



March 29, 2013

**ENGROSSED  
SENATE BILL No. 285**

DIGEST OF SB 285 (Updated March 26, 2013 12:35 pm - DI 87)

**Citations Affected:** IC 36-9.

**Synopsis:** Waiver of the right to remonstrate against annexation. Provides that if a person waives the person's right to remonstrate against an annexation as part of a contract with a municipality for providing sewer service to the person's property, the release is not binding on a successor in title to the property unless, for sewer contracts executed after June 30, 2013, the successor in title: (1) has actual notice of the waiver; or (2) has constructive notice of the waiver because the contract or a signed memorandum of the contract stating the waiver, has been recorded in the chain of title of the property. (Under current law, the contract containing the waiver must be recorded in order to bind the successors in title of the party to the agreement.)

**Effective:** July 1, 2013.

**Buck, Bray, Crider**

(HOUSE SPONSORS — KARICKHOFF, MAYFIELD, VANNATTER)

January 8, 2013, read first time and referred to Committee on Local Government.  
January 24, 2013, reported favorably — Do Pass.  
January 29, 2013, read second time, amended, ordered engrossed.  
January 30, 2013, engrossed.  
January 31, 2013, read third time, passed. Yeas 49, nays 0.

HOUSE ACTION

March 12, 2013, read first time and referred to Committee on Government and Regulatory Reform.  
March 28, 2013, amended, reported — Do Pass.

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March 29, 2013

First Regular Session 118th General Assembly (2013)

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 2012 Regular Session of the General Assembly.

## ENGROSSED SENATE BILL No. 285

A BILL FOR AN ACT to amend the Indiana Code concerning local government.

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

- 1 SECTION 1. IC 36-9-22-2 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 2. (a) The power of the  
3 municipal works board to fix the terms of a contract under this section  
4 applies to contracts for the installation of sewage works that have not  
5 been finally approved or accepted for full maintenance and operation  
6 by the municipality on July 1, 1979.  
7 (b) The works board of a municipality may contract with owners of  
8 real property for the construction of sewage works within the  
9 municipality or within four (4) miles outside its corporate boundaries  
10 in order to provide service for the area in which the real property of the  
11 owners is located. The contract must provide, for a period of not to  
12 exceed fifteen (15) years, for the payment to the owners and their  
13 assigns by any owner of real property who:  
14 (1) did not contribute to the original cost of the sewage works;  
15 and  
16 (2) subsequently taps into, uses, or deposits sewage or storm  
17 waters in the sewage works or any lateral sewers connected to

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1           them;  
 2           of a fair pro rata share of the cost of the construction of the sewage  
 3           works, subject to the rules of the board and notwithstanding any other  
 4           law relating to the functions of local governmental entities. However,  
 5           the contract does not apply to any owner of real property who is not a  
 6           party to ~~it~~ **the contract** unless ~~it~~ **the contract or a signed**  
 7           **memorandum of the contract** has been recorded in the office of the  
 8           recorder of the county in which the real property of the owner is located  
 9           before the owner taps into or connects to the sewers and facilities. The  
 10          board may provide that the fair pro rata share of the cost of  
 11          construction includes interest at a rate not exceeding the amount of  
 12          interest allowed on judgments, and the interest shall be computed from  
 13          the date the sewage works are approved until the date payment is made  
 14          to the municipality.

15          (c) The contract must include, as part of the consideration running  
 16          to the municipality, the release of the right of the parties to the contract  
 17          and their successors in title to remonstrate against pending or future  
 18          annexations by the municipality of the area served by the sewage  
 19          works. Any person tapping into or connecting to the sewage works  
 20          contracted for is considered to waive ~~his~~ **the person's** rights to  
 21          remonstrate against the annexation of the area served by the sewage  
 22          works.

23          **(d) This subsection does not affect any rights or liabilities**  
 24          **accrued, or proceedings begun before July 1, 2013. Those rights,**  
 25          **liabilities, and proceedings continue and shall be imposed and**  
 26          **enforced under prior law as if this subsection had not been enacted.**  
 27          **For contracts executed after June 30, 2013, the release of the right**  
 28          **to remonstrate is binding on a successor in title to a party to the**  
 29          **contract only if the successor in title:**

30                 **(1) has actual notice of the release; or**  
 31                 **(2) has constructive notice of the release because the contract,**  
 32                 **or a signed memorandum of the contract stating the release,**  
 33                 **has been recorded in the chain of title of the property.**

34          ~~(d)~~ (e) Subsection (c) does not apply to a landowner if all of the  
 35          following conditions apply:

36                 (1) The landowner is required to connect to the sewage works  
 37                 because a person other than the landowner has polluted or  
 38                 contaminated the area.

