

HOUSE BILL No. 1464

DIGEST OF INTRODUCED BILL

Citations Affected: IC 8-1.5-5; IC 36-7-10.1-3; IC 36-9-23; IC 36-9-25.

Synopsis: Notice of delinquent sewer and storm water bills. Provides that for purposes of: (1) the statute governing storm water management in certain local government units; (2) the statute governing municipal sewer utilities; and (3) the statute governing sanitation departments in certain municipalities; certain notices must be provided when storm water or sewer fees assessed against real property become delinquent. Provides that delinquency notices must be provided to the address of the real property served by the storm water or sewage works and, in the case of property occupied by someone other than the owner, to the property owner: (1) when the fees first become delinquent; and (2) after the first notice is sent, if the fees continue to be delinquent. Provides that the first notice must contain a statement that: (1) a lien will not attach to the property; and (2) collection charges and attorney's fees will not be assessed; if the delinquency is paid not later than 30 days after the date of the notice. Provides that in the case of property occupied by someone other than the owner, notices to the property owner must be sent by certified mail or an equivalent service to: (1) an address provided by the owner for receiving notices; or (2) the last address of the owner as indicated in the records of the county auditor on the date of the notice. Prohibits a municipality from recovering delinquent sewer fees and penalties by initiating a civil action unless: (1) the required notices have been sent; and (2) the fees are at least 60 days delinquent. Provides that a lien for delinquent sewer or storm water fees attaches only if the required notices have been sent. Provides that enforcing collection of unpaid storm water or sewer fees and penalties must be deferred until: (1) the required notices of delinquency
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Effective: Upon passage; July 1, 2011.

Tyler

January 20, 2011, read first time and referred to Committee on Local Government.



Digest Continued

have been sent; and (2) the unpaid fees and penalties are at least 60 days delinquent. Provides that a municipality or county that issues a notice or bill to a property owner in connection with the removal of weeds or rank vegetation from the owner's property must send the notice or bill by certified mail or an equivalent service to: (1) an address provided by the owner for receiving notices or bills; or (2) the last address of the owner as indicated in the records of the county auditor on the date of the notice or bill. Provides that if the owner's address is not the address of the real property on which the violation has occurred, a copy of the notice or bill must be also be sent by United States mail to the address of the real property on which the violation has occurred. Provides that a bill sent to the property owner for the removal of weeds or rank vegetation must include: (1) the amount owed by the owner for the costs incurred by the municipality or county in abating the violation; and (2) a statement that a lien will not attach to the property, and that collection charges and attorney's fees will not be assessed, if the amount owed is paid not later than 30 days after the date of the bill.

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Introduced

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. 1464



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 8-1.5-5-29, AS ADDED BY P.L.131-2005,
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2011]: Sec. 29. (a) Subsections (c), (d), ~~and~~ (e), **and (f)** do not
4 apply to a city that before January 1, 2005, adopted an ordinance
5 establishing procedures for the collection of unpaid user fees under this
6 chapter through the enforcement of a lien.

7 (b) Fees assessed against real property under this chapter constitute
8 a lien against the property assessed. The lien is superior to all other
9 liens except tax liens. Except as provided in ~~subsections~~ **subsection (c)**
10 **and subject to subsection (d)**, the lien attaches when notice of the lien
11 is filed in the county recorder's office under section 30 of this chapter.

12 (c) A fee is not enforceable as a lien against a subsequent owner of
13 property unless the lien for the fee was recorded with the county
14 recorder before the conveyance to the subsequent owner. If property is
15 conveyed before a lien is filed, the department shall notify the person



1 who owned the property at the time the fee became payable. The notice
2 must inform the person that payment, including penalty fees for
3 delinquencies, is due not more than fifteen (15) days after the date of
4 the notice. If payment is not received within one hundred eighty (180)
5 days after the date of the notice, the amount due may be expensed as a
6 bad debt loss.

7 (d) A lien attaches against real property ~~occupied by someone other~~
8 ~~than the owner as described in subsection (b)~~ only if the department
9 notifies the owner within twenty (20) days after the time the user fees
10 became sixty (60) days delinquent. However, the department must give
11 notice to the owner only if the owner has given the department written
12 notice of the address to which to send notice. or the department's
13 agent does the following:

14 (1) Sends notice of the delinquency upon which the lien is
15 based as follows:

16 (A) By United States mail to the address of the real
17 property. The notice required by this clause must include
18 the following:

19 (i) The amount of the delinquency, including any
20 applicable penalties for the delinquency, and the number
21 of days the account is delinquent.

22 (ii) A statement that payment is due not later than thirty
23 (30) days after the date of the notice, along with
24 instructions as to how the payment may be made.

25 (iii) A statement that a lien will not attach to the
26 property, and that collection charges, attorney's fees, or
27 other charges will not be assessed, if the amount of the
28 delinquency, including any applicable penalties for the
29 delinquency, is received by the department or the
30 department's agent not later than thirty (30) days after
31 the date of the notice.

32 (B) If the property is occupied by someone other than the
33 owner, by certified mail, return receipt requested, or by an
34 equivalent service permitted under IC 1-1-7-1, to the
35 owner, at the address described in subsection (e). The
36 notice required by this clause is in addition to the notice
37 required to be sent to the address of the property under
38 clause (A). The notice required by this clause must include
39 the following:

40 (i) The amount of the delinquency, including any
41 applicable penalties for the delinquency, and the number
42 of days the account is delinquent.

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(ii) A statement that notice of the delinquency, along with a demand for payment, has been sent to the address of the real property, as required under clause (A).

