

IC 36-9-39

Chapter 39. Barrett Law Funding for Municipal Sewers

IC 36-9-39-1

Application of chapter

Sec. 1. This chapter applies to all municipalities.

As added by P.L.98-1993, SEC.10.

IC 36-9-39-1.3

"Construction" defined

Sec. 1.3. As used in this chapter, "construction" includes repair, remodeling, renovation, or betterment, but only in instances when:

- (1) a municipality acquires a sewage works that is in need of repair, remodeling, renovation, or betterment; and
- (2) before the acquisition of the sewage works, the municipality was not responsible for the maintenance of the sewage works.

As added by P.L.1-1994, SEC.184.

IC 36-9-39-2

Transfer of powers and duties of municipal works board to utility service board; authorization

Sec. 2. If a municipality has a utility service board that operates at least one (1) municipally owned utility, the municipal legislative body may by ordinance transfer the powers and duties of the municipal works board under this chapter to the utility service board.

As added by P.L.98-1993, SEC.10.

IC 36-9-39-3

Adoption of resolution; contents

Sec. 3. (a) The municipal works board shall adopt a resolution containing the information required under subsection (b) if:

- (1) the municipal works board orders the construction of any sewage works in the municipality; and
- (2) the cost of that construction is to be assessed against property under this chapter.

(b) A resolution adopted under subsection (a) must include all of the following:

- (1) A description of the works to be constructed.
- (2) Full detail drawings and specifications for the works.

As added by P.L.98-1993, SEC.10.

IC 36-9-39-4

Notice of resolution and hearing; cost estimate

Sec. 4. (a) Notice of the resolution required under section 3 of this chapter shall be published in accordance with IC 5-3-1. The notice must state the date, time, and place of a hearing at which the municipal works board will hear all interested persons, including persons whose property is affected or will be affected by the proposed sewage works, on the question of whether the special benefits that will accrue to the property to be assessed will be equal

to the estimated cost of the works.

(b) On or before the date specified in the notice, the engineer shall file with the works board the engineer's estimate of the total cost of the work, including any amount determined under IC 36-9-22-5.

As added by P.L.98-1993, SEC.10.

IC 36-9-39-5

Conduct of hearing; findings

Sec. 5. (a) At the hearing specified in the notice given under section 4 of this chapter, the municipal works board shall hear all interested persons on the question of special benefits and on any other matter related to the proposed sewage works.

(b) If after the hearing the works board finds that the special benefits accruing to the abutting property are equal to the estimated cost of the sewage works, the finding shall be entered of record. The finding is final and conclusive on all parties.

(c) If after the hearing the works board finds that the special benefits accruing to the abutting property are not equal to the estimated cost of the sewage works, the works board may not proceed with the construction of the sewage works under any resolution for one (1) year. However, the works board may proceed with the sewage works if the works board finds that the municipality is benefited in an amount sufficient to cover the deficiency.

As added by P.L.98-1993, SEC.10.

IC 36-9-39-6

Confirmation or modification of resolution; subsequent proceedings under alternative sections depending on nature of sewage works

Sec. 6. (a) After the hearing under section 5 of this chapter, the original resolution may be rescinded, confirmed, or modified.

(b) If the resolution is confirmed or modified, the municipal works board shall do the following:

(1) Proceed under section 7 of this chapter if the resolution is for sewage works intended only for use by owners of abutting property.

(2) Proceed under section 8 of this chapter if the resolution is for sewage works intended to receive sewage from collateral drains.

As added by P.L.98-1993, SEC.10.

IC 36-9-39-7

Sewage works for use by owners of abutting property; bidding procedure

Sec. 7. If the proposed sewage works are intended only for use by owners of abutting property, the municipal works board shall in accordance with IC 5-3-1 publish a notice that does the following:

(1) Informs the public and contractors of the following:

(A) The general nature of the works.

(B) The fact that drawings and specifications of the works

- are on file in the office of the works board.
- (2) Requests sealed proposals for the works by a specified date.
- (3) Specifies the date the proposals shall be opened and considered.

As added by P.L.98-1993, SEC.10.

IC 36-9-39-8

Sewage works adapted for receiving sewage from collateral sewers; map, profiles, drawings, and specifications; filing

Sec. 8. (a) The municipal works board shall prepare the information described in subsection (b) if, from the size and character of the proposed sewage works, the proposed sewage works are intended and adapted as follows:

- (1) For use by owners of abutting property along the line of the works.
- (2) For receiving sewage from collateral sewers that have been or may be constructed.

(b) If the conditions of subsection (a) are satisfied, the municipal works board shall prepare the following:

- (1) A map showing the following:
 - (A) The exact course of the proposed works.
 - (B) Any appurtenances and branches of the works.
 - (C) The boundary lines of the district to be beneficially affected by and assessed for the construction of the works.
- (2) All necessary profiles, drawings, and specifications for the works.

(c) The map, profiles, drawings, and specifications prepared under subsection (b) shall be placed on file in the office of the works board.

As added by P.L.98-1993, SEC.10.

IC 36-9-39-9

Sewage works adapted for receiving sewage from collateral sewers; resolution; notice

Sec. 9. (a) After the material prepared under section 8 of this chapter is filed, the municipal works board shall do the following:

- (1) Adopt a resolution ordering the construction of the sewage works.
- (2) Publish a notice of the adoption of the resolution, in accordance with IC 5-3-1.