39                 (2) The costs of extension of or connection to the sewage works  
 40                 are paid by a person other than the landowner or the municipality.

41          SECTION 2. IC 36-9-25-14 IS AMENDED TO READ AS  
 42          FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 14. (a) As to each

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1 municipality to which this chapter applies:  
 2 (1) all the territory included within the corporate boundaries of  
 3 the municipality; and  
 4 (2) any territory, town, addition, platted subdivision, or unplatted  
 5 land lying outside the corporate boundaries of the municipality  
 6 that has been taken into the district in accordance with a prior  
 7 statute, the sewage or drainage of which discharges into or  
 8 through the sewage system of the municipality;  
 9 constitutes a special taxing district for the purpose of providing for the  
 10 sanitary disposal of the sewage of the district in a manner that protects  
 11 the public health and prevents the undue pollution of watercourses of  
 12 the district.  
 13 (b) Upon request by:  
 14 (1) a resolution adopted by the legislative body of another  
 15 municipality in the same county; or  
 16 (2) a petition of the majority of the resident freeholders in a  
 17 platted subdivision or of the owners of unplatted land outside the  
 18 boundaries of a municipality, if the platted subdivision or  
 19 unplatted land is in the same county;  
 20 the board may adopt a resolution incorporating all or any part of the  
 21 area of the municipality, platted subdivision, or unplatted land into the  
 22 district.  
 23 (c) A request under subsection (b) must be signed and certified as  
 24 correct by the secretary of the legislative body, resident freeholders, or  
 25 landowners. The original shall be preserved in the records of the board.  
 26 The resolution of the board incorporating an area in the district must be  
 27 in writing and must contain an accurate description of the area  
 28 incorporated into the district. A certified copy of the resolution, signed  
 29 by the president and secretary of the board, together with a map  
 30 showing the boundaries of the district and the location of additional  
 31 areas, shall be delivered to the auditor of the county within which the  
 32 district is located. It shall be properly indexed and kept in the  
 33 permanent records of the offices of the auditor.  
 34 (d) In addition, upon request by ten (10) or more interested resident  
 35 freeholders in a platted or unplatted territory, the board may define the  
 36 limits of an area within the county and including the property of the  
 37 freeholders that is to be considered for inclusion into the district.  
 38 Notice of the defining of the area by the board, and notice of the  
 39 location and limits of the area, shall be given by publication in  
 40 accordance with IC 5-3-1. Upon request by a majority of the resident  
 41 freeholders of the area, the area may be incorporated into the district in  
 42 the manner provided in this section. The resolution of the board

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1 incorporating the area into the district and a map of the area shall be  
2 made and filed in the same manner.

3 (e) In addition, a person owning or occupying real property outside  
4 the district may enter into a sewer service agreement with the board for  
5 connection to the sewage works of the district. If the agreement  
6 provides for connection at a later time, the date or the event upon  
7 which the service commences shall be stated in the agreement. The  
8 agreement may impose any conditions for connection that the board  
9 determines. The agreement must also provide the amount of service  
10 charge to be charged for connection if the persons are not covered  
11 under section 11 of this chapter, with the amount to be fixed by the  
12 board in its discretion and without a hearing.

13 (f) All sewer service agreements made under subsection (e) **or a**  
14 **signed memorandum of the sewer service agreement** shall be  
15 recorded in the office of the recorder of the county where the property  
16 is located. The agreements run with the property described and are  
17 binding upon the persons owning or occupying the property, their  
18 personal representatives, heirs, devisees, grantees, successors, and  
19 assigns. Each ~~recorded~~ agreement **that is recorded, or each**  
20 **agreement of which a signed memorandum is recorded, and** that  
21 provides for the property being served to be placed on the tax rolls shall  
22 be certified by the board to the auditor of the county where the property  
23 is located. The certification must state the date the property is to be  
24 placed on the tax rolls, and upon receipt of the certification together  
25 with a copy of the agreement, the auditor shall immediately place the  
26 property certified upon the rolls of property subject to the levy and  
27 collection of taxes for the district. An agreement may provide for the  
28 collection of a service charge for the period services are rendered  
29 before the levy and collection of the tax.

30 (g) Except as provided in subsection ~~(i)~~, **(j)**, sewer service  
31 agreements made under subsection (e) must contain a **waiver** provision  
32 that persons (other than municipalities) who own or occupy property  
33 agree for themselves, their executors, administrators, heirs, devisees,  
34 grantees, successors, and assigns that they will:

- 35 (1) neither object to nor file a remonstrance against the proposed
- 36 annexation of the property by a municipality within the
- 37 boundaries of the district;
- 38 (2) not appeal from an order or a judgment annexing the property
- 39 to a municipality; and
- 40 (3) not file a complaint or an action against annexation
- 41 proceedings.

