

HOUSE BILL No. 1085

DIGEST OF INTRODUCED BILL

Citations Affected: IC 36-9.

Synopsis: Delinquent sewer fees. Provides that in the case of real property for which municipal sewer fees become 60 days delinquent after June 30, 2020, regardless of whether the property is occupied by someone other than the owner, a lien attaches to the real property only if the municipal utility provides notice of the delinquency to: (1) the owner of the property; and (2) any first lien mortgage holder of record; not later than 20 days after the time the fees become 60 days delinquent.

Effective: July 1, 2020.

Pressel, Burton

January 7, 2020, read first time and referred to Committee on Judiciary.



Second Regular Session of the 121st General Assembly (2020)

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 2019 Regular Session of the General Assembly.

HOUSE BILL No. 1085

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 36-9-23-32, AS AMENDED BY P.L.196-2014,
2 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2020]: Sec. 32. (a) Except as otherwise provided in a
4 provision included in an ordinance under section 25(f)(3) of this
5 chapter, fees assessed against real property under this chapter or under
6 any statute repealed by IC 19-2-5-30 (repealed September 1, 1981)
7 constitute a lien against the property assessed. The lien is superior to
8 all other liens except tax liens. Except as provided in subsections (b)
9 and (c), the lien attaches when notice of the lien is filed in the county
10 recorder's office under section 33 of this chapter.

11 (b) A fee is not enforceable as a lien against a subsequent owner of
12 property unless the lien for the fee was recorded with the county
13 recorder before the conveyance to the subsequent owner. If the property
14 is conveyed before the lien can be filed, the municipality shall notify
15 the person who owned the property at the time the fee became payable.
16 The notice must inform the person that payment, including penalty fees
17 for delinquencies, is due not more than fifteen (15) days after the date



1 of the notice. If payment is not received within one hundred eighty
 2 (180) days after the date of the notice, the amount due may be
 3 expensed as a bad debt loss.

4 (c) Except as otherwise provided in a provision included in an
 5 ordinance under section 25(f)(3) of this chapter, **and subject to**
 6 **subsection (e)**, a lien attaches against real property occupied by
 7 someone other than the owner only if the utility notifies the owner not
 8 later than twenty (20) days after the time the utility fees become sixty
 9 (60) days delinquent. A notice sent to the owner under this subsection
 10 must be sent by first class mail or by certified mail, return receipt
 11 requested (or an equivalent service permitted under IC 1-1-7-1) to:

- 12 (1) the owner of record of real property with a single owner; or
- 13 (2) at least one (1) of the owners of real property with multiple
 14 owners;

15 at the last address of the owner for the property as indicated in the
 16 records of the county auditor on the date of the notice of the
 17 delinquency, or to another address specified by the owner, in a written
 18 notice to the utility, at which the owner requests to receive a notice of
 19 delinquency under this subsection **or subsection (e), as applicable**.
 20 The cost of sending notice under this subsection (**whether by first**
 21 **class mail or by certified mail, return receipt requested (or an**
 22 **equivalent service permitted under IC 1-1-7-1)) is an administrative**
 23 **cost that may be billed to the owner.**

24 (d) The municipality shall release:

- 25 (1) liens filed with the county recorder after the recorded date of
 26 conveyance of the property; and
- 27 (2) delinquent fees incurred by the seller;

28 upon receipt of a verified demand in writing from the purchaser. The
 29 demand must state that the delinquent fees were not incurred by the
 30 purchaser as a user, lessee, or previous owner, and that the purchaser
 31 has not been paid by the seller for the delinquent fees.

32 (e) **This subsection applies to real property with respect to**
 33 **which fees assessed under this chapter become sixty (60) days**
 34 **delinquent after June 30, 2020, regardless of whether the property**
 35 **is occupied by someone other than the owner. Except as otherwise**
 36 **provided in a provision included in an ordinance under section**
 37 **25(f)(3) of this chapter, a lien attaches to real property subject to**
 38 **this subsection only if the utility provides notice of the delinquency**
 39 **to:**

- 40 (1) **the owner, in the manner prescribed in subsection (c); and**
- 41 (2) **any first lien mortgage holder, as recorded in the office of**
 42 **the county recorder as of the date the fees become sixty (60)**



