
HOUSE BILL No. 1145

DIGEST OF INTRODUCED BILL

Citations Affected: IC 36-9-25.

Synopsis: Sanitation districts. Makes the following changes for a department of public sanitation in a sanitation district (district) that contains at least one city having a population of less than 100,000 and at least one town: (1) Makes the department an executive department of each municipality in the district. (2) Eliminates the bipartisan membership requirements for the board of sanitary commissioners (board). (3) Provides that sanitation commissioners currently serving may not be reappointed. (4) Allows a district to perform certain functions in the name of any municipality in the district or in the name of the board. (5) Provides that fees related to property that is subject to full taxation do not take effect until the fees are approved by the legislative body of each municipality in the district or established by the utility regulatory commission.

Effective: Upon passage.

Stevenson

January 5, 2006, read first time and referred to Committee on Local Government.

C
O
P
Y



Second Regular Session 114th General Assembly (2006)

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 2005 Regular Session of the General Assembly.

C
o
p
y

HOUSE BILL No. 1145



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 36-9-25-3 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. (a) A department
3 of public sanitation is established as an executive department of the
4 municipality. **However, in the case of a district described in**
5 **subsection (b)(2), the department is established as an executive**
6 **department of each municipality in the district.**

7 (b) The department is under the control of a board of sanitary
8 commissioners, which is composed as follows:

9 (1) If the department is established under section 1(a) of this
10 chapter, the board consists of not less than three (3) but not more
11 than five (5) commissioners. All of the commissioners shall be
12 appointed by the municipal executive, unless one (1)
13 commissioner is the municipal engineer. Not more than two (2)
14 of the commissioners may be of the same political party, unless
15 the board consists of five (5) commissioners, in which case not
16 more than three (3) may be of the same political party.

17 (2) Notwithstanding subdivision (1), if the department is



1 established under section 1(a) of this chapter and the district
 2 contains at least one (1) city having a population of less than one
 3 hundred thousand (100,000) and at least one (1) town, the board
 4 consists of one (1) commissioner from each municipality in the
 5 district. The executive of each of those municipalities shall
 6 appoint one (1) commissioner. If after all appointments are made
 7 the board has fewer than five (5) commissioners, the executive of
 8 the municipality with the largest population shall appoint the
 9 number of additional commissioners needed to bring the total to
 10 five (5). ~~Not more than three (3) of the commissioners may be of~~
 11 ~~the same political party.~~

12 (3) If the department is established under section 1(b) of this
 13 chapter, the board consists of three (3) commissioners. Two (2)
 14 commissioners shall be appointed by the city executive and one
 15 (1) commissioner is the city civil engineer. However, if the
 16 department is located in a county having a population of:

- 17 (A) more than one hundred five thousand (105,000) but less
 18 than one hundred ten thousand (110,000);
- 19 (B) more than one hundred ten thousand (110,000) but less
 20 than one hundred fifteen thousand (115,000);
- 21 (C) more than one hundred forty-eight thousand (148,000) but
 22 less than one hundred seventy thousand (170,000); or
- 23 (D) more than one hundred thirty thousand (130,000) but less
 24 than one hundred forty-five thousand (145,000);

25 and the city does not have a city civil engineer, the third
 26 commissioner shall also be appointed by the executive. The third
 27 commissioner, however, must be a licensed engineer with at least
 28 five (5) years experience in civil or sanitary engineering. In
 29 addition, in such a city the commissioners may not hold another
 30 public office. Not more than two (2) of the commissioners may be
 31 of the same political party.

32 (c) Before beginning the commissioner's duties, each commissioner
 33 shall take and subscribe the usual oath of office. The oath shall be
 34 endorsed upon the certificate of appointment and filed with the
 35 municipal clerk.

36 (d) Each commissioner shall also execute a bond in the penal sum
 37 of five thousand dollars (\$5,000) payable to the state and conditioned
 38 upon the faithful performance of the commissioner's duties and the
 39 faithful accounting for all money and property that comes under the
 40 commissioner's control. The bond must be approved by the municipal
 41 executive.

42 (e) The appointed commissioners are entitled to a salary of not less

**C
O
P
Y**



1 than three thousand six hundred dollars (\$3,600) a year during actual
2 construction and not less than six hundred dollars (\$600) a year in
3 other years.