42 **(h) This subsection does not affect any rights or liabilities**



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1 accrued or proceedings begun before July 1, 2013. Those rights,  
 2 liabilities, and proceedings continue and shall be imposed and  
 3 enforced under prior law as if this subsection had not been enacted.  
 4 For contracts executed after June 30, 2013, a waiver of the right to  
 5 remonstrate under subsection (g) is binding as to an executor,  
 6 administrator, heir, devisee, grantee, successor, or assign of a party  
 7 to a sewer service agreement under subsection (g) only if the  
 8 executor, administrator, heir, devisee, grantee, successor, or  
 9 assign:

- 10 (1) has actual notice of the waiver; or
- 11 (2) has constructive notice of the waiver because the sewer
- 12 agreement or a signed memorandum of the sewer agreement
- 13 stating the waiver has been recorded in the chain of title of the
- 14 property.

15 ~~(i)~~ (i) This section does not affect any sewer service agreements  
 16 entered into before March 13, 1953.

17 ~~(j)~~ (j) Subsection (g) does not apply to a landowner if all of the  
 18 following conditions apply:

- 19 (1) The landowner is required to connect to a sewer service
- 20 because a person other than the landowner has polluted or
- 21 contaminated the area.
- 22 (2) The costs of extension of service or connection to the sewer
- 23 service are paid by a person other than the landowner or the
- 24 municipality.

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## COMMITTEE REPORT

Madam President: The Senate Committee on Local Government, to which was referred Senate Bill No. 285, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to Senate Bill 285 as introduced.)

HEAD, Chairperson

Committee Vote: Yeas 6, Nays 0.

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 SENATE MOTION

Madam President: I move that Senate Bill 285 be amended to read as follows:

Page 2, line 18, reset in roman "is considered to waive".

Page 2, line 18, after "his" insert "**the person's**".

Page 2, line 18, reset in roman "rights to remonstrate against".

Page 2, line 19, reset in roman "the annexation of the area served by the sewage works.".

Page 2, line 19, delete "may grant, as", begin a new paragraph and insert:

**"(d) This subsection does not affect any rights or liabilities accrued, or proceedings begun before July 1, 2013. Those rights, liabilities, and proceedings continue and shall be imposed and enforced under prior law as if this subsection had not been enacted. For contracts executed after June 30, 2013, the release of the right to remonstrate is binding on a successor in title to a party to the contract only if the successor in title:**

**(1) has actual notice of the release; or**

**(2) has constructive notice of the release because the contract has been entered and recorded in the chain of title of the property."**

Page 2, delete lines 20 through 23.

Page 2, line 24, strike "(d)" and insert "(e)".

Page 2, delete lines 31 through 38.

Page 4, line 26, after "a" insert "**waiver**".

Page 4, line 37, delete "The annexation provision required in a sewer service" and insert "**This subsection does not affect any rights or liabilities accrued or proceedings begun before July 1, 2013. Those rights, liabilities, and proceedings continue and shall be**

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imposed and enforced under prior law as if this subsection had not been enacted. For contracts executed after June 30, 2013, a waiver of the right to remonstrate under subsection (g) is binding as to an executor, administrator, heir, devisee, grantee, successor, or assign of a party to a sewer service agreement under subsection (g) only if the executor, administrator, heir, devisee, grantee, successor, or assign:

- (1) has actual notice of the waiver; or
- (2) has constructive notice of the waiver because the sewer agreement has been entered and recorded in the chain of title of the property."

Page 4, delete lines 38 through 42.

Page 5, delete lines 1 through 4.

(Reference is to SB 285 as printed January 25, 2013.)

BUCK

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#### COMMITTEE REPORT

Mr. Speaker: Your Committee on Government and Regulatory Reform, to which was referred Senate Bill 285, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 2, line 6, after "to" strike "it" and insert "**the contract**".

Page 2, line 6, after "unless" strike "it" and insert "**the contract or a signed memorandum of the contract**".

Page 2, line 29, delete "contract".

Page 2, line 30, delete "has been entered and" and insert "**contract, or a signed memorandum of the contract stating the release, has been**".

Page 4, line 11, after "(e)" insert "**or a signed memorandum of the sewer service agreement**".

Page 4, line 16, strike "recorded".

Page 4, line 16, after "agreement" insert "**that is recorded, or each agreement of which a signed memorandum is recorded, and**".

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Page 5, line 7, delete "has been entered and" and insert "**or a signed memorandum of the sewer agreement stating the waiver has been**".  
and when so amended that said bill do pass.

(Reference is to SB 285 as reprinted January 30, 2013.)

MAHAN, Chair

Committee Vote: yeas 11, nays 0.

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