

## **IC 13-26-5**

### **Chapter 5. Powers and Duties of Regional Districts**

#### **IC 13-26-5-1**

##### **Prerequisites to exercising rights, powers, and duties**

Sec. 1. Upon:

- (1) the declaration of the commissioner organizing a district;
- (2) the qualification of the board; and
- (3) the election of a president, a treasurer, and a secretary;

the district may exercise in the district's own name, as a municipal corporation, all the rights, powers, and duties conferred upon the district by this article.

*As added by P.L.1-1996, SEC.16.*

#### **IC 13-26-5-2**

##### **Powers**

Sec. 2. A district may do the following:

- (1) Sue or be sued.
- (2) Make contracts in the exercise of the rights, powers, and duties conferred upon the district.
- (3) Adopt and alter a seal and use the seal by causing the seal to be impressed, affixed, reproduced, or otherwise used. However, the failure to affix a seal does not affect the validity of an instrument.
- (4) Adopt, amend, and repeal the following:
  - (A) Bylaws for the administration of the district's affairs.
  - (B) Rules and regulations for the following:
    - (i) The control of the administration and operation of the district's service and facilities.
    - (ii) The exercise of all of the district's rights of ownership.
- (5) Construct, acquire, lease, operate, or manage works and obtain rights, easements, licenses, money, contracts, accounts, liens, books, records, maps, or other property, whether real, personal, or mixed, of a person or an eligible entity.
- (6) Assume in whole or in part any liability or obligation of:
  - (A) a person;
  - (B) a nonprofit water, sewage, or solid waste project system;
  - or
  - (C) an eligible entity;

including a pledge of part or all of the net revenues of a works to the debt service on outstanding bonds of an entity in whole or in part in the district and including a right on the part of the district to indemnify and protect a contracting party from loss or liability by reason of the failure of the district to perform an agreement assumed by the district or to act or discharge an obligation.

- (7) Fix, alter, charge, and collect reasonable rates and other charges in the area served by the district's facilities to every person whose premises are, whether directly or indirectly, supplied with water or provided with sewage or solid waste

services by the facilities for the purpose of providing for the following:

- (A) The payment of the expenses of the district.
- (B) The construction, acquisition, improvement, extension, repair, maintenance, and operation of the district's facilities and properties.
- (C) The payment of principal or interest on the district's obligations.
- (D) To fulfill the terms of agreements made with:
  - (i) the purchasers or holders of any obligations; or
  - (ii) a person or an eligible entity.

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

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

- (i) the property line, if the property is adjacent to a body of water, including a lake, river, or reservoir;
- (ii) any part of a subdivision, or land that is divided or proposed to be divided into lots, whether contiguous or subject to zoning requirements, for the purpose of sale or lease as part of a larger common plan of development or sale; or
- (iii) for all other properties, the improvement or other structure from which the sewage or similar waste is discharged;

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

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

- (i) the district has obtained and provided to the property owner (along with the notice required by clause (B)) a letter of recommendation from the local health department that there is a possible threat to the public's health; and
- (ii) if the property is also located within the extraterritorial jurisdiction of a municipal sewage works under IC 36-9-23 or a public sanitation department under IC 36-9-25, the municipal works board or department of public sanitation has acknowledged in writing that the property is within the municipal sewage works or department of public sanitation's extraterritorial jurisdiction, but the municipal works board or department of public sanitation is unable to provide sewer service.

However, a district may not require the owner of a property described in this subdivision to connect to the district's sewer system if the property is already connected to a sewer system that has received an NPDES permit and has been determined to

be functioning satisfactorily.

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

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

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

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

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

(A) the location or protection of works;

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

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

(14) Upon consent of two-thirds (2/3) of the members of the board, merge or combine with another district into a single district on terms so that the surviving district:

(A) is possessed of all rights, franchises, and authority of the constituent districts; and

(B) is subject to all the liabilities, obligations, and duties of each of the constituent districts, with all rights of creditors of the constituent districts being preserved unimpaired.