(iii) A statement that payment is due not later than thirty (30) days after the date of the notice, along with instructions as to how the payment may be made.

(iv) A statement that a lien will not attach to the property, and that collection charges, attorney's fees, or other charges will not be assessed, if the amount of the delinquency, including any applicable penalties for the delinquency, is received by the department or the department's agent not later than thirty (30) days after the date of the notice.

The cost of sending notice to the owner under this clause is an administrative cost that may be billed to the owner. A notice required by this clause must be sent at the same time the notice is sent to the address of the real property under clause (A), subject to the requirements of this subdivision. If the department uses a periodic billing system under section 7(c) of this chapter, a notice required by this subdivision must be sent according to the schedule by which the department first sends notice of delinquent fees under the department's normal billing procedures, but not later than thirty (30) days after the date the fees first became delinquent. If the department collects fees under section 7(c) of this chapter through a charge appearing on the semiannual property tax statement of the affected property owner, a notice required by this subdivision must be sent not later than thirty (30) days after the date the fees first became delinquent, or not later than the date of the next semiannual property tax statement, whichever is earlier.

(2) If the fees remain delinquent after the notice or notices required by subdivision (1) have been sent, sends notice of the continuing delinquency as follows:

(A) By United States mail to the address of the real property. The notice required by this clause must include the following:

(i) The amount of the continuing delinquency, including any applicable penalties for the delinquency, and the number of days the account is delinquent.

(ii) A statement that payment is due not later than fifteen (15) days after the date of the notice, along with

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instructions as to how the payment may be made.

(iii) A statement that the property will be subject to a lien, and that collection charges, attorney's fees, or other charges may be assessed, unless the amount of the delinquency, including any applicable penalties for the delinquency, is received by the department or the department's agent not later than the date specified in item (ii). The statement must inform the recipient that the lien will attach when notice of the lien is filed in the county recorder's office, and that the lien will be released when the delinquent fees, penalties, service charges, and recording fees have been fully paid.

(B) If the property is occupied by someone other than the owner, by certified mail, return receipt requested, or by an equivalent service permitted under IC 1-1-7-1, to the owner, at the address described in subsection (e). The notice required by this clause is in addition to the notice required to be sent to the address of the property under clause (A). The notice required by this clause must include the following:

(i) The amount of the continuing delinquency, including any applicable penalties for the delinquency, and the number of days the account is delinquent.

(ii) A statement that notice of the continuing delinquency, along with a demand for payment, has been sent to the address of the real property, as required under clause (A).

(iii) A statement that payment is due not later than fifteen (15) days after the date of the notice, along with instructions for how payment may be made.

(iv) A statement that the property will be subject to a lien, and that collection charges, attorney's fees, or other charges may be assessed, unless the amount of the delinquency, including any applicable penalties for the delinquency, is received by the department or the department's agent not later than the date specified in item (iii). The statement must inform the owner that the lien will attach when notice of the lien is filed in the county recorder's office, and that the lien will be released when the delinquent fees, penalties, service charges, and recording fees have been fully paid.

The cost of sending notice to the owner under this clause is

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an administrative cost that may be billed to the owner. A notice required by this clause shall be sent at the same time the notice is sent to the address of the real property under clause (A), subject to the requirements of this subdivision. If the department uses a periodic billing system under section 7(c) of this chapter, a notice required by this subdivision must be sent according to the schedule by which the department sends notice of continuing delinquencies under the department's normal billing procedures, but not later than sixty (60) days after the date the fees first become delinquent. If the department collects fees under section 7(c) of this chapter through a charge appearing on the semiannual property tax statement of the affected property owner, a notice required by this subdivision must be sent not later than sixty (60) days after the date the fees first become delinquent, or not later than the date of the next semiannual property tax statement, whichever is earlier.

(e) The department, or the department's agent, shall send any notice required by subsection (d)(1)(B) or (d)(2)(B) to the following address:

(1) The address to which the owner has instructed, in writing, the department to direct any:

- (A) notice of delinquency under this section; or**
- (B) other notices;**

concerning the property.

(2) If the owner has not provided the department with an address under subdivision (1), the last address of the owner for the property as indicated in the records of the county auditor on the date of the notice. The notice must be sent to the owner of record of real property with a single owner, or to at least one (1) of the owners of real property with multiple owners.

~~(e)~~ **(f) 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, AS ADDED BY P.L.131-2005, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

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JULY 1, 2011]: Sec. 30. (a) The board:

(1) 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;

and

(2) shall defer enforcing the collection of the unpaid fees and penalties until:

(A) the unpaid fees and penalties are due and unpaid for at least sixty (60) days; and

(B) the notices required under section 29(d) of this chapter have been provided at the times and in the manner set forth in section 29(d) and 29(e) of this chapter.

(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. **Subject to section 29(d) and 29(e) of this chapter**, the officer shall mail by certified mail, **return receipt requested**, or by ~~another delivery service providing proof of delivery~~, **an equivalent service permitted under IC 1-1-7-1**, to each property owner on the list or on an individual instrument a notice stating that a lien against the owner's property has been recorded. A service charge of five dollars (\$5), which is in addition to the recording fee charged under this subsection and under subsection (e), shall be added to each delinquent fee that is recorded.

(d) Using the lists and instruments prepared under subsection (b) and recorded under subsection (c), the board shall, not later than ten (10) days after the list or each individual instrument is recorded under subsection (c), certify to the county auditor a list of the liens that

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1 remain unpaid for collection in the next May. The county and its
 2 officers and employees are not liable for any material error in the
 3 information on this list.

