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# HOUSE BILL No. 1141

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 13-26-12; IC 36-9.

**Synopsis:** Sewer liens on rental property. Requires a municipality that operates a sewage works to require a security deposit. Provides that a lien for unpaid sewage fees does not attach against real property if someone other than the owner occupies the property, and that a lien that attached before July 1, 2004, to property occupied by someone other than the owner is void. Repeals a provision allowing a sewer lien to attach against real property occupied by someone other than the owner.

**Effective:** July 1, 2004.

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January 13, 2004, read first time and referred to Committee on Local Government.

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Second Regular Session 113th General Assembly (2004)

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 2003 Regular Session of the General Assembly.

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# HOUSE BILL No. 1141



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:*

1 SECTION 1. IC 13-26-12-2 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 2. Except as provided  
3 in ~~sections section 5 and 6~~ of this chapter, a lien attaches at the time of  
4 the recording of the list in the county recorder's office as provided in  
5 IC 13-26-13. The lien:

- 6 (1) is superior to and takes precedence over all other liens except  
7 the lien for taxes; and
- 8 (2) shall be enforced under this article.

9 SECTION 2. IC 13-26-12-6.1 IS ADDED TO THE INDIANA  
10 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
11 [EFFECTIVE JULY 1, 2004]: **Sec. 6.1. After June 30, 2004, a lien**  
12 **does not attach against real property for rates or charges assessed**  
13 **against the property under this article if a person other than the**  
14 **owner of the property occupies the property.**

15 SECTION 3. IC 36-9-23-28, AS AMENDED BY P.L.2-2002,  
16 SECTION 123, IS AMENDED TO READ AS FOLLOWS  
17 [EFFECTIVE JULY 1, 2004]: Sec. 28. (a) The legislative body of a



1 municipality that operates sewage works under this chapter ~~may~~, **shall**,  
2 by ordinance, require the owners, lessees, or users of property served  
3 by the works to pay a deposit to ensure payment of sewer fees.

4 (b) The deposit required may not exceed the estimated average  
5 payment due from the property served by the sewage works for a three  
6 (3) month period. The deposit must be retained in a separate fund.

7 (c) The deposit, less any outstanding penalties and service fees,  
8 shall be refunded to the depositor after a notarized statement from the  
9 depositor that as of a certain date the property being served:

- 10 (1) has been conveyed or transferred to another person; or
- 11 (2) no longer uses or is connected with any part of the municipal  
12 sewage system.

13 A statement under subdivision (1) must include the name and address  
14 of the person to whom the property is conveyed or transferred.

15 (d) If a depositor fails to satisfy costs and fees within sixty (60) days  
16 after the termination of ~~his~~ **the depositor's** use or ownership of the  
17 property served, ~~he~~ **the depositor** forfeits ~~his~~ **the depositor's** deposit  
18 and all accrued interest. The forfeited amount shall be applied to the  
19 depositor's outstanding fees. Any excess that remains due after  
20 application of the forfeiture may be collected in the manner prescribed  
21 by section 31 or 32 of this chapter.

22 (e) A deposit may be used to satisfy all or part of any judgment  
23 awarded the municipality under section 31 of this chapter.

24 (f) A deposit made under this section that has remained unclaimed  
25 by the depositor for more than seven (7) years after the termination of  
26 the services for which the deposit was made becomes the property of  
27 the municipality. IC 32-34-1 (unclaimed property) does not apply to a  
28 deposit described in this subsection.

29 SECTION 4. IC 36-9-23-32 IS AMENDED TO READ AS  
30 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 32. (a) **Except as**  
31 **provided in subsection (c)**, fees assessed against real property under  
32 this chapter or under any statute repealed by IC 19-2-5-30 (**repealed**  
33 **September 1, 1981**) constitute a lien against the property assessed. The  
34 lien is superior to all other liens except tax liens. Except as provided in  
35 subsections (b) and (c), the lien attaches when notice of the lien is filed  
36 in the county recorder's office under section 33 of this chapter.

37 (b) A fee is not enforceable as a lien against a subsequent owner of  
38 property unless the lien for the fee was recorded with the county  
39 recorder before the conveyance to the subsequent owner. If the property  
40 is conveyed before the lien can be filed, the municipality shall notify  
41 the person who owned the property at the time the fee became payable.  
42 The notice must inform the person that payment, including penalty fees

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1 for delinquencies, is due not less than fifteen (15) days after the date of  
2 the notice. If payment is not received within one hundred eighty (180)  
3 days after the date of the notice, the amount due may be expensed as a  
4 bad debt loss.

5 ~~(c) A lien attaches against real property occupied by someone other~~  
6 ~~than the owner only if the utility notified the owner within twenty (20)~~  
7 ~~days after the time the utility fees became sixty (60) days delinquent.~~  
8 ~~However, the utility is required to give notice to the owner only if the~~  
9 ~~owner has given the general office of the utility written notice of the~~  
10 ~~address to which his notice is to be sent.~~

11 **(c) After June 30, 2004, a lien does not attach against real**  
12 **property for fees assessed against the property under this chapter**  
13 **if a person other than the owner of the property occupies the**  
14 **property.**

15 (d) The municipality shall release:  
16 (1) liens filed with the county recorder after the recorded date of  
17 conveyance of the property; and  
18 (2) delinquent fees incurred by the seller;  
19 upon receipt of a verified demand in writing from the purchaser. The  
20 demand must state that the delinquent fees were not incurred by the  
21 purchaser as a user, lessee, or previous owner, and that the purchaser  
22 has not been paid by the seller for the delinquent fees.

