

HOUSE BILL No. 1312

DIGEST OF INTRODUCED BILL

Citations Affected: IC 13-18-15-2; IC 36-4-3; IC 36-8-11-22; IC 36-9.

Synopsis: Annexation matters. Provides that a waiver of remonstrance of annexation executed before, on, or after June 30, 2018, is void if the waiver is recorded more than 90 business days after the date the waiver was executed. Provides that an area located within certain fire protection districts (including any area added to the fire protection district after the district is established) remains within the fire protection district after the annexation. (Current law provides that the annexed area ceases to be a part of the fire protection district when the municipality begins to provide fire protection services to the area.)

Effective: July 1, 2018.

Ellington

January 11, 2018, read first time and referred to Committee on Government and Regulatory Reform.



Second Regular Session of the 120th General Assembly (2018)

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 2017 Regular Session of the General Assembly.

HOUSE BILL No. 1312

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 13-18-15-2, AS AMENDED BY P.L.228-2015,
2 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2018]: Sec. 2. (a) The persons involved shall negotiate the
4 terms for connection and service under this chapter.
5 (b) If service is ordered under this chapter, a receiver of that service
6 that is located in an unincorporated area may grant a waiver to a
7 municipality providing the service. A waiver under this section:
8 (1) must waive the receiver's right of remonstrance against
9 annexation of the areas in which the service is to be provided; and
10 (2) may be one (1) of the terms for connection and service
11 described in subsection (a).
12 (c) The waiver, if granted:
13 (1) shall be noted on the deed of each property affected and
14 recorded as provided by law; and
15 (2) is considered a covenant running with the land.
16 (d) Notwithstanding any other law, a waiver of the right of
17 remonstrance executed after June 30, 2015, **that is not void under**



1 **subsection (f)** expires not later than fifteen (15) years after the date the
2 waiver was executed.

3 (e) This subsection applies to any deed recorded after June 30,
4 2015. This subsection applies only to property that is subject to a
5 remonstrance waiver. A municipality shall, within a reasonable time
6 after the recording of a deed to property located within the
7 municipality, provide written notice to the property owner that a waiver
8 of the right of remonstrance exists with respect to the property.

9 **(f) This subsection applies to a remonstrance waiver executed**
10 **before, on, or after June 30, 2018. A remonstrance waiver is void**
11 **if the remonstrance waiver is recorded more than ninety (90)**
12 **business days after the date the remonstrance waiver is executed.**

13 SECTION 2. IC 36-4-3-7, AS AMENDED BY THE TECHNICAL
14 CORRECTIONS BILL OF THE 2018 GENERAL ASSEMBLY, IS
15 AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2018]:
16 Sec. 7. (a) After an ordinance is adopted under section 3, 4, 5, or 5.1 of
17 this chapter, it must be published in the manner prescribed by IC 5-3-1.
18 Except as provided in subsection (b), ~~(c)~~, **(d)**, or (f), in the absence of
19 remonstrance and appeal under section 11 or 15.5 of this chapter, the
20 ordinance takes effect at least ninety (90) days after its publication and
21 upon the filing required by section 22(a) of this chapter.

22 (b) An ordinance described in subsection (d) or adopted under
23 section 3, 4, 5, or 5.1 of this chapter may not take effect during the year
24 preceding a year in which a federal decennial census is conducted. An
25 ordinance that would otherwise take effect during the year preceding
26 a year in which a federal decennial census is conducted takes effect
27 January 1 of the year in which a federal decennial census is conducted.

28 (c) Subsections (d) and (e) apply to fire protection districts that are
29 established after ~~June 14, 1987~~. **July 1, 1987. For the purposes of this**
30 **section, territory that has been:**

31 **(1) added to an existing fire protection district under**
32 **IC 36-8-11-11; or**

33 **(2) approved by ordinance of the county legislative body to be**
34 **added to an existing fire protection district under**
35 **IC 36-8-11-11, notwithstanding that the territory's addition to**
36 **the fire protection district has not yet taken effect;**
37 **shall be considered a part of the fire protection district as of the**
38 **date that the fire protection district was originally established.**

39 (d) Except as provided in subsection (b), whenever a municipality
40 annexes territory, all or part of which lies within a fire protection
41 district (IC 36-8-11), the annexation ordinance (in the absence of
42 remonstrance and appeal under section 11 or 15.5 of this chapter) takes



1 effect the second January 1 that follows the date the ordinance is
 2 adopted and upon the filing required by section 22(a) of this chapter.