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

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

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

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

26 (i) At the time of each semiannual tax settlement, the county
 27 treasurer shall certify to the county auditor all fees, charges, and
 28 penalties that have been collected. The county auditor shall deduct the
 29 service charges and certification fees collected by the county treasurer
 30 and pay over to the officer the remaining fees and penalties due the
 31 district. The county treasurer shall retain the service charges and
 32 certification fees that have been collected and shall deposit them in the
 33 county general fund.

34 (j) Fees, penalties, and service charges that were not recorded before
 35 a recorded conveyance shall be removed from the tax roll for a
 36 purchaser who, in the manner prescribed by section ~~29(e)~~ **29(f)** of this
 37 chapter, files a verified demand with the county auditor.

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

40 SECTION 3. IC 36-7-10.1-3, AS AMENDED BY P.L.113-2010,
 41 SECTION 130, IS AMENDED TO READ AS FOLLOWS
 42 [EFFECTIVE JULY 1, 2011]: Sec. 3. (a) The legislative body of a

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1 municipality or county may by ordinance require the owners of real
2 property located within the municipality or the unincorporated area of
3 the county to cut and remove weeds and other rank vegetation growing
4 on the property. As used in this chapter, "weeds and other rank
5 vegetation" does not include agricultural crops, such as hay and
6 pasture.

7 (b) An ordinance adopted under subsection (a) must specify the
8 following:

9 (1) The department of the municipality or county responsible for
10 the administration of the ordinance.

11 (2) The definitions of weeds and rank vegetation.

12 (3) The height at which weeds or rank vegetation becomes a
13 violation of the ordinance, specifying the appropriate heights for
14 various types of weeds and rank vegetation.

15 (4) **Subject to subsection (c)**, the procedure for issuing notice to
16 the owner of real property of a violation of the ordinance.

17 (5) The procedure under which the municipality or county, or its
18 contractors, may enter real property to abate a violation of the
19 ordinance if the owner fails to abate the violation.

20 (6) **Subject to subsections (c), (d), and (e)**, the procedure for
21 issuing a bill to the owner of real property for the costs incurred
22 by the municipality or county in abating the violation, including
23 administrative costs and removal costs. The cost of sending notice
24 under subsection (c) is an administrative cost that may be billed
25 to the owner under this subdivision.

26 (7) The procedure for appealing a notice of violation or a bill
27 issued under the ordinance.

28 (c) An ordinance adopted under subsection (a) must provide that a
29 notice **or bill** sent to the property owner must be sent by certified mail,
30 return receipt requested, or an equivalent service permitted under
31 IC 1-1-7-1 to ~~(1) the owner of record of real property with a single~~
32 ~~owner; or (2) at least one (1) of the owners of real property with~~
33 ~~multiple owners; at the last address of the owner for the property as~~
34 ~~indicated in the records of the county auditor on the date of the notice:~~
35 **one (1) of the following addresses, whichever applies:**

36 (1) **The address to which the owner has instructed, in writing,**
37 **the municipality or the county to direct any notices or bills**
38 **concerning the property.**

39 (2) **If the owner has not provided the municipality or the**
40 **county with an address under subdivision (1), the last address**
41 **of the owner for the property as indicated in the records of**
42 **the county auditor on the date of the notice or bill. The notice**

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or bill must be sent to the owner of record of real property with a single owner, or to at least one (1) of the owners of real property with multiple owners.

If the address to which a notice or bill is required to be sent under subdivision (1) or (2) is not the address of the real property on which the violation occurred, the ordinance must provide that a copy of the notice or bill must be also be sent by United States mail to the address of the real property on which the violation occurred.

(d) Subject to subsection (e), an ordinance adopted under subsection (a) must provide that a bill sent to the property owner under subsection (b)(6) must include the following:

(1) The amount owed by the owner for the costs incurred by the municipality or county in abating the violation, including removal costs and administrative costs, including the cost of sending notices and bills in the manner required by subsection (c).

(2) A statement that a lien will not attach to the property, and that collection charges, attorney's fees, or other charges will not be assessed, if the amount owed is received by the municipality or the county not later than thirty (30) days after the date of the bill.

(e) An ordinance adopted under subsection (a) must provide that if a second or a subsequent bill is sent to a property owner after an original bill sent under subsection (b)(6) remains unpaid, the second or subsequent bill must include the following:

(1) The amount owed by the owner for the costs incurred by the municipality or county in abating the violation, including removal costs and administrative costs, including the cost of sending notices and bills in the manner required by subsection (c).

(2) The number of days the bill is delinquent and the amount of any applicable penalties for the delinquency.

(3) If applicable, a statement that the property may be subject to a lien, and that collection charges, attorney's fees, or other charges may be assessed, unless the amount owed, including any applicable penalties for the delinquency, is received by the municipality or the county not later than a date specified in the second or subsequent bill, which date may not be earlier than fifteen (15) days after the date of the second or subsequent bill. If the property will be subject to a lien if payment is not received by the date specified, the statement must inform the owner that a lien will attach when notice of

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the lien is filed in the county recorder's office, and that the lien will be released when the delinquent costs and penalties, along with any service charges or recording fees incurred in connection with the filing of the lien, have been fully paid.

SECTION 4. IC 36-9-23-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 6. (a) The board may enter into all contracts or agreements necessary or incidental to the performance of its duties and the execution of its powers under this chapter. However, the board may not obligate itself or the municipality beyond the extent to which money has been or may be provided under this chapter.

