

# SENATE BILL No. 99

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 6-2.1-3-33; IC 13-11-2; IC 13-26.5.

**Synopsis:** Onsite waste management districts. Permits the establishment of regional onsite waste management districts. Specifies the requirements for establishment of a district through a petition and hearing process and for the operation of a district.

**Effective:** July 1, 2002.

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December 7, 2001, read first time and referred to Committee on Environmental Affairs.

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Second Regular Session 112th General Assembly (2002)

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 *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2001 General Assembly.

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# SENATE BILL No. 99



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:*

1 SECTION 1. IC 6-2.1-3-33 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 33. Gross income  
3 received by:  
4 (1) a conservancy district established under IC 14-33-20 or under  
5 IC 13-3-4 (before its repeal);  
6 (2) a regional water, sewage, or solid waste district established  
7 under IC 13-26 or IC 13-3-2 (before its repeal);  
8 (3) a nonprofit corporation formed solely for the purpose of  
9 supplying water to the public;  
10 (4) a county solid waste management district or a joint solid waste  
11 management district established under IC 13-21 or IC 13-9.5-2  
12 (before its repeal); ~~or~~  
13 (5) a nonprofit corporation formed for the purpose of providing a  
14 combination of:  
15 (A) water; and  
16 (B) sewer and sewage service;  
17 to the public; ~~or~~



1           **(6) a regional onsite waste management district established**  
 2           **under IC 13-26.5;**

3 is exempt from the gross income tax.

4           SECTION 2. IC 13-11-2-58, AS AMENDED BY P.L.225-2001,  
 5 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 6 JULY 1, 2002]: Sec. 58. (a) "District", for purposes of IC 13-20-17.5,  
 7 IC 13-20-20, IC 13-21, and IC 13-20-22, refers to:

- 8           (1) a county solid waste management district; or  
 9           (2) a joint solid waste management district;

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

11           (b) "District", for purposes of IC 13-26, refers to a regional water,  
 12 sewage, or solid waste district established under:

- 13           (1) IC 13-26;  
 14           (2) IC 13-3-2 (before its repeal on July 1, 1996); or  
 15           (3) IC 19-3-1.1 (before its repeal on April 1, 1980).

16           **(c) "District", for purposes of IC 13-26.5, refers to a regional**  
 17 **onsite waste management district established under IC 13-26.5.**

18           SECTION 3. IC 13-11-2-158, AS AMENDED BY P.L.225-2001,  
 19 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 20 JULY 1, 2002]: Sec. 158. (a) "Person", for purposes of:

- 21           (1) IC 13-21;  
 22           (2) air pollution control laws;  
 23           (3) water pollution control laws; and  
 24           (4) environmental management laws, except as provided in  
 25 subsections (c), (d), (e), and (h);

26 means an individual, a partnership, a copartnership, a firm, a company,  
 27 a corporation, an association, a joint stock company, a trust, an estate,  
 28 a municipal corporation, a city, a school city, a town, a school town, a  
 29 school district, a school corporation, a county, any consolidated unit of  
 30 government, political subdivision, state agency, a contractor, or any  
 31 other legal entity.

32           (b) "Person", for purposes of:

- 33           (1) IC 13-18-10; and  
 34           (2) IC 13-20-17;

35 means an individual, a partnership, a copartnership, a firm, a company,  
 36 a corporation, an association, a joint stock company, a trust, an estate,  
 37 a political subdivision, a state agency, or other legal entity, or their  
 38 legal representative, agent, or assigns.