4 (f) Notwithstanding IC 36-1-8-10, whenever this section requires
5 that the membership of the board of sanitary commissioners not exceed
6 a stated number of members from the same political party, at the time
7 of appointment the appointee must:

- 8 (1) have voted in the two (2) most recent primary elections held
- 9 by the party with which the appointee claims affiliation; or
- 10 (2) if the appointee did not vote in the two (2) most recent
- 11 primary elections or only voted in one (1) of those elections, be
- 12 certified as a member of the party with which the appointee
- 13 claims affiliation by that party's county chairman for the county
- 14 in which the appointee resides.

15 SECTION 2. IC 36-9-25-10 IS AMENDED TO READ AS
16 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 10. In performing
17 its duties the board may do the following:

- 18 (1) If needed for sewage works, condemn, appropriate, lease, rent,
- 19 purchase, and hold any real or personal property within the
- 20 district or within five (5) miles outside the boundaries of the
- 21 district.
- 22 (2) Enter upon any lots or lands for the purpose of surveying or
- 23 examining them to determine the location of any sewage works or
- 24 other structures, roads, levees, or walls connected with or
- 25 necessary for the use or operation of the facilities.
- 26 (3) Design, order, contract for, construct, reconstruct, and
- 27 maintain the sewage works.
- 28 (4) Build or have built all roads, levees, walls, other structures, or
- 29 lagoons that may be desirable in connection with sewage works
- 30 and make improvements to the grounds and premises under its
- 31 control, including the erection and operation of a plant for the
- 32 removal of sand and gravel from the grounds.
- 33 (5) Compel the owners, operators, or lessees of all factories,
- 34 shops, works, plants, or other structures to treat, purify, or
- 35 eliminate from the sewage and trade waste of the premises any
- 36 ingredients that interfere with the successful operation of the
- 37 sewage works. It may compel the owners, operators, or lessees of
- 38 the premises located on a watercourse to direct an excessive flow
- 39 of water into the watercourse.
- 40 (6) Review and approve plans for privately constructed plants for
- 41 the treatment or elimination of trade waste. This is to insure that
- 42 an owner, operator, or lessee of a house, factory, shop, works,

C
o
p
y



1 plant, or other structure that may be directly or indirectly
 2 connected with sewers emptying into the sewage works does not
 3 construct a purification plant, machine, or other device for
 4 eliminating or treating the trade waste from those places for the
 5 purpose of eliminating ingredients that would harm the sewage
 6 works until the plans have been submitted to and approved by the
 7 board. After plans have been submitted to the board, it may reject
 8 them in their entirety or order changes to be made that include its
 9 supervision and regulation of the operation. An appeal may be
 10 taken from the decision of the board rejecting the plans submitted
 11 or ordering changes by the owner, operator, or lessee of a
 12 proposed private plant, in the same manner as appeals from the
 13 works board as far as applicable.

14 (7) Build or have built a plant or plants and all appurtenances for
 15 the treatment of sludge, pressing of sludge, or converting sludge
 16 into marketable fertilizer.

17 (8) Sell any byproduct from the sewage works, or furnish any
 18 byproduct free for the use of the municipality or for other public
 19 uses, with revenue derived from the sale above the amount
 20 needed for maintenance to be paid into the sanitary district bond
 21 fund, or if no bonds are outstanding, to revert to its general fund.

22 (9) Compel the owners, lessees, or agents in possession of lots or
 23 land from which sewers discharge sewage or drainage and pollute
 24 a watercourse or body of water or constitute a menace to public
 25 health and welfare to connect the sewers with drains leading
 26 directly or indirectly into sewage works regulating the use and
 27 assessing reasonable charges.

28 (10) Construct or have constructed regulating devices at the
 29 junction of combined sewers with intercepting sewers to regulate
 30 the discharge into the intercepting and connecting sewers to
 31 prevent the pollution of streams or bodies of water or a menace to
 32 the public health and welfare.

