

First Regular Session of the 121st General Assembly (2019)

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 2018 Regular and Special Session of the General Assembly.

SENATE ENROLLED ACT No. 193

AN ACT to amend the Indiana Code concerning local government.

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

SECTION 1. IC 36-9-22-2, AS AMENDED BY P.L.18-2018, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. (a) The power of the municipal works board to fix the terms of a contract under this section applies to contracts for the installation of sewage works that have not been finally approved or accepted for full maintenance and operation by the municipality on July 1, 1979.

(b) The works board of a municipality may contract with owners of real property for the construction of sewage works within the municipality or within four (4) miles outside its corporate boundaries in order to provide service for the area in which the real property of the owners is located. The contract must provide, for a period of not to exceed fifteen (15) years, for the payment to the owners and their assigns by any owner of real property who:

- (1) did not contribute to the original cost of the sewage works; and
- (2) subsequently taps into, uses, or deposits sewage or storm waters in the sewage works or any lateral sewers connected to them;

of a fair pro rata share of the cost of the construction of the sewage

SEA 193 — Concur



works, subject to the rules of the board and notwithstanding any other law relating to the functions of local governmental entities. However, the contract does not apply to any owner of real property who is not a party to the contract unless the contract or (after June 30, 2013) a signed memorandum of the contract has been recorded in the office of the recorder of the county in which the real property of the owner is located before the owner taps into or connects to the sewers and facilities. The board may provide that the fair pro rata share of the cost of construction includes interest at a rate not exceeding the amount of interest allowed on judgments, and the interest shall be computed from the date the sewage works are approved until the date payment is made to the municipality.

(c) The contract must include, as part of the consideration running to the municipality, the release of the right of:

- (1) the parties to the contract; and
- (2) the successors in title of the parties to the contract;

to remonstrate against pending or future annexations by the municipality of the area served by the sewage works. Any person tapping into or connecting to the sewage works contracted for is considered to waive the person's rights to remonstrate against the annexation of the area served by the sewage works.

(d) Notwithstanding subsection (c), the works board of a municipality may waive the provisions of subsection (c) in the contract if:

- (1) the works board considers a waiver of subsection (c) to be in the best interests of the municipality; **or**
- (2) **the contract involves connection to the sewage works under IC 36-9-22.5.**

(e) This subsection does not affect any rights or liabilities accrued, or proceedings begun before July 1, 2013. Those rights, liabilities, and proceedings continue and shall be imposed and enforced under prior law as if this subsection had not been enacted. For contracts executed after June 30, 2013, the release of the right to remonstrate is binding on a successor in title to a party to the contract only if the successor in title:

- (1) has actual notice of the release; or
- (2) has constructive notice of the release because the contract, or a signed memorandum of the contract stating the release, has been recorded in the chain of title of the property.

(f) Subsection (c) does not apply to a landowner if all of the following conditions apply:

- (1) The landowner is required to connect to the sewage works



because a person other than the landowner has polluted or contaminated the area.

(2) The costs of extension of or connection to the sewage works are paid by a person other than the landowner or the municipality.

(g) Subsection (c) does not apply to a landowner who taps into, connects to, or is required to tap into or connect to the sewage works of a municipality only because the municipality provides wholesale sewage service (as defined in IC 8-1-2-61.7) to another municipality that provides sewage service to the landowner.

(h) Notwithstanding any other law, a waiver of the right of remonstrance executed after June 30, 2015, expires not later than fifteen (15) years after the date the waiver was executed.

(i) This subsection applies to any deed recorded after June 30, 2015. This subsection applies only to property that is subject to a remonstrance waiver. A municipality shall provide written notice to any successor in title to property within a reasonable time after the deed is recorded, that a waiver of the right of remonstrance exists with respect to the property.

SECTION 2. IC 36-9-22.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Chapter 22.5. Use of Right-of-Way for Sewer and Water Connections

Sec. 1. As used in this chapter, "qualified inspector", with respect to an onsite sewage system, means any of the following:

(1) An employee of a local health department who is designated by the local health department as having knowledge of onsite sewage systems sufficient to determine whether 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:

(A) the state department of health; or

(B) the local health department with jurisdiction over the service area of the property inspected;

as having sufficient knowledge of onsite sewage systems to determine whether an onsite sewage system is failing.