39           (c) "Person", for purposes of:

- 40           (1) IC 13-20-13;  
 41           (2) IC 13-20-14;  
 42           (3) IC 13-20-16; and

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- 1 (4) IC 13-25-6;  
 2 means an individual, a corporation, a limited liability company, a  
 3 partnership, or an unincorporated association.
- 4 (d) "Person", for purposes of IC 13-23, has the meaning set forth in  
 5 subsection (a). The term includes a consortium, a joint venture, a  
 6 commercial entity, and the United States government.
- 7 (e) "Person", for purposes of IC 13-20-17.5 and IC 13-25-3, means  
 8 an individual, a corporation, a limited liability company, a partnership,  
 9 a trust, an estate, or an unincorporated association.
- 10 (f) "Person", for purposes of IC 13-26 **and IC 13-26.5**, means an  
 11 individual, a firm, a partnership, an association, a limited liability  
 12 company, or a corporation other than an eligible entity.
- 13 (g) "Person", for purposes of IC 13-29-1, means any individual,  
 14 corporation, business enterprise, or other legal entity either public or  
 15 private and any legal successor, representative, agent, or agency of that  
 16 individual, corporation, business enterprise, or legal entity.
- 17 (h) "Person", for purposes of:  
 18 (1) IC 13-30-6-6;  
 19 (2) IC 13-30-6-7; and  
 20 (3) IC 13-30-8-1;  
 21 has the meaning set forth in IC 35-41-1.
- 22 SECTION 4. IC 13-11-2-164 IS AMENDED TO READ AS  
 23 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 164. (a) "Political  
 24 subdivision", for purposes of IC 13-18-13, means:  
 25 (1) a political subdivision (as defined in IC 36-1-2);  
 26 (2) a regional water, sewage, or solid waste district organized  
 27 under:  
 28 (A) IC 13-26; or  
 29 (B) IC 13-3-2 (before its repeal July 1, 1996); ~~or~~  
 30 (3) a local public improvement bond bank organized under  
 31 IC 5-1.4; **or**  
 32 **(4) a regional onsite waste management district organized**  
 33 **under IC 13-26.5.**
- 34 (b) "Political subdivision", for purposes of IC 13-18-21, means:  
 35 (1) a political subdivision (as defined in IC 36-1-2);  
 36 (2) a regional water, sewage, or solid waste district organized  
 37 under:  
 38 (A) IC 13-26; or  
 39 (B) IC 13-3-2 (before its repeal July 1, 1996);  
 40 (3) a local public improvement bond bank organized under  
 41 IC 5-1.4;  
 42 (4) a qualified entity described in IC 5-1.5-1-8(4) that is a public

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1 water utility described in IC 8-1-2-125; or

2 (5) a conservancy district established for the purpose set forth in  
3 IC 14-33-1-1(a)(4).

4 (c) "Political subdivision", for purposes of IC 13-19-5, has the  
5 meaning set forth in IC 36-1-2-13 and includes a redevelopment district  
6 under IC 36-7-14 or IC 36-7-15.1.

7 SECTION 5. IC 13-11-2-201 IS AMENDED TO READ AS  
8 FOLLOWS [EFFECTIVE JULY 1, 2002]: Sec. 201. "Sewage disposal  
9 system", for purposes of IC 13-18-12 **and IC 13-26.5**, means septic  
10 tanks, wastewater holding tanks, seepage pits, cesspools, privies,  
11 composting toilets, interceptors or grease traps, portable sanitary units,  
12 and other equipment, facilities, or devices used to:

- 13 (1) store;  
14 (2) treat;  
15 (3) make inoffensive; or  
16 (4) dispose of;

17 human excrement or liquid carrying wastes of a domestic nature.

18 SECTION 6. IC 13-26.5 IS ADDED TO THE INDIANA CODE AS  
19 A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1,  
20 2002]:

21 **ARTICLE 26.5. REGIONAL ONSITE WASTE**  
22 **MANAGEMENT DISTRICTS**

23 **Chapter 1. Definitions and Applicability**

24 **Sec. 1. The definitions in this chapter apply throughout this**  
25 **article.**

26 **Sec. 2. "District" means a regional onsite waste management**  
27 **district established under this article.**

28 **Sec. 3. "Multiple county district" means a district with area in**  
29 **more than one (1) county.**

30 **Sec. 4. "System" means a sewage disposal system.**

31 **Chapter 2. Purposes of Regional Districts**

32 **Sec. 1. A regional onsite waste management district may be**  
33 **established under this article to perform one (1) or more of the**  
34 **following functions related to onsite waste management:**

