

IC 36-9-24

Chapter 24. Leasing of Sewage Disposal Facilities

IC 36-9-24-1

Application of chapter

Sec. 1. This chapter applies to all municipalities that own and operate sewage works under IC 36-9-23.

As added by Acts 1981, P.L.309, SEC.97.

IC 36-9-24-2

"Sewage disposal facilities" defined

Sec. 2. As used in this chapter, "sewage disposal facilities" means all or part of the facilities of a sewage disposal company furnishing service within the corporate boundaries of a municipality, or within one (1) mile outside those boundaries, including:

- (1) certificates of territorial authority;
- (2) indeterminate permits;
- (3) franchises;
- (4) rights-of-way; and
- (5) easements;

but does not include the company's corporate stock, going-concern value, or good will.

As added by Acts 1981, P.L.309, SEC.97.

IC 36-9-24-3

Authorization

Sec. 3. (a) A municipality may lease sewage disposal facilities from a sewage disposal company that:

- (1) holds a certificate of territorial authority under IC 8-1-2-89; and
- (2) is a corporation organized under Indiana law for the purpose of acquiring, constructing, and leasing sewage disposal facilities to a municipality.

(b) In addition to the authority described in subsection (a), a municipality may lease from any person facilities to provide for treatment or disposal of sludge generated by the municipality's sewage works. The lessor under this subsection may be an individual, partnership, corporation, or other entity organized to lease sewage works to a municipality. Notwithstanding any other law, a lessor may acquire, construct, and lease facilities described in this subsection to a municipality without the approval of the utility regulatory commission.

(c) The municipality may operate the leased facilities in conjunction with the operation of the municipally owned sewage works.

As added by Acts 1981, P.L.309, SEC.97. Amended by P.L.5-1988, SEC.222; P.L.186-1988, SEC.2.

IC 36-9-24-4

Maximum duration; options to renew

Sec. 4. The term of a lease under this chapter may not exceed fifty (50) years. However, the lease must provide that the municipality has an option to renew the lease for a further term on similar conditions. *As added by Acts 1981, P.L.309, SEC.97.*

IC 36-9-24-5

Options to purchase; authorization of bonds to finance purchase; disposition of property when option not exercised

Sec. 5. (a) A lease under this chapter must provide that the municipality has an option to purchase the property covered by the lease, under the terms and conditions specified in the lease.

(b) If the municipality exercises the option to purchase, it may obtain money to pay the purchase price by issuing and selling revenue bonds under the statutes governing the issuance and sale of sewage works revenue bonds for additions and extensions to the municipally owned sewage works.

(c) If the municipality does not exercise the option to purchase, the property covered by the lease becomes the absolute property of the municipality when:

- (1) the lease has expired; and
- (2) the municipality has discharged and performed all its obligations under the lease.

The lessor shall then execute proper instruments conveying good and merchantable title to the property to the municipality.

As added by Acts 1981, P.L.309, SEC.97.

IC 36-9-24-6

Optional provisions of leases; payment of taxes, assessments, insurance, and maintenance expenses

Sec. 6. (a) A lease under this chapter may provide that:

(1) as part of the lease rental for the facilities, the municipality shall agree to:

- (A) pay all property taxes and assessments levied against or on account of the facilities; and
- (B) maintain insurance on the facilities for the benefit of the lessor; and

(2) the municipality shall assume all responsibilities for the operation, maintenance, repair, alteration, and extension of the facilities.

(b) However, the lease rental and the expenses incurred under this chapter are payable solely from the revenues derived from sewage and sewer fees to be collected by the municipality from property and users in the area served by the facilities.

As added by Acts 1981, P.L.309, SEC.97. Amended by P.L.186-1988, SEC.3.

IC 36-9-24-7

Proposed leases; notice and hearing

Sec. 7. (a) When a municipality and a lessor agree on the terms and conditions of a lease proposed to be entered into under this

chapter, notice of a hearing to be held before the municipal legislative body shall be given to all interested persons by publication in accordance with IC 5-3-1. The notice must name the date, place, and hour of the hearing, and set forth a summary of the principal terms of the lease agreed upon, including the name of the lessor, the character of the property to be leased, the lease rental to be paid, and the number of years the lease is to be in effect.

(b) The date of the hearing may not be less than twenty (20) days after publication of the notice.

(c) The proposed lease shall be kept available for inspection by the public before and at the hearing.

(d) At the hearing, all interested persons are entitled to be heard as to the necessity for the execution of the lease and whether the rental to be paid to the proposed lessor under the lease is a fair and reasonable rental for the facilities. The hearing may be adjourned to a later date or dates.

(e) After the hearing, the municipal legislative body may authorize the execution of the lease as originally agreed on, or may, with the consent of the proposed lessor, modify the lease. However, the lease rental as set out in the published notice may not be increased without a new notice and hearing.

As added by Acts 1981, P.L.309, SEC.97. Amended by Acts 1981, P.L.45, SEC.63; P.L.186-1988, SEC.4.