(b) A contract relating to the financing of the acquisition or construction of any sewage works, or to any trust indenture authorized by this chapter, is not effective until it is approved by the municipal legislative body.

(c) A contract or an agreement with any contractor or contractors for labor, equipment, or materials shall be let and entered into under the statutes governing the letting of contracts by agencies of municipalities.

(d) The board or any public utility (as defined in IC 8-1-6-3) contracting with the board for the treatment, purification, or disposal in a sanitary manner of liquid and solid waste, sewage, night soil, or industrial waste may contract with a water utility furnishing water service to users or property served in the municipality or by the public utility to do the following:

- (1) Ascertain the amount of water consumed.
- (2) Compute the amount of the charge to be billed for sewer services to each user or property served.
- (3) Bill and collect the amounts due for sewer services.
- (4) Discontinue water service to delinquent sewer users.

A contract under this subsection is enforceable without the approval of the Indiana utility regulatory commission.

(e) The procedures in IC 36-9-25-11.5(a) through ~~IC 36-9-25-11.5(c)~~ **IC 36-9-25-11.5(g)** apply to the discontinuance of water service to a delinquent sewer user under a contract between the board and a water utility described in subsection (d).

SECTION 5. IC 36-9-23-31 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 31. **(a)** If fees assessed against real property under this chapter or any statute repealed by IC 19-2-5-30 (repealed September 1, 1981) are not paid within the time fixed by the municipal legislative body, they are delinquent. A penalty of ten percent (10%) of the amount of the fees attaches to the delinquent fees. **Subject to subsection (b)**, the amount of the fee, the

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1 penalty, and a reasonable attorney's fee may be recovered by the board
2 in a civil action in the name of the municipality.

3 **(b) The board may not bring a civil action to recover fees,**
4 **applicable penalties, and attorney's fees under subsection (a)**
5 **unless:**

6 **(1) the utility provided the notices of the delinquency required**
7 **under section 32(c) of this chapter at the times and in the**
8 **manner set forth in section 32(c) and 32(d) of this chapter;**
9 **and**

10 **(2) the fees are least sixty (60) days delinquent.**

11 SECTION 6. IC 36-9-23-32, AS AMENDED BY P.L.113-2010,
12 SECTION 153, IS AMENDED TO READ AS FOLLOWS
13 [EFFECTIVE JULY 1, 2011]: Sec. 32. (a) Fees assessed against real
14 property under this chapter or under any statute repealed by
15 IC 19-2-5-30 constitute a lien against the property assessed. The lien
16 is superior to all other liens except tax liens. Except as provided in
17 ~~subsections~~ **subsection (b) and subject to subsection (c)**, the lien
18 attaches when notice of the lien is filed in the county recorder's office
19 under section 33 of this chapter.

20 (b) A fee is not enforceable as a lien against a subsequent owner of
21 property unless the lien for the fee was recorded with the county
22 recorder before the conveyance to the subsequent owner. If the property
23 is conveyed before the lien can be filed, the municipality shall notify
24 the person who owned the property at the time the fee became payable.
25 The notice must inform the person that payment, including penalty fees
26 for delinquencies, is due not more than fifteen (15) days after the date
27 of the notice. If payment is not received within one hundred eighty
28 (180) days after the date of the notice, the amount due may be
29 expensed as a bad debt loss.

30 (c) A lien attaches against real property ~~occupied by someone other~~
31 ~~than the owner~~ **under subsection (a)** only if the utility notified the
32 owner within twenty (20) days after the time the utility fees became
33 sixty (60) days delinquent. However, the utility is required to give
34 notice to the owner if the owner has given the general office of the
35 utility written notice of the address to which the owner's notice is to be
36 sent. A notice sent to the owner under this subsection must be sent by
37 certified mail, return receipt requested, or an equivalent service
38 permitted under IC ~~1-1-7-1~~ to:

- 39 (1) the owner of record of real property with a single owner; or
- 40 (2) at least one (1) of the owners of real property with multiple
41 owners;

42 at the last address of the owner for the property as indicated in the

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records of the county auditor on the date of the notice. The cost of sending notice under this subsection is an administrative cost that may be billed to the owner. does the following:

(1) Sends notice of the delinquency upon which the lien is based as follows:

(A) By United States mail to the address of the real property. The notice required by this clause must include the following:

(i) The amount of the delinquency, including any applicable penalties for the delinquency, and the number of days the account is delinquent.

(ii) A statement that payment is due not later than thirty (30) days after the date of the notice, along with instructions as to how the payment may be made.

(iii) A statement that a lien will not attach to the property, and that collection charges, attorney's fees, or other charges will not be assessed, if the amount of the delinquency, including any applicable penalties for the delinquency, is received by the utility not later than thirty (30) days after the date of the notice.

(B) If the property is occupied by someone other than the owner, by certified mail, return receipt requested, or by an equivalent service permitted under IC 1-1-7-1, to the owner, at the address described in subsection (d). The notice required by this clause is in addition to the notice required to be sent to the address of the property under clause (A). The notice required by this clause must include the following:

(i) The amount of the delinquency, including any applicable penalties for the delinquency, and the number of days the account is delinquent.

(ii) A statement that notice of the delinquency, along with a demand for payment, has been sent to the address of the real property, as required under clause (A).

(iii) A statement that payment is due not later than thirty (30) days after the date of the notice, along with instructions as to how the payment may be made.

(iv) A statement that a lien will not attach to the property, and that collection charges, attorney's fees, or other charges will not be assessed, if the amount of the delinquency, including any applicable penalties for the delinquency, is received by the utility not later than

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thirty (30) days after the date of the notice.

