

First Regular Session of the 123rd General Assembly (2023)

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 2022 Regular Session of the General Assembly.

## HOUSE ENROLLED ACT No. 1402

---

AN ACT to amend the Indiana Code concerning health.

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

SECTION 1. IC 8-1-1.9-6 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JULY 1, 2023]: **Sec. 6. (a) This section applies to a wastewater utility that:**

- (1) is not subject to the jurisdiction of the commission for the approval of rates and charges; and**
- (2) receives wholesale wastewater service from another wastewater utility.**

**(b) As used in this section, "wastewater utility" means a:**

- (1) public utility;**
- (2) municipally owned utility (as defined in IC 8-1-2-1(h)) that serves fewer than eight thousand (8,000) customers;**
- (3) not-for-profit utility (as defined in IC 8-1-2-125(a));**
- (4) cooperatively owned corporation;**
- (5) conservancy district established under IC 14-33; or**
- (6) regional sewer district established under IC 13-26.**

**(c) Before a wastewater utility may:**

- (1) disconnect from the wholesale wastewater service provided by another wastewater utility; and**
- (2) construct a new wastewater treatment plant to serve its customers;**

**the wastewater utility must obtain the approval of the commission of its plan to disconnect from the other wastewater utility's**

HEA 1402 — CC 1



**wholesale wastewater service and construct a new wastewater treatment plant.**

**(d) A wastewater utility to which subsection (c) applies must submit to the commission as part of the wastewater utility's case in chief:**

- (1) the current costs incurred by the wastewater utility for utility service with the other wastewater utility providing wholesale wastewater service;**
- (2) the projected future costs to be incurred by the wastewater utility for utility service if the other wastewater utility were to continue providing wholesale wastewater service; and**
- (3) the projected future costs to be incurred by the wastewater utility for utility service if the wastewater utility were to disconnect from the other wastewater utility providing wholesale wastewater service and construct a new wastewater treatment plant.**

**(e) The commission may approve a wastewater utility's proposal under subsection (c) if the commission finds that:**

- (1) the disconnection from the wholesale wastewater service and the construction of a new wastewater treatment plant is reasonable and in the public interest;**
- (2) the total rates charged by the wastewater utility for wastewater service will not increase above the projected cost of continued service with the wholesale wastewater service provider as a result of the disconnection from the wholesale wastewater service and the new wastewater treatment plant construction;**
- (3) the wastewater utility has developed an asset management program, as defined in guidelines adopted by the Indiana finance authority under IC 5-1.2; and**
- (4) the wastewater utility has the legal, managerial, technical, and financial expertise to construct and manage a new wastewater treatment plant.**

**(f) In the commission's annual report under IC 8-1-1-14, the commission shall include a description of any activity under this section.**

SECTION 2. IC 13-26-5-2, AS AMENDED BY P.L.178-2013, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 2. A district may do the following:

- (1) Sue or be sued.
- (2) Make contracts in the exercise of the rights, powers, and duties conferred upon the district.



- (3) Adopt and alter a seal and use the seal by causing the seal to be impressed, affixed, reproduced, or otherwise used. However, the failure to affix a seal does not affect the validity of an instrument.
- (4) Adopt, amend, and repeal the following:
- (A) Bylaws for the administration of the district's affairs.
  - (B) Rules and regulations for the following:
    - (i) The control of the administration and operation of the district's service and facilities.
    - (ii) The exercise of all of the district's rights of ownership.
- (5) Construct, acquire, lease, operate, or manage works and obtain rights, easements, licenses, money, contracts, accounts, liens, books, records, maps, or other property, whether real, personal, or mixed, of a person or an eligible entity.
- (6) Assume in whole or in part any liability or obligation of:
- (A) a person;
  - (B) a nonprofit water, sewage, or solid waste project system; or
  - (C) an eligible entity;
- including a pledge of part or all of the net revenues of a works to the debt service on outstanding bonds of an entity in whole or in part in the district and including a right on the part of the district to indemnify and protect a contracting party from loss or liability by reason of the failure of the district to perform an agreement assumed by the district or to act or discharge an obligation.
- (7) Fix, alter, charge, and collect reasonable rates and other charges in the area served by the district's facilities to every person whose premises are, whether directly or indirectly, supplied with water or provided with sewage or solid waste services by the facilities for the purpose of providing for the following:
- (A) The payment of the expenses of the district.
  - (B) The construction, acquisition, improvement, extension, repair, maintenance, and operation of the district's facilities and properties.
  - (C) The payment of principal or interest on the district's obligations.
  - (D) To fulfill the terms of agreements made with:
    - (i) the purchasers or holders of any obligations; or
    - (ii) a person or an eligible entity.
- (8) Except as provided in sections 2.5 and 2.6 of this chapter, require connection to the district's sewer system of property



producing sewage or similar waste, and require the discontinuance of use of privies, cesspools, septic tanks, and similar structures if:

