Reprinted
February 29, 2000

ENGROSSED
HOUSE BILL No. 1248

DIGEST OF HB 1248 (Updated February 28, 2000 3:43 PM - DI 75)

Citations Affected: IC 13-11; IC 13-26.

Synopsis: Regional water, sewer, and solid waste districts. Makes various changes to the notice requirements for establishing a regional water, sewage, and solid waste district. Provides that an appointed trustee of a regional water, sewage, and solid waste district serves at the pleasure of the appointing authority. Provides in Jennings County that the district may not require a property owner that has a septic system and that is not connected to the district's sewer system on March 1, 2000, to connect to the system if the county commissioners adopt an ordinance before May 1, 2000, establishing procedures for (1) exemption from the connection requirement if the property owner has the septic system certified as functioning properly; (2) periodic review of the property owner's entitlement to exemption; and (3) notice to the district that the property owner is exempt or has lost an exemption previously applied.

Effective: January 1, 1999 (retroactive); upon passage; July 1, 2001.

Lytle, Mellinger, Kruse, Scholer
(SENATE SPONSORS — NUGENT, LEWIS)

January 10, 2000, read first time and referred to Committee on Commerce and Economic Development.
January 25, 2000, amended, reported — Do Pass.
February 1, 2000, read second time, amended, ordered engrossed.
February 2, 2000, engrossed.
February 7, 2000, read third time, passed. Yeas 81, nays 15.

SENATE ACTION

February 10, 2000, read first time and referred to Committee on Rules and Legislative Procedure.
February 15, 2000, amended, reported favorably — Do Pass; reassigned to Committee on Environmental Affairs.
February 22, 2000, amended, reported favorably — Do Pass.
February 28, 2000, read second time, amended, ordered engrossed.

C o p y

Reprinted
February 29, 2000

Second Regular Session 111th General Assembly (2000)

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 1999 General Assembly.

C o p y

ENGROSSED
HOUSE BILL No. 1248

A BILL FOR AN ACT to amend the Indiana Code concerning environmental law.

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

SECTION 1. IC 13-11-2-58 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 1999 (RETROACTIVE)]: Sec. 58. (a) "District", for purposes of IC 13-20-20, IC 13-21, and IC 13-20-22, refers to:

(1) a county solid waste management district; or

(2) a joint solid waste management district;

established under IC 13-21-3-1 or IC 13-9.5-2-1 (before its repeal).

(b) **Except as provided in subsection (c),** "district", for purposes of IC 13-26, refers to a regional water, sewage, or solid waste district established under:

(1) IC 13-26;

(2) IC 13-3-2 (before its repeal on July 1, 1996); or

(3) IC 19-3-1.1 (before its repeal on April 1, 1980).

(c) "District", for purposes of IC 13-26-5-2.5, has the meaning set forth in IC 13-26-5-2.5(a).

SECTION 2. IC 13-26-2-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6. (a) Except as

provided in section 9 of this chapter, the hearing officer shall fix a time and place inside or within ten (10) miles of the proposed district for the hearing on ~~the petition for the establishment of the proposed district.~~ **any matter for which a hearing is authorized under this chapter.**

(b) The hearing officer shall ~~have~~ **make a reasonable effort to provide** notice of the hearing ~~given~~ as follows:

(1) By publication ~~one (1) time~~ **of notice two (2) times** each week for two (2) consecutive weeks in ~~a newspaper~~ **at least two (2) newspapers** of general circulation in each of the counties, in whole or in part, in the district. **The publication of notice must, at a minimum, include a legal notice and a prominently displayed three (3) inches by five (5) inches advertisement.**

(2) By certified mail, **return receipt requested,** mailed at least two (2) weeks before the hearing to the following:

(A) ~~Each eligible entity involved.~~ **The fiscal and executive bodies of each county with territory in the proposed district.**

(B) The executive of ~~each entity.~~ **all other eligible entities with territory in the proposed district.**

(C) The ~~department of natural resources if the department of natural resources is involved.~~ **state and any of its agencies owning, controlling, or leasing land within the proposed district, excluding highways and public thoroughfares owned or controlled by the Indiana department of transportation.**

(D) Each sewage disposal company holding a certificate of territorial authority under IC 8-1-2-89 respecting territory in the proposed district.

(3) By making a reasonable effort to provide notice of the hearing by regular United States mail, postage prepaid, mailed at least two (2) weeks before the hearing to each freeholder within the proposed district.

(4) By including the date on which the hearing is to be held, a brief description of:

(A) the subject of the petition, including a description of the general boundaries of the area to be included in the proposed district; and

(B) the locations where copies of the petition are available for viewing.

SECTION 3. IC 13-26-4-8 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec 8. An appointed trustee shall serve at the**

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pleasure of the appointing authority.