3 The municipality shall:

4 (1) provide fire protection to that territory beginning the date the
 5 ordinance is effective; and

6 (2) send written notice to the fire protection district of the date the
 7 municipality will begin to provide fire protection to the annexed
 8 territory within ten (10) days of the date the ordinance is adopted.

9 (e) If the fire protection district from which a municipality annexes
 10 territory under subsection (d) is indebted or has outstanding unpaid
 11 bonds or other obligations at the time the annexation is effective, the
 12 municipality is liable for and shall pay that indebtedness in the same
 13 ratio as the assessed valuation of the property in the annexed territory
 14 (that is part of the fire protection district) bears to the assessed
 15 valuation of all property in the fire protection district, as shown by the
 16 most recent assessment for taxation before the annexation, unless the
 17 assessed property within the municipality is already liable for the
 18 indebtedness. The annexing municipality shall pay its indebtedness
 19 under this section to the board of fire trustees. If the indebtedness
 20 consists of outstanding unpaid bonds or notes of the fire protection
 21 district, the payments to the board of fire trustees shall be made as the
 22 principal or interest on the bonds or notes becomes due.

23 (f) This subsection applies to an annexation initiated by property
 24 owners under section 5.1 of this chapter in which all property owners
 25 within the area to be annexed petition the municipality to be annexed.
 26 Subject to subsections (b) and (d), and in the absence of an appeal
 27 under section 15.5 of this chapter, an annexation ordinance takes effect
 28 at least thirty (30) days after its publication and upon the filing required
 29 by section 22(a) of this chapter.

30 SECTION 3. IC 36-4-3-11.7, AS ADDED BY P.L.228-2015,
 31 SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 32 JULY 1, 2018]: Sec. 11.7. (a) Notwithstanding any other law, a waiver
 33 of the right of remonstrance executed after June 30, 2015, **that is not**
 34 **void under subsection (c)** expires not later than fifteen (15) years after
 35 the date the waiver was executed.

36 (b) This subsection applies to any deed recorded after June 30,
 37 2015. This subsection applies only to property that is subject to a
 38 remonstrance waiver. A municipality shall, within a reasonable time
 39 after the recording of a deed to property located within the
 40 municipality, provide written notice to the property owner that a waiver
 41 of the right of remonstrance exists with respect to the property.

42 (c) **This subsection applies to a remonstrance waiver executed**



1 **before, on, or after June 30, 2018. A remonstrance waiver is void**
 2 **if the remonstrance waiver is recorded more than ninety (90)**
 3 **business days after the date the remonstrance waiver is executed.**

4 SECTION 4. IC 36-8-11-22 IS AMENDED TO READ AS
 5 FOLLOWS [EFFECTIVE JULY 1, 2018]: Sec. 22. **(a) Except as**
 6 **provided in subsection (b),** any area that is part of a fire protection
 7 district and is annexed by a municipality that is not a part of the district
 8 ceases to be a part of the fire protection district when the municipality
 9 begins to provide fire protection services to the area.

10 **(b) If a fire protection district has a total assessed value of more**
 11 **than six hundred million dollars (\$600,000,000) on the date that the**
 12 **annexation ordinance is adopted, the annexed area shall remain a**
 13 **part of the fire protection district.**

14 SECTION 5. IC 36-9-22-2, AS AMENDED BY P.L.228-2015,
 15 SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 16 JULY 1, 2018]: Sec. 2. (a) The power of the municipal works board to
 17 fix the terms of a contract under this section applies to contracts for the
 18 installation of sewage works that have not been finally approved or
 19 accepted for full maintenance and operation by the municipality on July
 20 1, 1979.