- 35 (1) **Inventory of systems.**  
36 (2) **Inspection of systems.**  
37 (3) **Monitoring the:**  
38 (A) **performance;**  
39 (B) **installation; and**  
40 (C) **maintenance;**  
41 **of systems.**  
42 (4) **Establishing:**

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- 1 (A) standards for installation and inspection of systems  
 2 that are no less stringent than standards established by the  
 3 state department of health; and  
 4 (B) procedures for enforcement of the standards.  
 5 (5) Seeking grants for:  
 6 (A) system maintenance; and  
 7 (B) any other activities described in this article.  
 8 (6) Recommending rates and charges to be imposed under this  
 9 article by the county executives of the counties in which the  
 10 district is located for the operation of the district.  
 11 (7) Establishing policy and procedures for the use of grants  
 12 and other revenue of the district for installation, maintenance,  
 13 and other activities of the district relating to systems in the  
 14 district.  
 15 (8) Seeking solutions for disposal of septage from systems.  
 16 (9) Education and training of system service providers and  
 17 system owners.  
 18 (10) Coordination of activities of the district with activities of:  
 19 (A) local health departments;  
 20 (B) the department;  
 21 (C) the department of natural resources; and  
 22 (D) the state department of health.  
 23 (11) Other functions as determined by the governing body of  
 24 the district.

25 Enforcement of standards by a district under subdivision (4) does  
 26 not affect the authority of the department or the state department  
 27 of health.

### 28 Chapter 3. Establishment of Regional Districts

29 Sec. 1. (a) The establishment of a regional district whose  
 30 proposed territory is all or part of the area of one (1) county may  
 31 be initiated only by the executive of the county.

32 (b) The establishment of a regional district whose proposed  
 33 territory is all or part of the areas of more than one (1) county may  
 34 be initiated only upon agreement of the executives of all of the  
 35 affected counties.

36 (c) A notice of intent to establish a district must be filed in:

- 37 (1) the office of the executive of each governmental entity  
 38 having territory within the proposed district;  
 39 (2) the department; and  
 40 (3) the state department of health.

41 Sec. 2. A notice of intent to establish a district under this  
 42 chapter must state the following:

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- 1           **(1) The proposed name of the district.**
- 2           **(2) The place in which the district's principal office is to be**
- 3           **located.**
- 4           **(3) The following information:**
  - 5               **(A) The need for the proposed district.**
  - 6               **(B) The purpose to be accomplished.**
  - 7               **(C) How the district will be conducive to the public health,**
  - 8               **safety, convenience, or welfare.**
- 9           **(4) An accurate description of the territory to be included in**
- 10           **the district, which does not have to be given by metes and**
- 11           **bounds or by legal subdivisions.**
- 12           **(5) The plan for financing the cost of the operations of the**
- 13           **district until the district is in receipt of revenue from its**
- 14           **operations.**
- 15           **(6) Estimates of the following:**
  - 16               **(A) The costs of accomplishing the purpose of the district.**
  - 17               **(B) The sources of the funding of those costs.**
  - 18               **(C) The rates and charges that will be required.**
- 19           **Sec. 3. The district may include area that is not contiguous, but**
- 20           **the territory must be so situated that the public health, safety,**
- 21           **convenience, or welfare will be promoted by the establishment of**
- 22           **the area described as a single district.**
- 23           **Sec. 4. The description of the area to be included in a district**
- 24           **may not include area in a municipality that has, by ordinance or**
- 25           **resolution filed with the county or counties establishing the district,**
- 26           **exercised the option not to be included in the district.**
- 27           **Sec. 5. Upon the filing of a notice of intent to establish a district**
- 28           **under this chapter, the county executive shall appoint a hearing**
- 29           **officer to preside over hearings concerning the establishment of a**
- 30           **district. The hearing officer does not have to be a state or county**
- 31           **employee. If the hearing officer is not a full-time state or county**
- 32           **employee, the hearing officer is entitled to be paid reasonable:**
  - 33               **(1) expenses; and**
  - 34               **(2) per diem;**
- 35           **for each day or part of a day in actual attendance at a meeting or**
- 36           **hearing or in performance of duties.**
- 37           **Sec. 6. (a) The hearing officer shall fix a date, time, and place**
- 38           **inside or within ten (10) miles of the proposed district for the**
- 39           **hearing on any matter for which a hearing is authorized under this**
- 40           **chapter.**
- 41           **(b) The hearing officer shall provide notice of the hearing:**
  - 42               **(1) under IC 5-3-1; and**