33 (11) Construct, **add to, reconstruct, or maintain** an incinerating
 34 or reduction plant or other plants for the conversion, destruction,
 35 or disposal of garbage, filth, ashes, dirt, and rubbish. ~~and add to;~~
 36 ~~reconstruct; and maintain it. It~~ **The board** may operate the plant
 37 in connection with sewage works, and sell any byproducts derived
 38 from the garbage, filth, ashes, or rubbish, including sand and
 39 gravel taken from lands under the control of the board at prices
 40 that are determined by the board, or furnish it free to the
 41 municipality or for other public uses, with revenue derived above
 42 the amount needed for maintenance to be paid into the sanitary

C
o
p
y



- 1 district bond fund, or if no bonds are outstanding, to revert to its
2 general fund.
- 3 (12) Take charge of all real property, belonging to the
4 municipality and under the control of the works board, suitably
5 located for sewage works if the board demands the works board,
6 subject to contracts, to relinquish and transfer control of real and
7 personal property used by the works board for the collection and
8 removal of garbage and ashes. The transfer of personal property
9 must be made by resolution adopted by the works board
10 describing the property, with a copy of the resolution to be
11 delivered to the board and made a matter of record in the minutes
12 of the proceedings of the board.
- 13 (13) Collect and remove, or contract for the collection and
14 removal of, all garbage, ashes, dead animals, refuse, and wastes
15 from domestic premises, and construct or have constructed
16 stations, including barns, garages, sheds, blacksmith shops,
17 dumps, incinerators, and all other useful or necessary
18 improvements for this purpose. This includes the power to collect
19 and remove soil and other sewage in areas not provided with
20 sewers, and then to discharge or dispose of it into sewage works.
- 21 (14) Enter into contracts in the name of the municipality, with the
22 approval of the executive as provided by law. **However, in the**
23 **case of a district described in section 3(b)(2) of this chapter,**
24 **the board may enter into contracts in the name of:**
- 25 (A) a municipality in the district, with the approval of the
26 executive of the municipality; or
- 27 (B) the district, with the approval of the board.
- 28 (15) Employ and pay for all engineering, architectural, legal, and
29 other professional services needed in carrying out this chapter,
30 including determining the number, prescribing the duties, and
31 fixing the compensation for all its engineers, chemists, attorneys,
32 bacteriologists, surveyors, inspectors, clerks, stenographers,
33 laborers, supervisors, and other employees as provided by law for
34 other executive departments of the municipality.
- 35 (16) Adopt resolutions, rules, and bylaws that are necessary to
36 carry out this chapter, including repealing or amending them
37 consistent with this chapter.
- 38 (17) Prepare a schedule of reasonable service fees and collect
39 them from persons who own, lease, or possess or control as
40 tenants or as agents lots or lands located outside the boundaries
41 of the district if the lots or lands are benefited by connection into
42 the sanitary sewer system of the district as described in this

C
o
p
y



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42

chapter, with the proceeds from sewage connections and treatment service credited to the general fund of the district for general use and maintenance purposes. The fees may be fixed, repealed, or amended, or the service discontinued, by the board at its discretion.

(18) Sue or be sued in the name of the municipality, with payment for obligations and of a judgment against the municipality in an action to be made solely from funds of the department and its district that may be available for this purpose. **In the case of a district described in section 3(b)(2) of this chapter, the board may sue or be sued in the name of any municipality in the district or in the name of the district. If a judgment is entered against a municipality in the district, payment of obligations and the judgment shall be made solely from available funds of the department or the district.**

(19) Pay for services rendered or for any other obligations incurred by the board while executing its powers, or pay any judgments, including interest and costs, by issuing and selling the bonds of the district, or obtaining temporary loans or levying taxes as authorized by this or other statutes for any other purpose.

(20) Lease, rent, purchase, and hold real or personal property more than five (5) miles outside the boundaries of the district if the property is needed:

- (A) to store sludge;**
- (B) to convert sludge into marketable fertilizer; or**
- (C) by the district to conduct activities that are related to activities described in clause (A) or (B).**

SECTION 3. IC 36-9-25-11 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 11. (a) In connection with its duties, the board may fix fees for the treatment and disposal of sewage and other waste discharged into the sewerage system, collect the fees, and establish and enforce rules governing the furnishing of and payment for sewage treatment and disposal service. The fees must be just and equitable and shall be paid by any user of the sewage works and the owner of every lot, parcel of real property, or building that is connected with and uses the sewage works of the district by or through any part of the sewerage system. This section applies to owners of property that is partially or wholly exempt from taxation, as well as owners of property subject to full taxation.

