

## SENATE BILL No. 285

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### DIGEST OF INTRODUCED BILL

**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 an agreement with a municipality for providing sewer service to the person's property, the waiver is not enforceable against a successor in title to the property unless the waiver is: (1) noted on the deed of the property; and (2) recorded in the office of the recorder of the county in which the property is located.

**Effective:** July 1, 2013.

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January 8, 2013, read first time and referred to Committee on Local Government.

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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.

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## 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



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 unless it has been recorded in the office of the recorder of the  
 7 county in which the real property of the owner is located before the  
 8 owner taps into or connects to the sewers and facilities. The board may  
 9 provide that the fair pro rata share of the cost of construction includes  
 10 interest at a rate not exceeding the amount of interest allowed on  
 11 judgments, and the interest shall be computed from the date the sewage  
 12 works are approved until the date payment is made to the municipality.

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

24           (d) Subsection (c) does not apply to a landowner if all of the  
 25 following conditions apply:

26           (1) The landowner is required to connect to the sewage works  
 27 because a person other than the landowner has polluted or  
 28 contaminated the area.

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

31           **(e) A release of the right to remonstrate against pending or**  
 32 **future annexations under subsection (c):**

33           **(1) must be noted on the deed of each property affected and**  
 34 **recorded in the office of the recorder of the county in which**  
 35 **the property is located; and**

36           **(2) is considered a covenant running with the land.**

37 **A release is not enforceable against a successor in title to the**  
 38 **property unless the requirements of this subsection are met.**

39           SECTION 2. IC 36-9-25-14 IS AMENDED TO READ AS  
 40 FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 14. (a) As to each  
 41 municipality to which this chapter applies:

42           (1) all the territory included within the corporate boundaries of

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1 the municipality; and

2 (2) any territory, town, addition, platted subdivision, or unplatted  
3 land lying outside the corporate boundaries of the municipality  
4 that has been taken into the district in accordance with a prior  
5 statute, the sewage or drainage of which discharges into or  
6 through the sewage system of the municipality;

7 constitutes a special taxing district for the purpose of providing for the  
8 sanitary disposal of the sewage of the district in a manner that protects  
9 the public health and prevents the undue pollution of watercourses of  
10 the district.

11 (b) Upon request by:

12 (1) a resolution adopted by the legislative body of another  
13 municipality in the same county; or

14 (2) a petition of the majority of the resident freeholders in a  
15 platted subdivision or of the owners of unplatted land outside the  
16 boundaries of a municipality, if the platted subdivision or  
17 unplatted land is in the same county;

18 the board may adopt a resolution incorporating all or any part of the  
19 area of the municipality, platted subdivision, or unplatted land into the  
20 district.

21 (c) A request under subsection (b) must be signed and certified as  
22 correct by the secretary of the legislative body, resident freeholders, or  
23 landowners. The original shall be preserved in the records of the board.  
24 The resolution of the board incorporating an area in the district must be  
25 in writing and must contain an accurate description of the area  
26 incorporated into the district. A certified copy of the resolution, signed  
27 by the president and secretary of the board, together with a map  
28 showing the boundaries of the district and the location of additional  
29 areas, shall be delivered to the auditor of the county within which the  
30 district is located. It shall be properly indexed and kept in the  
31 permanent records of the offices of the auditor.

32 (d) In addition, upon request by ten (10) or more interested resident  
33 freeholders in a platted or unplatted territory, the board may define the  
34 limits of an area within the county and including the property of the  
35 freeholders that is to be considered for inclusion into the district.  
36 Notice of the defining of the area by the board, and notice of the  
37 location and limits of the area, shall be given by publication in  
38 accordance with IC 5-3-1. Upon request by a majority of the resident  
39 freeholders of the area, the area may be incorporated into the district in  
40 the manner provided in this section. The resolution of the board  
41 incorporating the area into the district and a map of the area shall be  
42 made and filed in the same manner.



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

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

25 (g) Except as provided in subsection ~~(i)~~, (j), sewer service  
 26 agreements made under subsection (e) must contain a provision that  
 27 persons (other than municipalities) who own or occupy property agree  
 28 for themselves, their executors, administrators, heirs, devisees,  
 29 grantees, successors, and assigns that they will:

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

37 **(h) The annexation provision required in a sewer service**  
 38 **agreement under subsection (g):**

- 39 **(1) must be noted on the deed of each property affected and**  
 40 **recorded in the office of the recorder of the county in which**  
 41 **the property is located; and**  
 42 **(2) is considered a covenant running with the land.**

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1     **The provision is not enforceable against the executors,**  
2     **administrators, heirs, devisees, grantees, successors, and assigns of**  
3     **a party to the agreement unless the requirements of this subsection**  
4     **are met.**

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

7         ~~(i)~~ (j) Subsection (g) does not apply to a landowner if all of the  
8         following conditions apply:

9             (1) The landowner is required to connect to a sewer service  
10            because a person other than the landowner has polluted or  
11            contaminated the area.

12            (2) The costs of extension of service or connection to the sewer  
13            service are paid by a person other than the landowner or the  
14            municipality.

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