(A) there is an available sanitary sewer within three hundred (300) feet of:

- (i) the property line, if the property is adjacent to a body of water, including a lake, river, or reservoir;
- (ii) any part of a subdivision, or land that is divided or proposed to be divided into lots, whether contiguous or subject to zoning requirements, for the purpose of sale or lease as part of a larger common plan of development or sale; or
- (iii) for all other properties, the improvement or other structure from which the sewage or similar waste is discharged;

(B) the district has given written notice by certified mail to the property owner at the address of the property at least ninety (90) days before a date for connection to be stated in the notice and **the notice includes a list of the applicable exemptions from connecting to the sewer system available to the property owner that are described in section 2.5 of this chapter; and**

(C) if the property is located outside the district's territory:

- (i) the district has obtained and provided to the property owner (along with the notice required by clause (B)) a letter of recommendation from the local health department that there is a possible threat to the public's health; and
- (ii) if the property is also located within the extraterritorial jurisdiction of a municipal sewage works under IC 36-9-23 or a public sanitation department under IC 36-9-25, the municipal works board or department of public sanitation has acknowledged in writing that the property is within the municipal sewage works or department of public sanitation's extraterritorial jurisdiction, but the municipal works board or department of public sanitation is unable to provide sewer service.

However, a district may not require the owner of a property described in this subdivision to connect to the district's sewer system if the property is already connected to a sewer system that has received an NPDES permit and has been determined to be functioning satisfactorily.

(9) Provide by ordinance for a reasonable penalty, not to exceed



one hundred dollars (\$100) per day, for failure to connect and also apply to the circuit or superior court of the county in which the property is located for an order to force connection, with the cost of the action, including reasonable attorney's fees of the district, to be assessed by the court against the property owner in the action.

(10) Refuse the services of the district's facilities if the rates or other charges are not paid by the user.

(11) Control and supervise all property, works, easements, licenses, money, contracts, accounts, liens, books, records, maps, or other property rights and interests conveyed, delivered, transferred, or assigned to the district.

(12) Construct, acquire by purchase or otherwise, operate, lease, preserve, and maintain works considered necessary to accomplish the purposes of the district's establishment within or outside the district and enter into contracts for the operation of works owned, leased, or held by another entity, whether public or private.

(13) Hold, encumber, control, acquire by donation, purchase, or condemnation, construct, own, lease as lessee or lessor, use, and sell interests in real and personal property or franchises within or outside the district for:

(A) the location or protection of works;

(B) the relocation of buildings, structures, and improvements situated on land required by the district or for any other necessary purpose; or

(C) obtaining or storing material to be used in constructing and maintaining the works.

(14) Upon consent of two-thirds (2/3) of the members of the board, merge or combine with another district into a single district on terms so that the surviving district:

(A) is possessed of all rights, franchises, and authority of the constituent districts; and

(B) is subject to all the liabilities, obligations, and duties of each of the constituent districts, with all rights of creditors of the constituent districts being preserved unimpaired.

(15) Provide by agreement with another eligible entity for the joint construction of works the district is authorized to construct if the construction is for the district's own benefit and that of the other entity. For this purpose the cooperating entities may jointly appropriate land either within or outside their respective borders if all subsequent proceedings, actions, powers, liabilities, rights, and duties are those set forth by statute.



(16) Enter into contracts with a person, an eligible entity, the state, or the United States to provide services to the contracting party for any of the following:

(A) The distribution or purification of water.

(B) The collection or treatment of sanitary sewage.

(C) The collection, disposal, or recovery of solid waste.

(17) Make provision for, contract for, or sell the district's byproducts or waste.

(18) Exercise the power of eminent domain, including for purposes of siting sewer or water utility infrastructure, but only after the district attempts to use existing public rights-of-way or easements.

(19) Remove or change the location of a fence, building, railroad, canal, or other structure or improvement located within or outside the district. If:

(A) it is not feasible or economical to move the building, structure, or improvement situated in or upon land acquired; and

(B) the cost is determined by the board to be less than that of purchase or condemnation;

the district may acquire land and construct, acquire, or install buildings, structures, or improvements similar in purpose to be exchanged for the buildings, structures, or improvements under contracts entered into between the owner and the district.

(20) Employ consulting engineers, superintendents, managers, and other engineering, construction, and accounting experts, attorneys, bond counsel, employees, and agents that are necessary for the accomplishment of the district's purpose and fix their compensation.

(21) Procure insurance against loss to the district by reason of damages to the district's properties, works, or improvements resulting from fire, theft, accident, or other casualty or because of the liability of the district for damages to persons or property occurring in the operations of the district's works and improvements or the conduct of the district's activities.