(15) Provide by agreement with another eligible entity for the joint construction of works the district is authorized to construct if the construction is for the district's own benefit and that of the other entity. For this purpose the cooperating entities may jointly appropriate land either within or outside their respective borders if all subsequent proceedings, actions, powers, liabilities, rights, and duties are those set forth by statute.

(16) Enter into contracts with a person, an eligible entity, the state, or the United States to provide services to the contracting party for any of the following:

(A) The distribution or purification of water.

(B) The collection or treatment of sanitary sewage.

- (C) The collection, disposal, or recovery of solid waste.
- (17) Make provision for, contract for, or sell the district's byproducts or waste.
- (18) Exercise the power of eminent domain, including for purposes of siting sewer or water utility infrastructure, but only after the district attempts to use existing public rights-of-way or easements.
- (19) Remove or change the location of a fence, building, railroad, canal, or other structure or improvement located within or outside the district. If:
- (A) it is not feasible or economical to move the building, structure, or improvement situated in or upon land acquired; and
  - (B) the cost is determined by the board to be less than that of purchase or condemnation;
- the district may acquire land and construct, acquire, or install buildings, structures, or improvements similar in purpose to be exchanged for the buildings, structures, or improvements under contracts entered into between the owner and the district.
- (20) Employ consulting engineers, superintendents, managers, and other engineering, construction, and accounting experts, attorneys, bond counsel, employees, and agents that are necessary for the accomplishment of the district's purpose and fix their compensation.
- (21) Procure insurance against loss to the district by reason of damages to the district's properties, works, or improvements resulting from fire, theft, accident, or other casualty or because of the liability of the district for damages to persons or property occurring in the operations of the district's works and improvements or the conduct of the district's activities.
- (22) Exercise the powers of the district without obtaining the consent of other eligible entities. However, the district shall:
- (A) restore or repair all public or private property damaged in carrying out the powers of the district and place the property in the property's original condition as nearly as practicable; or
  - (B) pay adequate compensation for the property.
- (23) Dispose of, by public or private sale or lease, real or personal property determined by the board to be no longer necessary or needed for the operation or purposes of the district.

*As added by P.L.1-1996, SEC.16. Amended by P.L.193-2001, SEC.2; P.L.221-2007, SEC.18; P.L.1-2009, SEC.110; P.L.97-2012, SEC.9; P.L.178-2013, SEC.2.*

### **IC 13-26-5-2.5**

#### **Septic tank soil absorption system exemption**

Sec. 2.5. (a) As used in this section, "septic tank soil absorption system" has the meaning set forth in IC 13-11-2-199.5.

(b) Subject to subsection (d), a property owner is exempt from the requirement to connect to a district's sewer system and to discontinue

use of a septic tank soil absorption system if the following conditions are met:

(1) The property owner's septic tank soil absorption system was new at the time of installation and was approved in writing by the local health department.

(2) The property owner, at the property owner's own expense, obtains a written determination from the local health department or the department's designee that the septic tank soil absorption system is not failing. The local health department or the department's designee shall provide the owner with a written determination not later than sixty (60) days after receipt of the owner's request. If the local health department or the department's designee fails to provide a written determination within the time established in this subdivision, the owner, at the owner's expense, may obtain a written determination from a qualified inspector. If the local health department or the department's designee determines that a septic tank soil absorption system is failing, the property owner may appeal the determination to the board of the local health department. The decision of the board is final and binding.

(3) The property owner provides the district with:

(A) the written notification of potential qualification for the exemption described in subsection (f); and

(B) the written determination described in subdivision (2); within the time limits set forth in subsection (f).

(c) If a property owner, within the time allowed under subsection (f), notifies a district in writing that the property owner qualifies for the exemption under this section, the district shall, until the property owner's eligibility for an exemption under this section is determined, suspend the requirement that the property owner discontinue use of a septic tank soil absorption system and connect to the district's sewer system.

(d) A property owner who qualifies for the exemption provided under this section may not be required to connect to the district's sewer system for a period of ten (10) years beginning on the date the new septic tank soil absorption system was installed. A property owner may apply for two (2) five (5) year extensions of the exemption provided under this section by following the procedures set forth in subsections (b) and (c). If ownership of an exempt property is transferred during a valid exemption period, including during an extension of an initial exemption:

(1) the exemption applies to the subsequent owner of the property for the remainder of the exemption period during which the transfer occurred; and

(2) the subsequent owner may apply for any remaining extensions.