Sec. 2. As used in this chapter, "sewage disposal system" means a privy, cesspool, septic tank, or other similar structure. The term includes the following:

(1) A septic tank soil absorption system (as defined in



IC 13-11-2-199.5).

(2) A constructed wetland septic system (as defined in IC 36-9-23-30.1(a)).

(3) An onsite sewage system (as defined in IC 13-11-2-144.8).

The term does not include a sewer system.

Sec. 3. As used in this chapter, "sewer system" includes a sewer system owned or operated by any of the following:

(1) A public utility (as defined in IC 8-1-2-1(a)).

(2) A municipality under IC 36-9-23 or IC 36-9-25.

(3) A not-for-profit utility (as defined in IC 8-1-2-125(a)).

(4) A cooperatively owned corporation.

(5) A conservancy district established under IC 14-33.

(6) A regional sewer district established under IC 13-26.

The term does not include a sewer system owned or operated by the Indiana department of transportation.

Sec. 4. As used in this chapter, "water utility" means:

(1) a public utility (as defined in IC 8-1-2-1(a));

(2) a municipally owned utility (as defined in IC 8-1-2-1(h));

(3) a not-for-profit utility (as defined in IC 8-1-2-125(a));

(4) a cooperatively owned corporation;

(5) a conservancy district established under IC 14-33; or

(6) a regional water district established under IC 13-26;

that provides water service to the public.

Sec. 5. (a) This section applies to the owner of a lot, parcel of real property, or building if:

(1) the sewage disposal system that serves the lot, parcel, or building is failing; and

(2) the owner seeks to install (or to cause to be installed) a sewer line or other sewage works:

(A) in or through a public right-of-way owned or controlled by a unit; and

(B) for the purpose of connecting the owner's lot, parcel of real property, or building to a sewer system owned or operated by a unit or an entity other than the unit described in clause (A);

regardless of whether the proposed installation will be accomplished by excavation, directional boring, or any other commonly used method of installation.

(b) An owner may not install a sewer line or other sewage works as described in subsection (a) unless:

(1) the unit or other entity that owns or operates the sewer system executes a sewer agreement with the owner of the lot,



parcel, or building;

(2) the sewer line or sewage works does not extend outside the regulated territory, if any, in which the property is located; and

(3) the owner has obtained all permits and approvals that are required by the state and the unit in which the lot, parcel, or building is located for installation of the sewer line or other sewage works.

(c) This subsection does not apply to the Indiana department of transportation with respect to any right-of-way owned or controlled by the department. A unit may not prohibit the installation of a sewer line or other sewage works as described in subsection (a) in or through a public right-of-way owned or controlled by the unit if the following conditions are met:

(1) The property owner seeking to install the sewer line or other sewage works does both of the following:

(A) Obtains, at the property owner's expense, a written determination from any of the following that the sewage disposal system serving the property owner's property is failing:

(i) The local health department.

(ii) The local health department's designee.

(iii) The board of the local health department, if the local health department or the local health department's designee, in response to a property owner's request for a determination under this clause, determines that the sewage disposal system serving the property owner's property is not failing, and the property owner appeals that determination to the board of the local health department.

(iv) A qualified inspector.

A written determination by the board of a local health department under item (iii) or by a qualified inspector under item (iv) as to whether a sewage disposal system serving a property owner's property is failing is final and binding for purposes of this chapter.

(B) Provides the written determination described in clause (A) to the unit:

(i) before the installation of the sewer line or other sewage works; and

(ii) not later than the date of application for all necessary construction or other permits required for the project.



(2) The property owner submits along with, or as part of, the written determination required under subdivision (1)(B) a signed statement agreeing to restore or repair all public or private property damaged in carrying out the installation described in subsection (a) and to place the property in the property's original condition as nearly as practicable, in accordance with the requirements of the unit that owns or controls the right-of-way, regardless of whether the restoration or repair will be undertaken or performed by the property owner, by the owner or operator of the sewer system to which the property is to be connected, or by some other party.

(d) 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.