(22) Exercise the powers of the district without obtaining the consent of other eligible entities. However, the district shall:

(A) restore or repair all public or private property damaged in carrying out the powers of the district and place the property in the property's original condition as nearly as practicable; or

(B) pay adequate compensation for the property.

(23) Dispose of, by public or private sale or lease, real or personal



property determined by the board to be no longer necessary or needed for the operation or purposes of the district.

SECTION 3. IC 16-18-2-317.8, AS ADDED BY P.L.167-2022, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 317.8. "Residential onsite sewage system", for purposes of **IC 16-19-3-27.5, IC 16-19-3-27.7, IC 16-19-3-27.8, and IC 16-41-25**, has the meaning set forth in IC 16-41-25-0.4.

SECTION 4. IC 16-19-3-27.5, AS AMENDED BY P.L.178-2022(ts), SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 27.5. (a) As used in this section **and section 27.8 of this chapter**, "technology new to Indiana" (referred to in this section as "TNI") means sewage treatment or disposal methods, processes, or equipment that are not described in the administrative rules of the state department or the executive board concerning residential onsite sewage systems (410 IAC 6-8.3) or commercial onsite sewage systems (410 IAC 6-10.1).

(b) The state department shall establish and maintain a technical review panel consisting of individuals with technical or scientific knowledge relating to onsite sewage systems. The technical review panel: ~~shall:~~

- (1) **shall** decide under subsection (f) whether to approve:
  - (A) proprietary residential wastewater treatment devices; and
  - (B) proprietary commercial wastewater treatment devices;
 for general use in Indiana;
- (2) **shall** biannually review the performance of residential **onsite sewage septic** systems and commercial onsite sewage systems;
- (3) **shall** assist the state department in developing standards and guidelines for proprietary residential wastewater treatment devices and proprietary commercial wastewater treatment devices; **and**
- (4) **shall** assist the executive board and the state department in updating rules adopted under section 4 of this chapter concerning residential **onsite sewage septic** systems and commercial onsite sewage systems; **and**
- (5) **may exercise the powers granted by section 27.7 of this chapter.**

- (c) The technical review panel shall include the following:
- (1) A member of the staff of the state department, who shall serve as the chair.
  - (2) A local health department environmental health specialist appointed by the governor.
  - (3) An Indiana professional engineer registered under IC 25-31-1



representing the American Council of Engineering Companies.

(4) A representative of the Indiana Builders Association.

(5) An Indiana registered professional soil scientist (as defined in IC 25-31.5-1-6) representing the Indiana Registry of Soil Scientists.

(6) A representative of an Indiana college or university with a specialty in engineering, soil science, environmental health, or biology appointed by the governor.

(7) A representative of the Indiana Onsite Wastewater Professionals Association.

(8) An Indiana onsite sewage system contractor appointed by the governor.

(9) A representative of the Indiana State Building and Construction Trades Council.

All members of the technical review panel are voting members.

(d) In the case of a tie vote of the technical review panel, the technical review panel shall, not more than seven (7) days after the day of the tie vote:

(1) contact the applicant by phone call and by mail; and

(2) request more information or provide an explanation of how the applicant can modify the application to make it more complete.

The technical review panel shall review any new information provided by the applicant and vote again on the application not more than thirty (30) days after receiving the information.

(e) The technical review panel shall do the following:

(1) Receive applications for the approval of TNI for general use in:

(A) residential **onsite sewage septic** systems under sections 4 and 27 of this chapter and IC 16-41-25; and

(B) commercial onsite sewage systems under sections 4 and 27 of this chapter and IC 16-19-3.5.

(2) Meet at least four (4) times per year to review applications described in subdivision (1).

(3) Notify each person who submits an application described in subdivision (1):

(A) that the person's application has been received by the technical review panel; and

(B) of whether the application is complete;

not later than thirty (30) days after the technical review panel receives the application.

(4) Inform each person who submits an application described in subdivision (1) of:





- (A) a tentative decision of the technical review panel; or
  - (B) the technical review panel's final decision under subsection (f);
- concerning the application not more than ninety (90) days after the technical review panel notifies the person under subdivision (3) that the panel has received the person's application.
- (f) In response to each application described in subsection (e)(1), the technical review panel shall make, and inform the applicant of, one (1) of the following final decisions:
- (1) That the TNI to which the application relates is approved for general use in Indiana.
  - (2) That the TNI to which the application relates is approved for use in Indiana with certain conditions, which may include:
    - (A) a requirement that the TNI be used initially only in a pilot project;
    - (B) restrictions on the number or type of installations of the TNI;
    - (C) sampling and analysis requirements for TNI involving or comprising a secondary treatment system;
    - (D) requirements relating to training concerning the TNI;
    - (E) requirements concerning the operation and maintenance of the TNI; or
    - (F) other requirements.
  - (3) That the TNI to which the application relates is approved on a project-by-project basis.
  - (4) That the TNI is not approved for use in Indiana, which must be accompanied by a statement of the reason for the decision.
- (g) If the technical review panel makes a decision under subsection (f)(4) that the TNI is not approved for use in Indiana, the applicant may:
- (1) submit a new application to the technical review panel under this section; or
  - (2) file a petition for review of the technical review panel's decision under IC 4-21.5-3.
- (h) If the technical review panel fails to notify a person who submits an application of the technical review panel's tentative decision or final recommendation within ninety (90) days after receiving the application as required by subsection (e)(4), the person who submitted the application may use the TNI to which the application relates in a single residential **onsite sewage septic** system or commercial onsite sewage system, as if the TNI had been approved only for use in a pilot project.
- (i) The technical review panel shall decide that the TNI to which an



