the date of the first delivery or labor performed.

The furnishing and filing of the notice is a condition precedent to the right of acquiring a lien upon the real estate or upon the improvement constructed on the real estate.

(j) A lien for material or labor in original construction does not attach to real estate purchased by an innocent purchaser for value without notice of a single or double family dwelling for occupancy by the purchaser unless notice of intention to hold the lien is recorded under section 3 of this chapter before recording the deed by which the purchaser takes title.

SECTION 19. IC 32-28-3-5, AS AMENDED BY P.L.35-2010, SECTION 207, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 5. (a) As used in this section, "lender" refers to:

- (1) an individual;
- (2) a supervised financial organization (as defined in IC 26-1-4-102.5);
- (3) an insurance company or a pension fund; or
- (4) any other entity that has the authority to make loans.

(b) The recorder shall record the statement and notice of intention to hold a lien when presented under section 3 of this chapter in the miscellaneous record book. The recorder shall charge a fee for recording the statement and notice in accordance with IC 36-2-7-10. When the statement and notice of intention to hold a lien is recorded, the lien is created. The recorded lien relates back to the date the mechanic or other person began to perform the labor or furnish the materials or machinery. Except as provided in subsections (c) and (d), a lien created under this chapter has priority over a lien created after it.

(c) The lien of a mechanic or materialman does not have priority over the lien of another mechanic or materialman.

(d) The mortgage of a lender has priority over all liens created under this chapter that are recorded after the date the mortgage was recorded, to the extent of the funds actually owed to the lender for the specific



project to which the lien rights relate. This subsection does not apply to a lien that relates to a construction contract for the development, construction, alteration, or repair of the following:

- (1) A Class 2 structure (as defined in IC 22-12-1-5).
- (2) An improvement on the same real estate auxiliary to a Class 2 structure (as defined in IC 22-12-1-5).
- (3) Property that is:
 - (A) owned, operated, managed, or controlled by:
 - (i) a public utility (as defined in IC 8-1-2-1);
 - (ii) a municipally owned utility (as defined in IC 8-1-2-1);
 - (iii) a joint agency (as defined in IC 8-1-2.2-2);
 - (iv) a rural electric membership corporation formed under IC 8-1-13-4;
 - (v) a rural ~~telephone~~ **communications** cooperative corporation formed under IC 8-1-17; or
 - (vi) a not-for-profit utility (as defined in IC 8-1-2-125);
 regulated under IC 8; and
 - (B) intended to be used and useful for the production, transmission, delivery, or furnishing of heat, light, water, telecommunications services, or power to the public.

SECTION 20. IC 32-28-3-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 16. (a) This section applies to a construction contract for the construction, alteration, or repair of a building or structure other than:

- (1) a Class 2 structure (as defined in IC 22-12-1-5) or an improvement on the same real estate auxiliary to a Class 2 structure (as defined in IC 22-12-1-5); or
- (2) property that is:
 - (A) owned, operated, managed, or controlled by a public utility (as defined in IC 8-1-2-1), a municipally owned utility (as defined in IC 8-1-2-1), a joint agency (as defined in IC 8-1-2.2-2), a rural electric membership corporation formed under IC 8-1-13-4, rural ~~telephone~~ **communications** cooperative corporation formed under IC 8-1-17, or a not-for-profit utility (as defined in IC 8-1-2-125) regulated under IC 8; and
 - (B) intended to be used and useful for the production, transmission, delivery, or furnishing of heat, light, water, telecommunications services, or power to the public.

(b) A provision in a contract for the improvement of real estate in Indiana is void if the provision requires a person described in section 1 of this chapter who furnishes labor, materials, or machinery to waive



a right to:

- (1) a lien against real estate; or
- (2) a claim against a payment bond;

before the person is paid for the labor or materials furnished.

(c) A provision in a contract for the improvement of real estate in Indiana under which one (1) or more persons agree not to file a notice of intention to hold a lien is void.

SECTION 21. IC 32-28-3-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 18. (a) This section applies to a provider of labor, materials, or equipment under a contract for the improvement of real estate that conditions the right of the provider to receive payment on the obligor's receipt of payment from a third person with whom the provider does not have a contractual relationship.

(b) This section does not apply to a construction contract for the construction, alteration, or repair of the following:

- (1) A Class 2 structure (as defined in IC 22-12-1-5).
- (2) An improvement on the same real estate auxiliary to a Class 2 structure (as defined in IC 22-12-1-5).

(3) Property that is:

(A) owned, operated, managed, or controlled by a:

- (i) public utility (as defined in IC 8-1-2-1);
- (ii) municipally owned utility (as defined in IC 8-1-2-1);
- (iii) joint agency (as defined in IC 8-1-2.2-2);
- (iv) rural electric membership corporation formed under IC 8-1-13-4;
- (v) rural ~~telephone~~ **communications** cooperative corporation formed under IC 8-1-17; or
- (vi) not-for-profit utility (as defined in IC 8-1-2-125);

regulated under IC 8; and

(B) intended to be used and useful for the production, transmission, delivery, or furnishing of heat, light, water, telecommunications services, or power to the public.

(c) An obligor's receipt of payment from a third person may not:

- (1) be a condition precedent to;
- (2) limit; or
- (3) be a defense to;

the provider's right to record or foreclose a lien against the real estate that was improved by the provider's labor, material, or equipment.

SECTION 22. IC 32-34-1-1, AS AMENDED BY P.L.2-2008, SECTION 70, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 1. (a) This chapter does not apply to any property

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held, due, and owing in a foreign country and arising out of a foreign transaction.

(b) This chapter does not apply to:

- (1) stocks;
- (2) dividends;
- (3) capital credits;
- (4) patronage refunds;
- (5) utility deposits;
- (6) membership fees;
- (7) account balances; or
- (8) book equities;

for which the owner cannot be found and that are the result of distributable savings of a rural electric membership corporation formed under IC 8-1-13, a rural ~~telephone~~ **communications** cooperative corporation formed under IC 8-1-17, or an agricultural cooperative association formed under IC 15-12-1.

(c) This chapter does not apply to unclaimed overpayments of utility bills that become the property of a municipality under IC 36-9-23-28.5.

(d) This chapter does not apply to deposits required by a municipally owned utility (as defined in IC 8-1-2-1).

(e) This chapter does not apply to a business to business credit memorandum or a credit balance resulting from a business to business credit memorandum.

(f) This chapter does not apply to gift certificates or gift cards.

SECTION 23. IC 34-30-2-24.2, AS AMENDED BY P.L.86-2018, SECTION 240, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 24.2. (a) IC 8-1-2.8-25 (Concerning InTRAC or a local exchange company for the development, adoption, implementation, maintenance, or operation of dual party relay services or telecommunications devices).

(b) IC 8-1-17.5-16 (Concerning a member or director of a rural electric membership corporation or ~~telephone~~ **communications** cooperative corporation that is merged or consolidated).

(c) IC 8-1-19.5-10 (Concerning a recognized 211 service provider and its employees, directors, officers, and agents for injuries or loss to persons or property as a result of an act or omission in connection with developing and providing 211 services).



President of the Senate

President Pro Tempore

Speaker of the House of Representatives

Governor of the State of Indiana

Date: _____ Time: _____

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