

SENATE BILL No. 261

DIGEST OF INTRODUCED BILL

Citations Affected: IC 13-18-15-2; IC 36-4-3-11.7; IC 36-9.

Synopsis: Recording of annexation remonstrance waivers. Provides that a waiver of remonstrance of annexation executed before, on, or after June 30, 2018, is void if the waiver is recorded more than 30 business days after the date the waiver is executed.

Effective: July 1, 2018.

Bray

January 3, 2018, read first time and referred to Committee on Local Government.



Second Regular Session 120th General Assembly (2018)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2017 Regular Session of the General Assembly.

SENATE BILL No. 261

A BILL FOR AN ACT to amend the Indiana Code concerning local government.

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

1 SECTION 1. IC 13-18-15-2, AS AMENDED BY P.L.228-2015,
2 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2018]: Sec. 2. (a) The persons involved shall negotiate the
4 terms for connection and service under this chapter.
5 (b) If service is ordered under this chapter, a receiver of that service
6 that is located in an unincorporated area may grant a waiver to a
7 municipality providing the service. A waiver under this section:
8 (1) must waive the receiver's right of remonstrance against
9 annexation of the areas in which the service is to be provided; and
10 (2) may be one (1) of the terms for connection and service
11 described in subsection (a).
12 (c) The waiver, if granted:
13 (1) shall be noted on the deed of each property affected and
14 recorded as provided by law; and
15 (2) is considered a covenant running with the land.
16 (d) Notwithstanding any other law, a waiver of the right of
17 remonstrance executed after June 30, 2015, **that is not void under**



1 **subsection (f)** expires not later than fifteen (15) years after the date the
2 waiver was executed.

3 (e) This subsection applies to any deed recorded after June 30,
4 2015. This subsection applies only to property that is subject to a
5 remonstrance waiver. A municipality shall, within a reasonable time
6 after the recording of a deed to property located within the
7 municipality, provide written notice to the property owner that a waiver
8 of the right of remonstrance exists with respect to the property.

9 **(f) This subsection applies to a remonstrance waiver executed**
10 **before, on, or after June 30, 2018. A remonstrance waiver is void**
11 **unless the remonstrance waiver is recorded:**

12 **(1) with the county recorder of the county where the property**
13 **subject to the waiver is located; and**

14 **(2) not more than thirty (30) business days after the date the**
15 **remonstrance waiver is executed.**

16 **This subsection does not invalidate an annexation that was effective**
17 **on or before July 1, 2018.**

18 SECTION 2. IC 36-4-3-11.7, AS ADDED BY P.L.228-2015,
19 SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
20 JULY 1, 2018]: Sec. 11.7. (a) Notwithstanding any other law, a waiver
21 of the right of remonstrance executed after June 30, 2015, **that is not**
22 **void under subsection (c)** expires not later than fifteen (15) years after
23 the date the waiver was executed.

24 (b) This subsection applies to any deed recorded after June 30,
25 2015. This subsection applies only to property that is subject to a
26 remonstrance waiver. A municipality shall, within a reasonable time
27 after the recording of a deed to property located within the
28 municipality, provide written notice to the property owner that a waiver
29 of the right of remonstrance exists with respect to the property.

30 **(c) This subsection applies to a remonstrance waiver executed**
31 **before, on, or after June 30, 2018. A remonstrance waiver is void**
32 **unless the remonstrance waiver is recorded:**

33 **(1) with the county recorder of the county where the property**
34 **subject to the waiver is located; and**

35 **(2) not more than thirty (30) business days after the date the**
36 **remonstrance waiver is executed.**

37 **This subsection does not invalidate an annexation that was effective**
38 **on or before July 1, 2018.**

39 SECTION 3. IC 36-9-22-2, AS AMENDED BY P.L.228-2015,
40 SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
41 JULY 1, 2018]: Sec. 2. (a) The power of the municipal works board to
42 fix the terms of a contract under this section applies to contracts for the



1 installation of sewage works that have not been finally approved or
 2 accepted for full maintenance and operation by the municipality on July
 3 1, 1979.

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

11 (1) did not contribute to the original cost of the sewage works;
 12 and

13 (2) subsequently taps into, uses, or deposits sewage or storm
 14 waters in the sewage works or any lateral sewers connected to
 15 them;

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

29 (c) The contract must include, as part of the consideration running
 30 to the municipality, the release of the right of the parties to the contract
 31 and their successors in title to remonstrate against pending or future
 32 annexations by the municipality of the area served by the sewage
 33 works. Any person tapping into or connecting to the sewage works
 34 contracted for is considered to waive the person's rights to remonstrate
 35 against the annexation of the area served by the sewage works.

