



January 30, 2013

SENATE BILL No. 204

DIGEST OF SB 204 (Updated January 28, 2013 12:08 pm - DI 118)

Citations Affected: IC 8-1; IC 13-26.

Synopsis: Sewer connections. Provides that a not-for-profit public sewer utility or a regional sewage district may require connection to its sewage disposal system if there is an available sanitary sewer line within 300 feet of : (1) the property line, if the property line is located in a consolidated city or adjacent to a body of water; or (2) for all other properties, the source of the sewage discharge. (Current law requires connection if there is an available line within 300 feet of the property line.)

Effective: July 1, 2013.

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January 7, 2013, read first time and referred to Committee on Environmental Affairs.
January 29, 2013, amended, reported favorably — Do Pass.

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SB 204—LS 6428/DI 103+



January 30, 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.

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SENATE BILL No. 204

A BILL FOR AN ACT to amend the Indiana Code concerning environmental law.

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

1 SECTION 1. IC 8-1-2-125, AS AMENDED BY P.L.97-2012,
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2013]: Sec. 125. (a) As used in this section, "not-for-profit
4 utility" means a public water or sewer utility that:
5 (1) does not have shareholders;
6 (2) does not engage in any activities for the profit of its trustees,
7 directors, incorporators, or members; and
8 (3) is organized and conducts its affairs for purposes other than
9 the pecuniary gain of its trustees, directors, incorporators, or
10 members.
11 The term does not include a regional district established under
12 IC 13-26, a conservancy district established under IC 14-33, or, for
13 purposes of subsections (f), (g), (h), (i), (j), and (k), a utility company
14 owned, operated, or held in trust by a consolidated city.
15 (b) As used in this section, "sewage disposal system" means a privy,
16 cesspool, septic tank, or other similar structure. The term includes a
17 septic tank soil absorption system (as defined in IC 13-11-2-199.5).

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1 The term does not include a sewer system operated by a not-for-profit
2 public sewer utility.

3 (c) A not-for-profit utility shall be required to furnish reasonably
4 adequate services and facilities. The charge made by any not-for-profit
5 utility for any service rendered or to be rendered, either directly or in
6 connection with the service, must be nondiscriminatory, reasonable,
7 and just. Each discriminatory, unjust, or unreasonable charge for the
8 service is prohibited and unlawful.

9 (d) A reasonable and just charge for water or sewer service within
10 the meaning of this section is a charge that will produce sufficient
11 revenue to pay all legal and other necessary expense incident to the
12 operation of the not-for-profit utility's system, including the following:

- 13 (1) Maintenance and repair costs.
- 14 (2) Operating charges.
- 15 (3) Interest charges on bonds or other obligations.
- 16 (4) Provision for a sinking fund for the liquidation of bonds or
17 other evidences of indebtedness.
- 18 (5) Provision for a debt service reserve for bonds or other
19 obligations in an amount not to exceed the maximum annual debt
20 service on the bonds or obligations.
- 21 (6) Provision of adequate funds to be used as working capital.
- 22 (7) Provision for making extensions and replacements.
- 23 (8) The payment of any taxes that may be assessed against the
24 not-for-profit utility or its property.

25 The charges must produce an income sufficient to maintain the
26 not-for-profit utility's property in sound physical and financial
27 condition to render adequate and efficient service. A rate too low to
28 meet these requirements is unlawful.

29 (e) Except as provided in subsections (f) and (h), a not-for-profit
30 public sewer utility may require connection to its sewer system of
31 property producing sewage or similar waste and require the
32 discontinuance of use of a sewage disposal system if:

- 33 (1) there is an available sanitary sewer within three hundred (300)
34 feet of:
 - 35 (A) the property line, **if the property is:**
 - 36 (i) **located in a consolidated city; or**
 - 37 (ii) **adjacent to a body of water, including a lake, river,**
38 **reservoir; or**
 - 39 (B) **for all other properties, the improvement or other**
40 **structure from which the sewage or similar waste is**
41 **discharged; and**
- 42 (2) the utility has given written notice by certified mail to the

