

SENATE BILL No. 529

DIGEST OF INTRODUCED BILL

Citations Affected: IC 13-11-2-199.5; IC 13-26-5.

Synopsis: Septic tank inspections and fees. Provides that a regional sewage district (district) may not: (1) inspect a septic tank soil absorption system (system); or (2) impose a fee for an inspection of a system. Provides that a property owner may bring a civil action against a district that inspects a system or charges a fee for an inspection. Provides that a prevailing property owner may recover reasonable attorney's fees and court costs.

Effective: July 1, 2015.

Eckerty

January 14, 2015, read first time and referred to Committee on Environmental Affairs.



First Regular Session 119th General Assembly (2015)

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 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

SENATE BILL No. 529

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 13-11-2-199.5, AS AMENDED BY P.L.292-2013,
- 2 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 3 JULY 1, 2015]: Sec. 199.5. "Septic tank soil absorption system", for
- 4 purposes of this chapter, IC 13-18-12, ~~and~~ IC 13-26-5-2.5, **and**
- 5 **IC 13-26-5-10**, means pipes laid in a system of trenches or elevated
- 6 beds, into which the effluent from the septic tank is discharged for soil
- 7 absorption, or similar structures.
- 8 SECTION 2. IC 13-26-5-2, AS AMENDED BY P.L.178-2013,
- 9 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 10 JULY 1, 2015]: Sec. 2. A district may do the following:
- 11 (1) Sue or be sued.
- 12 (2) Make contracts in the exercise of the rights, powers, and
- 13 duties conferred upon the district.
- 14 (3) Adopt and alter a seal and use the seal by causing the seal to
- 15 be impressed, affixed, reproduced, or otherwise used. However,
- 16 the failure to affix a seal does not affect the validity of an



- 1 instrument.
- 2 (4) Adopt, amend, and repeal the following:
- 3 (A) Bylaws for the administration of the district's affairs.
- 4 (B) Rules and regulations for the following:
- 5 (i) The control of the administration and operation of the
- 6 district's service and facilities.
- 7 (ii) The exercise of all of the district's rights of ownership.
- 8 (5) Construct, acquire, lease, operate, or manage works and obtain
- 9 rights, easements, licenses, money, contracts, accounts, liens,
- 10 books, records, maps, or other property, whether real, personal, or
- 11 mixed, of a person or an eligible entity.
- 12 (6) Assume in whole or in part any liability or obligation of:
- 13 (A) a person;
- 14 (B) a nonprofit water, sewage, or solid waste project system;
- 15 or
- 16 (C) an eligible entity;
- 17 including a pledge of part or all of the net revenues of a works to
- 18 the debt service on outstanding bonds of an entity in whole or in
- 19 part in the district and including a right on the part of the district
- 20 to indemnify and protect a contracting party from loss or liability
- 21 by reason of the failure of the district to perform an agreement
- 22 assumed by the district or to act or discharge an obligation.
- 23 (7) **Except as provided in section 10 of this chapter**, fix, alter,
- 24 charge, and collect reasonable rates and other charges in the area
- 25 served by the district's facilities to every person whose premises
- 26 are, whether directly or indirectly, supplied with water or
- 27 provided with sewage or solid waste services by the facilities for
- 28 the purpose of providing for the following:
- 29 (A) The payment of the expenses of the district.
- 30 (B) The construction, acquisition, improvement, extension,
- 31 repair, maintenance, and operation of the district's facilities
- 32 and properties.
- 33 (C) The payment of principal or interest on the district's
- 34 obligations.
- 35 (D) To fulfill the terms of agreements made with:
- 36 (i) the purchasers or holders of any obligations; or
- 37 (ii) a person or an eligible entity.
- 38 (8) Except as provided in sections 2.5 and 2.6 of this chapter,
- 39 require connection to the district's sewer system of property
- 40 producing sewage or similar waste, and require the
- 41 discontinuance of use of privies, cesspools, septic tanks, and
- 42 similar structures if:



- 1 (A) there is an available sanitary sewer within three hundred
 2 (300) feet of:
 3 (i) the property line, if the property is adjacent to a body of
 4 water, including a lake, river, or reservoir;
 5 (ii) any part of a subdivision, or land that is divided or
 6 proposed to be divided into lots, whether contiguous or
 7 subject to zoning requirements, for the purpose of sale or
 8 lease as part of a larger common plan of development or
 9 sale; or
 10 (iii) for all other properties, the improvement or other
 11 structure from which the sewage or similar waste is
 12 discharged;
 13 (B) the district has given written notice by certified mail to the
 14 property owner at the address of the property at least ninety
 15 (90) days before a date for connection to be stated in the
 16 notice; and
 17 (C) if the property is located outside the district's territory:
 18 (i) the district has obtained and provided to the property
 19 owner (along with the notice required by clause (B)) a letter
 20 of recommendation from the local health department that
 21 there is a possible threat to the public's health; and
 22 (ii) if the property is also located within the extraterritorial
 23 jurisdiction of a municipal sewage works under IC 36-9-23
 24 or a public sanitation department under IC 36-9-25, the
 25 municipal works board or department of public sanitation
 26 has acknowledged in writing that the property is within the
 27 municipal sewage works or department of public sanitation's
 28 extraterritorial jurisdiction, but the municipal works board
 29 or department of public sanitation is unable to provide sewer
 30 service.
 31 However, a district may not require the owner of a property
 32 described in this subdivision to connect to the district's sewer
 33 system if the property is already connected to a sewer system that
 34 has received an NPDES permit and has been determined to be
 35 functioning satisfactorily.
 36 (9) Provide by ordinance for a reasonable penalty, not to exceed
 37 one hundred dollars (\$100) per day, for failure to connect and also
 38 apply to the circuit or superior court of the county in which the
 39 property is located for an order to force connection, with the cost
 40 of the action, including reasonable attorney's fees of the district,
 41 to be assessed by the court against the property owner in the
 42 action.