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



- 1 (1) has actual notice of the release; or
 2 (2) has constructive notice of the release because the contract, or
 3 a signed memorandum of the contract stating the release, has been
 4 recorded in the chain of title of the property.
- 5 (e) Subsection (c) does not apply to a landowner if all of the
 6 following conditions apply:
 7 (1) The landowner is required to connect to the sewage works
 8 because a person other than the landowner has polluted or
 9 contaminated the area.
 10 (2) The costs of extension of or connection to the sewage works
 11 are paid by a person other than the landowner or the municipality.
- 12 (f) Subsection (c) does not apply to a landowner who taps into,
 13 connects to, or is required to tap into or connect to the sewage works
 14 of a municipality only because the municipality provides wholesale
 15 sewage service (as defined in IC 8-1-2-61.7) to another municipality
 16 that provides sewage service to the landowner.
- 17 (g) Notwithstanding any other law, a waiver of the right of
 18 remonstrance executed after June 30, 2015, **that is not void under**
 19 **subsection (i)** expires not later than fifteen (15) years after the date the
 20 waiver was executed.
- 21 (h) This subsection applies to any deed recorded after June 30,
 22 2015. This subsection applies only to property that is subject to a
 23 remonstrance waiver. A municipality shall provide written notice to
 24 any successor in title to property within a reasonable time after the
 25 deed is recorded, that a waiver of the right of remonstrance exists with
 26 respect to the property.
- 27 **(i) This subsection applies to a remonstrance waiver executed**
 28 **before, on, or after June 30, 2018. A remonstrance waiver is void**
 29 **unless the remonstrance waiver is recorded:**
 30 **(1) with the county recorder of the county where the property**
 31 **subject to the waiver is located; and**
 32 **(2) not more than thirty (30) business days after the date the**
 33 **remonstrance waiver is executed.**
- 34 **This subsection does not invalidate an annexation that was effective**
 35 **on or before July 1, 2018.**
- 36 SECTION 4. IC 36-9-25-14, AS AMENDED BY P.L.228-2015,
 37 SECTION 24, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 38 JULY 1, 2018]: Sec. 14. (a) As to each municipality to which this
 39 chapter applies:
 40 (1) all the territory included within the corporate boundaries of
 41 the municipality; and
 42 (2) any territory, town, addition, platted subdivision, or unplatted



1 land lying outside the corporate boundaries of the municipality
2 that has been taken into the district in accordance with a prior
3 statute, the sewage or drainage of which discharges into or
4 through the sewage system of the municipality;
5 constitutes a special taxing district for the purpose of providing for the
6 sanitary disposal of the sewage of the district in a manner that protects
7 the public health and prevents the undue pollution of watercourses of
8 the district.

9 (b) Upon request by:

10 (1) a resolution adopted by the legislative body of another
11 municipality in the same county; or

12 (2) a petition of the majority of the resident freeholders in a
13 platted subdivision or of the owners of unplatted land outside the
14 boundaries of a municipality, if the platted subdivision or
15 unplatted land is in the same county;

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

19 (c) A request under subsection (b) must be signed and certified as
20 correct by the secretary of the legislative body, resident freeholders, or
21 landowners. The original shall be preserved in the records of the board.
22 The resolution of the board incorporating an area in the district must be
23 in writing and must contain an accurate description of the area
24 incorporated into the district. A certified copy of the resolution, signed
25 by the president and secretary of the board, together with a map
26 showing the boundaries of the district and the location of additional
27 areas, shall be delivered to the auditor of the county within which the
28 district is located. It shall be properly indexed and kept in the
29 permanent records of the offices of the auditor.

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

41 (e) In addition, a person owning or occupying real property outside
42 the district may enter into a sewer service agreement with the board for



1 connection to the sewage works of the district. If the agreement
2 provides for connection at a later time, the date or the event upon
3 which the service commences shall be stated in the agreement. The
4 agreement may impose any conditions for connection that the board
5 determines. The agreement must also provide the amount of service
6 charge to be charged for connection if the persons are not covered
7 under section 11 of this chapter, with the amount to be fixed by the
8 board in its discretion and without a hearing.

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

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

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

38 (h) This subsection does not affect any rights or liabilities accrued
39 or proceedings begun before July 1, 2013. Those rights, liabilities, and
40 proceedings continue and shall be imposed and enforced under prior
41 law as if this subsection had not been enacted. For contracts executed
42 after June 30, 2013, a waiver of the right to remonstrate under



1 subsection (g) **that is not void under subsection (k) or (m)** is binding
 2 as to an executor, administrator, heir, devisee, grantee, successor, or
 3 assign of a party to a sewer service agreement under subsection (g)
 4 only if the executor, administrator, heir, devisee, grantee, successor, or
 5 assign:

6 (1) has actual notice of the waiver; or

7 (2) has constructive notice of the waiver because the sewer
 8 service agreement or a signed memorandum of the sewer service
 9 agreement stating the waiver has been recorded in the chain of
 10 title of the property.

11 (i) This section does not affect any sewer service agreements
 12 entered into before March 13, 1953. **However, subsection (m) applies**
 13 **to a remonstrance waiver regardless of when the waiver was**
 14 **executed.**

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

17 (1) The landowner is required to connect to a sewer service
 18 because a person other than the landowner has polluted or
 19 contaminated the area.

20 (2) The costs of extension of service or connection to the sewer
 21 service are paid by a person other than the landowner or the
 22 municipality.

23 (k) Notwithstanding any other law, a waiver of the right of
 24 remonstrance executed after June 30, 2015, **that is not void under**
 25 **subsection (m)** expires not later than fifteen (15) years after the date
 26 the waiver was executed.

27 (l) This subsection applies to any deed recorded after June 30, 2015.
 28 This subsection applies only to property that is subject to a
 29 remonstrance waiver. A municipality shall provide written notice to
 30 any successor in title to property within a reasonable time after the
 31 deed is recorded, that a waiver of the right of remonstrance has been
 32 granted with respect to the property.

33 **(m) This subsection applies to a remonstrance waiver executed**
 34 **before, on, or after June 30, 2018. A remonstrance waiver is void**
 35 **unless the remonstrance waiver is recorded:**

36 **(1) with the county recorder of the county where the property**
 37 **subject to the waiver is located; and**

38 **(2) not more than thirty (30) business days after the date the**
 39 **remonstrance waiver is executed.**

40 **This subsection does not invalidate an annexation that was effective**
 41 **on or before July 1, 2018.**