1 **days delinquent, by first class mail or by certified mail, return**
 2 **receipt requested (or an equivalent service permitted under**
 3 **IC 1-1-7-1);**

4 **not later than twenty (20) days after the time the fees become sixty**
 5 **(60) days delinquent. The cost of sending notice under this**
 6 **subsection (whether by first class mail or by certified mail, return**
 7 **receipt requested (or an equivalent service permitted under**
 8 **IC 1-1-7-1)) is an administrative cost that may be billed to the**
 9 **owner.**

10 SECTION 2. IC 36-9-23-33, AS AMENDED BY P.L.21-2017,
 11 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 12 JULY 1, 2020]: Sec. 33. (a) Subsections (c) through (l) do not apply to
 13 unpaid fees and penalties assessed against property occupied by
 14 someone other than the property owner if:

15 (1) the municipal legislative body has adopted an ordinance
 16 provision described in section 25(f) of this chapter concerning
 17 property occupied by someone other than the property owner;

18 (2) the ordinance provision described in section 25(f) of this
 19 chapter provides that fees assessed against the property for
 20 services rendered by the sewage works to the property do not
 21 constitute a lien against the property, as described in section
 22 25(f)(3) of this chapter; and

23 (3) any requirements or conditions:

24 (A) described in section 25(f)(1) or 25(f)(2) of this chapter;
 25 and

26 (B) included in the ordinance;

27 have been satisfied.

28 (b) An officer described in subsection (c) may defer enforcing the
 29 collection of unpaid fees and penalties assessed under this chapter until
 30 the unpaid fees and penalties have been due and unpaid for at least
 31 ninety (90) days. However, ~~in the case of property that is occupied by~~
 32 ~~someone other than the owner~~; this subsection does not relieve the
 33 utility of its duty under:

34 (1) section 32(c) of this chapter to notify the owner **of the**
 35 **property; or**

36 (2) **section 32(e) of this chapter to notify:**

37 (A) **the owner of the property; and**

38 (B) **any first lien mortgage holder of record;**

39 **as applicable**, not later than twenty (20) days after the time user fees
 40 become sixty (60) days delinquent.

41 (c) Except as provided in subsection (m), the officer charged with
 42 the collection of fees and penalties assessed under this chapter shall



1 enforce their payment. As often as the officer determines is necessary
2 in a calendar year, the officer shall prepare either of the following:

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

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

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

9 (C) The amount of the delinquent fees, together with the
10 penalty.

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

13 (d) The officer shall record a copy of each list or each individual
14 instrument with the county recorder who shall charge a fee for
15 recording the list or each individual instrument in accordance with the
16 fee schedule established in IC 36-2-7-10. The officer shall then mail to
17 each property owner on the list or on an individual instrument a notice
18 stating that a lien against the owner's property has been recorded.
19 Except for a county having a consolidated city, a service charge of five
20 dollars (\$5), which is in addition to the recording fee charged under
21 this subsection and under subsection (g), shall be added to each
22 delinquent fee that is recorded.

23 (e) This subsection applies only to a county containing a
24 consolidated city. Using the lists and instruments prepared under
25 subsection (c) and recorded under subsection (d), the officer shall
26 certify to the county auditor, according to a schedule agreed upon by
27 the county treasurer and the officer, a list of the unpaid liens for
28 collection with the next cycle's property tax installment. The county
29 and its officers and employees are not liable for any material error in
30 the information on the list.

31 (f) This subsection applies to a county not described in subsection
32 (e). Using the lists and instruments prepared under subsection (c) and
33 recorded under subsection (d), the officer shall, not later than ten (10)
34 days after the list or each individual instrument is recorded under
35 subsection (d), certify to the county auditor a list of the unpaid liens for
36 collection with the next May installment of property taxes. The county
37 and its officers and employees are not liable for any material error in
38 the information on this list.

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



1 (h) On receipt of the list under subsection (e) or (f), the county
 2 auditor of each county shall add a fifteen dollar (\$15) certification fee
 3 for each lot or parcel of real property on which fees are delinquent,
 4 which fee is in addition to all other fees and charges. The county
 5 auditor shall immediately enter on the tax duplicate for the
 6 municipality the delinquent fees, penalties, service charges, recording
 7 fees, and certification fees, which are due not later than the due date of
 8 the next cycle's installment of property taxes. The county treasurer shall
 9 then include any unpaid charges for the delinquent fee, penalty, service
 10 charge, recording fee, and certification fee to the owner or owners of
 11 each lot or parcel of property, at the time the next cycle's property tax
 12 installment is billed.