application relates is approved for general use in Indiana if:

- (1) the TNI has been certified as meeting the NSF/ANSI 40 Standard;
  - (2) a proposed Indiana design and installation manual for the TNI is submitted with the permit application; and
  - (3) the technical review panel certifies that the proposed Indiana design and installation manual meets the vertical and horizontal separation, sizing, and soil loading criteria of the state department.
- (j) Subsection (k) applies if:
- (1) a particular TNI meets the requirements of NSF/ANSI 40, NSF/ANSI 245, or NSF/ANSI 350;
  - (2) the proposed Indiana design and installation manual for the TNI meets the vertical and horizontal separation, sizing, and soil loading criteria of the state department; and
  - (3) an Indiana professional engineer registered under IC 25-31-1 prepares site specific plans for the use of the TNI for a residential or commercial application.
- (k) In a case described in subsection (j):
- (1) if the TNI is to be used in a residential application, the site specific plans prepared under subsection (j)(3), after being submitted to the local health department of the county, city, or multiple county unit in which the TNI would be installed, may be approved by the local health department within the period set forth in IC 16-41-25-1(a); and
  - (2) if the TNI is to be used in a commercial application, the site specific plans prepared under subsection (j)(3) shall be approved by the state department upon submission of the site specific plans.
- (l) A local health department may not refuse an application for a permit for the construction or installation of a residential onsite sewage system (as defined in IC 16-41-25-0.4) solely because the residential onsite sewage system has not been used previously in the jurisdiction of the local health department or is unfamiliar to the local health department, if either of the following apply:
- (1) The residential onsite sewage system has been approved by the technical review panel under this section for general use in Indiana.
  - (2) The residential onsite sewage system:
    - (A) is based on one (1) or more sewage treatment or disposal methods or processes; or
    - (B) incorporates equipment;
      - approved by the technical review panel under this section for



general use in Indiana.

SECTION 5. IC 16-19-3-27.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: **Sec. 27.7. (a) Subject to subsection (b), for all rules concerning residential onsite sewage systems, the state department shall update:**

**(1) all matters incorporated by reference in the rules, including all bulletins, standards, and specifications incorporated by reference; and**

**(2) all industry standard practices reflected in the rules; upon the recognition of new bulletins, standards, specifications, and industry standard practices that supersede the bulletins, standards, specifications, and industry standard practices incorporated by reference or otherwise reflected in the rules.**

**(b) The technical review panel established under section 27.5(b) of this chapter:**

**(1) may recognize and notify the state department of:**

**(A) new bulletins, standards, and specifications; and**

**(B) new industry standard practices;**

**for the purposes of subsection (a); and**

**(2) must approve updates described in subsection (a) before the state department may update the rules concerning residential onsite sewage systems under subsection (a).**

**(c) Updates approved by the technical review panel described in subsection (b) and updated by the state department under subsection (a) are effective one hundred eighty (180) days after the publication of the updates.**

**(d) The technical review panel may only notify the state department of updated:**

**(1) matters incorporated by reference in the rules, including all bulletins, standards, and specifications incorporated by reference; and**

**(2) industry standard practices reflected in the rules; for publication once every two (2) years.**

**(e) The state department may publish the updates described in subsection (a) not more than once every two (2) years.**

SECTION 6. IC 16-19-3-27.8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: **Sec. 27.8. (a) After June 30, 2023, a county, city, or town ordinance concerning residential onsite sewage systems that:**

**(1) would restrict or prohibit the use of technology new to**



**Indiana that is approved for general use in Indiana under section 27.5 of this chapter; or**

**(2) would otherwise vary from the rules concerning residential onsite sewage systems, including rules updated under section 27.7 of this chapter;**

**is subject to this section.**

**(b) After adopting an ordinance described in subsection (a), the county, city, or town must submit the ordinance to the technical review panel established under section 27.5(b) of this chapter, along with a:**

**(1) request for approval of the ordinance;**

**(2) statement of the reasons for the restriction, prohibition, or variance; and**

**(3) statement of financial impact.**

**(c) The technical review panel shall consider an ordinance submitted by a county, city, or town under subsection (b). If the technical review panel approves the ordinance by vote of a majority of its members at a public meeting, the ordinance becomes effective within the county, city, or town.**