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1 (2) by certified mail, return receipt requested, mailed at least  
2 two (2) weeks before the hearing to:

- 3 (A) the department; and  
4 (B) the state department of health.

5 Sec. 7. A person that resides in or partially resides in an area  
6 affected by the establishment of a district:

- 7 (1) may, on or before the date set for the hearing, file a  
8 written objection to the establishment of the district; and  
9 (2) may be heard at the hearing.

10 Sec. 8. (a) After the hearing on the establishment of the  
11 proposed district, which may be adjourned periodically, the  
12 hearing officer shall make findings and recommendations as to  
13 whether the establishment of the district should be:

- 14 (1) approved;  
15 (2) approved with modifications; or  
16 (3) denied.

17 (b) The hearing officer shall consider, at a minimum, the  
18 following in making findings and recommendations concerning the  
19 establishment of a proposed district:

- 20 (1) Whether the proposed district complies with the  
21 conditions of this chapter for establishment of a district.  
22 (2) Whether the proposed district appears capable of  
23 accomplishing its purpose or purposes in an economically  
24 feasible manner.

25 Sec. 9. (a) Following a hearing under this chapter, if:

- 26 (1) the executive of a county, if the area of the district will be  
27 in that county, determines; or  
28 (2) for a multiple county district, the executives of those  
29 counties determine;

30 that the findings and recommendations of the hearing officer show  
31 that the proposed district appears capable of accomplishing the  
32 purpose or purposes of the district in an economically feasible  
33 manner, a regional district may be established under subsection  
34 (b).

35 (b) A regional district may be established:

- 36 (1) by the adoption of an ordinance by the executive of a  
37 county, if the area of the district will be in that county; or  
38 (2) for a multiple county district, by the adoption of joint  
39 ordinances by the executives of two (2) or more counties.

40 Sec. 10. The district shall provide notice of the adoption of an  
41 ordinance under section 9 of this chapter to:

- 42 (1) local health departments;

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- (2) the department;
- (3) the department of natural resources; and
- (4) the state department of health.

**Sec. 11. A district established under this chapter is not an independent municipal corporation.**

**Sec. 12. An ordinance adopted under section 9 of this chapter must state the following:**

- (1) The name of the district.
- (2) The need for the district.
- (3) The purpose to be accomplished by the district.
- (4) An accurate description of the territory included in the district, which does not have to be given by metes and bounds or by legal subdivisions.
- (5) Estimates of the costs of the operations of the district.
- (6) The plan for financing the cost of the operations of the district by the county or counties in which the district is located.

**Chapter 4. Governing Body of a Regional District**

**Sec. 1. (a) For a district with area in one (1) county, the executive of the county is the governing body of the district.**

**(b) For a multiple county district, the executives of all the counties in which the district is located act jointly as the governing body of the district.**

**Sec. 2. (a) The governing body of a district with area in one (1) county may take action by adoption of an ordinance.**

**(b) The governing body of a multiple county district may take action by adoption of a joint ordinance of all the county executives that comprise the governing body.**

**Chapter 5. Powers and Duties of Regional Districts**

**Sec. 1. Upon establishment of the district, the district may exercise all the rights, powers, and duties conferred upon the district by this article.**

**Sec. 2. A district may do the following:**

- (1) Make contracts for the services necessary for the operations of the district, including management of the district by any public or private entity.
- (2) Adopt, amend, and repeal bylaws for the administration of the district's affairs.
- (3) Fix, alter, charge, and collect reasonable rates and other charges, to be imposed by the county executives of each county in which the district is located, in the area served by the district with respect to every person whose premises are,

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1 whether directly or indirectly, served by the district, for the  
2 following purposes:

3 (A) To fulfill the terms of contracts made by the district.