13 (i) After certification of liens under subsection (f), the officer may
 14 not collect or accept delinquent fees, penalties, service charges,
 15 recording fees, or certification fees from property owners whose
 16 property has been certified to the county auditor. This subsection does
 17 not apply to a county containing a consolidated city.

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

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

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

33 (m) A board may write off a fee or penalty under subsection (b) that
 34 is for less than two hundred dollars (\$200).

35 SECTION 3. IC 36-9-25-11, AS AMENDED BY P.L.257-2019,
 36 SECTION 163, IS AMENDED TO READ AS FOLLOWS
 37 [EFFECTIVE JULY 1, 2020]: Sec. 11. (a) In connection with its duties,
 38 the board may fix fees for the treatment and disposal of sewage and
 39 other waste discharged into the sewerage system, collect the fees, and
 40 establish and enforce rules governing the furnishing of and payment for
 41 sewage treatment and disposal service. The fees must be just and
 42 equitable and shall be paid by any user of the sewage works and, except



1 as otherwise provided in an ordinance provision described in
2 subsection (l), the owner of every lot, parcel of real property, or
3 building that is connected with and uses the sewage works of the
4 district by or through any part of the sewerage system. This section
5 applies to owners of property that is partially or wholly exempt from
6 taxation, as well as owners of property subject to full taxation.

7 (b) The board may change fees from time to time. The fees, together
8 with the taxes levied under this chapter, must at all times be sufficient
9 to produce revenues sufficient to pay operation, maintenance, and
10 administrative expenses, to pay the principal and interest on bonds as
11 they become due and payable, and to provide money for the revolving
12 fund authorized by this chapter.

13 (c) Fees may not be established until a public hearing has been held
14 at which all the users of the sewage works and owners of property
15 served or to be served by the works, including interested parties, have
16 had an opportunity to be heard concerning the proposed fees. After
17 introduction of the resolution fixing fees, and before they are finally
18 adopted, notice of the hearing setting forth the proposed schedule of
19 fees shall be given by publication in accordance with IC 5-3-1. After
20 the hearing, the resolution establishing fees, either as originally
21 introduced or as amended, shall be passed and put into effect.
22 However, fees related to property that is subject to full taxation do not
23 take effect until they have been approved by ordinance of the municipal
24 legislative body or, in the case of a district described in section 3(b)(2)
25 of this chapter, under section 11.3 of this chapter.

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

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

38 (f) If a fee established is not paid within the time fixed by the board,
39 the board may recover, in a civil action in the name of the municipality,
40 the amount, together with a penalty of ten percent (10%) and a
41 reasonable attorney's fee from:

42 (1) the delinquent user; or



1 (2) the owner of the property;
 2 subject to any ordinance described in subsection (l).

3 (g) Except as otherwise provided in:

4 (1) subsection (h);

5 (2) **section 11.2(b) of this chapter**; or **in**

6 (3) an ordinance provision described in subsection (l);

7 fees assessed against real property under this section also constitute a
 8 lien against the property assessed. The lien attaches at the time of the
 9 filing of the notice of lien in the county recorder's office. The lien is
 10 superior to all other liens except tax liens, and shall be enforced and
 11 foreclosed in the same manner as is provided for liens under
 12 IC 36-9-23-33 and IC 36-9-23-34.

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

17 (i) In addition to the:

18 (1) penalties under subsections (f) and (g); or

19 (2) alternative penalty available under section 11.5 of this
 20 chapter;

21 a delinquent user may not discharge water into the public sewers and
 22 may have the property disconnected from the public sewers.

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

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

34 (1) established under this subsection or any other law; and

35 (2) used to provide financial assistance under section 42 of this
 36 chapter;

37 is considered just and equitable if the project for which the financial
 38 assistance is provided otherwise complies with the requirements of this
 39 chapter.