21 (b) The works board of a municipality may contract with owners of
 22 real property for the construction of sewage works within the
 23 municipality or within four (4) miles outside its corporate boundaries
 24 in order to provide service for the area in which the real property of the
 25 owners is located. The contract must provide, for a period of not to
 26 exceed fifteen (15) years, for the payment to the owners and their
 27 assigns by any owner of real property who:

- 28 (1) did not contribute to the original cost of the sewage works;
 29 and
 30 (2) subsequently taps into, uses, or deposits sewage or storm
 31 waters in the sewage works or any lateral sewers connected to
 32 them;

33 of a fair pro rata share of the cost of the construction of the sewage
 34 works, subject to the rules of the board and notwithstanding any other
 35 law relating to the functions of local governmental entities. However,
 36 the contract does not apply to any owner of real property who is not a
 37 party to the contract unless the contract or (after June 30, 2013) a
 38 signed memorandum of the contract has been recorded in the office of
 39 the recorder of the county in which the real property of the owner is
 40 located before the owner taps into or connects to the sewers and
 41 facilities. The board may provide that the fair pro rata share of the cost
 42 of construction includes interest at a rate not exceeding the amount of



1 interest allowed on judgments, and the interest shall be computed from
 2 the date the sewage works are approved until the date payment is made
 3 to the municipality.

4 (c) The contract must include, as part of the consideration running
 5 to the municipality, the release of the right of the parties to the contract
 6 and their successors in title to remonstrate against pending or future
 7 annexations by the municipality of the area served by the sewage
 8 works. Any person tapping into or connecting to the sewage works
 9 contracted for is considered to waive the person's rights to remonstrate
 10 against the annexation of the area served by the sewage works.

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

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

19 (2) has constructive notice of the release because the contract, or
 20 a signed memorandum of the contract stating the release, has been
 21 recorded in the chain of title of the property.

22 (e) Subsection (c) does not apply to a landowner if all of the
 23 following conditions apply:

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

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

29 (f) Subsection (c) does not apply to a landowner who taps into,
 30 connects to, or is required to tap into or connect to the sewage works
 31 of a municipality only because the municipality provides wholesale
 32 sewage service (as defined in IC 8-1-2-61.7) to another municipality
 33 that provides sewage service to the landowner.

34 (g) Notwithstanding any other law, a waiver of the right of
 35 remonstrance executed after June 30, 2015, **that is not void under**
 36 **subsection (i)** expires not later than fifteen (15) years after the date the
 37 waiver was executed.

38 (h) This subsection applies to any deed recorded after June 30,
 39 2015. This subsection applies only to property that is subject to a
 40 remonstrance waiver. A municipality shall provide written notice to
 41 any successor in title to property within a reasonable time after the
 42 deed is recorded, that a waiver of the right of remonstrance exists with



1 respect to the property.

2 **(i) This subsection applies to a remonstrance waiver executed**
 3 **before, on, or after June 30, 2018. A remonstrance waiver is void**
 4 **if the remonstrance waiver is recorded more than ninety (90)**
 5 **business days after the date the remonstrance waiver is executed.**

6 SECTION 6. IC 36-9-25-14, AS AMENDED BY P.L.228-2015,
 7 SECTION 24, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 8 JULY 1, 2018]: Sec. 14. (a) As to each municipality to which this
 9 chapter applies:

10 (1) all the territory included within the corporate boundaries of
 11 the municipality; and

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

17 constitutes a special taxing district for the purpose of providing for the
 18 sanitary disposal of the sewage of the district in a manner that protects
 19 the public health and prevents the undue pollution of watercourses of
 20 the district.

21 (b) Upon request by:

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

24 (2) a petition of the majority of the resident freeholders in a
 25 platted subdivision or of the owners of unplatted land outside the
 26 boundaries of a municipality, if the platted subdivision or
 27 unplatted land is in the same county;

28 the board may adopt a resolution incorporating all or any part of the
 29 area of the municipality, platted subdivision, or unplatted land into the
 30 district.

31 (c) A request under subsection (b) must be signed and certified as
 32 correct by the secretary of the legislative body, resident freeholders, or
 33 landowners. The original shall be preserved in the records of the board.
 34 The resolution of the board incorporating an area in the district must be
 35 in writing and must contain an accurate description of the area
 36 incorporated into the district. A certified copy of the resolution, signed
 37 by the president and secretary of the board, together with a map
 38 showing the boundaries of the district and the location of additional
 39 areas, shall be delivered to the auditor of the county within which the
 40 district is located. It shall be properly indexed and kept in the
 41 permanent records of the offices of the auditor.