However, the total period during which a property may be exempt from the requirement to connect to a district's sewer system under this section may not exceed twenty (20) years, regardless of ownership of the property.

(e) A district that has filed plans with the department to create or expand a sewage district shall, within ten (10) days after filing the plans, provide written notice to affected property owners:

- (1) that the property owner may be required to discontinue the use of a septic tank soil absorption system;
- (2) that the property owner may qualify for an exemption from the requirement to discontinue the use of the septic tank soil absorption system; and
- (3) of the procedures to claim an exemption.

(f) To qualify for an exemption under this section, a property owner must:

- (1) within sixty (60) days after the date of the written notice given to the property owner under subsection (e), notify the district in writing that the property owner qualifies for the exemption under this section; and
- (2) within one hundred twenty (120) days after the district receives the written notice provided under subdivision (1), provide the district with the written determination required under subsection (b)(2).

(g) When a property owner who qualifies for an exemption under this section subsequently discontinues use of the property owner's septic tank soil absorption system and connects to the district's sewer system, the property owner may be required to pay only the following to connect to the sewer system:

- (1) The connection fee the property owner would have paid if the property owner connected to the sewer system on the first date the property owner could have connected to the sewer system.
- (2) Any additional costs:
  - (A) considered necessary by; and
  - (B) supported by documentary evidence provided by; the district.

(h) A property owner who connects to a district's sewer system may provide, at the owner's expense, labor, equipment, materials, or any combination of labor, equipment, and materials from any source to accomplish the connection to the sewer system, subject to inspection and approval by the board or a designee of the board.

(i) This section does not affect the authority of the state department of health, a local health department, or a county health officer with respect to a septic tank soil absorption system.

(j) For purposes of this section, a septic tank soil absorption system is "failing" if one (1) or more of the following apply:

- (1) The system refuses to accept sewage at the rate of design application and interferes with the normal use of plumbing fixtures.
- (2) Effluent discharge exceeds the absorptive capacity of the soil into which the system discharges, resulting in ponding, seepage, or other discharge of the effluent to the ground surface or to surface waters.
- (3) Effluent discharged from the system contaminates a potable

water supply, ground water, or surface waters.

(k) As used in this section, "qualified inspector" means any of the following:

(1) An employee of a local health department who is designated by the local health department as having sufficient knowledge of onsite sewage systems to determine if an onsite sewage system is failing.

(2) An individual who is certified by the Indiana Onsite Wastewater Professionals Association as an onsite sewage system installer or inspector.

(3) An individual listed by the state department of health or a local health department with jurisdiction over the service area of the property inspected as having sufficient knowledge of onsite sewage systems to determine if an onsite sewage system is failing.

*As added by P.L.193-2001, SEC.3. Amended by P.L.1-2002, SEC.67; P.L.123-2011, SEC.1; P.L.97-2012, SEC.10; P.L.292-2013, SEC.7.*

#### **IC 13-26-5-2.6**

##### **Large parcel exemption**

Sec. 2.6. A district may not require the owner of a property described in section 2(8) of this chapter to connect to the district's sewer system if:

(1) the property is located on at least ten (10) acres;

(2) the owner can demonstrate the availability of at least two (2) areas on the property for the collection and treatment of sewage that will protect human health and the environment;

(3) the waste stream from the property is limited to domestic sewage from a residence or business;

(4) the system used to collect and treat the domestic sewage has a maximum design flow of seven hundred fifty (750) gallons per day; and

(5) the owner, at the owner's expense, obtains and provides to the district a certification from the local health department or the department's designee that the system is functioning satisfactorily.

*As added by P.L.97-2012, SEC.11.*

#### **IC 13-26-5-3**

##### **Rules and resolutions of board; legislative and administrative acts**

Sec. 3. (a) The board may by rules and resolutions provide the following:

(1) The procedure for the board's actions.