**(d) An ordinance described in subsection (a) is not effective unless it is approved by the technical review panel under this section.**

**(e) If an ordinance described in subsection (a) was adopted before July 1, 2023, the ordinance becomes void and unenforceable on July 1, 2023.**

**(f) An ordinance described in subsection (a) may be readopted if:**

**(1) the legislative body of county, city, or town votes to adopt the ordinance after it expires on July 1, 2023; and**

**(2) after being readopted under subdivision (1), the ordinance is:**

**(A) submitted to the technical review panel under subsection (b); and**

**(B) approved by the technical review panel under subsection (c).**

**SECTION 7. IC 16-19-3-27.9 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 27.9. (a) An ordinance described in section 27.8(a) of this chapter may not be presented to the technical review board for adoption before October 1, 2023.**

**(b) This section expires January 1, 2024.**

**SECTION 8. IC 16-41-25-7, AS ADDED BY P.L.167-2022,**



SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 7. (a) After June 30, 2023, a county, city, or town ordinance may not ~~impose~~ **adopt** requirements, restrictions, or conditions concerning the:

- (1) design;
- (2) construction;
- (3) installation;
- (4) location;
- (5) maintenance; ~~or~~
- (6) operation; ~~or~~

**(7) inspection of a septic system before a sale;**

of a residential onsite sewage system that are more stringent than the requirements, restrictions, and conditions of the rule of the state department concerning residential onsite sewage systems. ~~After June 30, 2023;~~ An ordinance that imposes requirements, restrictions, or conditions that are more stringent than the requirements, restrictions, and conditions of the state department's rule concerning residential onsite sewage systems is ~~void and may not be enforced.~~ **subject to invalidation under IC 16-19-3-27.8(e).**

(b) After June 30, 2023, a local health department may not ~~impose~~ **adopt** requirements, restrictions, or conditions concerning the:

- (1) design;
- (2) construction;
- (3) installation;
- (4) location;
- (5) maintenance; ~~or~~
- (6) operation; ~~or~~

**(7) inspection of a septic system before a sale;**

of a residential onsite sewage system that are more stringent than the requirements, restrictions, and conditions of the rule of the state department concerning residential onsite sewage systems. After June 30, 2023, any requirements, restrictions, or conditions that are ~~imposed~~ **adopted** by a local health department and that are more stringent than the requirements, restrictions, and conditions of the state department's rule concerning residential onsite sewage systems are void and ~~may not be enforced.~~ **unenforceable.**

SECTION 9. IC 16-41-25-7.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: **Sec. 7.2. (a) As used in this section, "sinkhole" means a depression or hole in the ground caused by some form of collapse of the surface layer, as when subsurface limestone is dissolved or worn away by the movement of water**



underground.

**(b) A residential onsite sewage system shall not be installed in a site less than twenty-five (25) feet from the edge of a sinkhole, as identified by a professional soil scientist registered under IC 25-31.5-4.**

SECTION 10. IC 16-41-25-8, AS ADDED BY P.L.167-2022, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 8. (a) If:

**(1) an application has been filed with a local health department for a permit for the installation of a residential onsite sewage system;**

**(2) a professional soil scientist registered under IC 25-31.5-4 has conducted an onsite evaluation, including a description of the soil profile, and has determined that the proposed site of the residential onsite sewage system is suitable for the installation of the residential onsite sewage system; and**

**(3) the design and specifications for a the residential onsite sewage system proposed for construction or installation at a particular location the site described in subdivision (2) have been approved by either:**

~~(1)~~ **(A)** the local health department; or

~~(2)~~ **(B)** at the option and expense of the property owner:

~~(A)~~ **(i)** a professional engineer registered under IC 25-31-1;

~~(B)~~ a registered soil scientist (as defined in IC 25-31.5-1-7);

~~(C)~~ **(ii)** an individual or entity engaged in the business of constructing and installing residential onsite sewage systems; and a septic system installer or inspector registered with the county in which the residential onsite sewage system would be installed; and

~~(D)~~ **(iii)** the designer of the system, if the system was designed by someone other than a person referred to in clause ~~(A)~~ **item (i) or (C); (ii);**

the local health department shall issue a permit for the residential onsite sewage system not later than thirty (30) business days after receiving a complete application for the permit.

(b) Subject to IC 16-19-3-27.5, IC 16-19-3-27.6, and sections 5 and 6 of this chapter, this section does not affect the authority of a local health department to inspect an onsite sewage system before or after the system's installation.

