



February 11, 2005

## SENATE BILL No. 446

DIGEST OF SB 446 (Updated February 10, 2005 10:50 am - DI 106)

**Citations Affected:** IC 8-1.5; IC 13-26; IC 36-11.

**Synopsis:** Liens for storm water fees. Provides that storm water management district fees constitute liens. Sets forth the procedures by which: (1) a lien attaches and is enforced; and (2) payment of fees is enforced. Conforms the lien procedure for regional sewer districts with the lien procedure for municipal sewers.

**Effective:** July 1, 2005.

**Gard, Lanane**

January 13, 2005, read first time and referred to Committee on Judiciary.  
February 10, 2005, amended, reported favorably — Do Pass.

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SB 446—LS 7745/DI 103+



February 11, 2005

First Regular Session 114th General Assembly (2005)

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 2004 Regular Session of the General Assembly.

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## SENATE BILL No. 446



A BILL FOR AN ACT to amend the Indiana Code concerning utilities and transportation.

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

1 SECTION 1. IC 8-1.5-5-29 IS ADDED TO THE INDIANA CODE  
2 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 2005]: **Sec. 29. (a) Fees assessed against real property under this  
4 chapter constitute a lien against the property assessed. The lien is  
5 superior to all other liens except tax liens. Except as provided in  
6 subsections (b) and (c), the lien attaches when notice of the lien is  
7 filed in the county recorder's office under section 30 of this  
8 chapter.**

9 (b) A fee is not enforceable as a lien against a subsequent owner  
10 of property unless the lien for the fee was recorded with the county  
11 recorder before the conveyance to the subsequent owner. If  
12 property is conveyed before a lien is filed, the department shall  
13 notify the person who owned the property at the time the fee  
14 became payable. The notice must inform the person that payment,  
15 including penalty fees for delinquencies, is due not less than fifteen  
16 (15) days after the date of the notice. If payment is not received  
17 within one hundred eighty (180) days after the date of the notice,

SB 446—LS 7745/DI 103+



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the amount due may be expensed as a bad debt loss.

(c) A lien attaches against real property occupied by someone other than the owner only if the department notifies the owner within twenty (20) days after the time the user fees became sixty (60) days delinquent. However, the department must give notice to the owner only if the owner has given the department written notice of the address to which to send notice.

(d) The department shall release:

- (1) liens filed with the county recorder after the recorded date of conveyance of the property; and
- (2) delinquent fees incurred by the seller; upon receipt of a verified demand in writing from the purchaser. The demand must state that the delinquent fees were not incurred by the purchaser as a user, lessee, or previous owner and that the purchaser has not been paid by the seller for the delinquent fees.

SECTION 2. IC 8-1.5-5-30 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 30. (a) The board may defer enforcing the collection of unpaid fees and penalties assessed under this chapter until the unpaid fees and penalties have been due and unpaid for at least ninety (90) days.

(b) Except as provided in subsection (k), the board shall enforce payment of fees imposed under this chapter. As often as the board determines necessary in a calendar year, the board shall prepare either of the following:

- (1) A list of the delinquent fees and penalties that are enforceable under this section. The list must include the following:
  - (A) The name of the owner of each lot or parcel of real property on which fees are delinquent.
  - (B) A description of the premises, as shown by the records of the county auditor.
  - (C) The amount of the delinquent fees, together with the penalty.
- (2) An individual instrument for each lot or parcel of real property on which the fees are delinquent.

(c) An officer of the board shall record a copy of each list or each individual instrument with the county recorder who shall charge a fee for recording the list or each individual instrument in accordance with the fee schedule established in IC 36-2-7-10. The officer shall mail by certified mail, or by another delivery service providing proof of delivery, to each property owner on the list or

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1 on an individual instrument a notice stating that a lien against the  
2 owner's property has been recorded. A service charge of five  
3 dollars (\$5), which is in addition to the recording fee charged  
4 under this subsection and under subsection (e), shall be added to  
5 each delinquent fee that is recorded.

6 (d) Using the lists and instruments prepared under subsection  
7 (b) and recorded under subsection (c), the board shall, not later  
8 than ten (10) days after the list or each individual instrument is  
9 recorded under subsection (c), certify to the county auditor a list  
10 of the liens that remain unpaid for collection in the next May. The  
11 county and its officers and employees are not liable for any  
12 material error in the information on this list.

13 (e) The board shall release any recorded lien when the  
14 delinquent fees, penalties, service charges, and recording fees have  
15 been fully paid. The county recorder shall charge a fee for  
16 releasing the lien in accordance with IC 36-2-7-10.