42 (d) In addition, upon request by ten (10) or more interested resident



1 freeholders in a platted or unplatted territory, the board may define the
2 limits of an area within the county and including the property of the
3 freeholders that is to be considered for inclusion into the district.
4 Notice of the defining of the area by the board, and notice of the
5 location and limits of the area, shall be given by publication in
6 accordance with IC 5-3-1. Upon request by a majority of the resident
7 freeholders of the area, the area may be incorporated into the district in
8 the manner provided in this section. The resolution of the board
9 incorporating the area into the district and a map of the area shall be
10 made and filed in the same manner.

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

21 (f) All sewer service agreements made under subsection (e) or (after
22 June 30, 2013) a signed memorandum of the sewer service agreement
23 shall be recorded in the office of the recorder of the county where the
24 property is located. The agreements run with the property described
25 and are binding upon the persons owning or occupying the property,
26 their personal representatives, heirs, devisees, grantees, successors, and
27 assigns. Each agreement that is recorded, or each agreement of which
28 a signed memorandum is recorded, and that provides for the property
29 being served to be placed on the tax rolls shall be certified by the board
30 to the auditor of the county where the property is located. The
31 certification must state the date the property is to be placed on the tax
32 rolls, and upon receipt of the certification together with a copy of the
33 agreement, the auditor shall immediately place the property certified
34 upon the rolls of property subject to the levy and collection of taxes for
35 the district. An agreement may provide for the collection of a service
36 charge for the period services are rendered before the levy and
37 collection of the tax.

38 (g) Except as provided in subsection (j), sewer service agreements
39 made under subsection (e) must contain a waiver provision that persons
40 (other than municipalities) who own or occupy property agree for
41 themselves, their executors, administrators, heirs, devisees, grantees,
42 successors, and assigns that they will:



1 (1) neither object to nor file a remonstrance against the proposed
 2 annexation of the property by a municipality within the
 3 boundaries of the district;

4 (2) not appeal from an order or a judgment annexing the property
 5 to a municipality; and

6 (3) not file a complaint or an action against annexation
 7 proceedings.

8 (h) This subsection does not affect any rights or liabilities accrued
 9 or proceedings begun before July 1, 2013. Those rights, liabilities, and
 10 proceedings continue and shall be imposed and enforced under prior
 11 law as if this subsection had not been enacted. For contracts executed
 12 after June 30, 2013, a waiver of the right to remonstrate under
 13 subsection (g) is binding as to an executor, administrator, heir, devisee,
 14 grantee, successor, or assign of a party to a sewer service agreement
 15 under subsection (g) only if the executor, administrator, heir, devisee,
 16 grantee, successor, or assign:

17 (1) has actual notice of the waiver; or

18 (2) has constructive notice of the waiver because the sewer
 19 service agreement or a signed memorandum of the sewer service
 20 agreement stating the waiver has been recorded in the chain of
 21 title of the property.

22 (i) This section does not affect any sewer service agreements
 23 entered into before March 13, 1953. **However, subsection (m) applies**
 24 **to a remonstrance waiver regardless of when the waiver was**
 25 **executed.**

26 (j) Subsection (g) does not apply to a landowner if all of the
 27 following conditions apply:

28 (1) The landowner is required to connect to a sewer service
 29 because a person other than the landowner has polluted or
 30 contaminated the area.

31 (2) The costs of extension of service or connection to the sewer
 32 service are paid by a person other than the landowner or the
 33 municipality.

34 (k) Notwithstanding any other law, a waiver of the right of
 35 remonstrance executed after June 30, 2015, **if the waiver is not void**
 36 **under subsection (m)**, expires not later than fifteen (15) years after the
 37 date the waiver was executed.

38 (l) This subsection applies to any deed recorded after June 30, 2015.
 39 This subsection applies only to property that is subject to a
 40 remonstrance waiver. A municipality shall provide written notice to
 41 any successor in title to property within a reasonable time after the
 42 deed is recorded, that a waiver of the right of remonstrance has been



1 granted with respect to the property.

2 **(m) This subsection applies to a remonstrance waiver executed**
3 **before, on, or after June 30, 2018. A remonstrance waiver is void**
4 **if the remonstrance waiver is recorded more than ninety (90)**
5 **business days after the date the remonstrance waiver is executed.**