SECTION 11. IC 16-41-25-8.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: **Sec. 8.5. (a) As used in this section,**



**"lot" means the parcel of real property on which:**

- (1) a one (1) family or two (2) family dwelling; or**
- (2) two (2) single family dwellings located on the same property with a combined design daily flow of not more than seven hundred fifty (750) gallons per day;**

**have been constructed or are proposed for construction.**

**(b) A residential onsite sewage system may be installed in a lot described in subsection (a) if at least one (1) site on the lot is determined to be suitable for the installation of the residential onsite sewage system.**

SECTION 12. IC 16-41-25-10 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: **Sec. 10. (a) Neither an officer or employee of a local health department nor another agency, officer, or employee of a county, city, or town may enter property on which a residential onsite sewage system is located for the purpose of inspecting the residential onsite sewage system if, not more than one hundred eighty (180) days before the date of the inspection, the owner or occupant of the residence served by the residential onsite sewage system and:**

- (1) a septic system installer or inspector registered with the county in which the residential onsite sewage system is located;**
- (2) an onsite sewage system technician; or**
- (3) an Indiana professional engineer registered under IC 25-31-1;**

**state in a writing transmitted to the local health department, county, city, or town that the residential onsite sewage system is functioning properly.**

**(b) Subject to subsection (d), if subsection (a) does not apply, an officer or employee of a local health department or another officer or employee of a county, city, or town may not enter property on which a residential onsite sewage system is located for the purpose of inspecting the residential onsite sewage system unless the owner or occupant of the residence served by the residential onsite sewage system is given notice of the inspection by first class mail addressed to the residence at least seven (7) days before the day of the inspection.**

**(c) Subject to subsection (d), if a manufacturer of a residential onsite sewage system requires inspection of the system multiple times a year, an owner of the property on which a residential onsite sewage system is located may request an officer or employee of a**



local health department or another agency, officer, or employee of a county, city, or town to inspect the residential onsite sewage system located on the owner's property, but the inspection may only occur if the owner of the residential onsite sewage system invites the inspector to the property.

(d) An advance notice to the owner or occupant of the residence is not required under subsection (b) in an urgent situation caused by a malfunction of the residential onsite sewage system that creates a clear and immediate danger to the public's health, safety, or property.

SECTION 13. IC 16-41-25-11 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 11. (a) As used in this section, "residential onsite sewage system failure" means a residential onsite sewage system that exhibits one (1) or more of the following:

- (1) The onsite sewage system refuses to accept sewage at the rate of design application and interferes with the normal use of residential plumbing fixtures.
- (2) Effluent discharge exceeds the absorptive capacity of the soil, resulting in ponding, seepage, or other discharge of the effluent to the ground surface or to surface waters.
- (3) Effluent is discharged from the onsite sewage system causing contamination of a potable water supply, ground water, or surface waters.

(b) A local health department that determines that a residential onsite sewage system is in residential onsite sewage system failure may issue an order requiring that the failure be corrected. However, an order issued under this subsection is stayed if the owner or occupant of the residence served by the residential onsite sewage system, within fourteen (14) days after the date of the order, enters into a contract with:

- (1) a septic system installer or inspector registered with the county in which the residential onsite sewage system is located;
- (2) an onsite sewage system technician; or
- (3) an Indiana professional engineer registered under IC 25-31-1;

under which the installer or inspector, onsite sewage system technician, or professional engineer agrees to conduct an inspection to determine whether the residential onsite sewage system is in residential onsite sewage system failure.

(c) An order is stayed under subsection (b) until the earlier of





the following:

(1) The date on which the installer or inspector, technician, or engineer performs the inspection and presents the results of the inspection in writing to:

(A) the owner or occupant of the residence served by the residential onsite sewage system; and

(B) the local health department.

(2) The expiration of forty-five (45) days after the date of the order issued under subsection (b).

(d) If the installer or inspector, onsite sewage system technician, or professional engineer states in the report provided to the local health department that the residential onsite sewage system is not in residential onsite sewage system failure, the local health department shall:

(1) withdraw the order issued under subsection (b); or

(2) conduct an investigation of the residential onsite sewage system to make a new determination whether the residential onsite sewage system is in residential onsite sewage system failure.

(e) If the local health department conducts an investigation under subsection (d)(2), the order issued under subsection (b) is stayed pending the new determination of the local health department based on the investigation.

SECTION 14. IC 16-41-25-12 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 12. (a) As used in this section, "onsite sewage system service" means:

(1) installing;

(2) inspecting; and

(3) providing maintenance and repair services for;

residential onsite sewage systems.