The cost of sending notice to the owner under this clause is an administrative cost that may be billed to the owner. A notice required by this clause shall be sent at the same time the notice is sent to the address of the real property under clause (A).

A notice required by this subdivision must be sent according to the schedule by which the utility first sends notice of delinquent fees under the utility's normal billing procedures, but not later than thirty (30) days after the date the fees first become delinquent.

(2) If the fees remain delinquent after the notice or notices required by subdivision (1) have been sent, sends notice of the continuing delinquency as follows:

(A) By United States mail to the address of the real property. The notice required by this clause must include the following:

(i) The amount of the continuing delinquency, including any applicable penalties for the delinquency, and the number of days the account is delinquent.

(ii) A statement that payment is due not later than fifteen (15) days after the date of the notice, along with instructions for how payment may be made.

(iii) A statement that the property will be subject to a lien, and that collection charges, attorney's fees, or other charges may be assessed, unless the amount of the delinquency, including any applicable penalties for the delinquency, is received by the utility not later than the date specified in item (ii). The statement must inform the recipient that the lien will attach when notice of the lien is filed in the county recorder's office, and that the lien will be released when the delinquent fees, penalties, service charges, and recording fees have been fully paid.

(B) If the property is occupied by someone other than the owner, by certified mail, return receipt requested, or by an equivalent service permitted under IC 1-1-7-1, to the owner, at the address described in subsection (d). The notice required by this clause is in addition to the notice required to be sent to the address of the property under clause (A). The notice required by this clause must include the following:

(i) The amount of the continuing delinquency, including

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any applicable penalties for the delinquency, and the number of days the account is delinquent.

(ii) A statement that notice of the continuing delinquency, along with a demand for payment, has been sent to the address of the property, as required under clause (A).

(iii) A statement that payment is due not later than fifteen (15) days after the date of the notice, along with instructions as to how the payment may be made.

(iv) A statement that the property will be subject to a lien, and that collection charges, attorney's fees, or other charges may be assessed, unless the amount of the delinquency, including any applicable penalties for the delinquency, is received by the utility not later than the date specified in item (iii). The statement must inform the owner that the lien will attach when notice of the lien is filed in the county recorder's office, and that the lien will be released when the delinquent fees, penalties, service charges, and recording fees have been fully paid.

The cost of sending notice to the owner under this clause is an administrative cost that may be billed to the owner. A notice required by this clause must be sent at the same time the notice is sent to the address of the real property under clause (A), subject to the requirements of the subdivision.

A notice required by this subdivision must be sent according to the schedule by which the utility sends notice of continuing delinquencies under the utility's normal billing procedures, but not later than sixty (60) days after the date the fees first become delinquent.

(d) The utility shall send any notice required by subsection (c)(1)(B) or (c)(2)(B) to the following address:

(1) The address to which the owner has instructed, in writing, the utility to direct any:

(A) notice of delinquency under this section; or

(B) other notices;

concerning the property.

(2) If the owner has not provided the utility with an address under subdivision (1), the last address of the owner for the property as indicated in the records of the county auditor on the date of the notice. The notice must be sent to the owner of record of real property with a single owner, or to at least one (1) of the owners of real property with multiple owners.

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1 ~~(d)~~ (e) The municipality shall release:
 2 (1) liens filed with the county recorder after the recorded date of
 3 conveyance of the property; and
 4 (2) delinquent fees incurred by the seller;
 5 upon receipt of a verified demand in writing from the purchaser. The
 6 demand must state that the delinquent fees were not incurred by the
 7 purchaser as a user, lessee, or previous owner, and that the purchaser
 8 has not been paid by the seller for the delinquent fees.

9 SECTION 7. IC 36-9-23-33, AS AMENDED BY P.L.39-2008,
 10 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 11 JULY 1, 2011]: Sec. 33. (a) An officer described in subsection (b):

12 (1) may defer enforcing the collection of unpaid fees and
 13 penalties assessed under this chapter until the unpaid fees and
 14 penalties have been due and unpaid for at least ninety (90) days;
 15 **and**

16 (2) shall defer enforcing the collection of the unpaid fees and
 17 penalties until:

18 (A) the unpaid fees and penalties are due and unpaid for at
 19 least sixty (60) days; and

20 (B) the notices required under section 32(c) of this chapter
 21 (or IC 36-9-25-11.2, if applicable) have been provided at
 22 the times and in the manner set forth in section 32(c) and
 23 32(d) of this chapter (or IC 36-9-25-11.2, if applicable).

24 (b) Except as provided in subsection (1), the officer charged with the
 25 collection of fees and penalties assessed under this chapter shall
 26 enforce their payment. As often as the officer determines is necessary
 27 in a calendar year, the officer shall prepare either of the following:

28 (1) A list of the delinquent fees and penalties that are enforceable
 29 under this section, which must include the following:

30 (A) The name or names of the owner or owners of each lot or
 31 parcel of real property on which fees are delinquent.

32 (B) A description of the premises, as shown by the records of
 33 the county auditor.

34 (C) The amount of the delinquent fees, together with the
 35 penalty.

36 (2) An individual instrument for each lot or parcel of real property
 37 on which the fees are delinquent.

