First Regular Session 117th General Assembly (2011)

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 2010 Regular Session of the General Assembly.

HOUSE ENROLLED ACT No. 1098

C o p y

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 13-26-5-9, AS ADDED BY P.L.78-2009, SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 9. **(a) As used in this section, "electronic funds transfer" means a transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, that is initiated through an electronic terminal, a telephone, a computer, magnetic tape, or other electronic means to order, instruct, or authorize a financial institution to debit or credit an account.**

~~(a)~~ **(b)** A board may adopt an ordinance allowing money to be disbursed for lawful district purposes under this section.

(c) As part of an ordinance adopted under subsection (b), or by a separate ordinance adopted by the board, the board may authorize the district to do one (1) or both of the following through an electronic funds transfer method of payment:

(1) Pay claims owed by the district.

(2) Receive payments owed to the district.

If the board adopts an ordinance to grant the district the authority described in subdivision (1), the district may pay money from its funds by electronic funds transfer. However, the authority granted to a district by this subsection does not affect the rights, liabilities, or responsibilities of participants in an electronic fund transfer

under the federal Electronic Fund Transfer Act (15 U.S.C. 1693 et seq.), and a regional district that pays a claim by electronic funds transfer shall comply with all other requirements for the payment of claims by the regional district.

~~(b)~~ **(d)** Notwithstanding IC 5-11-10, with the prior written approval of the board, the fiscal officer of the district may make claim payments in advance of board allowance for the following kinds of expenses if the board has adopted an ordinance under subsection ~~(a):~~ **(b):**

(1) Property or services purchased or leased from the United States government, its agencies, or its political subdivisions.

(2) License or permit fees.

(3) Insurance premiums.

(4) Utility payments or utility connection charges.

(5) General grant programs for which advance funding is not prohibited and the contracting party posts sufficient security to cover the amount advanced.

(6) Grants of state funds authorized by statute.

(7) Maintenance or service agreements.

(8) Leases or rental agreements.

(9) Bond or coupon payments.

(10) Payroll.

(11) State or federal taxes.

(12) Expenses that must be paid because of emergency circumstances.

(13) Expenses described in an ordinance.

~~(c)~~ **(e)** Each payment of expenses under this section must be supported by a fully itemized invoice or bill and certification by the fiscal officer of the district.

~~(d)~~ **(f)** The board shall review and allow ~~the~~ **a** claim **paid under subsection (d)** at ~~its~~ **the board's** next regular or special meeting following the preapproved payment of the expense.

SECTION 2. IC 13-26-11-15, AS AMENDED BY P.L.221-2007, SECTION 21, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 15. (a) A district authority is established in each regional sewage district established under this article. **A district authority:**

(1) must consist of an odd number of members;

(2) must consist of at least three (3) members; and

(3) may not include as a member any person who serves on the board of trustees of the district.

(b) The district authority of a regional sewage district consists of the following **members:**

C o p y

(1) In the case of a regional sewage district located in one (1) county, **the following members:**

(A) ~~except as provided in clause (B),~~ **If no members of the county executive are trustees of the regional sewage district,** the county executive of ~~that~~ **the** county. ~~or~~

(B) If: ~~the~~

(i) one (1) or more members of the county executive are trustees of the regional sewage district; **and**

(ii) no members of the county fiscal body are trustees of the regional sewage district;

the members of the county fiscal body.

(C) If the regional sewage district's board of trustees consists of one (1) or more members of the county executive and one (1) or more members of the county fiscal body, three (3) members appointed as follows:

(i) Two (2) members appointed by the county executive. If not all of the members of the county executive are trustees of the district, the county executive may appoint either or both of the two (2) members required by this item from among the county executive's own membership, subject to subsection (a)(3).

(ii) One (1) member appointed by the county fiscal body. If not all of the members of the county fiscal body are trustees of the district, the county fiscal body may appoint the member required by this item from among the county fiscal body's own membership, subject to subsection (a)(3).