(b) An individual who:

(1) is registered with at least one (1) county in Indiana to provide onsite sewage system service in the county;

(2) is:

(A) certified as an inspector or installer by the Indiana Onsite Wastewater Professionals Association; and

(B) a member in good standing of the Indiana Onsite Wastewater Professionals Association; and

(3) has not had the individual's registration revoked in any county;

is entitled to provide onsite sewage system service in any county in



**Indiana.**

**(c) An individual entitled to provide onsite sewage system service in any county under subsection (b) may be required to pay a license fee in a county in which the individual provides onsite sewage system service under subsection (b).**

SECTION 15. IC 36-9-23-30, AS AMENDED BY P.L.107-2016, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 30. (a) Subject to subsection (b) and section 30.1 of this chapter, a municipality that operates sewage works under this chapter or under any statute repealed by IC 19-2-5-30 (repealed September 1, 1981) may require:

- (1) connection to its sewer system of any property producing sewage or similar waste; and
- (2) discontinuance of the use of privies, cesspools, septic tanks, and similar structures.

(b) A municipality may exercise the powers granted by subsection (a) only if:

- (1) there is an available sanitary sewer within three hundred (300) feet of the property line of the affected property; and
- (2) it has given notice by certified mail to the property owner at the address of the property, at least ninety (90) days before the date specified for connection in the notice **and the notice includes a list of the applicable exemptions from connecting to the sewer system available to the property owner that are described in IC 36-9-25-15.**

(c) A municipality may establish, enforce, and collect reasonable penalties for failure to make a connection under this section.

(d) A municipality may apply to the circuit or superior court for the county in which it is located for an order to require a connection under this section. The court shall assess the cost of the action and reasonable attorney's fees of the municipality against the property owner in such an action.

SECTION 16. IC 36-9-25-15, AS AMENDED BY P.L.167-2022, SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 15. (a) The board, on its own initiative, whenever any territory, by its contour and watershed, or because of the extension of sewers by the municipality, is capable of draining sewage into or connecting with the sanitary system, may incorporate any territory, whether platted or unplatted, into the district by adopting a resolution to that effect describing the reason it is to be included. A certified copy of the resolution is conclusive evidence in any proceeding that the territory described was properly incorporated and constitutes a part of



the district, subject to this chapter.

(b) Immediately after the passage of a resolution under subsection (a), a notice stating the time and place for a public hearing on the resolution shall be published in accordance with IC 5-3-1. By the date and time of the hearing any affected person may file in the office of the board a written remonstrance to having the person's lands included. The board shall either confirm, modify, or rescind the resolution after the hearing. An appeal may be taken from the decision by one (1) or more persons considering themselves aggrieved or injuriously affected, as long as those appealing have filed written remonstrances, as provided in this subsection, by filing their complaint within thirty (30) days after the final decision of the board. The appeal shall be governed by IC 34-13-6.

(c) If the court is satisfied upon hearing an appeal under subsection (b):

(1) that less than seventy-five percent (75%) of the persons owning property in the territory sought to be incorporated in the district have remonstrated; and

(2) that the incorporation of the territory into the district will be for its interest and will cause no manifest injury to the persons owning property in the territory;

the court shall so find and the incorporation shall be ordered. If the court is satisfied that seventy-five percent (75%) or more of the persons owning property in the territory sought to be incorporated have remonstrated, then the incorporation may not be ordered unless the court further finds from the evidence that unless it is incorporated, the health and welfare of residents of the territory or of the adjoining lands will be materially affected and that the safety and welfare of the inhabitants and property of other persons and property will be endangered.

(d) Pending an appeal under subsection (b) and during the time within which the appeal may be taken, the territory sought to be incorporated is not a part of the district. Upon the determination of the appeal, the judgment must particularly describe the resolution upon which the appeal is based. The clerk of the court shall deliver a certified copy of the judgment to the secretary of the board, who shall record it in the minute book of the board and make a cross-reference to the page upon the margin where the original resolution was recorded. If a decision is adverse to an incorporation, further proceedings may not be taken by the board to incorporate that territory within the district for a period of one (1) year after the rendition of the judgment.

(e) Except as provided in subsection (n) and subject to subsections



(f) through (m), a property owner whose property is incorporated into a district under this section or section 14(b) of this chapter, regardless of whether the property owner has filed a written remonstrance or an appeal with respect to the incorporation, is exempt from a requirement to connect to the district's sewer system and to discontinue use of a sewage disposal system on the property owner's property if all of the following conditions are met:

(1) The property owner's sewage disposal system is a septic tank soil absorption system (as defined in IC 13-11-2-199.5) or constructed wetland septic system (as defined in IC 36-9-23-30.1(a)) that:

(A) was new at the time of installation; and

(B) was approved in writing by the local health department, the department's designee, or a qualified inspector.

(2) The property owner, at the property owner's own expense, obtains a written determination from the local health department or the department's designee that the property owner's sewage disposal system is not failing. The local health department or the department's designee shall provide the owner with a written determination not later than sixty (60) days after receipt of the owner's request. If the local health department or the department's designee fails to provide a written determination within the time set forth in this subdivision, the owner, at the owner's expense, may obtain a written determination from a qualified inspector. If the local health department or the department's designee determines that the sewage disposal system is failing, the property owner may appeal the determination to the board of the local health department. The decision of the board of the local health department is final and binding.