IC 36-9-24-8

Notice of signing of lease contract; petitions, notice, and hearing concerning objections to lease rental

Sec. 8. (a) When a municipal legislative body authorizes the execution of a lease under section 7 of this chapter, notice of the signing of the contract shall be given by publication in the manner prescribed by section 7 of this chapter. Within thirty (30) days after publication of the notice, fifty (50) or more of the:

- (1) users in the municipality served by the municipally owned sewage works; or
- (2) users served by the facilities to be leased;

may file with the utility regulatory commission (if the lessor is leasing facilities under section 3(a) of this chapter), or with the circuit or superior court of the county where the facility is located (if the lessor is leasing facilities under section 3(b) of this chapter), a petition setting forth their objections to the lease rental, including facts showing that the lease rental is not fair and reasonable.

(b) On receipt of the petition, the commission or the court shall fix a time and place for a hearing on whether the lease rental is fair and reasonable. The hearing may not be less than twenty (20) nor more than sixty (60) days after the commission's or the court's receipt of the petition. At least ten (10) days before the date of the hearing, the commission or the court shall mail notice of the hearing to:

- (1) the municipal executive;
- (2) the municipality; and
- (3) the first ten (10) petitioners listed on the petition, at their

usual place of residence.

(c) The decision of the commission or the court as to whether the lease rental is fair and reasonable is final.

As added by Acts 1981, P.L.309, SEC.97. Amended by P.L.23-1988, SEC.126; P.L.186-1988, SEC.5.

IC 36-9-24-9

Limitations on actions to contest leases

Sec. 9. An action to contest the validity of a lease under this chapter, or to enjoin the performance of any of the terms and conditions of such a lease, may not be instituted later than:

- (1) thirty (30) days after publication of notice under section 8(a) of this chapter; or
- (2) if a petition has been filed with the utility regulatory commission or the court twenty (20) days after the decision of the commission or the court.

As added by Acts 1981, P.L.309, SEC.97. Amended by P.L.23-1988, SEC.127; P.L.186-1988, SEC.6.

IC 36-9-24-10

Determination of sufficiency by department of environmental management

Sec. 10. A lease under this chapter does not become effective until its provisions for sewage treatment have been found sufficient by the department of environmental management according to rules adopted by the state water pollution control board.

As added by Acts 1981, P.L.309, SEC.97. Amended by P.L.143-1985, SEC.201.

IC 36-9-24-11

Fees; establishment; procedure

Sec. 11. (a) A municipality that leases facilities under this chapter may, by ordinance, establish, bill, and collect fees from the property and users in the area served by the leased facilities. The fees must be sufficient to pay the costs of operation, maintenance, repair, alterations, depreciation, additions, and extensions of the leased facilities, and to pay the lease rental as it becomes due.

(b) The municipal legislative body may use one (1) or more of the following factors to establish the fees:

- (1) A flat charge for each sewer connection.
- (2) The amount of water used on or in the property.
- (3) The number and size of water outlets on the property.
- (4) The amount, strength, or character of the sewage discharged into the sewers.
- (5) The size of sewer connections.
- (6) Any other factors the legislative body considers necessary.

(c) After introduction of the ordinance establishing the fees, but before it is finally adopted, the municipal legislative body shall hold a public hearing at which all of the users of the leased facilities and owners of property served or to be served by the facilities may be

heard concerning the proposed fees. Notice of the hearing, setting forth the proposed schedule of fees, shall be published in accordance with IC 5-3-1. The hearing may be adjourned from time to time.

(d) After the hearing, the municipal legislative body shall adopt the ordinance establishing the fees, either as originally introduced or as modified.

(e) The fees established for any class of users shall be extended to cover any additional property that is subsequently served and falls within the same class, without any hearing or notice.

(f) The municipal legislative body may change or readjust the fees in the same manner by which they were established.

(g) The fees established and collected by the municipality are not subject to the jurisdiction of the utility regulatory commission.

(h) The municipality may collect delinquent fees in the manner provided by IC 36-9-23-31 through IC 36-9-23-34.

As added by Acts 1981, P.L.309, SEC.97. Amended by Acts 1981, P.L.45, SEC.64; P.L.23-1988, SEC.128; P.L.186-1988, SEC.7.

IC 36-9-24-12

Tax liability and exemptions

Sec. 12. Facilities leased to a municipality under this chapter are exempt from all state, county, and other taxes. However, the rental paid to a lessor under the terms of such a lease is subject to all applicable taxes.

As added by Acts 1981, P.L.309, SEC.97. Amended by P.L.186-1988, SEC.8.

IC 36-9-24-13

Exception from compliance with certain statutes

Sec. 13. Except as specifically required in this chapter, a municipality acting under this chapter need not comply with other statutes concerning the lease and acquisition of facilities by municipalities.

As added by Acts 1981, P.L.309, SEC.97. Amended by P.L.186-1988, SEC.9.

IC 36-9-24-14

Operation and lease of facilities within one mile of boundaries considered furnishing of sewage and sewer service

Sec. 14. A municipality that leases and operates sewage disposal facilities in an area within one (1) mile outside its corporate boundaries is considered to be furnishing sewage and sewer service in that area for purposes of IC 36-4-3-13.

As added by Acts 1981, P.L.309, SEC.97.