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1 property owner at the address of the property at least ninety (90)
2 days before the date for connection stated in the notice.
3 The notice given under subdivision (2) must also inform the property
4 owner, other than an owner of property located in a consolidated city,
5 that the property owner may qualify for an exemption as set forth in
6 subsection (f).
7 (f) Subject to subsection (h), a property owner is exempt from the
8 requirement to connect to a not-for-profit public sewer utility's sewer
9 system and to discontinue use of a sewage disposal system if the
10 following conditions are met:
11 (1) The property owner's sewage disposal system is a septic tank
12 soil absorption system that was new at the time of installation and
13 approved in writing by the local health department.
14 (2) The property owner, at the property owner's expense, obtains
15 and provides to the not-for-profit public sewer utility a
16 certification from the local health department or the department's
17 designee that the sewage disposal system is functioning
18 satisfactorily. If the local health department or the department's
19 designee denies the issuance of a certificate to the property owner,
20 the property owner may appeal the denial to the board of the local
21 health department. The decision of the board is final and binding.
22 (3) The property owner provides the not-for-profit public sewer
23 utility with:
24 (A) the written notification of potential qualification for the
25 exemption described in subsection (i); and
26 (B) the certification described in subdivision (2);
27 within the time limits set forth in subsection (i).
28 (g) If a property owner, within the time allowed under subsection
29 (i), notifies a not-for-profit public sewer utility in writing that the
30 property owner qualifies for the exemption under this section, the
31 not-for-profit public sewer utility shall, until the property owner's
32 eligibility for an exemption under this section is determined, suspend
33 the requirement that the property owner discontinue use of a sewage
34 disposal system and connect to the not-for-profit public sewer utility's
35 sewer system.
36 (h) A property owner who qualifies for the exemption provided
37 under this section may not be required to connect to the not-for-profit
38 public sewer utility's sewer system for a period of ten (10) years
39 beginning on the date the new sewage disposal system was installed.
40 A property owner may apply for two (2) five (5) year extensions of the
41 exemption provided under this section by following the procedures set
42 forth in subsections (f) and (g). If ownership of an exempt property is

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1 transferred during a valid exemption period, including during an
2 extension of an initial exemption:

- 3 (1) the exemption applies to the subsequent owner of the property
4 for the remainder of the exemption period during which the
5 transfer occurred; and
6 (2) the subsequent owner may apply for any remaining
7 extensions.

8 However, the total period during which a property may be exempt from
9 the requirement to connect to a district's sewer system under this
10 section may not exceed twenty (20) years, regardless of ownership of
11 the property.

12 (i) To qualify for an exemption under this section, a property owner
13 must:

- 14 (1) within sixty (60) days after the date of the written notice given
15 to the property owner under subsection (e), notify the
16 not-for-profit public sewer utility in writing that the property
17 owner qualifies for the exemption under this section; and
18 (2) within sixty (60) days after the not-for-profit public sewer
19 utility receives the written notice provided under subdivision (1),
20 provide the not-for-profit public sewer utility with the
21 certification required under subsection (f)(2).

22 (j) When a property owner who qualifies for an exemption under
23 this section subsequently discontinues use of the property owner's
24 sewage disposal system and connects to the not-for-profit public sewer
25 utility's sewer system, the property owner may be required to pay only
26 the following to connect to the sewer system:

- 27 (1) The connection fee the property owner would have paid if the
28 property owner connected to the sewer system on the first date the
29 property owner could have connected to the sewer system.

30 (2) Any additional costs:

- 31 (A) considered necessary by; and
32 (B) supported by documentary evidence provided by;
33 the not-for-profit public sewer utility.

34 (k) A not-for-profit public sewer utility may not require a property
35 owner to connect to the not-for-profit public sewer utility's sewer
36 system if:

- 37 (1) the property is located on at least ten (10) acres;
38 (2) the owner can demonstrate the availability of at least two (2)
39 areas on the property for the collection and treatment of sewage
40 that will protect human health and the environment;
41 (3) the waste stream from the property is limited to domestic
42 sewage from a residence or business;