(b) The board may change fees from time to time. The fees, together with the taxes levied under this chapter, must at all times be sufficient to produce revenues sufficient to pay operation, maintenance, and

C
o
p
y



1 administrative expenses, to pay the principal and interest on bonds as
 2 they become due and payable, and to provide money for the revolving
 3 fund authorized by this chapter.

4 (c) Fees may not be established until a public hearing has been held
 5 at which all the users of the sewage works and owners of property
 6 served or to be served by the works, including interested parties, have
 7 had an opportunity to be heard concerning the proposed fees. After
 8 introduction of the resolution fixing fees, and before they are finally
 9 adopted, notice of the hearing setting forth the proposed schedule of
 10 fees shall be given by publication in accordance with IC 5-3-1. After
 11 the hearing the resolution establishing fees, either as originally
 12 introduced or as amended, shall be passed and put into effect.
 13 However, fees related to property that is subject to full taxation do not
 14 take effect until they have been approved by ordinance of the municipal
 15 legislative body **or, in the case of a district described in section**
 16 **3(b)(2) of this chapter, under section 11.3 of this chapter.**

17 (d) A copy of the schedule of the fees shall be kept on file in the
 18 office of the board and must be open to inspection by all interested
 19 parties. The fees established for any class of users or property served
 20 shall be extended to cover any additional premises thereafter served
 21 that fall within the same class, without the necessity of hearing or
 22 notice.

23 (e) A change of fees may be made in the same manner as fees were
 24 originally established. However, if a change is made substantially pro
 25 rata for all classes of service, hearing or notice is not required, but
 26 approval of the change by ordinance of the municipal legislative body
 27 is required, **and, in the case of a district described in section 3(b)(2)**
 28 **of this chapter, approval under section 11.3 of this chapter is**
 29 **required.**

30 (f) If a fee established is not paid within thirty (30) days after it is
 31 due, the amount, together with a penalty of ten percent (10%) and a
 32 reasonable attorney's fee, may be recovered by the board from the
 33 delinquent user or owner of the property served in a civil action in the
 34 name of the municipality.

35 (g) Fees assessed against real property under this section also
 36 constitute a lien against the property assessed. The lien attaches at the
 37 time of the filing of the notice of lien in the county recorder's office.
 38 The lien is superior to all other liens except tax liens, and shall be
 39 enforced and foreclosed in the same manner as is provided for liens
 40 under IC 36-9-23-33 and IC 36-9-23-34.

41 (h) ~~This subsection applies to fees due after July 1, 1988.~~ A fee
 42 assessed against real property under this section constitutes a lien

C
o
p
y



1 against the property assessed only when the fee is delinquent for no
2 more than three (3) years from the day after the fee is due.

3 (i) In addition to the penalties under subsections (f) and (g) and
4 section 11.5 of this chapter, a delinquent user may not discharge water
5 into the public sewers and may have the property disconnected from
6 the public sewers.

7 (j) The authority to establish a user fee under this section includes
8 fees to recover the cost of construction of sewage works from industrial
9 users as defined and required under federal statute or rule. Any
10 industrial users' cost recovery fees may become a lien upon the real
11 property and shall be collected in the manner provided by law. In
12 addition, the imposition of the fees, the use of the amounts collected,
13 and the criteria for the fees must be consistent with the regulations of
14 the federal Environmental Protection Agency.

15 SECTION 4. IC 36-9-25-11.3 IS ADDED TO THE INDIANA
16 CODE AS A NEW SECTION TO READ AS FOLLOWS
17 [EFFECTIVE UPON PASSAGE]: **Sec. 11.3. (a) This section applies
18 to a board and district created under section 3(b)(2) of this
19 chapter.**

20 **(b) For purposes of this section, "commission" refers to the
21 Indiana utility regulatory commission created by IC 8-1-1-2.**

22 **(c) For purposes of this section, "fees" means fees:**

- 23 **(1) for the treatment and disposal of sewage and other waste
24 discharged into the sewer system of the district; and
25 (2) related to property that is subject to full taxation.**

26 **(d) Fees do not take effect until the fees are:**

- 27 **(1) approved by the board; and
28 (2) either:**

- 29 **(A) approved in an ordinance adopted by the legislative
30 body of each municipality in the district; or
31 (B) established by the commission under this section.**

32 **(e) Not earlier than thirty (30) days after fees are approved
33 under subsection (d)(1), the board may petition the commission to
34 establish the fees under:**