SECTION 4. IC 13-26-5-2.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 1999 (RETROACTIVE)]: **Sec. 2.5. (a) As used in this section, "district" refers to a regional sewage district located in a county having a population of more than twenty-three thousand six hundred fifty (23,650) but less than twenty-three thousand seven hundred (23,700).**

(b) The district may not require a property owner whose property was not connected to the district's sewer system on March 1, 2000, to connect to the district's sewer system and to discontinue use of a septic system if the following conditions are met:

(1) The board of commissioners of the county in which the property is located adopts an ordinance before May 1, 2000, that establishes procedures for:

(A) exemption of a property owner from the requirement as described in this chapter to connect to the district's sewer system, if the property owner at the property owner's own expense obtains and provides to the county health department a certification from the county health department or a person designated by the county health department that the septic system is functioning satisfactorily;

(B) periodic review of a property owner's qualification for exemption under this section; and

(C) notice to the district that a property owner is exempt under this section, or that the property owner has lost an exemption previously applied under this section.

(2) The property owner has complied with the requirements for exemption under subdivision (1).

SECTION 5. [EFFECTIVE JANUARY 1, 1999 (RETROACTIVE)] **IC 13-26-5-2.5, as added by this act, applies only to property owners that received notices of proposed sewer connection under IC 13-26-5, dated after December 31, 1998.**

SECTION 6. **An emergency is declared for this act.**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Commerce and Economic Development, to which was referred House Bill 1248, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

and when so amended that said bill do pass.

(Reference is to HB 1248 as introduced.)

BOTTORFF, Chair

Committee Vote: yeas 13, nays 0.

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HOUSE MOTION

Mr. Speaker: I move that House Bill 1248 be amended to read as follows:

Page 2, between lines 20 and 21, begin a new paragraph and insert:

"SECTION . IC 13-26-5-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: 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.

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(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 section 2.5 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 the property line; and

(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.

(9) Provide by ordinance for reasonable penalties 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

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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.

(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

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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 13-26-5-2.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2001]: **Sec. 2.5. (a) As used in this section, "septic system" includes privies, cesspools, septic tanks, and similar structures.**

(b) Except as provided in subsection (c), the district may not require a property owner to connect to the district's sewer system and to discontinue use of a septic system if the following conditions are met:

(1) The property owner's septic system was installed not more than five (5) years before the district's sewer system first became available for connection.

(2) The property owner's septic system was new at the time of installation and was approved in writing by the local health department.

(3) The property owner, at the property owner's own expense, obtains and provides to the district a certification from the local health department or a registered professional engineer that the septic system is functioning satisfactorily.

(c) 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 three (3) years beginning on the date the district's sewer system first becomes available for connection. The exemption does not apply to a subsequent owner of the property during the exemption period. A property owner has sixty (60) days from the date of the notice given under section 2(8) of this

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chapter to notify the district in writing that the property owner may qualify for the exemption. The property owner has an additional sixty (60) days from the date the district receives the property owner's original notification to provide to the district the certification required under subsection (b)(3). The district shall suspend the date proposed for connection in the notice given under section 2(8) of this chapter while a determination of the property owner's eligibility for the exemption is pending.

(d) The district may require a property owner who qualifies for the exemption under subsection (b) to connect to the district's sewer system if the district credits the unamortized portion of the original cost of the property owner's septic system against the debt service portion of the customer's monthly bill according to the following STEPS:

STEP ONE: Multiply the original cost of the property owner's septic system by a fraction, the numerator of which is ninety-six (96) months minus the age in months of the property owner's septic system, and the denominator of which is ninety-six (96) months.

STEP TWO: The total credit the district may provide to a property owner shall equal four thousand eight hundred dollars ($4,800) or the result of STEP ONE, whichever is less.

The district shall apportion the total credit amount as determined in STEP TWO against the debt service portion of the property owner's monthly bill over a period to be determined by the district, but not to exceed twenty (20) years, or two hundred forty (240) months.".

Renumber all SECTIONS consecutively.

(Reference is to HB 1248 as printed January 26, 2000.)

BOTTORFF

HOUSE MOTION

Mr. Speaker: I move that House Bill 1248 be amended to read as follows:

Page 2, between lines 13 and 14, begin a new line block indented and insert:

"**(3) By making a reasonable effort to provide notice of the hearing by regular United States mail, postage prepaid, mailed at least two (2) weeks before the hearing to each**

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freeholder within the proposed district.".

Page 2, line 14, delete "(3)" and insert "**(4)**".

(Reference is to HB 1248 as printed January 26, 2000.)

MELLINGER

HOUSE MOTION

Mr. Speaker: I move that House Bill 1248 be amended to read as follows:

Page 2, between lines 27 and 28, begin a new paragraph and insert:

"SECTION 3. IC 14-13-3-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 4. (a) The commission consists of the following members:

(1) The executive of Gary.
(2) The executive of Hammond.
(3) The executive of East Chicago.
(4) The executive of Portage.
(5) The executive of Michigan City.
(6) The executive of Whiting.
(7) The director of the department of commerce, who is a nonvoting member.
(8) The director of the department, who is a nonvoting member.
(9) Three (3) members of the general assembly, who are nonvoting members appointed under section 5.5 of this chapter.

(b) A member of the commission may designate an individual to serve on the commission in the member's place.

SECTION 4. IC 14-13-3-5.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2000]: **Sec. 5.5. (a) The members appointed to the commission from the general assembly are as follows:**

(1) A member who resides in Lake County.
(2) A member who resides in LaPorte County.
(3) A member who resides in Porter County.