38 (c) The officer shall record a copy of each list or each individual
 39 instrument with the county recorder who shall charge a fee for
 40 recording the list or each individual instrument in accordance with the
 41 fee schedule established in IC 36-2-7-10. **Subject to section 32(c) and**
 42 **32(d) of this chapter**, the officer shall then mail **by certified mail**,

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1 **return receipt requested, or by an equivalent service permitted**
 2 **under IC 1-1-7-1**, to each property owner on the list or on an
 3 individual instrument a notice stating that a lien against the owner's
 4 property has been recorded. Except for a county having a consolidated
 5 city, a service charge of five dollars (\$5), which is in addition to the
 6 recording fee charged under this subsection and under subsection (f),
 7 shall be added to each delinquent fee that is recorded.

8 (d) This subsection applies only to a county containing a
 9 consolidated city. Using the lists and instruments prepared under
 10 subsection (b) and recorded under subsection (c), the officer shall
 11 certify to the county auditor a list of the liens that remain unpaid
 12 according to a schedule agreed upon by the county treasurer and the
 13 officer for collection with the next cycle's property tax installment. The
 14 county and its officers and employees are not liable for any material
 15 error in the information on the list.

16 (e) Using the lists and instruments prepared under subsection (b)
 17 and recorded under subsection (c), the officer shall, not later than ten
 18 (10) days after the list or each individual instrument is recorded under
 19 subsection (c), certify to the county auditor a list of the liens that
 20 remain unpaid for collection in the next May. The county and its
 21 officers and employees are not liable for any material error in the
 22 information on this list.

23 (f) The officer shall release any recorded lien when the delinquent
 24 fees, penalties, service charges, and recording fees have been fully
 25 paid. The county recorder shall charge a fee for releasing the lien in
 26 accordance with IC 36-2-7-10.

27 (g) On receipt of the list under subsection (e), the county auditor of
 28 each county shall add a fifteen dollar (\$15) certification fee for each lot
 29 or parcel of real property on which fees are delinquent, which fee is in
 30 addition to all other fees and charges. The county auditor shall
 31 immediately enter on the tax duplicate for the municipality the
 32 delinquent fees, penalties, service charges, recording fees, and
 33 certification fees, which are due not later than the due date of the next
 34 installment of property taxes. The county treasurer shall then include
 35 any unpaid charges for the delinquent fee, penalty, service charge,
 36 recording fee, and certification fee to the owner or owners of each lot
 37 or parcel of property, at the time the next cycle's property tax
 38 installment is billed.

39 (h) After certification of liens under subsection (e), the officer may
 40 not collect or accept delinquent fees, penalties, service charges,
 41 recording fees, or certification fees from property owners whose
 42 property has been certified to the county auditor. This subsection does

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not apply to a county containing a consolidated city.

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

(j) At the time of each semiannual tax settlement, the county treasurer shall certify to the county auditor all fees, charges, and penalties that have been collected. The county auditor shall deduct the service charges and certification fees collected by the county treasurer and pay over to the officer the remaining fees and penalties due the municipality. The county treasurer shall retain the service charges and certification fees that have been collected, and shall deposit them in the county general fund.

(k) Fees, penalties, and service charges that were not recorded before a recorded conveyance shall be removed from the tax roll for a purchaser who, in the manner prescribed by section ~~32(d)~~ 32(e) of this chapter, files a verified demand with the county auditor.

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

SECTION 8. IC 36-9-25-11, AS AMENDED BY P.L.168-2009, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: 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 administrative expenses, to pay the principal and interest on bonds as they become due and payable, and to provide money for the revolving fund authorized by this chapter.

(c) Fees may not be established until a public hearing has been held at which all the users of the sewage works and owners of property served or to be served by the works, including interested parties, have had an opportunity to be heard concerning the proposed fees. After introduction of the resolution fixing fees, and before they are finally

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1 adopted, notice of the hearing setting forth the proposed schedule of
2 fees shall be given by publication in accordance with IC 5-3-1. After
3 the hearing the resolution establishing fees, either as originally
4 introduced or as amended, shall be passed and put into effect.
5 However, fees related to property that is subject to full taxation do not
6 take effect until they have been approved by ordinance of the municipal
7 legislative body or, in the case of a district described in section 3(b)(2)
8 of this chapter, under section 11.3 of this chapter.

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

15 (e) A change of fees may be made in the same manner as fees were
16 originally established. However, if a change is made substantially pro
17 rata for all classes of service, hearing or notice is not required, but
18 approval of the change by ordinance of the municipal legislative body
19 is required, and, in the case of a district described in section 3(b)(2) of
20 this chapter, approval under section 11.3 of this chapter is required.

21 (f) If a fee established is not paid within thirty (30) days after it is
22 due, the amount, together with a penalty of ten percent (10%) and a
23 reasonable attorney's fee, may be recovered by the board from the
24 delinquent user or owner of the property served in a civil action in the
25 name of the municipality. **However, the municipality may not bring**
26 **a civil action under this subsection unless:**

- 27 (1) **the board provided the notices of the delinquency required**
- 28 **under section 11.2 of this chapter at the times and in the**
- 29 **manner set forth in section 11.2 of this chapter; and**
- 30 (2) **the fees are at least sixty (60) days delinquent.**

31 (g) Fees assessed against real property under this section also
32 constitute a lien against the property assessed. **Subject to section 11.2**
33 **of this chapter,** the lien attaches at the time of the filing of the notice
34 of lien in the county recorder's office. ~~The~~ **A lien under this**
35 **subsection** is superior to all other liens except tax liens, and shall be
36 enforced and foreclosed in the same manner as is provided for liens
37 under IC 36-9-23-33 and IC 36-9-23-34.

