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# HOUSE BILL No. 1301

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 32-24-4-1; IC 36-9-23; IC 36-9-25-10.

**Synopsis:** Eminent domain for sewer services. Provides that the statute governing eminent domain procedures for public utilities and other corporations: (1) applies to sewer utilities; and (2) includes the authority to condemn less than a fee simple estate in land or real estate, including the authority to condemn or appropriate a new or an existing easement for a right-of-way. Provides that the authority of a municipally owned sewer utility to condemn or appropriate real property includes: (1) the authority to condemn or appropriate any real property that is needed to allow a mandatory connection to the municipality's sewer system by a property using a septic system or similar structure, regardless of whether the real property to be condemned or appropriated is the property that will be connected to the sewer system; and (2) the authority to condemn or appropriate less than a fee simple estate in real property, including the authority to condemn or appropriate a new or an existing easement for a right-of-way. Makes conforming amendments.

**Effective:** Upon passage.

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## DeLaney

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January 13, 2011, read first time and referred to Committee on Local Government.

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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.

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## HOUSE BILL No. 1301



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 32-24-4-1, AS AMENDED BY P.L.163-2006,  
2 SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 UPON PASSAGE]: Sec. 1. (a) A person, firm, partnership, limited  
4 liability company, or corporation authorized to do business in Indiana  
5 and authorized to:

6 (1) furnish, supply, transmit, transport or distribute electrical  
7 energy, gas, oil, petroleum, water, heat, steam, hydraulic power,  
8 or communications by telegraph or telephone to the public or to  
9 any town or city; or

10 **(2) collect, treat, purify, and dispose of in a sanitary manner**  
11 **liquid and solid waste, sewage, night soil, and industrial**  
12 **waste; or**

13 ~~(2)~~ **(3)** construct, maintain or operate turnpikes, toll bridges,  
14 canals, public landings, wharves, ferries, dams, aqueducts, street  
15 railways, or interurban railways for the use of the public or for the  
16 use of any town or city;

17 may take, acquire, condemn, and appropriate land, real estate, or any



1 interest in the land or real estate to accomplish the essential delivery of  
2 services described in subdivisions (1) ~~and (2)~~; **through (3). The**  
3 **authority to condemn or appropriate an interest in land or real**  
4 **estate under this section includes the authority to condemn less**  
5 **than a fee simple estate in land or real estate, including the**  
6 **authority to condemn or appropriate a new or an existing easement**  
7 **for a right-of-way.**

8 (b) A person described in subsection (a) has all accommodations,  
9 rights, and privileges necessary to accomplish the use for which the  
10 property is taken. A person acting under subsection (a) may use  
11 acquired, condemned, or appropriated land to construct railroad siding,  
12 switch, or industrial tracks connecting its plant or facilities with the  
13 tracks of any common carrier.

14 SECTION 2. IC 36-9-23-2 IS AMENDED TO READ AS  
15 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. (a) A  
16 municipality may:

- 17 (1) acquire, construct, improve, operate, and maintain sewage
- 18 works under this chapter;
- 19 (2) acquire, by gift, grant, purchase, condemnation, or otherwise,
- 20 all lands, **easements**, rights-of-way, and other property that are
- 21 necessary for the sewage works **or the extension of sewers**;
- 22 (3) issue revenue bonds to pay the cost of acquiring, constructing,
- 23 and improving the sewage works and property; and
- 24 (4) lease sewage works from a person, an entity, a corporation, a
- 25 public utility, or a unit for a term not to exceed fifty (50) years.