- 1 (10) Refuse the services of the district's facilities if the rates or
2 other charges are not paid by the user.
- 3 (11) Control and supervise all property, works, easements,
4 licenses, money, contracts, accounts, liens, books, records, maps,
5 or other property rights and interests conveyed, delivered,
6 transferred, or assigned to the district.
- 7 (12) Construct, acquire by purchase or otherwise, operate, lease,
8 preserve, and maintain works considered necessary to accomplish
9 the purposes of the district's establishment within or outside the
10 district and enter into contracts for the operation of works owned,
11 leased, or held by another entity, whether public or private.
- 12 (13) Hold, encumber, control, acquire by donation, purchase, or
13 condemnation, construct, own, lease as lessee or lessor, use, and
14 sell interests in real and personal property or franchises within or
15 outside the district for:
- 16 (A) the location or protection of works;
17 (B) the relocation of buildings, structures, and improvements
18 situated on land required by the district or for any other
19 necessary purpose; or
20 (C) obtaining or storing material to be used in constructing and
21 maintaining the works.
- 22 (14) Upon consent of two-thirds (2/3) of the members of the
23 board, merge or combine with another district into a single district
24 on terms so that the surviving district:
- 25 (A) is possessed of all rights, franchises, and authority of the
26 constituent districts; and
27 (B) is subject to all the liabilities, obligations, and duties of
28 each of the constituent districts, with all rights of creditors of
29 the constituent districts being preserved unimpaired.
- 30 (15) Provide by agreement with another eligible entity for the
31 joint construction of works the district is authorized to construct
32 if the construction is for the district's own benefit and that of the
33 other entity. For this purpose the cooperating entities may jointly
34 appropriate land either within or outside their respective borders
35 if all subsequent proceedings, actions, powers, liabilities, rights,
36 and duties are those set forth by statute.
- 37 (16) Enter into contracts with a person, an eligible entity, the
38 state, or the United States to provide services to the contracting
39 party for any of the following:
- 40 (A) The distribution or purification of water.
41 (B) The collection or treatment of sanitary sewage.
42 (C) The collection, disposal, or recovery of solid waste.



- 1 (17) Make provision for, contract for, or sell the district's
 2 byproducts or waste.
- 3 (18) Exercise the power of eminent domain, including for
 4 purposes of siting sewer or water utility infrastructure, but only
 5 after the district attempts to use existing public rights-of-way or
 6 easements.
- 7 (19) Remove or change the location of a fence, building, railroad,
 8 canal, or other structure or improvement located within or outside
 9 the district. If:
- 10 (A) it is not feasible or economical to move the building,
 11 structure, or improvement situated in or upon land acquired;
 12 and
- 13 (B) the cost is determined by the board to be less than that of
 14 purchase or condemnation;
- 15 the district may acquire land and construct, acquire, or install
 16 buildings, structures, or improvements similar in purpose to be
 17 exchanged for the buildings, structures, or improvements under
 18 contracts entered into between the owner and the district.
- 19 (20) Employ consulting engineers, superintendents, managers,
 20 and other engineering, construction, and accounting experts,
 21 attorneys, bond counsel, employees, and agents that are necessary
 22 for the accomplishment of the district's purpose and fix their
 23 compensation.
- 24 (21) Procure insurance against loss to the district by reason of
 25 damages to the district's properties, works, or improvements
 26 resulting from fire, theft, accident, or other casualty or because of
 27 the liability of the district for damages to persons or property
 28 occurring in the operations of the district's works and
 29 improvements or the conduct of the district's activities.
- 30 (22) Exercise the powers of the district without obtaining the
 31 consent of other eligible entities. However, the district shall:
- 32 (A) restore or repair all public or private property damaged in
 33 carrying out the powers of the district and place the property
 34 in the property's original condition as nearly as practicable; or
 35 (B) pay adequate compensation for the property.
- 36 (23) Dispose of, by public or private sale or lease, real or personal
 37 property determined by the board to be no longer necessary or
 38 needed for the operation or purposes of the district.
- 39 SECTION 3. IC 13-26-5-10 IS ADDED TO THE INDIANA CODE
 40 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 41 1, 2015]: **Sec. 10. (a) As used in this section, "septic tank soil
 42 absorption system" has the meaning set forth in IC 13-11-2-199.5.**



1 **(b) A district may not do the following:**
2 **(1) Inspect a septic tank soil absorption system.**
3 **(2) Impose a fee for an inspection of a septic tank soil**
4 **absorption system.**
5 **(c) If a district:**
6 **(1) inspects a septic tank soil absorption system; or**
7 **(2) imposes a fee;**
8 **in violation of subsection (b), an affected property owner may**
9 **bring a civil action in the circuit or superior court in which the**
10 **property is located to enforce this section. A prevailing property**
11 **owner is entitled to reasonable attorney's fees and court costs.**