17 (f) Upon receipt of the list under subsection (c), the county  
18 auditor of each county shall add a fifteen dollar (\$15) certification  
19 fee for each lot or parcel of real property on which fees are  
20 delinquent. The fee is in addition to all other fees and charges. The  
21 county auditor shall immediately enter on the tax duplicate for the  
22 district the delinquent fees, penalties, service charges, recording  
23 fees, and certification fees, which are due not later than the due  
24 date of the next May installment of property taxes. The county  
25 treasurer shall include any unpaid charges for the delinquent fee,  
26 penalty, service charge, recording fee, and certification fee to the  
27 owner or owners of each lot or parcel of property, at the time the  
28 next cycle's property tax installment is billed.

29 (g) After certification of liens under subsection (d), the board  
30 may not collect or accept delinquent fees, penalties, service  
31 charges, recording fees, or certification fees from property owners  
32 whose property has been certified to the county auditor.

33 (h) If a delinquent fee, penalty, service charge, recording fee,  
34 and certification fee are not paid, they shall be collected by the  
35 county treasurer in the same way that delinquent property taxes  
36 are collected.

37 (i) At the time of each semiannual tax settlement, the county  
38 treasurer shall certify to the county auditor all fees, charges, and  
39 penalties that have been collected. The county auditor shall deduct  
40 the service charges and certification fees collected by the county  
41 treasurer and pay over to the officer the remaining fees and  
42 penalties due the district. The county treasurer shall retain the

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1 service charges and certification fees that have been collected and  
2 shall deposit them in the county general fund.

3 (j) Fees, penalties, and service charges that were not recorded  
4 before a recorded conveyance shall be removed from the tax roll  
5 for a purchaser who, in the manner prescribed by section 29(d) of  
6 this chapter, files a verified demand with the county auditor.

7 (k) A board may write off a fee or penalty under subsection (a)  
8 that is less than forty dollars (\$40).

9 SECTION 3. IC 8-1.5-5-31 IS ADDED TO THE INDIANA CODE  
10 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
11 1, 2005]: **Sec. 31. (a) A district may foreclose a lien established by  
12 this chapter in order to collect fees and penalties. The district shall  
13 recover the amount of the fees and penalties, and a reasonable  
14 attorney's fee. The court shall order the sale to be made without  
15 relief from valuation or appraisal laws.**

16 (b) Except as otherwise provided by this chapter, actions under  
17 this chapter are subject to the general statutes regarding municipal  
18 public improvement assessments.

19 SECTION 4. IC 13-26-14-4 IS ADDED TO THE INDIANA CODE  
20 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
21 1, 2005]: **Sec. 4. Rates, fees, or charges made, assessed, or  
22 established by the district are a lien on a lot, parcel of land, or  
23 building that is connected with or uses the works of the district in  
24 the manner established under IC 36-9-23. The liens:**

- 25 (1) attach;
- 26 (2) are recorded;
- 27 (3) are subject to the same penalties, interest, and reasonable  
28 attorney's fees on recovery; and
- 29 (4) shall be collected and enforced;

30 in substantially the same manner as provided in IC 36-9-23-31  
31 through IC 36-9-23-32.

32 SECTION 5. IC 36-11-11-2 IS AMENDED TO READ AS  
33 FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 2. A district may  
34 enforce delinquent fees and penalties in the manner described in  
35 ~~IC 13-26-13~~. IC 36-9-23.**

36 SECTION 6. THE FOLLOWING ARE REPEALED [EFFECTIVE  
37 JULY 1, 2005]: IC 13-26-12; IC 13-26-13.

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SENATE MOTION

Madam President: I move that Senator Lanane be added as second author of Senate Bill 446.

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COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred Senate Bill No. 446, 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, line 12, delete "can be" and insert "is".

Page 2, line 41, after "mail" insert "**by certified mail, or by another delivery service providing proof of delivery,**".

Page 4, after line 17, begin a new paragraph and insert:

"SECTION 4. IC 13-26-14-4 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 4. Rates, fees, or charges made, assessed, or established by the district are a lien on a lot, parcel of land, or building that is connected with or uses the works of the district in the manner established under IC 36-9-23. The liens:**

- (1) attach;**
- (2) are recorded;**
- (3) are subject to the same penalties, interest, and reasonable attorney's fees on recovery; and**
- (4) shall be collected and enforced;**

**in substantially the same manner as provided in IC 36-9-23-31 through IC 36-9-23-32.**

SECTION 5. IC 36-11-11-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. A district may enforce delinquent fees and penalties in the manner described in ~~IC 13-26-13~~. **IC 36-9-23.**

SECTION 6. THE FOLLOWING ARE REPEALED [EFFECTIVE JULY 1, 2005]: IC 13-26-12; IC 13-26-13."

and when so amended that said bill do pass.

(Reference is to SB 446 as introduced.)

BRAY, Chairperson

Committee Vote: Yeas 10, Nays 0.

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