26 A sewage works leased under this section is subject to IC 5-16-7.

27 (b) **The authority of a municipality under subsection (a)(2) to**  
28 **condemn lands, easements, rights-of-way, and other property**  
29 **necessary for the sewage works or the extension of sewers includes:**

- 30 (1) **the authority to condemn or appropriate any real property**
- 31 **that is needed to allow a connection described in section 30 of**
- 32 **this chapter, regardless of whether the real property to be**
- 33 **condemned or appropriated is the property that will be**
- 34 **connected to the municipality's sewer system under section 30**
- 35 **of this chapter; and**
- 36 (2) **the authority to condemn or appropriate less than a fee**
- 37 **simple estate in real property, including the authority to**
- 38 **condemn or appropriate a new or an existing easement for a**
- 39 **right-of-way.**

40 SECTION 3. IC 36-9-23-14 IS AMENDED TO READ AS  
41 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 14. (a) A  
42 municipality may, in the manner prescribed by IC 32-24, condemn:

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- 1 (1) sewage works; and
- 2 (2) any land, easements, **rights-of-way**, franchises, and other
- 3 property it considers necessary for the construction of sewage
- 4 works, ~~or~~ for improvements to sewage works, **or for the**
- 5 **extension of sewers.**

6 However, the municipality may pay for any property condemned or  
 7 purchased only from money provided under this chapter.

8 **(b) The authority of a municipality under subsection (a)(2) to**  
 9 **condemn land, easements, rights-of-way, franchises, and other**  
 10 **property necessary for the construction of sewage works, for**  
 11 **improvements to sewage works, or for the extension of sewers**  
 12 **includes:**

13 **(1) the authority to condemn or appropriate any real property**  
 14 **that is needed to allow a connection described in section 30 of**  
 15 **this chapter, regardless of whether the real property to be**  
 16 **condemned or appropriated is the property that will be**  
 17 **connected to the municipality's sewer system under section 30**  
 18 **of this chapter; and**

19 **(2) the authority to condemn or appropriate less than a fee**  
 20 **simple estate in real property, including the authority to**  
 21 **condemn or appropriate a new or an existing easement for a**  
 22 **right-of-way.**

23 ~~(b)~~ **(c)** In any proceedings to condemn, orders that are just to the  
 24 municipality and to the owners of the property to be condemned may  
 25 be made. An undertaking or other security securing the property  
 26 owners against any loss or damage resulting from the failure of the  
 27 municipality to accept and pay for the property may be required, but the  
 28 undertaking or security imposes liability upon the municipality only in  
 29 the amount that may be paid from money provided under this chapter.

30 ~~(c)~~ **(d)** If the board wants to purchase sewage works, it may obtain  
 31 and exercise an option for the purchase of the works, or may enter into  
 32 a contract for the purchase in the manner and under the terms and  
 33 conditions that it considers proper.

34 ~~(d)~~ **(e)** If the board wants to purchase or condemn sewage works  
 35 already constructed, it must, at or before the time of adoption of the  
 36 ordinance authorizing the acquisition, determine what repairs,  
 37 replacements, additions, and other actions are required to make the  
 38 works effective for their purpose. An estimate of the cost of these  
 39 actions shall be included in the estimate of cost made under section 11  
 40 of this chapter. These actions shall be taken upon the acquisition of the  
 41 works, as a part of the cost of the acquisition.

42 SECTION 4. IC 36-9-23-30 IS AMENDED TO READ AS

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1 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 30. (a) Subject to  
2 subsection (b), a municipality that operates sewage works under this  
3 chapter or under any statute repealed by IC 19-2-5-30 (repealed  
4 September 1, 1981) may require:

- 5 (1) connection to its sewer system of any property producing
- 6 sewage or similar waste; and
- 7 (2) discontinuance of the use of privies, cesspools, septic tanks,
- 8 and similar structures.

9 (b) A municipality may exercise the powers granted by subsection  
10 (a) only if:

- 11 (1) there is an available sanitary sewer within three hundred (300)
- 12 feet of the property line of the affected property; and
- 13 (2) it has given notice by certified mail to the property owner at
- 14 the address of the property, at least ninety (90) days before the
- 15 date specified for connection in the notice.

16 (c) A municipality may establish, enforce, and collect reasonable  
17 penalties for failure to make a connection under this section.

18 (d) A municipality may apply to the circuit or superior court for the  
19 county in which it is located for an order to require a connection under  
20 this section. The court shall assess the cost of the action and reasonable  
21 attorney's fees of the municipality against the property owner in such  
22 an action.

