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

Synopsis: Annexation waivers and fire protection districts. Provides the following with regard to a waiver of remonstrance of annexation: (1) A waiver executed before, on, or after July 1, 2019 expires 10 years after the waiver is executed. (2) A waiver executed before, on, or after June 30, 2019, 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, 2019.

Ellington

January 14, 2019, read first time and referred to Committee on Government and Regulatory Reform.
HOUSE BILL No. 1389

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:

SECTION 1. IC 13-18-15-2, AS AMENDED BY P.L.228-2015, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 2. (a) The persons involved shall negotiate the terms for connection and service under this chapter.

(b) If service is ordered under this chapter, a receiver of that service that is located in an unincorporated area may grant a waiver to a municipality providing the service. A waiver under this section:

(1) must waive the receiver's right of remonstrance against annexation of the areas in which the service is to be provided; and

(2) may be one (1) of the terms for connection and service described in subsection (a).

(c) The waiver, if granted:

(1) shall be noted on the deed of each property affected and recorded as provided by law; and

(2) is considered a covenant running with the land.

(d) Notwithstanding any other law, a waiver of the right of remonstrance executed before, on, or after June 30, 2015, July 1, 2019.

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2019, that is not void under subsection (f) expires not later than fifteen (15) ten (10) years after the date the waiver was executed.

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

(f) This subsection applies to a remonstrance waiver executed before, on, or after June 30, 2019. A remonstrance waiver is void if the remonstrance waiver is recorded more than ninety (90) business days after the date the remonstrance waiver is executed.

SECTION 2. IC 36-4-3-7, AS AMENDED BY P.L.86-2018, SECTION 342, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 7. (a) After an ordinance is adopted under section 3, 4, 5, or 5.1 of this chapter, it must be published in the manner prescribed by IC 5-3-1. Except as provided in subsection (b), (c), (d), or (f), in the absence of remonstrance and appeal under section 11 or 15.5 of this chapter, the ordinance takes effect at least ninety (90) days after its publication and upon the filing required by section 22(a) of this chapter.

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

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

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

(2) approved by ordinance of the county legislative body to be added to an existing fire protection district under IC 36-8-11-11, notwithstanding that the territory's addition to the fire protection district has not yet taken effect;

shall be considered a part of the fire protection district as of the date that the fire protection district was originally established.

(d) Except as provided in subsection (b), whenever a municipality annexes territory, all or part of which lies within a fire protection district (IC 36-8-11), the annexation ordinance (in the absence of remonstrance and appeal under section 11 or 15.5 of this chapter) takes
effect the second January 1 that follows the date the ordinance is
adopted and upon the filing required by section 22(a) of this chapter.
The municipality shall:

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

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

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

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

SECTION 3. IC 36-4-3-11.7, AS ADDED BY P.L.228-2015,
SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
JULY 1, 2019]: Sec. 11.7. (a) Notwithstanding any other law, a waiver
of the right of remonstrance executed before, on, or after June 30,
2015, July 1, 2019, that is not void under subsection (c) expires not
later than fifteen (15) ten (10) years after the date the waiver was
executed.

(b) This subsection applies to any deed recorded after June 30,
2015. This subsection applies only to property that is subject to a
remonstrance waiver. A municipality shall, within a reasonable time
after the recording of a deed to property located within the
municipality, provide written notice to the property owner that a waiver
of the right of remonstrance exists with respect to the property.
(c) This subsection applies to a remonstrance waiver executed before, on, or after June 30, 2019. A remonstrance waiver is void if the remonstrance waiver is recorded more than ninety (90) business days after the date the remonstrance waiver is executed.

SECTION 4. IC 36-8-11-22 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 22. (a) Except as provided in subsection (b), any area that is part of a fire protection district and is annexed by a municipality that is not a part of the district ceases to be a part of the fire protection district when the municipality begins to provide fire protection services to the area.

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

SECTION 5. IC 36-9-22-2, AS AMENDED BY P.L.18-2018, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: 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:

(1) the parties to the contract; and
(2) the successors in title of the parties to the contract;
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) Notwithstanding subsection (c), the works board of a
municipality may waive the provisions of subsection (c) in the contract
if the works board considers a waiver of subsection (c) to be in the best
interests of the municipality.

(e) 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.

(f) 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.

(g) 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.

(h) Notwithstanding any other law, a waiver of the right of
remonstrance executed before, on, or after June 30, 2015, July 1,
2019, that is not void under subsection (j), expires not later than fifteen (15) ten (10) years after the date the waiver was executed.

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

(j) This subsection applies to a remonstrance waiver executed before, on, or after June 30, 2019. A remonstrance waiver is void if the remonstrance waiver is recorded more than ninety (90) business days after the date the remonstrance waiver is executed.

SECTION 6. IC 36-9-25-14, AS AMENDED BY P.L.228-2015, SECTION 24, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 14. (a) As to each municipality to which this chapter applies:

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

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

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

(b) Upon request by:

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

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

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

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

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

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

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

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

1. neither object to nor file a remonstrance against the proposed
   annexation of the property by a municipality within the
   boundaries of the district;
2. not appeal from an order or a judgment annexing the property
to a municipality; and
3. not file a complaint or an action against annexation
   proceedings.

(h) 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, a waiver of the right to remonstrate under
subsection (g) is binding as to an executor, administrator, heir, devisee,
grantee, successor, or assign of a party to a sewer service agreement
under subsection (g) only if the executor, administrator, heir, devisee,
grantee, successor, or assign:

1. has actual notice of the waiver; or
2. has constructive notice of the waiver because the sewer
   service agreement or a signed memorandum of the sewer service
   agreement stating the waiver has been recorded in the chain of
   title of the property.

(i) This section does not affect any sewer service agreements
entered into before March 13, 1953. However, subsections (k) and
(m) apply to a remonstrance waiver regardless of when the waiver
was executed.

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

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

(k) Notwithstanding any other law, a waiver of the right of
remonstrance executed before, on, or after June 30, 2015, July 1,
2019, if the waiver is not void under subsection (m), expires not later than fifteen (15) ten (10) years after the date the waiver was executed.

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

(m) This subsection applies to a remonstrance waiver executed before, on, or after June 30, 2019. A remonstrance waiver is void if the remonstrance waiver is recorded more than ninety (90) business days after the date the remonstrance waiver is executed.