23 SECTION 5. IC 36-9-25-11 IS AMENDED TO READ AS  
24 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 11. (a) In connection  
25 with its duties, the board may fix fees for the treatment and disposal of  
26 sewage and other waste discharged into the sewerage system, collect  
27 the fees, and establish and enforce rules governing the furnishing of  
28 and payment for sewage treatment and disposal service. The fees must  
29 be just and equitable and shall be paid by any user of the sewage works  
30 and the owner of every lot, parcel of real property, or building that is  
31 connected with and uses the sewage works of the district by or through  
32 any part of the sewerage system. This section applies to owners of  
33 property that is partially or wholly exempt from taxation, as well as  
34 owners of property subject to full taxation.

35 (b) The board may change fees from time to time. The fees, together  
36 with the taxes levied under this chapter, must at all times be sufficient  
37 to produce revenues sufficient to pay operation, maintenance, and  
38 administrative expenses, to pay the principal and interest on bonds as  
39 they become due and payable, and to provide money for the revolving  
40 fund authorized by this chapter.

41 (c) Fees may not be established until a public hearing has been held  
42 at which all the users of the sewage works and owners of property

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1 served or to be served by the works, including interested parties, have  
 2 had an opportunity to be heard concerning the proposed fees. After  
 3 introduction of the resolution fixing fees, and before they are finally  
 4 adopted, notice of the hearing setting forth the proposed schedule of  
 5 fees shall be given by publication in accordance with IC 5-3-1. After  
 6 the hearing the resolution establishing fees, either as originally  
 7 introduced or as amended, shall be passed and put into effect.  
 8 However, fees related to property that is subject to full taxation do not  
 9 take effect until they have been approved by ordinance of the municipal  
 10 legislative body.

11 (d) A copy of the schedule of the fees shall be kept on file in the  
 12 office of the board and must be open to inspection by all interested  
 13 parties. The fees established for any class of users or property served  
 14 shall be extended to cover any additional premises thereafter served  
 15 that fall within the same class, without the necessity of hearing or  
 16 notice.

17 (e) A change of fees may be made in the same manner as fees were  
 18 originally established. However, if a change is made substantially pro  
 19 rata for all classes of service, hearing or notice is not required, but  
 20 approval of the change by ordinance of the municipal legislative body  
 21 is required.

22 (f) If a fee established is not paid within thirty (30) days after it is  
 23 due, the amount, together with a penalty of ten percent (10%) and a  
 24 reasonable attorney's fee, may be recovered by the board from the  
 25 delinquent user or owner of the property served in a civil action in the  
 26 name of the municipality.

27 (g) Fees assessed against real property under this section also  
 28 constitute a lien against the property assessed. **Except as provided in**  
 29 **subsection (k)**, the lien attaches at the time of the filing of the notice  
 30 of lien in the county recorder's office. The lien is superior to all other  
 31 liens except tax liens, and shall be enforced and foreclosed in the same  
 32 manner as is provided for liens under IC 36-9-23-33 and  
 33 IC 36-9-23-34.

34 (h) ~~This subsection applies to fees due after July 1, 1988.~~ **Except as**  
 35 **provided in subsection (k)**, a fee assessed against real property under  
 36 this section constitutes a lien against the property assessed only when  
 37 the fee is delinquent for no more than three (3) years from the day after  
 38 the fee is due.

39 (i) In addition to the penalties under subsections (f) and (g) and  
 40 section 11.5 of this chapter, a delinquent user may not discharge water  
 41 into the public sewers and may have the property disconnected from  
 42 the public sewers.

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1 (j) The authority to establish a user fee under this section includes  
2 fees to recover the cost of construction of sewage works from industrial  
3 users as defined and required under federal statute or rule. Any  
4 industrial users' cost recovery fees may become a lien upon the real  
5 property and shall be collected in the manner provided by law. In  
6 addition, the imposition of the fees, the use of the amounts collected,  
7 and the criteria for the fees must be consistent with the regulations of  
8 the federal Environmental Protection Agency.

9 (k) **After June 30, 2004, a lien does not attach against real  
10 property for fees assessed against the property under this section  
11 if a person other than the owner of the property occupies the  
12 property.**

13 SECTION 6. IC 13-26-12-6 IS REPEALED [EFFECTIVE JULY 1,  
14 2004].

15 SECTION 7. [EFFECTIVE JULY 1, 2004] **Notwithstanding the  
16 repeal of IC 13-26-12-6 by this act, a lien that:**

- 17 (1) **attached before July 1, 2004, against real property**  
18 **occupied by someone other than the owner under**  
19 **IC 13-26-12-6 before its repeal by this act; and**
- 20 (2) **is not released from the property on July 1, 2004;**  
21 **is void and unenforceable.**

22 SECTION 8. [EFFECTIVE JULY 1, 2004] **Notwithstanding**  
23 **IC 36-9-23-28 as amended by this act, a lien that:**

- 24 (1) **attached before July 1, 2004, against real property**  
25 **occupied by someone other than the owner under**  
26 **IC 36-9-23-28(c) before its amendment by this act; and**
- 27 (2) **is not released from the property on July 1, 2004;**  
28 **is void and unenforceable.**

29 SECTION 9. [EFFECTIVE JULY 1, 2004] **Notwithstanding**  
30 **IC 36-9-25-11 as amended by this act, a lien that:**

- 31 (1) **attached before July 1, 2004, against real property**  
32 **occupied by someone other than the owner under**  
33 **IC 36-9-25-11 before its amendment by this act; and**
- 34 (2) **is not released from the property on July 1, 2004;**  
35 **is void and unenforceable.**

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