23 **(e) A municipality may exercise the powers granted by sections**  
24 **2(b) and 14(b) of this chapter to effect a connection under this**  
25 **section.**

26 SECTION 5. IC 36-9-25-10, AS AMENDED BY P.L.175-2006,  
27 SECTION 22, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
28 UPON PASSAGE]: Sec. 10. In performing its duties the board may do  
29 the following:

30 (1) If needed for sewage works **or the extension of sewers,**  
31 **condemn, appropriate, lease, rent, purchase, and hold any real or**  
32 **personal property within the district or within five (5) miles**  
33 **outside the boundaries of the district. The authority of the board**  
34 **under this subdivision to condemn or appropriate real**  
35 **property within the district or within five (5) miles outside the**  
36 **boundaries of the district includes:**

- 37 **(A) the authority to condemn or appropriate any real**
- 38 **property that is needed to allow a connection described in**
- 39 **IC 36-9-23-30, regardless of whether the real property to**
- 40 **be condemned or appropriated is the property that will be**
- 41 **connected to the sewer system under IC 36-9-23-30; and**
- 42 **(B) the authority to condemn or appropriate less than a fee**

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**simple estate in real property, including the authority to condemn or appropriate a new or an existing easement for a right-of-way.**

(2) Enter upon any lots or lands for the purpose of surveying or examining them to determine the location of any sewage works or other structures, roads, levees, or walls connected with or necessary for the use or operation of the facilities.

(3) Design, order, contract for, construct, reconstruct, and maintain the sewage works.

(4) Build or have built all roads, levees, walls, other structures, or lagoons that may be desirable in connection with sewage works and make improvements to the grounds and premises under its control, including the erection and operation of a plant for the removal of sand and gravel from the grounds.

(5) Compel the owners, operators, or lessees of all factories, shops, works, plants, or other structures to treat, purify, or eliminate from the sewage and trade waste of the premises any ingredients that interfere with the successful operation of the sewage works. It may compel the owners, operators, or lessees of the premises located on a watercourse to direct an excessive flow of water into the watercourse.

(6) Review and approve plans for privately constructed plants for the treatment or elimination of trade waste. This is to insure that an owner, operator, or lessee of a house, factory, shop, works, plant, or other structure that may be directly or indirectly connected with sewers emptying into the sewage works does not construct a purification plant, machine, or other device for eliminating or treating the trade waste from those places for the purpose of eliminating ingredients that would harm the sewage works until the plans have been submitted to and approved by the board. After plans have been submitted to the board, it may reject them in their entirety or order changes to be made that include its supervision and regulation of the operation. An appeal may be taken from the decision of the board rejecting the plans submitted or ordering changes by the owner, operator, or lessee of a proposed private plant, in the same manner as appeals from the works board as far as applicable.

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

(8) Sell any byproduct from the sewage works, or furnish any byproduct free for the use of the municipality or for other public