Sec. 6. (a) This section applies if the owner of a lot, parcel of real property, or building seeks to install (or to cause to be installed) a water service line or other infrastructure for the delivery of water utility service to the owner's lot, parcel of real property, or building:

(1) in or through a public right-of-way owned or controlled by a unit; and

(2) for the purpose of connecting the owner's lot, parcel of real property, or building to a waterworks that is owned or operated by a water utility other than a water utility owned or operated by the unit;

regardless of whether the proposed installation will be accomplished by excavation, directional boring, or any other commonly used method of installation.

(b) An owner may not install a water service line or other infrastructure as described in subsection (a) unless:

(1) the water utility that owns or operates the waterworks executes a service agreement with the owner of the lot, parcel, or building;



(2) the water service line or other infrastructure does not extend outside the regulated territory, if any, in which the property is located; and

(3) the owner obtains all permits and approvals that are required by the state and the unit in which the lot, parcel, or building is located for installation of the water service line or other infrastructure.

(c) This subsection does not apply to the Indiana department of transportation with respect to any right-of-way owned or controlled by the department. A unit may not prohibit the installation of a water service line or other infrastructure as described in subsection (a) in or through a public right-of-way owned or controlled by the unit if the following conditions are met:

(1) The lot, parcel of real property, or building that the property owner seeks to connect to a waterworks is served by a private water well.

(2) The property owner submits before the installation of the water service line or other infrastructure, and not later than the date of application for all necessary construction or other permits required for the project, a signed statement agreeing to do the following:

(A) Abandon and plug the property owner's existing well in accordance with IC 25-39-2-14 and rules adopted under IC 25-39.

(B) Restore or repair all public or private property damaged in carrying out the installation described in subsection (a) and to place the property in the property's original condition as nearly as practicable, in accordance with the requirements of the unit that owns or controls the right-of-way, regardless of whether the restoration or repair will be undertaken or performed by the property owner, by the owner or operator of the waterworks to which the property is to be connected, or by some other party.

Sec. 7. (a) This chapter does not abrogate, limit, or affect in any manner the authority of a unit under:

(1) IC 8-1-2-101; or

(2) any other law;

to otherwise regulate or control a public right-of-way owned or controlled by the unit.

(b) This chapter does not abrogate, limit, or affect in any manner the authority of the Indiana department of transportation



under:

- (1) IC 8-23; or
- (2) any other law;

to safely and efficiently manage and operate the state highway system and associated highway rights-of-way for the benefit of the traveling public.

Sec. 8. This chapter does not affect the rights of any water utility or wastewater utility with respect to the service area or territory of the water utility or wastewater utility, as those rights may be established or limited by law.

SECTION 3. IC 36-9-25-14, AS AMENDED BY P.L.228-2015, SECTION 24, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 14. (a) As to each municipality to which this chapter applies:

- (1) all the territory included within the corporate boundaries of the municipality; and
- (2) any territory, town, addition, platted subdivision, or unplatted land lying outside the corporate boundaries of the municipality that has been taken into the district in accordance with a prior statute, the sewage or drainage of which discharges into or through the sewage system of the municipality;

constitutes a special taxing district for the purpose of providing for the sanitary disposal of the sewage of the district in a manner that protects the public health and prevents the undue pollution of watercourses of the district.

(b) Upon request by:

- (1) a resolution adopted by the legislative body of another municipality in the same county; or
- (2) a petition of the majority of the resident freeholders in a platted subdivision or of the owners of unplatted land outside the boundaries of a municipality, if the platted subdivision or unplatted land is in the same county;

the board may adopt a resolution incorporating all or any part of the area of the municipality, platted subdivision, or unplatted land into the district.

(c) A request under subsection (b) must be signed and certified as correct by the secretary of the legislative body, resident freeholders, or landowners. The original shall be preserved in the records of the board. The resolution of the board incorporating an area in the district must be in writing and must contain an accurate description of the area incorporated into the district. A certified copy of the resolution, signed by the president and secretary of the board, together with a map

SEA 193 — Concur



showing the boundaries of the district and the location of additional areas, shall be delivered to the auditor of the county within which the district is located. It shall be properly indexed and kept in the permanent records of the offices of the auditor.