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- 1 (4) the system used to collect and treat the domestic sewage has
- 2 a maximum design flow of seven hundred fifty (750) gallons per
- 3 day; and
- 4 (5) the owner, at the owner's expense, obtains and provides to the
- 5 district a certification from the local health department or the
- 6 department's designee that the system is functioning satisfactorily.
- 7 (l) A property owner who connects to a not-for-profit public sewer
- 8 utility's sewer system may provide, at the owner's expense, labor,
- 9 equipment, materials, or any combination of labor, equipment, and
- 10 materials from any source to accomplish the connection to the sewer
- 11 system, subject to inspection and approval by the not-for-profit public
- 12 sewer utility.
- 13 (m) This section does not affect the authority of the state department
- 14 of health, a local health department, or a county health officer with
- 15 respect to a sewage disposal system.
- 16 SECTION 2. IC 13-26-5-2, AS AMENDED BY P.L.97-2012,
- 17 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 18 JULY 1, 2013]: Sec. 2. A district may do the following:
- 19 (1) Sue or be sued.
- 20 (2) Make contracts in the exercise of the rights, powers, and
- 21 duties conferred upon the district.
- 22 (3) Adopt and alter a seal and use the seal by causing the seal to
- 23 be impressed, affixed, reproduced, or otherwise used. However,
- 24 the failure to affix a seal does not affect the validity of an
- 25 instrument.
- 26 (4) Adopt, amend, and repeal the following:
- 27 (A) Bylaws for the administration of the district's affairs.
- 28 (B) Rules and regulations for the following:
- 29 (i) The control of the administration and operation of the
- 30 district's service and facilities.
- 31 (ii) The exercise of all of the district's rights of ownership.
- 32 (5) Construct, acquire, lease, operate, or manage works and obtain
- 33 rights, easements, licenses, money, contracts, accounts, liens,
- 34 books, records, maps, or other property, whether real, personal, or
- 35 mixed, of a person or an eligible entity.
- 36 (6) Assume in whole or in part any liability or obligation of:
- 37 (A) a person;
- 38 (B) a nonprofit water, sewage, or solid waste project system;
- 39 or
- 40 (C) an eligible entity;
- 41 including a pledge of part or all of the net revenues of a works to
- 42 the debt service on outstanding bonds of an entity in whole or in

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1 part in the district and including a right on the part of the district
 2 to indemnify and protect a contracting party from loss or liability
 3 by reason of the failure of the district to perform an agreement
 4 assumed by the district or to act or discharge an obligation.

5 (7) Fix, alter, charge, and collect reasonable rates and other
 6 charges in the area served by the district's facilities to every
 7 person whose premises are, whether directly or indirectly,
 8 supplied with water or provided with sewage or solid waste
 9 services by the facilities for the purpose of providing for the
 10 following:

11 (A) The payment of the expenses of the district.

12 (B) The construction, acquisition, improvement, extension,
 13 repair, maintenance, and operation of the district's facilities
 14 and properties.

15 (C) The payment of principal or interest on the district's
 16 obligations.

17 (D) To fulfill the terms of agreements made with:

18 (i) the purchasers or holders of any obligations; or

19 (ii) a person or an eligible entity.

20 (8) Except as provided in sections 2.5 and 2.6 of this chapter,
 21 require connection to the district's sewer system of property
 22 producing sewage or similar waste, and require the
 23 discontinuance of use of privies, cesspools, septic tanks, and
 24 similar structures if:

25 (A) there is an available sanitary sewer within three hundred
 26 (300) feet of:

27 (i) the property line, **if the property is adjacent to a body**
 28 **of water, including a lake, river, or reservoir; or**

29 (ii) **for all other properties, the improvement or other**
 30 **structure from which the sewage or similar waste is**
 31 **discharged;**

32 (B) the district has given written notice by certified mail to the
 33 property owner at the address of the property at least ninety
 34 (90) days before a date for connection to be stated in the
 35 notice; and

36 (C) if the property is located outside the district's territory:

37 (i) the district has obtained and provided to the property
 38 owner (along with the notice required by clause (B)) a letter
 39 of recommendation from the local health department that
 40 there is a possible threat to the public's health; and

41 (ii) if the property is also located within the extraterritorial
 42 jurisdiction of a municipal sewage works under IC 36-9-23

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1 or a public sanitation department under IC 36-9-25, the
 2 municipal works board or department of public sanitation
 3 has acknowledged in writing that the property is within the
 4 municipal sewage works or department of public sanitation's
 5 extraterritorial jurisdiction, but the municipal works board
 6 or department of public sanitation is unable to provide sewer
 7 service.

8 However, a district may not require the owner of a property
 9 described in this subdivision to connect to the district's sewer
 10 system if the property is already connected to a sewer system that
 11 has received an NPDES permit and has been determined to be
 12 functioning satisfactorily.

13 (9) Provide by ordinance for a reasonable penalty, not to exceed
 14 one hundred dollars (\$100) per day, for failure to connect and also
 15 apply to the circuit or superior court of the county in which the
 16 property is located for an order to force connection, with the cost
 17 of the action, including reasonable attorney's fees of the district,
 18 to be assessed by the court against the property owner in the
 19 action.