(b) Not more than two (2) members appointed under this section may be of:

(1) the same political party; or
(2) the same chamber of the general assembly.

(c) The governor shall annually make the appointments required under this section.

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(d) If a member of the general assembly appointed under this section ceases to be a member of the general assembly, the member also ceases to be a member of the commission, creating a vacancy for the duration of the member's term.

(e) If a vacancy exists under subsection (d), the governor shall appoint a member of the general assembly to fill the vacancy for the duration of the former member's term. A member appointed under this subsection must have the same qualifications as the former member whose position has become vacant.

SECTION 5. IC 14-13-3-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 6. (a) **Except as provided in subsection (c),** members of the commission are not entitled to receive from the commission a per diem. However, the members are entitled to receive an amount for mileage or travel.

(b) Designees:

(1) of members of the commission; and

(2) who are not holders of public office;

are entitled to receive from the commission an amount for per diem, mileage, and travel allowance equal to that fixed by the budget agency as payment to all persons entitled to receive those payments from the state.

(c) A member appointed under section 5.5 of this chapter is entitled to receive the same per diem, mileage, and travel allowances paid to members of the general assembly serving on interim study committees established by the legislative council."

Page 3, between lines 9 and 10, begin a new paragraph and insert:

"SECTION 7. [EFFECTIVE UPON PASSAGE] **(a) The appointments made by the governor under IC 14-13-3-5.5, as added by this act, must be made not later than June 30, 2000.**

(b) This SECTION expires July 1, 2000."

Renumber all SECTIONS consecutively.

(Reference is to HB 1248 as printed January 26, 2000.)

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COMMITTEE REPORT

Mr. President: The Senate Committee on Rules and Legislative Procedure, to which was referred House Bill No. 1248, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 7, delete lines 13 through 42.
Delete page 8.
Page 9, delete lines 1 through 11.
Renumber all SECTIONS consecutively.

and when so amended that said bill be reassigned to the Senate Committee on Environmental Affairs.

(Reference is to HB 1248 as reprinted February 2, 2000.)

GARTON, Chairperson

Committee Vote: Yeas 8, Nays 0.

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COMMITTEE REPORT

Mr. President: The Senate Committee on Environmental Affairs, to which was referred House Bill No. 1248, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 13-11-2-58 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 1999 (RETROACTIVE)]: Sec. 58. (a) "District", for purposes of IC 13-20-20, IC 13-21, and IC 13-20-22, refers to:

(1) a county solid waste management district; or

(2) a joint solid waste management district;

established under IC 13-21-3-1 or IC 13-9.5-2-1 (before its repeal).

(b) **Except as provided in subsection (c),** "district", for purposes of IC 13-26, refers to a regional water, sewage, or solid waste district established under:

(1) IC 13-26;

(2) IC 13-3-2 (before its repeal on July 1, 1996); or

(3) IC 19-3-1.1 (before its repeal on April 1, 1980).

(c) "District", for purposes of IC 13-26-5-2.5, has the meaning set forth in IC 13-26-5-2.5(a).".

Page 2, delete lines 25 through 42.

Delete pages 3 through 6, begin a new paragraph and insert:

"SECTION 2. IC 13-26-5-2.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 1999 (RETROACTIVE)]: **Sec. 2.5. (a) As used in this section, "district" refers to a regional sewage district located in a county having a population of more than twenty-three thousand six hundred fifty (23,650) but less than twenty-three thousand seven hundred (23,700).**

(b) The district may not require a property owner whose property was not connected to the district's sewer system on March 1, 2000, to connect to the district's sewer system and to discontinue use of a septic system if the following conditions are met:

(1) The board of commissioners of the county in which the property is located adopts an ordinance before May 1, 2000, that establishes procedures for:

(A) exemption of a property owner from the requirement as described in this chapter to connect to the district's sewer system, if the property owner at the property owner's own expense obtains and provides to the county

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health department a certification from the county health department or a person designated by the county health department that the septic system is functioning satisfactorily;

(B) periodic review of a property owner's qualification for exemption under this section; and

(C) notice to the district that a property owner is exempt under this section, or that the property owner has lost an exemption previously applied under this section.

(2) The property owner has complied with the requirements for exemption under subdivision (1).".

Page 7, delete luines 1 through 12, begin a new paragraph and insert:

"SECTION 3. [EFFECTIVE JANUARY 1, 1999 (RETROACTIVE)] IC 13-26-5-2.5, as added by this act, applies only to property owners that received notices of proposed sewer connection under IC 13-26-5, dated after December 31, 1998.".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to EHB 1248 as printed February 16, 2000.)

GARD, Chairperson

Committee Vote: Yeas 8, Nays 0.

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SENATE MOTION

Mr. President: I move that Engrossed House Bill 1248 be amended to read as follows:

Page 2, between lines 39 and 40, begin a new paragraph and insert: "SECTION 3. IC 13-26-4-8 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: **Sec 8. An appointed trustee shall serve at the pleasure of the appointing authority.**".

Renumber all SECTIONS consecutively.

(Reference is to EHB 1248 as printed February 23, 2000.)

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