- 35 **(1) the procedures set forth in IC 8-1-2; and
36 (2) subsection (f).**

37 **(f) The commission shall observe the following requirements
38 when establishing fees for a district:**

- 39 **(1) Fees must be sufficient to enable the district to furnish
40 reasonably adequate services and facilities.
41 (2) Fees for a service must be nondiscriminatory, reasonable,
42 and just and must produce sufficient revenue, together with**

**C
O
P
Y**



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42

- taxes levied under this chapter, to do the following:
- (A) Pay all legal and other necessary expenses incident to the operation of the utility, including the following:
 - (i) Maintenance costs.
 - (ii) Operating charges.
 - (iii) Upkeep.
 - (iv) Repairs.
 - (v) Depreciation.
 - (vi) Interest charges on bonds or other obligations, including leases.
 - (B) Provide a sinking fund for the liquidation of bonds or other obligations, including leases.
 - (C) Provide a debt service reserve for bonds or other obligations, including leases, in an amount established by the board. The amount may not exceed the maximum annual debt service on the bonds or obligations or the maximum annual lease rentals, if any.
 - (D) Provide adequate money for working capital.
 - (E) Provide adequate money for making extensions and replacements to the extent not provided for through depreciation in clause (A).
 - (F) Provide money for the payment of taxes that may be assessed against the district.
- (3) The fees charged by the district must produce an income sufficient to maintain district property in a sound physical and financial condition to render adequate and efficient service. Fees may not be too low to meet these requirements.
- (4) If the board petitions the commission under subsection (e), the fees established must produce a reasonable return on the sanitary district facilities.
- (5) Fees other than fees established for a municipally owned utility taxed under IC 6-1.1-8-3 must be sufficient to compensate the municipality for taxes that would be due the municipality on the utility property located in the municipality if the property were privately owned.
- (6) The commission must grant a request by the board to postpone an increase in fees until after the occurrence of a future event.
- (g) The board may transfer fees in lieu of taxes established under subsection (f)(5) to the general fund of the appropriate municipality.
- (h) Fees established by the commission under this section take

C
o
p
y



1 effect to the same extent as if the fees were approved by an
2 ordinance adopted by the legislative body of each municipality in
3 the district.

4 SECTION 5. IC 36-9-25-13 IS AMENDED TO READ AS
5 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 13. (a) The board,
6 in the name of the municipality, may bring an action to recover
7 damages for:

8 (1) the breach of an agreement, express or implied, relating to the
9 construction, management, or repair of sewage works under its
10 control, including real property; or

11 (2) injury to the personal or real property used in the sanitary
12 disposal of sewage in a municipality located within the district.

13 (b) The board may recover possession of property, may bring an
14 action for the specific performance of an agreement, and may use, in
15 the name of the municipality, any legal or equitable remedy necessary
16 to protect and enforce the rights and perform the duties of the
17 department.

18 (c) The board may establish limits on the kinds or amounts of
19 chemicals and the strength of the waste or other substances the board
20 considers detrimental to the sewage works. If a person discharges
21 sewage into the sewage works that exceeds limits set by the board, the
22 board may order the person to cease using the sewage works upon a
23 hearing with notice. However, if evidence indicates a public health
24 hazard is being created, the board may summarily order the person to
25 cease without notice or hearing. Orders of the board may be enforced
26 by bringing an action to enjoin discharges into the sewer works in any
27 court in the county having jurisdiction to hear equity actions. A person
28 aggrieved by an order of the board is entitled to appeal the order to the
29 circuit or superior court of the county in which the city is located. If an
30 order is given without notice, an appeal must be perfected within ten
31 (10) days after receipt of the order or the right to appeal is considered
32 waived.

33 (d) The board of a department in a district described in section
34 3(b)(2) of this chapter may bring an action in the name of:

35 (1) a municipality in the district with the approval of the
36 executive of the municipality; or

37 (2) the district, with the approval of the board.

38 SECTION 6. [EFFECTIVE UPON PASSAGE] (a) A commissioner
39 of the board of sanitary commissioners of a district described in
40 IC 36-9-25-3(b)(2), as amended by this act, who is serving on the
41 effective date of this SECTION may not be reappointed under
42 IC 36-9-25-4.

C
o
p
y



1 **(b) This SECTION expires July 1, 2010.**
2 **SECTION 7. An emergency is declared for this act.**

**C
o
p
y**

