

HOUSE BILL No. 1245

DIGEST OF INTRODUCED BILL

Citations Affected: IC 8-1-2-101.6; IC 13-26-5-2.

Synopsis: Connections to water and sewer systems. Prohibits a local unit or a water or wastewater utility from charging or collecting from a property owner a connection fee that: (1) is established after June 30, 2022; and (2) includes contributions in aid of construction. Provides that if a local unit or a utility charges a property owner a connection fee that is established after June 30, 2022, and that is based, in whole or in part, on contributions in aid of construction, the property owner may file with the Indiana utility regulatory commission (IURC), not later than 30 days after the date the connection fee is first imposed on the property owner, a petition challenging the connection fee. Provides that if the IURC determines the connection fee is based in whole or in part on contributions in aid of construction, the IURC shall invalidate the connection fee. Amends the Indiana Code section setting forth the powers of a regional water, sewer, or solid waste district (district) to eliminate the authority of a district to adopt an ordinance providing for a penalty of up to \$100 for a property owner's failure to connect to a sewer system operated by the district. Provides that any such ordinance adopted by a district before July 1, 2022: (1) may not be enforced; and (2) is void and of no effect; after June 30, 2022.

Effective: July 1, 2022.

Pressel

January 6, 2022, read first time and referred to Committee on Utilities, Energy and Telecommunications.



Second Regular Session of the 122nd General Assembly (2022)

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 2021 Regular Session of the General Assembly.

HOUSE BILL No. 1245

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

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

1 SECTION 1. IC 8-1-2-101.6 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2022]: **Sec. 101.6. (a) As used in this section, "connection fee"**
4 **means a flat charge imposed on a property owner, including a**
5 **developer of the property, by a local unit or a utility to permit the**
6 **owner to connect the owner's property to a main or other utility**
7 **infrastructure used to provide water or wastewater service. The**
8 **term includes:**
9 (1) a tap fee or charge;
10 (2) a system development charge;
11 (3) an availability fee;
12 (4) an interceptor fee; or
13 (5) any other flat charge for connection to:
14 (A) a main; or
15 (B) other utility infrastructure;
16 used to provide water or wastewater service, however such
17 charge is denominated.



1 (b) As used in this section, "contributions in aid of
2 construction", with respect to utility infrastructure, means any
3 amount of money, services, or property that:

4 (1) is received by a local unit or a utility from any person,
5 developer, or governmental agency for the installation or
6 extension of the utility infrastructure;

7 (2) is provided at no cost to the local unit or utility; and

8 (3) includes:

9 (A) previously paid fees or charges from any person or
10 developer;

11 (B) contributions, grants, or forgivable loans from
12 governmental agencies; and

13 (C) any other money or property provided at no cost to the
14 local unit or utility.

15 (c) As used in this section, "local unit" means a county or a
16 municipality.

17 (d) As used in this section, "utility" means a:

18 (1) public utility (as defined in section 1(a) of this chapter);

19 (2) municipally owned utility (as defined in section 1(h) of this
20 chapter), including a sewer utility operated under IC 36-9-23
21 or IC 36-9-25;

22 (3) not-for-profit utility (as defined in section 125(a) of this
23 chapter);

24 (4) cooperatively owned corporation;

25 (5) conservancy district established under IC 14-33; or

26 (6) regional district established under IC 13-26;

27 that provides water service or wastewater service, or both, to the
28 public.

29 (e) As used in this section, "utility infrastructure" means mains,
30 service lines, pumps, and other facilities or infrastructure used to
31 provide water or wastewater service.

32 (f) A local unit or a utility may not charge or collect any
33 connection fee that:

34 (1) is established after June 30, 2022; and

35 (2) includes contributions in aid of construction.