4 (B) To pay the other expenses of the district.

5 (4) Refuse the services of the district if the rates and other  
6 charges are not paid by the user.

7 (5) Control and supervise all licenses, money, contracts,  
8 accounts, books, records, maps, or other property rights and  
9 interests conveyed, delivered, transferred, or assigned to the  
10 district.

11 (6) Upon consent of the governing body of a district with area  
12 in one (1) county or all of the county executives that comprise  
13 the governing body of a multiple county district, merge or  
14 combine with another district into a single district on terms so  
15 that the surviving district:

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

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

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

23 (8) Adopt and enforce rules:

24 (A) to establish procedures for the governing body's  
25 actions; or

26 (B) for any other lawful subject necessary to the operation  
27 of the district and the exercise of the power granted.

28 **Sec. 3. A district may make contracts or incur obligations only  
29 if the contracts or obligations are payable solely from:**

30 (1) revenue the district is permitted to raise under this article;  
31 or

32 (2) federal, state, or other grants or contributions.

33 **Sec. 4. A district may not make expenditures or take any other  
34 action for the benefit of a property served by a system if there is an  
35 available sanitary sewer within three hundred (300) feet of the  
36 property line.**

37 **Chapter 6. District Plan**

38 **Sec. 1. A district plan for the operation of the district must  
39 include:**

40 (1) a detailed statement of the activities under IC 13-26.5-2-1  
41 that the district plans to undertake; and

42 (2) a timetable for the activities under subdivision (1).

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**Chapter 7. Payment of District Expenses**

**Sec. 1. Each district must keep proper records showing the district's finances.**

**Sec. 2. A local, state, or federal agency or person may advance or give a district money to be used by the district for the following purposes:**

- (1) The preparation of a plan for the operation of the district.**
- (2) Other purposes of the district until the district is in receipt of revenue from its operations or from the counties in which the district is located.**

**Sec. 3. When a district receives revenue from its operations or from the counties in which the district is located, the district shall repay any money advanced to the advancing agency in the manner agreed.**

**Sec. 4. The governing body of a district may provide for the use of revenue of the county, or revenue of the counties for a multiple county district, for operation of the district.**

**Chapter 8. Territorial Authority of Sewage Disposal Companies**

**Sec. 1. This article does not limit the following:**

- (1) The formation and operation under IC 8-1-2-89 of a sewage disposal company to provide sewage disposal service to an area within a district.**
- (2) The granting of a certificate of territorial authority under IC 8-1-2-89 encompassing a part of the area within the district.**

**Chapter 9. Rates and Charges**

**Sec. 1. The governing body may determine rates and charges of the district, to be imposed by the county executive of each county in which the district is located, based on the following:**

- (1) A flat charge for each system.**
- (2) Variable charges based on the capacity of a system.**
- (3) Other factors that the governing body determines are necessary to establish just and equitable rates and charges.**

**Sec. 2. Unless the governing body finds and directs otherwise, the district is considered to benefit every:**

- (1) lot;**
- (2) parcel of land; or**
- (3) building;**

**served by a system. The rates or charges shall be billed and collected accordingly.**

**Sec. 3. (a) Just and equitable rates and charges are those that produce sufficient revenue to pay all expenses incidental to the**

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operation of the district.

(b) Rates and charges too low to meet the financial requirements described in subsection (a) are unlawful.

Sec. 4. The county executive of each county in which the district is located shall impose the initial rates and charges determined by the governing body. The county executive shall establish the rates and charges after a public hearing at which all:

- (1) the users of systems in the part of the district located in the county; and
- (2) others interested;

have an opportunity to be heard concerning the proposed rates and charges.