(d) In addition, upon request by ten (10) or more interested resident freeholders in a platted or unplatted territory, the board may define the limits of an area within the county and including the property of the freeholders that is to be considered for inclusion into the district. Notice of the defining of the area by the board, and notice of the location and limits of the area, shall be given by publication in accordance with IC 5-3-1. Upon request by a majority of the resident freeholders of the area, the area may be incorporated into the district in the manner provided in this section. The resolution of the board incorporating the area into the district and a map of the area shall be made and filed in the same manner.

(e) In addition, a person owning or occupying real property outside the district may enter into a sewer service agreement with the board for connection to the sewage works of the district. If the agreement provides for connection at a later time, the date or the event upon which the service commences shall be stated in the agreement. The agreement may impose any conditions for connection that the board determines. The agreement must also provide the amount of service charge to be charged for connection if the persons are not covered under section 11 of this chapter, with the amount to be fixed by the board in its discretion and without a hearing.

(f) All sewer service agreements made under subsection (e) or (after June 30, 2013) a signed memorandum of the sewer service agreement shall be recorded in the office of the recorder of the county where the property is located. The agreements run with the property described and are binding upon the persons owning or occupying the property, their personal representatives, heirs, devisees, grantees, successors, and assigns. Each agreement that is recorded, or each agreement of which a signed memorandum is recorded, and that provides for the property being served to be placed on the tax rolls shall be certified by the board to the auditor of the county where the property is located. The certification must state the date the property is to be placed on the tax rolls, and upon receipt of the certification together with a copy of the agreement, the auditor shall immediately place the property certified upon the rolls of property subject to the levy and collection of taxes for the district. An agreement may provide for the collection of a service charge for the period services are rendered before the levy and collection of the tax.

SEA 193 — Concur



(g) Except as provided in ~~subsection~~ **subsections (j) and (m)**, sewer service agreements made under subsection (e) must contain a waiver provision that persons (other than municipalities) who own or occupy property agree for themselves, their executors, administrators, heirs, devisees, grantees, successors, and assigns that they will:

- (1) neither object to nor file a remonstrance against the proposed annexation of the property by a municipality within the boundaries of the district;
- (2) not appeal from an order or a judgment annexing the property to a municipality; and
- (3) not file a complaint or an action against annexation proceedings.

(h) This subsection does not affect any rights or liabilities accrued or proceedings begun before July 1, 2013. Those rights, liabilities, and proceedings continue and shall be imposed and enforced under prior law as if this subsection had not been enacted. For contracts executed after June 30, 2013, a waiver of the right to remonstrate under subsection (g) is binding as to an executor, administrator, heir, devisee, grantee, successor, or assign of a party to a sewer service agreement under subsection (g) only if the executor, administrator, heir, devisee, grantee, successor, or assign:

- (1) has actual notice of the waiver; or
- (2) has constructive notice of the waiver because the sewer service agreement or a signed memorandum of the sewer service agreement stating the waiver has been recorded in the chain of title of the property.

(i) This section does not affect any sewer service agreements entered into before March 13, 1953.

(j) Subsection (g) does not apply to a landowner if all of the following conditions apply:

- (1) The landowner is required to connect to a sewer service because a person other than the landowner has polluted or contaminated the area.
- (2) The costs of extension of service or connection to the sewer service are paid by a person other than the landowner or the municipality.

(k) Notwithstanding any other law, a waiver of the right of remonstrance executed after June 30, 2015, expires not later than fifteen (15) years after the date the waiver was executed.

(l) This subsection applies to any deed recorded after June 30, 2015. This subsection applies only to property that is subject to a remonstrance waiver. A municipality shall provide written notice to



any successor in title to property within a reasonable time after the deed is recorded, that a waiver of the right of remonstrance has been granted with respect to the property.

(m) The board may waive the waiver provision described in subsection (g) in a sewer service agreement made under subsection (e) if the sewer service agreement involves a connection to the district's sewage works under IC 36-9-22.5.

SECTION 4. An emergency is declared for this act.



President of the Senate

President Pro Tempore

Speaker of the House of Representatives

Governor of the State of Indiana

Date: _____ Time: _____

SEA 193 — Concur