(2) In the case of a regional sewage district located in more than one (1) county, **the following members:**

(A) If:

(i) an odd number of counties are part of the regional sewage district; and

(ii) each county in the district has at least one (1) county executive member who is not a trustee of the regional sewage district;

one (1) county executive member, appointed by that member's county executive, from each county in which the district is located, ~~However, a person who serves on the board of trustees of a district may not be a member of the district authority.~~ **subject to subsection (a)(3).**

(B) If an even number of counties are part of the regional sewage district, the following members:

C o p y

(i) Two (2) county executive members, appointed by those members' county executive, from the county that has the largest number of customers served by the district's sewer system. However, if the county that has the largest number of customers served by the district's sewer system does not have at least two (2) members of its executive who are not also trustees of the district, the county executive of that county may appoint one (1) or more of the members required by this item from outside the county executive's own membership in order to comply with subsection (a)(3).

(ii) One (1) county executive member, appointed by that member's county executive, from each county, other than the county described in item (i), in which the district is located. However, if a county described in this item does not have at least one (1) member of its executive who is not also a trustee of the district, the county executive of that county may appoint the member required by this item from outside the county executive's own membership in order to comply with subsection (a)(3).

(C) If an odd number of counties are part of the regional sewage district and an odd number of those counties in the district do not have at least one (1) county executive member who is not also a trustee of the district, the following members:

(i) One (1) county executive member, appointed by that member's county executive, from each county that has at least one (1) county executive member who is not also a trustee of the district, subject to subsection (a)(3).

(ii) One (1) member appointed by the county executive of each county that does not have at least one (1) county executive member who is not also a trustee of the district. A member appointed under this item must be appointed from outside the appointing county executive's own membership, subject to subsection (a)(3).

(c) If a district adopts an ordinance increasing sewer rates and charges at a rate that is greater than five percent (5%) per year, as calculated from the rates and charges in effect from the date of the district's last rate increase, ~~before January 1, 2001,~~ the district shall mail, either separately or along with a periodic billing statement, a notice of the new rates and charges to each user of the sewer system

C o p y

who is affected by the increase. The notice:

(1) shall be mailed not later than seven (7) days after the district adopts the ordinance increasing the rates and charges; and

(2) must include a statement of a freeholder's rights under this section.

(d) If subsection (c) applies, fifty (50) freeholders of the district or ten percent (10%) of the district's freeholders, whichever is fewer, may file a written petition objecting to the rates and charges of the district. A petition filed under this subsection must:

(1) contain the name and address of each petitioner;

(2) be filed with a member of the district authority, in the county where at least one (1) petitioner resides, not later than thirty (30) days after the district adopts the ordinance establishing the rates and charges; and

(3) set forth the grounds for the freeholders' objection.

If a petition meeting the requirements of this subsection is filed, the district authority shall investigate and conduct a public hearing on the petition. If more than one (1) petition concerning a particular increase in rates and charges is filed, the district authority shall consider the objections set forth in all the petitions at the same public hearing.

(e) The district authority shall set the matter for public hearing not less than ten (10) business days but not later than twenty (20) business days after the petition has been filed. The district authority shall send notice of the hearing by certified mail to the district and the **first listed** petitioner and publish the notice of the hearing in a newspaper of general circulation in each county in the district.

(f) Upon the date fixed in the notice, the district authority shall hear the evidence produced and determine **the following:**

(1) Whether the board of trustees of the district, in adopting the ordinance increasing sewer rates and charges, followed the procedure required by this chapter.

(2) Whether the increased sewer rates and charges established by the board by ordinance are just and equitable rates and charges, according to the standards set forth in section 9 of this chapter.

(g) After the district authority hears the evidence produced and makes the determinations set forth in subsection (f), the district authority, by a majority vote, shall:

(1) sustain the ordinance establishing the rates and charges;

(2) sustain the petition; or

(3) make any other ruling appropriate in the matter, **subject to the standards set forth in section 9 of this chapter.**

~~(g)~~ **(h)** The order of the district authority may be appealed by the

C o p y

district or a petitioner to the circuit court of the county in which the district is located. The court shall try the appeal without a jury and shall determine one (1) or both of the following:

(1) Whether the board of trustees of the district, in adopting the ordinance increasing sewer rates and charges, followed the procedure required by this chapter.