20 (10) Refuse the services of the district's facilities if the rates or
 21 other charges are not paid by the user.

22 (11) Control and supervise all property, works, easements,
 23 licenses, money, contracts, accounts, liens, books, records, maps,
 24 or other property rights and interests conveyed, delivered,
 25 transferred, or assigned to the district.

26 (12) Construct, acquire by purchase or otherwise, operate, lease,
 27 preserve, and maintain works considered necessary to accomplish
 28 the purposes of the district's establishment within or outside the
 29 district and enter into contracts for the operation of works owned,
 30 leased, or held by another entity, whether public or private.

31 (13) Hold, encumber, control, acquire by donation, purchase, or
 32 condemnation, construct, own, lease as lessee or lessor, use, and
 33 sell interests in real and personal property or franchises within or
 34 outside the district for:

35 (A) the location or protection of works;

36 (B) the relocation of buildings, structures, and improvements
 37 situated on land required by the district or for any other
 38 necessary purpose; or

39 (C) obtaining or storing material to be used in constructing and
 40 maintaining the works.

41 (14) Upon consent of two-thirds (2/3) of the members of the
 42 board, merge or combine with another district into a single district

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1 on terms so that the surviving district:
 2 (A) is possessed of all rights, franchises, and authority of the
 3 constituent districts; and
 4 (B) is subject to all the liabilities, obligations, and duties of
 5 each of the constituent districts, with all rights of creditors of
 6 the constituent districts being preserved unimpaired.
 7 (15) Provide by agreement with another eligible entity for the
 8 joint construction of works the district is authorized to construct
 9 if the construction is for the district's own benefit and that of the
 10 other entity. For this purpose the cooperating entities may jointly
 11 appropriate land either within or outside their respective borders
 12 if all subsequent proceedings, actions, powers, liabilities, rights,
 13 and duties are those set forth by statute.
 14 (16) Enter into contracts with a person, an eligible entity, the
 15 state, or the United States to provide services to the contracting
 16 party for any of the following:
 17 (A) The distribution or purification of water.
 18 (B) The collection or treatment of sanitary sewage.
 19 (C) The collection, disposal, or recovery of solid waste.
 20 (17) Make provision for, contract for, or sell the district's
 21 byproducts or waste.
 22 (18) Exercise the power of eminent domain, including for
 23 purposes of siting sewer or water utility infrastructure, but only
 24 after the district attempts to use existing public rights-of-way or
 25 easements.
 26 (19) Remove or change the location of a fence, building, railroad,
 27 canal, or other structure or improvement located within or outside
 28 the district. If:
 29 (A) it is not feasible or economical to move the building,
 30 structure, or improvement situated in or upon land acquired;
 31 and
 32 (B) the cost is determined by the board to be less than that of
 33 purchase or condemnation;
 34 the district may acquire land and construct, acquire, or install
 35 buildings, structures, or improvements similar in purpose to be
 36 exchanged for the buildings, structures, or improvements under
 37 contracts entered into between the owner and the district.
 38 (20) Employ consulting engineers, superintendents, managers,
 39 and other engineering, construction, and accounting experts,
 40 attorneys, bond counsel, employees, and agents that are necessary
 41 for the accomplishment of the district's purpose and fix their
 42 compensation.

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- 1 (21) Procure insurance against loss to the district by reason of
- 2 damages to the district's properties, works, or improvements
- 3 resulting from fire, theft, accident, or other casualty or because of
- 4 the liability of the district for damages to persons or property
- 5 occurring in the operations of the district's works and
- 6 improvements or the conduct of the district's activities.
- 7 (22) Exercise the powers of the district without obtaining the
- 8 consent of other eligible entities. However, the district shall:
- 9 (A) restore or repair all public or private property damaged in
- 10 carrying out the powers of the district and place the property
- 11 in the property's original condition as nearly as practicable; or
- 12 (B) pay adequate compensation for the property.
- 13 (23) Dispose of, by public or private sale or lease, real or personal
- 14 property determined by the board to be no longer necessary or
- 15 needed for the operation or purposes of the district.

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COMMITTEE REPORT

Madam President: The Senate Committee on Environmental Affairs, to which was referred Senate Bill No. 204, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

and when so amended that said bill do pass.

(Reference is to SB 204 as introduced.)

CHARBONNEAU, Chairperson

Committee Vote: Yeas 7, Nays 0.

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