(3) The property owner provides the board with:

(A) a written notification of potential qualification for the exemption, as described in subsection (h); and

(B) the written determination described in subdivision (2); within the time limits set forth in subsection (h).

(f) If the property owner, within the time allowed under subsection (h), notifies the board in writing of the property owner's potential qualification for the exemption, the board shall, until the property owner's eligibility for the exemption is determined, suspend the requirement that the property owner discontinue use of the property owner's sewage disposal system and connect to the district's sewer system.

(g) A property owner who qualifies for the exemption provided



under this section may not be required to connect to the district's sewer system for a period of ten (10) years beginning on the date of the written determination of the local health department, the department's designee, or a qualified inspector under subsection (e)(2) that the property owner's sewage disposal system is not failing. A property owner may apply for two (2) five (5) year extensions of the exemption provided under this section by following the procedures set forth in this section. If ownership of an exempt property is transferred during a valid exemption period, including during an extension of an initial exemption:

- (1) the exemption applies to the subsequent owner of the property for the remainder of the exemption period during which the transfer occurred; and
- (2) the subsequent owner may apply for any remaining extensions.

However, the total period during which a property may be exempt from the requirement to connect to a district's sewer system under this section may not exceed twenty (20) years, regardless of ownership of the property.

(h) To qualify for an exemption under this section, a property owner must:

- (1) not later than sixty (60) days after being notified of the requirement to connect to the district's sewer system, notify the board in writing that the property owner qualifies for an exemption under this section; and
- (2) not later than one hundred twenty (120) days after the board receives the written notice provided under subdivision (1), provide the board with the written determination required under subsection (e)(2).

(i) When a property owner who qualifies for an exemption under this section subsequently discontinues use of the property owner's sewage disposal system and connects to the district's sewer system, the property owner may be required to pay only the following to connect to the sewer system:

- (1) The connection fee the property owner would have paid if the property owner connected to the sewer system on the first date the property owner could have connected to the sewer system.
- (2) Any additional costs:
  - (A) considered necessary by; and
  - (B) supported by documentary evidence provided by; the board.

(j) A property owner who connects to a district's sewer system may



provide, at the owner's expense, labor, equipment, materials, or any combination of labor, equipment, and materials from any source to accomplish the connection to the sewer system, subject to inspection and approval by the board or a designee of the board.

(k) This section does not affect the authority of the **state Indiana** department of health, a local health department, or a county health officer with respect to a sewage disposal system.

(l) For purposes of this section, a sewage disposal system is "failing" if one (1) or more of the following apply:

- (1) The system refuses to accept sewage at the rate of design application and interferes with the normal use of plumbing fixtures.
- (2) Effluent discharge exceeds the absorptive capacity of the soil into which the system discharges, resulting in ponding, seepage, or other discharge of the effluent to the ground surface or to surface waters.
- (3) Effluent discharged from the system contaminates a potable water supply, ground water, or surface waters.

(m) As used in this section, "qualified inspector" means any of the following:

- (1) An employee of a local health department who is designated by the local health department as having sufficient knowledge of onsite sewage systems to determine if an onsite sewage system is failing.
- (2) An individual who is certified by the Indiana Onsite Wastewater Professionals Association as an onsite sewage system installer or inspector.
- (3) An individual listed by the **state Indiana** department of health or a local health department with jurisdiction over the service area of the property inspected as having sufficient knowledge of onsite sewage systems to determine if an onsite sewage system is failing.

(n) Subsections (e) through (i) do not apply to a property owner whose property is incorporated into a district under this section or section 14(b) of this chapter if:

- (1) the district has received approval from the Indiana finance authority before January 1, 2022, of a preliminary engineering report:
  - (A) for a project to construct the sewer line to which the property owner's property is being required to connect; and
  - (B) in connection with funding from the wastewater or drinking water revolving loan program under IC 5-1.2-10; and
- (2) the timing and requirements for connection to the district's



sewer system are the same for all property owners being required to connect to the district's sewer system under the terms of the project.

**(o) Immediately after the adoption of a resolution under subsection (a), and following the completion of any appeals under subsections (b) and (c), the board shall do the following:**

**(1) Notify any impacted property owners of the sewer project within three hundred (300) feet of the property line.**

**(2) Give notice by certified mail to the property owner at the address of the property at least ninety (90) days before the date specified for mandatory connection in the notice.**

**(3) Give notice by certified mail to the property owner at the address of the property of the applicable exemptions from connecting to the sewer system available to the property owner that are described in subsection (e) at least ninety (90) days before the date specified for connection in the notice.**



---

Speaker of the House of Representatives

---

President of the Senate

---

President Pro Tempore

---

Governor of the State of Indiana

Date: \_\_\_\_\_ Time: \_\_\_\_\_

**HEA 1402 — CC 1**