38 (h) A fee assessed against real property under this section
39 constitutes a lien against the property assessed only when the fee is
40 delinquent for no more than three (3) years from the day after the fee
41 is due.

42 (i) In addition to the:

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1 **(1) penalties available** under subsections (f) and (g); ~~and or~~
 2 **(2) the alternative penalty available under** section 11.5 of this
 3 chapter,
 4 a delinquent user may not discharge water into the public sewers and
 5 may have the property disconnected from the public sewers.

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

14 (k) The authority to establish a user fee under this section includes
 15 fees to recover the costs associated with providing financial assistance
 16 under section 42 of this chapter. A fee that is:

- 17 (1) established under this subsection or any other law; and
- 18 (2) used to provide financial assistance under section 42 of this
 19 chapter;

20 is considered just and equitable if the project for which the financial
 21 assistance is provided otherwise complies with the requirements of this
 22 chapter.

23 SECTION 9. IC 36-9-25-11.2 IS AMENDED TO READ AS
 24 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 11.2. **(a)** If a fee
 25 established under section 11 of this chapter is not paid within thirty
 26 (30) days after it is due a copy of any notice of delinquency sent to a
 27 delinquent user who is a tenant must be sent to the owner of the
 28 property occupied by the tenant at the latest address of the owner as
 29 shown on the property tax records of the county in which the property
 30 is located. **becomes delinquent, a lien attaches against the real
 31 property under section 11(g) of this chapter only if the board or the
 32 board's designee does the following:**

33 **(1) Sends notice of the delinquency upon which the lien is
 34 based as follows:**

35 **(A) By United States mail to the address of the real
 36 property. The notice required by this clause must include
 37 the following:**

38 **(i) The amount of the delinquency, including any
 39 applicable penalties for the delinquency, and the number
 40 of days the account is delinquent.**

41 **(ii) A statement that payment is due not later than thirty
 42 (30) days after the date of the notice, along with**

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instructions for how payment may be made.
(iii) A statement that a lien will not attach to the property, and that collection charges, attorney's fees, or other charges will not be assessed, if the amount of the delinquency, including any applicable penalties for the delinquency, is received by the board or the board's designee not later than thirty (30) days after the date of the notice.

(B) If the property is occupied by someone other than the owner, by certified mail, return receipt requested, or by an equivalent service permitted under IC 1-1-7-1, to the owner, at the address described in subsection (c). The notice required by this clause is in addition to the notice required to be sent to the address of the real property under clause (A). The notice required by this clause must include the following:

- (i) The amount of the delinquency, including any applicable penalties for the delinquency, and the number of days the account is delinquent.
- (ii) A statement that notice of the delinquency, along with a demand for payment, has been sent to the address of the real property, as required under clause (A).
- (iii) A statement that payment is due not later than thirty (30) days after the date of the notice, along with instructions for how payment may be made.
- (iv) A statement that a lien will not attach to the property, and that collection charges, attorney's fees, or other charges will not be assessed, if the amount of the delinquency, including any applicable penalties for the delinquency, is received by the board or the board's designee not later than thirty (30) days after the date of the notice.

The cost of sending notice to the owner under this clause is an administrative cost that may be billed to the owner. A notice required by this clause shall be sent at the same time the notice is sent to the address of the real property under clause (A), subject to the requirements of this subdivision. A notice required by this subdivision must be sent according to the schedule by which the board first sends notice of delinquent fees under the board's normal billing procedures, but not later than thirty (30) days after the date the fees first become delinquent.

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(2) If the fees remain delinquent after the notice or notices required by subdivision (1) have been sent, sends notice of the continuing delinquency as follows:

(A) By United States mail to the address of the real property. The notice required by this clause must include the following:

(i) The amount of the continuing delinquency, including any applicable penalties for the delinquency, and the number of days the account is delinquent.

(ii) A statement that payment is due not later than fifteen (15) days after the date of the notice, along with instructions as to how the payment may be made.

(iii) A statement that the property will be subject to a lien, and that collection charges, attorney's fees, or other charges may be assessed, unless the amount of the delinquency, including any applicable penalties for the delinquency, is received by the board or the board's designee not later than the date specified in item (ii). The statement must inform the recipient that the lien will attach when notice of the lien is filed in the county recorder's office, and that the lien will be released when the delinquent fees, penalties, service charges, and recording fees have been fully paid.

(B) If the property is occupied by someone other than the owner, by certified mail, return receipt requested, or by an equivalent service permitted under IC 1-1-7-1, to the owner, at the address described in subsection (c). The notice required by this clause is in addition to the notice required to be sent to the address of the real property under clause (A). The notice required by this clause must include the following:

(i) The amount of the continuing delinquency, including any applicable penalties for the delinquency, and the number of days the account is delinquent.

(ii) A statement that notice of the continuing delinquency, along with a demand for payment, has been sent to the address of the real property, as required under clause (A).

(iii) A statement that payment is due not later than fifteen (15) days after the date of the notice, along with instructions for how payment may be made.

(iv) A statement that the property will be subject to a

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lien, and that collection charges, attorney's fees, or other charges may be assessed, unless the amount of the delinquency, including any applicable penalties for the delinquency, is received by the board or the board's designee not later than the date specified in item (iii). The statement must inform the owner that the lien will attach when notice of the lien is filed in the county recorder's office, and that the lien will be released when the delinquent fees, penalties, service charges, and recording fees have been fully paid.

The cost of sending notice to the owner under this clause is an administrative cost that may be billed to the owner. A notice required by this clause must be sent at the same time the notice is sent to the address of the real property under clause (A), subject to the requirements of this subdivision.