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1 uses, with revenue derived from the sale above the amount  
 2 needed for maintenance to be paid into the sanitary district bond  
 3 fund, or if no bonds are outstanding, to revert to its general fund.  
 4 (9) Compel the owners, lessees, or agents in possession of lots or  
 5 land from which sewers discharge sewage or drainage and pollute  
 6 a watercourse or body of water or constitute a menace to public  
 7 health and welfare to connect the sewers with drains leading  
 8 directly or indirectly into sewage works regulating the use and  
 9 assessing reasonable charges.  
 10 (10) Construct or have constructed regulating devices at the  
 11 junction of combined sewers with intercepting sewers to regulate  
 12 the discharge into the intercepting and connecting sewers to  
 13 prevent the pollution of streams or bodies of water or a menace to  
 14 the public health and welfare.  
 15 (11) Construct, add to, reconstruct, or maintain an incinerating or  
 16 reduction plant or other plants for the conversion, destruction, or  
 17 disposal of garbage, filth, ashes, dirt, and rubbish. The board may  
 18 operate the plant in connection with sewage works, and sell any  
 19 byproducts derived from the garbage, filth, ashes, or rubbish,  
 20 including sand and gravel taken from lands under the control of  
 21 the board at prices that are determined by the board, or furnish it  
 22 free to the municipality or for other public uses, with revenue  
 23 derived above the amount needed for maintenance to be paid into  
 24 the sanitary district bond fund, or if no bonds are outstanding, to  
 25 revert to its general fund.  
 26 (12) Take charge of all real property, belonging to the  
 27 municipality and under the control of the works board, suitably  
 28 located for sewage works if the board demands the works board,  
 29 subject to contracts, to relinquish and transfer control of real and  
 30 personal property used by the works board for the collection and  
 31 removal of garbage and ashes. The transfer of personal property  
 32 must be made by resolution adopted by the works board  
 33 describing the property, with a copy of the resolution to be  
 34 delivered to the board and made a matter of record in the minutes  
 35 of the proceedings of the board.  
 36 (13) Collect and remove, or contract for the collection and  
 37 removal of, all garbage, ashes, dead animals, refuse, and wastes  
 38 from domestic premises, and construct or have constructed  
 39 stations, including barns, garages, sheds, blacksmith shops,  
 40 dumps, incinerators, and all other useful or necessary  
 41 improvements for this purpose. This includes the power to collect  
 42 and remove soil and other sewage in areas not provided with

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1 sewers, and then to discharge or dispose of it into sewage works.  
 2 (14) Enter into contracts in the name of the municipality, with the  
 3 approval of the executive as provided by law. However, in the  
 4 case of a district described in section 3(b)(2) of this chapter, the  
 5 board may enter into contracts in the name of:  
 6 (A) a municipality in the district, with the approval of the  
 7 executive of the municipality; or  
 8 (B) the district, with the approval of the board.  
 9 (15) Employ and pay for all engineering, architectural, legal, and  
 10 other professional services needed in carrying out this chapter,  
 11 including determining the number, prescribing the duties, and  
 12 fixing the compensation for all its engineers, chemists, attorneys,  
 13 bacteriologists, surveyors, inspectors, clerks, stenographers,  
 14 laborers, supervisors, and other employees as provided by law for  
 15 other executive departments of the municipality.  
 16 (16) Adopt resolutions, rules, and bylaws that are necessary to  
 17 carry out this chapter, including repealing or amending them  
 18 consistent with this chapter.  
 19 (17) Prepare a schedule of reasonable service fees and collect  
 20 them from persons who own, lease, or possess or control as  
 21 tenants or as agents lots or lands located outside the boundaries  
 22 of the district if the lots or lands are benefited by connection into  
 23 the sanitary sewer system of the district as described in this  
 24 chapter, with the proceeds from sewage connections and  
 25 treatment service credited to the general fund of the district for  
 26 general use and maintenance purposes. The fees may be fixed,  
 27 repealed, or amended, or the service discontinued, by the board  
 28 at its discretion.  
 29 (18) Sue or be sued in the name of the municipality, with payment  
 30 for obligations and of a judgment against the municipality in an  
 31 action to be made solely from funds of the department and its  
 32 district that may be available for this purpose. In the case of a  
 33 district described in section 3(b)(2) of this chapter, the board may  
 34 sue or be sued in the name of any municipality in the district or in  
 35 the name of the district. If a judgment is entered against a  
 36 municipality in the district, payment of obligations and the  
 37 judgment shall be made solely from available funds of the  
 38 department or the district.  
 39 (19) Pay for services rendered or for any other obligations  
 40 incurred by the board while executing its powers, or pay any  
 41 judgments, including interest and costs, by issuing and selling the  
 42 bonds of the district, or obtaining temporary loans or levying

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1 taxes as authorized by this or other statutes for any other purpose.  
2 (20) Lease, rent, purchase, and hold real or personal property  
3 more than five (5) miles outside the boundaries of the district if  
4 the property is needed:  
5 (A) to store sludge;  
6 (B) to convert sludge into marketable fertilizer; or  
7 (C) by the district to conduct activities that are related to  
8 activities described in clause (A) or (B).

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

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