(2) The manner of selection of the board's president, treasurer, and secretary and other officers or employees of the district, including the titles, terms of office, compensation, duties, number, and qualifications.

(3) Any other lawful subject necessary to the operation of the district and the exercise of the power granted.

(b) The board must adopt an ordinance by a majority vote to take

action of a legislative nature. Proposed ordinances may be read by title only unless a trustee requests a reading in full.

(c) A majority of the board or the officers of the board or employees of the district that are authorized by the board may take action of an administrative or executive nature.

*As added by P.L.1-1996, SEC.16.*

#### **IC 13-26-5-4**

##### **Rules; establishment and enforcement**

Sec. 4. (a) The board may adopt and enforce rules for the following purposes:

- (1) To accomplish the purpose of a district.
- (2) To protect the works, improvements, and properties, both real and personal, that the district owns.
- (3) To secure the best results from the construction, operation, and maintenance of works, improvements, and properties.
- (4) To prevent damage by the misuse of the works, improvements, or properties by:
  - (A) the pollution or misuse of the waters in the district or of the sewerage system; or
  - (B) the improper disposal of solid waste.

(b) The board may adopt and enforce rules under subsection (a) that are necessary and advisable to do the following:

- (1) Protect and preserve the works, improvements, and properties owned or controlled by the district, prescribe the manner of use by any person, and preserve order in and adjacent to the works.
- (2) Prescribe the manner:
  - (A) in which ditches, sewers, pipelines, or other works should be adjusted to or connected with the works of the district; and
  - (B) of waste disposal in the district.

(3) Prescribe the permissible uses of the water supply and the manner of distribution and prevent the pollution or unnecessary waste of the water supply.

(4) Prohibit or regulate the discharge into the sewers of the district of liquid or solid waste detrimental to the works and improvements.

(c) Rules must be:

- (1) consistent with:
  - (A) statutes; and
  - (B) the rules of the environmental rules board; and
- (2) maintained and open to inspection in the office of the district.

(d) The board may enforce by injunction or other legal remedy rules adopted under this section. The board may remove a harmful or improper construction or obstruction or may close an opening or connection made improperly or in violation of the rules. A person that willfully fails to comply with the rules is liable for damage caused by the failure and for the cost of restoring or replacing



construction damaged.

*As added by P.L.1-1996, SEC.16. Amended by P.L.113-2014, SEC.83.*

#### **IC 13-26-5-5**

##### **Contracts for purchases of supplies, materials, or labor**

Sec. 5. The board or an officer or employee designated by the board may contract for the following:

- (1) The purchase of supplies in accordance with IC 5-22.
- (2) Labor for a work in accordance with IC 36-1-12.

*As added by P.L.1-1996, SEC.16. Amended by P.L.49-1997, SEC.48.*

#### **IC 13-26-5-6**

##### **Eminent domain**

Sec. 6. (a) Subject to subsections (b) and (c), the board may condemn for the use of the district public or private land, easements, rights, rights-of-way, franchises, or other property within or outside the district required by the district for the accomplishment of the district's purposes according to the statutory procedure for the appropriation of land or other property taken by an eligible entity.

(b) The power of condemnation by a district under this article may not be exercised against a sewage disposal company holding a certificate of territorial authority under IC 8-1-2-89 until the expiration of twelve (12) years after the granting of the certificate of territorial authority.

(c) If the board of a regional sewage district exercises eminent domain to acquire an easement or right-of-way within or outside the district required by the district for the accomplishment of the district's purposes, the easement or right-of-way may not exceed fifty (50) feet in width.

*As added by P.L.1-1996, SEC.16. Amended by P.L.123-2011, SEC.2.*

#### **IC 13-26-5-6.5**

##### **Notice; proposed extension of service**

Sec. 6.5. A district that intends to extend service within its territory shall provide notice to all owners of property to be served by the proposed extension of service in the following manner not later than sixty (60) days from the date of the decision to extend service:

(1) By publication of notice one (1) time each week for three (3) consecutive weeks in at least two (2) newspapers of general circulation in each of the counties, in whole or in part, of the district affected by the proposed extension of service. If there is only one (1) newspaper of general circulation in a county, a single publication each week for three (3) consecutive weeks satisfies the requirement of this subdivision.