(2) Whether the increased sewer rates and charges established by the board by ordinance are just and equitable rates and charges, according to the standards set forth in section 9 of this chapter.

Either party may appeal the circuit court's decision in the same manner that other civil cases may be appealed.

SECTION 3. IC 13-26-14-4, AS ADDED BY P.L.131-2005, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 4. Rates, fees, or charges made, assessed, or established by the district are a lien, **in the same manner established under IC 36-9-23 for municipal sewage works,** 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 **under this chapter:**

(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, **and, if necessary, foreclosed;**

in substantially the same manner as provided in IC 36-9-23-31 through ~~IC 36-9-23-32.~~ **IC 36-9-23-34.**

SECTION 4. [EFFECTIVE UPON PASSAGE] **(a) As used in this SECTION, "authority" refers to a district authority established in a regional sewage district under IC 13-26-11-15 before the amendment of IC 13-26-11-15 by this act.**

(b) As used in this SECTION, "department" refers to the department of environmental management established by IC 13-13-1-1.

(c) As used in this SECTION, "district" refers to a regional sewage 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).

(d) A district with an authority whose membership does not comply with IC 13-26-11-15, as amended by this act, as of the effective date of the amendments to IC 13-26-11-15 made by this

C o p y

act, shall, not later than September 1, 2011, and in the manner prescribed by IC 13-26-1-2, file with the department a petition that does the following:

(1) Identifies any existing members of the authority that the district proposes to replace or remove from the authority to comply with 13-26-11-15, as amended by this act.

(2) Identifies any new members that the appropriate body, as determined under 13-26-11-15, as amended by this act, proposes to appoint to the authority to comply with IC 13-26-11-15, as amended by this act.

(3) For each new member identified under subdivision (2) who is not a member of a county executive or a county fiscal body, sets forth the member's proposed term on the authority, which term may not exceed four (4) years.

(e) If the department determines that the proposed membership of a district's authority, as set forth in the petition filed by the district under subsection (d), complies with IC 13-26-11-15, as amended by this act, the department shall issue an order approving the proposed membership.

(f) If the department determines that the proposed membership of a district's authority, as set forth in the petition filed by the district under subsection (d), does not comply with IC 13-26-11-15, as amended by this act, the department shall issue an order that does the following:

(1) Notifies the district of the department's determination that the proposed membership of the district's authority does not comply with IC 13-26-11-15, as amended by this act.

(2) Specifies each aspect in which the proposed membership fails to comply with IC 13-26-11-15, as amended by this act, including an identification of each proposed member who does not qualify to serve on the authority under IC 13-26-11-15, as amended by this act.

(3) Sets forth a date, which must be at least thirty (30) days after the date of the order, by which the district must submit to the department an amended petition that resolves each failure to comply identified in the department's order under subdivision (2).

(g) The department shall as soon as practicable, but in no case later than December 31, 2011, issue an order under subsection (e) or (f) with respect to each petition received by the department under subsection (d). If a district is required to file a petition with the department under subsection (d):

C o p y

(1) the members of the authority as it exists on the date of the petition filed under subsection (d);

(2) the proposed members of the authority, as set forth in the petition filed under subsection (d);

(3) the board of trustees of the district;

(4) the fiscal and executive bodies of each eligible entity (as defined in IC 13-11-2-62) with territory in the district; and

(5) the state and any of its agencies owning, controlling, or leasing land (excluding highways and public thoroughfares owned or controlled by the Indiana department of transportation) in the district;

shall cooperate with the department in providing any information, or any books, records, or other documents, that the department may require to issue an order under subsection (e) or (f).

(h) An order of the department under subsection (e) or (f) may be appealed by:

(1) the district;

(2) an eligible entity (as defined in IC 13-11-2-62) with territory in the district;

(3) any member of the authority as it exists on the date of the petition filed under subsection (d);

(4) any proposed member of the authority, as set forth in the petition filed under subsection (d); or

(5) any freeholder in the district;

to the circuit court of any county with territory in the district in the same manner that civil cases may be appealed.

(i) This SECTION expires July 1, 2012.

SECTION 5. **An emergency is declared for this act.**

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Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Governor of the State of Indiana

Date: _____ Time: _____

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