Sec. 5. After introduction of the ordinance initially fixing rates and charges but before the ordinance is finally adopted, notice of the hearing setting forth the proposed schedule of the rates and charges must be given by publication one (1) time each week for two (2) weeks in a newspaper of general circulation in each of the counties in which the district is located. The last publication must be at least seven (7) days before the date fixed in the notice for the hearing. The hearing may be adjourned as necessary.

Sec. 6. (a) The ordinance establishing the initial rates and charges, either as:

- (1) originally introduced; or
- (2) modified and amended;

shall be passed and put into effect after the hearing. However, the governing body must approve any modification or amendment of the rates and charges.

(b) A copy of the schedule of the rates and charges established must be:

- (1) kept on file in the office of the district; and
- (2) open to public inspection.

Sec. 7. A change of the rates and charges may be made in the same manner as the rates and charges were originally established.

**Chapter 10. Liens for Rates and Charges**

Sec. 1. The rates and charges made, assessed, or established under this article against:

- (1) a lot;
- (2) a parcel of land; or
- (3) a building;

that is served by the district are a lien against the lot, parcel of land, or building.

Sec. 2. The district shall record in the county recorder's office

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1 of the county in which the property is located a list of the rates and  
 2 charges. Except as provided in sections 5 and 6 of this chapter, a  
 3 lien attaches at the time of the recording of the list. The lien:

- 4 (1) is superior to and takes precedence over all other liens  
 5 except a lien for taxes; and  
 6 (2) shall be enforced under this article.

7 **Sec. 3.** If rates and charges are not paid within the time fixed by  
 8 the governing body, the rates and charges become delinquent, and  
 9 a penalty of ten percent (10%) of the amount of the rates and  
 10 charges attaches to the rates and charges. The governing body may  
 11 recover:

- 12 (1) the amount due;  
 13 (2) the penalty; and  
 14 (3) reasonable attorney's fees;

15 in a civil action in the name of the district.

16 **Sec. 4.** The rates and charges, together with the penalty, are  
 17 collectible in the manner provided by this article.

18 **Sec. 5. (a)** A rate or charge is not enforceable as a lien against a  
 19 subsequent owner of property unless the lien for the rate or charge  
 20 was recorded with the county recorder before the conveyance to  
 21 the subsequent owner.

22 (b) If the property is conveyed before the lien can be filed, the  
 23 officer of the district who is charged with the collection of the rate  
 24 or charge shall notify the person who owned the property at the  
 25 time the fee became payable. The notice must inform the person  
 26 that payment, including penalty fees for delinquencies, is due not  
 27 less than fifteen (15) days after the date of the notice. If payment is  
 28 not received within one hundred eighty (180) days after the date of  
 29 the notice, the amount due may be expensed as a bad debt loss.

30 **Sec. 6. (a)** This section applies whenever the owner of the  
 31 property has notified the general office of the district by certified  
 32 mail with return receipt requested of the address to which the  
 33 owner's notice is to be sent.

34 (b) A lien does not attach against a lot, parcel of land, or  
 35 building occupied by someone other than the owner unless the  
 36 officer of the district who is charged with the collection of rates  
 37 and charges notifies the owner of the property after the rates and  
 38 charges have become sixty (60) days delinquent.

39 **Sec. 7. (a)** The district shall release:

- 40 (1) liens filed with the county recorder after the recorded date  
 41 of conveyance of the property; and  
 42 (2) delinquent fees incurred by the seller;

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1 upon receipt of a verified demand in writing from the purchaser.  
2 (b) The demand must state the following:  
3 (1) That the delinquent fees were not incurred by the  
4 purchaser as a user, lessee, or previous owner.  
5 (2) That the purchaser has not been paid by the seller for the  
6 delinquent fees.  
7 Chapter 11. Enforcement of Delinquencies  
8 Sec. 1. This chapter applies only to fees or penalties that have  
9 been due and unpaid for at least ninety (90) days.  
10 Sec. 2. A district may enforce delinquent fees and penalties in  
11 the manner described in IC 13-26-13.

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