A notice required by this subdivision must be sent according to the schedule by which the board sends notice of continuing delinquencies under the board's normal billing procedures, but not later than sixty (60) days after the date the fees first become delinquent.

(c) The board or the board's designee shall send the notices required by subsection (b)(1)(B) and (b)(2)(B) to the following address:

(1) The address to which the owner has instructed, in writing, the board to direct any:

- (A) notice of delinquency under this section; or
- (B) other notices; concerning the property.

(2) If the owner has not provided the board with an address under subdivision (1), the last address of the owner for the property as indicated in the records of the county auditor on the date of the notice. The notice shall be sent to the owner of record of real property with a single owner, or to at least one (1) of the owners of real property with multiple owners.

SECTION 10. IC 36-9-25-11.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 11.5. (a) As an alternative to the penalties provided in section 11 of this chapter, the board may require that the water utility providing water service to a delinquent user discontinue service until payment of all overdue user fees, together with any penalties provided in this section, are received by the municipality.

(b) Subject to subsection (c), if a fee established is not paid within

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1 one (1) monthly billing cycle after it is due, the board or its designee
2 shall send notice, **by United States mail**, to the ~~delinquent user~~; **the**
3 **address of the property served by the district's sewage works**,
4 stating:

- 5 (1) the delinquent amount due, together with any penalty;
- 6 (2) that water service may be disconnected if the ~~user continues~~
7 **not to pay the delinquency and any penalty are not paid**; and
- 8 (3) the procedure for resolving disputed bills.

9 The municipality shall provide by ordinance a procedure for resolving
10 disputed bills that includes an opportunity for a delinquent user **or the**
11 **owner of the property served, if the owner is different from the**
12 **user**, to meet informally with designated personnel empowered to
13 correct incorrect charges. Payment of a disputed bill and penalties by
14 a user **or the owner of the property served** does not constitute a
15 waiver of rights to subsequently claim and recover from the
16 municipality sums improperly charged to the user.

17 **(c) If fees that have been assessed against real property occupied**
18 **by someone other than the owner become delinquent under**
19 **subsection (a), the board or the board's designee shall send, by**
20 **certified mail, return receipt requested, or by an equivalent service**
21 **permitted under IC 1-1-7-1, a copy of the notice required by**
22 **subsection (b) to the owner of the real property against which the**
23 **fees have been assessed. The board or the board's designee shall**
24 **send the copy of the notice to the owner at the same time that the**
25 **board or the board's designee sends under subsection (b) the notice**
26 **to the address of the real property served by the sewage works. The**
27 **board or the board's designee shall send the copy of the notice**
28 **required by this subsection to the following address:**

29 (1) The address to which the owner has instructed, in writing,
30 the board to direct any:

- 31 (A) notices of delinquency under this section; or
 - 32 (B) other notices;
- 33 **concerning the property.**

34 (2) **If the owner has not provided the board with an address**
35 **under subdivision (1), the last address of the owner for the**
36 **property as indicated in the records of the county auditor on**
37 **the date of the notice. The notice must be sent to the owner of**
38 **record of real property with a single owner, or to at least one**
39 **(1) of the owners of real property with multiple owners.**

40 ~~(c)~~ (d) **If the user or the owner of the real property fails to pay the**
41 **delinquent amount or otherwise resolve the charges as specified in**
42 **subsection (a), the board or its designee shall give written notice to the**

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1 water utility serving the user to discontinue water service to the
2 premises designated in the notice until notified otherwise. The notice
3 must identify the ~~delinquent sewer user~~ **user premises** in enough detail to
4 enable the water utility to identify the water service connection that is
5 to be terminated. Upon receipt of the notice, the water utility shall
6 disconnect water service to the ~~user~~ **premises**.

7 ~~(d)~~ **(e)** Water service may not be shut off under this section if a local
8 board of health has found and certified to the municipality that the
9 termination of water service will endanger the health of the user and
10 others in the municipality.

11 ~~(e)~~ **(f)** The water utility that discontinues water service in
12 accordance with an order from the board or its designee does not incur
13 any liability except to the extent of its own negligence or improper
14 conduct.

15 ~~(f)~~ **(g)** If the water utility does not discontinue service within thirty
16 (30) days after receiving notice from the municipality, the utility is
17 liable for any user fees incurred thirty (30) days after receipt of notice
18 to discontinue water service and that are not collected. ~~from the user~~.

19 SECTION 11. [EFFECTIVE UPON PASSAGE] **(a) This**
20 **SECTION applies to a unit if:**

- 21 **(1) the unit's legislative body has adopted an ordinance under**
- 22 **IC 36-7-10.1-3, before its amendment by this act; and**
- 23 **(2) the ordinance described in subdivision (1) does not comply**
- 24 **with IC 36-7-10.1-3, as amended by this act, as of the effective**
- 25 **date of the amendments to IC 36-7-10.1-3 made by this act.**

26 **(b) As used in this SECTION, "unit" means a unit (as defined**
27 **in IC 36-1-2-23) other than a township.**

28 **(c) Not later than September 1, 2011, a unit to which this**
29 **SECTION applies shall:**

- 30 **(1) amend the ordinance described in subsection (a) to comply**
- 31 **IC 36-7-10.1-3, as amended by this act; or**
- 32 **(2) adopt a new ordinance under IC 36-7-10.1-3, as amended**
- 33 **by this act.**

34 **(d) This SECTION expires January 1, 2013.**

35 SECTION 12. **An emergency is declared for this act.**

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