(2) By United States mail, postage prepaid, mailed to each freeholder within the territory to which the district proposes to extend service.

*As added by P.L.292-2013, SEC.8.*

### **IC 13-26-5-7**

#### **Contracts for water supply, sewage treatment, or solid waste disposition; issuance of bonds**

Sec. 7. (a) Exclusive of building a sewage treatment plant, solid waste disposal or recovery system, or installing a supply of water, a district that desires to own, acquire, construct, equip, improve, enlarge, extend, operate, and maintain a works may proceed under this article if the district first contracts for:

- (1) a supply of water;
- (2) the required treatment of the sewage emanating from the district's works; or
- (3) the disposition of solid waste generated within the district.

(b) A governmental or private body owning and operating facilities for water supply, sewage, or solid waste disposal, recovery, or treatment may contract to supply water or treat all or part of the sewage and solid waste of a district. The contracts:

- (1) must be authorized by ordinance; and
- (2) are subject to approval by the department.

(c) All bonds issued under this article or IC 13-3-2 (before its repeal) by a district contracting for:

- (1) water supply;
- (2) sewage or solid waste disposal; or
- (3) recovery treatment service;

under this section are payable before the expiration date of the contract and districts may contract for the term of the bonds, including a term or terms beyond the last maturity of the bonds.

*As added by P.L.1-1996, SEC.16.*

### **IC 13-26-5-8**

#### **Limitations on contracts**

Sec. 8. A district may make contracts or incur obligations only if the contracts or obligations are payable solely from:

- (1) the money provided under this article; or
- (2) federal, state, or other grants or contributions.

*As added by P.L.1-1996, SEC.16.*

### **IC 13-26-5-9**

#### **Disbursal of money for district purposes; electronic funds transfers; advance claim payments; board preapproval and review required**

Sec. 9. (a) As used in this section, "electronic funds transfer" means a transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, that is initiated through an electronic terminal, a telephone, a computer, magnetic tape, or other electronic means to order, instruct, or authorize a financial institution to debit or credit an account.

(b) A board may adopt an ordinance allowing money to be disbursed for lawful district purposes under this section.

(c) As part of an ordinance adopted under subsection (b), or by a separate ordinance adopted by the board, the board may authorize the

district to do one (1) or both of the following through an electronic funds transfer method of payment:

- (1) Pay claims owed by the district.
- (2) Receive payments owed to the district.

If the board adopts an ordinance to grant the district the authority described in subdivision (1), the district may pay money from its funds by electronic funds transfer. However, the authority granted to a district by this subsection does not affect the rights, liabilities, or responsibilities of participants in an electronic fund transfer under the federal Electronic Fund Transfer Act (15 U.S.C. 1693 et seq.), and a regional district that pays a claim by electronic funds transfer shall comply with all other requirements for the payment of claims by the regional district.

(d) Notwithstanding IC 5-11-10, with the prior written approval of the board, the fiscal officer of the district may make claim payments in advance of board allowance for the following kinds of expenses if the board has adopted an ordinance under subsection (b):

- (1) Property or services purchased or leased from the United States government, its agencies, or its political subdivisions.
- (2) License or permit fees.
- (3) Insurance premiums.
- (4) Utility payments or utility connection charges.
- (5) General grant programs for which advance funding is not prohibited and the contracting party posts sufficient security to cover the amount advanced.
- (6) Grants of state funds authorized by statute.
- (7) Maintenance or service agreements.
- (8) Leases or rental agreements.
- (9) Bond or coupon payments.
- (10) Payroll.
- (11) State or federal taxes.
- (12) Expenses that must be paid because of emergency circumstances.
- (13) Expenses described in an ordinance.

(e) Each payment of expenses under this section must be supported by a fully itemized invoice or bill and certification by the fiscal officer of the district.

(f) The board shall review and allow a claim paid under subsection (d) at the board's next regular or special meeting following the preapproved payment of the expense.

*As added by P.L. 78-2009, SEC.20. Amended by P.L. 71-2011, SEC.1.*