40 (l) For purposes of this subsection, "municipal legislative body"
 41 refers to the legislative body of each municipality in the district, in the
 42 case of a district described in section 3(b)(2) of this chapter. This



1 subsection does not apply to a conservancy district established under
 2 IC 14-33 for the collection, treatment, and disposal of sewage and other
 3 liquid wastes. In an ordinance adopted under this chapter, the
 4 municipal legislative body may include one (1) or more of the
 5 following provisions with respect to property occupied by someone
 6 other than the owner of the property:

7 (1) That fees for the services rendered by the sewerage system to
 8 the property are payable by the person occupying the property. At
 9 the option of the municipal legislative body, the ordinance may
 10 include any:

11 (A) requirement for a deposit to ensure payment of the fees by
 12 the person occupying the property; or

13 (B) other requirement to ensure the creditworthiness of the
 14 person occupying the property as the account holder or
 15 customer with respect to the property;

16 that the municipal legislative body may lawfully impose.

17 (2) That the fees for the services rendered by the sewerage system
 18 to the property are payable by the person occupying the property
 19 if one (1) of the following conditions is satisfied:

20 (A) Either the property owner or the person occupying the
 21 property gives to the board written notice that indicates that
 22 the person occupying the property is responsible for paying the
 23 fees with respect to the property and requests that the account
 24 or other customer or billing records maintained for the
 25 property be in the name of the person occupying the property.

26 At the option of the municipal legislative body, the ordinance
 27 may provide that a document that:

28 (i) is executed by the property owner and the person
 29 occupying the property;

30 (ii) identifies the person occupying the property by name;
 31 and

32 (iii) indicates that the person occupying the property is
 33 responsible for paying the fees assessed by the board with
 34 respect to the property;

35 serves as written notice for purposes of this clause.

36 (B) The account or other customer or billing records
 37 maintained by the board for the property otherwise indicate
 38 that:

39 (i) the property is occupied by someone other than the
 40 owner; and

41 (ii) the person occupying the property is responsible for
 42 paying the fees.



1 (C) The property owner or the person occupying the property
 2 satisfies any other requirements or conditions that the
 3 municipal legislative body includes in the ordinance.

4 (3) That fees assessed against the property for the services
 5 rendered by the sewerage system to the property do not constitute
 6 a lien against the property, notwithstanding subsection (g), and
 7 subject to any requirements or conditions set forth in the
 8 ordinance.

9 This subsection may not be construed to prohibit a municipal
 10 legislative body from including in an ordinance adopted under this
 11 chapter any other provision that the municipal legislative body
 12 considers appropriate.

13 SECTION 4. IC 36-9-25-11.2, AS AMENDED BY P.L.257-2019,
 14 SECTION 164, IS AMENDED TO READ AS FOLLOWS
 15 [EFFECTIVE JULY 1, 2020]: Sec. 11.2. (a) If a fee established under
 16 section 11 of this chapter is not paid within the time fixed by the board,
 17 a copy of any notice of delinquency sent to a delinquent user who is a
 18 tenant must be sent to the owner of the property occupied by the tenant
 19 at the latest address of the owner as shown on the property tax records
 20 of the county in which the property is located.

21 (b) **This subsection applies to real property with respect to**
 22 **which fees established under section 11 of this chapter become**
 23 **sixty (60) days delinquent after June 30, 2020, regardless of**
 24 **whether the property is occupied by someone other than the owner.**
 25 **Except as otherwise provided in section 11(h) of this chapter or in**
 26 **a provision included in an ordinance under section 11(l)(3) of this**
 27 **chapter, a lien attaches to real property subject to this subsection**
 28 **only if the board provides notice of the delinquency to:**

29 (1) **the owner, at the latest address of the owner as shown on**
 30 **the property tax records of the county in which the property**
 31 **is located; and**

32 (2) **any first lien mortgage holder of record, as recorded in the**
 33 **office of the county recorder as of the date the fees become**
 34 **sixty (60) days delinquent, by first class mail or by certified**
 35 **mail, return receipt requested (or an equivalent service**
 36 **permitted under IC 1-1-7-1);**

37 **not later than twenty (20) days after the time the fees become sixty**
 38 **(60) days delinquent. The cost of sending notice under this**
 39 **subsection (whether by first class mail or by certified mail, return**
 40 **receipt requested (or an equivalent service permitted under**
 41 **IC 1-1-7-1)) is an administrative cost that may be billed to the**
 42 **owner of the property.**

