

IC 36-9-22

Chapter 22. Contracts With Property Owners for Sewer Construction by Municipalities

IC 36-9-22-1

Application of chapter

Sec. 1. This chapter applies to all municipalities.

As added by Acts 1981, P.L.309, SEC.95.

IC 36-9-22-2

Terms of contract; power to fix; duration; share of cost; parties bound; waiver of rights

Sec. 2. (a) The power of the municipal works board to fix the terms of a contract under this section applies to contracts for the installation of sewage works that have not been finally approved or accepted for full maintenance and operation by the municipality on July 1, 1979.

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

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

of a fair pro rata share of the cost of the construction of the sewage works, subject to the rules of the board and notwithstanding any other law relating to the functions of local governmental entities. However, the contract does not apply to any owner of real property who is not a party to the contract unless the contract or (after June 30, 2013) a signed memorandum of the contract has been recorded in the office of the recorder of the county in which the real property of the owner is located before the owner taps into or connects to the sewers and facilities. The board may provide that the fair pro rata share of the cost of construction includes interest at a rate not exceeding the amount of interest allowed on judgments, and the interest shall be computed from the date the sewage works are approved until the date payment is made to the municipality.

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

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

- (1) has actual notice of the release; or
- (2) has constructive notice of the release because the contract, or a signed memorandum of the contract stating the release, has been recorded in the chain of title of the property.

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

- (1) The landowner is required to connect to the sewage works because a person other than the landowner has polluted or contaminated the area.
- (2) The costs of extension of or connection to the sewage works are paid by a person other than the landowner or the municipality.

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

As added by Acts 1981, P.L.309, SEC.95. Amended by P.L.172-1995, SEC.5; P.L.251-2013, SEC.4; P.L.243-2013, SEC.3.

IC 36-9-22-3

Sewage works; approval of plans and specifications before construction; ownership by municipality; maintenance and operation

Sec. 3. (a) Plans and specifications for the sewage works contracted for must be approved by the municipal works board before construction is begun.

(b) Upon their completion, final inspection, and approval the sewage works become the property of the municipality, and the works board may:

- (1) approve the construction of the sewage works;
- (2) accept sewage from the sewers and pumping stations subject to the sewage rates that the municipality establishes;
- (3) operate and maintain the disposal plants subject to the sewage rates that the municipality establishes; and
- (4) accept storm water from sewers or approve the location of discharge of storm water.

(c) After the sewage works are approved and accepted by the works board, all further maintenance and operation of them are the responsibility of the municipality.

(d) Subsections (b) and (c) do not apply to lateral sewers or other extensions that, upon completion, become the property and responsibility of the landowners whose property they benefit.

As added by Acts 1981, P.L.309, SEC.95. Amended by Acts 1982, P.L.77, SEC.21.

IC 36-9-22-4

Taps into sewage works; prerequisites; amounts received under contracts; pay out without appropriation; unauthorized taps; removal and disposal without liability

Sec. 4. (a) A person may not be granted a permit or be authorized to tap into, use, or deposit sewage into any sewage works contracted for under this chapter, or any extension of them, during the period prescribed in the contract without first:

- (1) obtaining the approval of the municipal works board; and
- (2) paying to the municipality:
 - (A) charges made or assessed for the tap, use, or deposit, or for the sewers constructed in connection with the tap, use, or deposit; and
 - (B) the amount required by the contract.

All amounts received by the municipality under the contract shall be paid out, without appropriation, under the terms of the contract within sixty (60) days after they are received.

(b) Whenever any tap or connection is made in violation of subsection (a), the works board shall:

- (1) remove or cause to be removed the unauthorized tap or connection and all connecting tile located in the right-of-way for the sewage works; and
- (2) dispose of the unauthorized materials that are removed, without any liability on the part of the municipality.

As added by Acts 1981, P.L.309, SEC.95.

IC 36-9-22-5

Sewer connected to existing works; certain cases; amounts to be included in cost estimate and assessments; payment of assessments in installments; amount of bonds; cash payments

Sec. 5. (a) This section applies when:

- (1) any part of the cost of a sewer, whether local or general, storm, sanitary, combination, or otherwise, is to be assessed against the owners of real property;
- (2) the proposed sewer is to be connected into sewage works constructed under this chapter; and
- (3) the owners did not contribute to the cost of those sewage works.

(b) There shall be included in:

- (1) the engineer's estimate submitted to the municipal works board before the hearing on the proposed sewer; and
- (2) the assessments;

a sum equal to the amount provided in or computed from the contract as the fair pro rata share due from the owners upon and for the contracted sewage works, including any interest owed. The sum included in the engineer's estimate must be separately itemized.

(c) If an owner elects to pay his assessment by installments in

anticipation of which bonds and coupons are issued, the amount of the bonds and coupons must include the fair pro rata share of the cost of the contracted sewage works. However, an owner may elect to pay the fair pro rata share in cash within sixty (60) days after the assessment is final and to pay the remainder of the assessment in installments.

As added by Acts 1981, P.L.309, SEC.95.