36 (g) After June 30, 2022, if a local unit or a utility charges any
37 property owner, including a developer of the property, a
38 connection fee that is established after June 30, 2022, and that is
39 based, in whole or in part, on contributions in aid of construction,
40 the property owner may file with the commission, not later than
41 thirty (30) days after the date the connection fee is first imposed on
42 the property owner, a petition challenging the connection fee. If the



1 **commission determines the connection fee is based in whole or in**
 2 **part on contributions in aid of construction, the commission shall**
 3 **invalidate the connection fee. A property owner's right to file a**
 4 **petition with the commission under this subsection is in addition to**
 5 **any other rights or remedies the property owner may have by law**
 6 **or contract. The commission is not precluded from reviewing a**
 7 **connection fee under this subsection because of:**

8 **(1) a prior challenge to the connection fee under another law;**
 9 **or**

10 **(2) the exemption of the local unit or utility, as applicable,**
 11 **from the commission's jurisdiction for the approval of rates**
 12 **and charges.**

13 SECTION 2. IC 13-26-5-2, AS AMENDED BY P.L.178-2013,
 14 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 15 JULY 1, 2022]: Sec. 2. (a) A district may do the following:

16 (1) Sue or be sued.

17 (2) Make contracts in the exercise of the rights, powers, and
 18 duties conferred upon the district.

19 (3) Adopt and alter a seal and use the seal by causing the seal to
 20 be impressed, affixed, reproduced, or otherwise used. However,
 21 the failure to affix a seal does not affect the validity of an
 22 instrument.

23 (4) Adopt, amend, and repeal the following:

24 (A) Bylaws for the administration of the district's affairs.

25 (B) Rules and regulations for the following:

26 (i) The control of the administration and operation of the
 27 district's service and facilities.

28 (ii) The exercise of all of the district's rights of ownership.

29 (5) Construct, acquire, lease, operate, or manage works and obtain
 30 rights, easements, licenses, money, contracts, accounts, liens,
 31 books, records, maps, or other property, whether real, personal, or
 32 mixed, of a person or an eligible entity.

33 (6) Assume in whole or in part any liability or obligation of:

34 (A) a person;

35 (B) a nonprofit water, sewage, or solid waste project system;

36 or

37 (C) an eligible entity;

38 including a pledge of part or all of the net revenues of a works to
 39 the debt service on outstanding bonds of an entity in whole or in
 40 part in the district and including a right on the part of the district
 41 to indemnify and protect a contracting party from loss or liability
 42 by reason of the failure of the district to perform an agreement



1 assumed by the district or to act or discharge an obligation.

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

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

9 (B) The construction, acquisition, improvement, extension,
10 repair, maintenance, and operation of the district's facilities
11 and properties.

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

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

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

16 (ii) a person or an eligible entity.

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

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

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

26 (ii) any part of a subdivision, or land that is divided or
27 proposed to be divided into lots, whether contiguous or
28 subject to zoning requirements, for the purpose of sale or
29 lease as part of a larger common plan of development or
30 sale; or

31 (iii) for all other properties, the improvement or other
32 structure from which the sewage or similar waste is
33 discharged;

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

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

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



1 (ii) if the property is also located within the extraterritorial
 2 jurisdiction of a municipal sewage works under IC 36-9-23
 3 or a public sanitation department under IC 36-9-25, the
 4 municipal works board or department of public sanitation
 5 has acknowledged in writing that the property is within the
 6 municipal sewage works or department of public sanitation's
 7 extraterritorial jurisdiction, but the municipal works board
 8 or department of public sanitation is unable to provide sewer
 9 service.

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

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

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

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

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

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

37 (A) the location or protection of works;

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

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



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



- 1 for the accomplishment of the district's purpose and fix their
2 compensation.
- 3 (21) Procure insurance against loss to the district by reason of
4 damages to the district's properties, works, or improvements
5 resulting from fire, theft, accident, or other casualty or because of
6 the liability of the district for damages to persons or property
7 occurring in the operations of the district's works and
8 improvements or the conduct of the district's activities.
- 9 (22) Exercise the powers of the district without obtaining the
10 consent of other eligible entities. However, the district shall:
- 11 (A) restore or repair all public or private property damaged in
12 carrying out the powers of the district and place the property
13 in the property's original condition as nearly as practicable; or
14 (B) pay adequate compensation for the property.
- 15 (23) Dispose of, by public or private sale or lease, real or personal
16 property determined by the board to be no longer necessary or
17 needed for the operation or purposes of the district.
- 18 **(b) After June 30, 2022, an ordinance that:**
- 19 **(1) is adopted by a district before July 1, 2022; and**
20 **(2) provides for a fee or penalty for a property owner's failure**
21 **to connect, under subsection (a)(8), to a sewer system**
22 **operated by the district;**
23 **may not be enforced and is void and of no effect.**