(b) The resolution and notice must describe the following:

- (1) The general character of the sewage works.
- (2) The termini and general course of the sewage works.
- (3) The boundary lines of the district or area to be drained by and assessed for the sewage works.

(c) The notice must state the date, time, and place of a hearing at which the board will do the following:

- (1) Receive and hear remonstrances from persons interested in or affected by the construction of the works.
- (2) Hear and determine the following questions:
 - (A) Whether the district is properly bounded for the purpose

of the drainage.

(B) Whether other territory not included in the boundaries should be added to the district.

(C) Whether any of the territory included should be excluded from the district.

(D) Whether the special benefits accruing to the land within the district and to the municipality from the proposed improvement will be equal to the estimated cost of the improvement.

As added by P.L.98-1993, SEC.10.

IC 36-9-39-10

Sewage works adapted for receiving sewage from collateral sewers; estimate of costs; hearing

Sec. 10. (a) On or before the day the notice is first published under section 9 of this chapter, the engineer shall file with the municipal works board the engineer's estimate of the total cost of the sewage works. A contract that exceeds this estimate may not be let under the resolution.

(b) At the hearing specified in the notice, the works board shall hear and receive evidence on the questions listed in section 9(c) of this chapter from all persons owning property within the district who appear before the board.

As added by P.L.98-1993, SEC.10.

IC 36-9-39-11

Sewage works adapted for receiving sewage from collateral sewers; hearing; findings

Sec. 11. (a) If after a hearing under section 10 of this chapter the municipal works board finds that:

(1) the district to be drained is properly bounded; and

(2) the special benefits to the property within the district and to the municipality will be equal to the estimated cost of the sewage works;

the findings shall be entered of record and the resolution shall be confirmed or modified. The findings of the works board under this subsection are final and conclusive as to all parties.

(b) If after the hearing under section 10 of this chapter the works board finds that the benefits will not equal the estimated cost, the board may not proceed with the construction of the sewage works under the resolution.

As added by P.L.98-1993, SEC.10.

IC 36-9-39-12

Sewage works adapted for receiving sewage from collateral sewers; enlargement of district; resolution; notice; hearing

Sec. 12. (a) If after a hearing under section 10 of this chapter the municipal works board finds that the district described in the resolution and notice should be enlarged by adding to the district other lots and lands that, at the hearing, were shown to be benefited

by the sewage works, the board may do the following:

- (1) Adopt a supplementary resolution reciting this finding.
- (2) Proceed under that supplementary resolution.

(b) The works board shall give notice to the property owners in the added territory by publishing in accordance with IC 5-3-1 a notice that does the following:

- (1) Describes the proposed works.
- (2) Sets forth the boundaries of the original district.
- (3) Describes the boundaries of the territory proposed to be added.
- (4) Fixes a date when the owners of property in the added territory may be heard on the question of whether the new territory or any part of the new territory should be incorporated into the original district.

(c) At the hearing specified in the notice, any of the owners of the lots or lands situated in the territory proposed to be added to the district may appear before and be heard by the works board on the question of whether the territory should be added. The decision of the works board is final and conclusive as to all parties in the territory.

(d) If the original resolution is confirmed or modified, the works board shall do the following:

- (1) Proceed to advertise for proposals.
- (2) Open and consider the proposals in the same manner as other proposals under this chapter.

As added by P.L.98-1993, SEC.10.

IC 36-9-39-13

Payment of costs; appropriations; assessments; contracts

Sec. 13. (a) The municipal legislative body may by ordinance appropriate money from the general fund or from the sanitary district funds of the municipality to pay all or part of the cost of constructing sewage works under this chapter.

(b) Any costs not paid by appropriation shall be paid by at least one (1) of the following:

- (1) By assessment under sections 15 through 27 of this chapter.
- (2) By contract under IC 36-9-22.

(c) A second class city may not make an appropriation under this section unless the following conditions exist:

- (1) The city works board makes a request for the appropriation to the city fiscal officer.
- (2) The city fiscal officer prepares and submits to the city legislative body an ordinance for the appropriation.

As added by P.L.98-1993, SEC.10.

IC 36-9-39-14

Payment of costs; application of statutes concerning public bond issues, construction, appropriations, and tax levies

Sec. 14. Construction of sewage works from a municipal general fund must comply with the statutes concerning public bond issues,

construction, appropriations, and tax levies.
As added by P.L.98-1993, SEC.10.

IC 36-9-39-15

Sewage works for use by property owners along street, alley, or other public place; requirements

Sec. 15. (a) The requirements listed in subsection (b) apply only if the municipal works board finds that the sewage works to be constructed:

- (1) are intended and adapted only for local use by property owners along the line of the street, alley, or other public place on which the sewage works are constructed; and
- (2) are not intended or adapted for receiving sewage from collateral sewers.

(b) The following requirements apply to the sewage works if the conditions of subsection (a) are satisfied:

- (1) The abutting lots, parcels, and tracts of land shall be assessed primarily for the cost of the sewage works.
- (2) The cost of the sewage works shall be primarily estimated according to the total number of lots abutting on the line of the works and served by the sewage works.
- (3) The costs shall be primarily apportioned equally among all abutting lands or lots. However, adjustments shall be made as provided by section 16 of this chapter.

As added by P.L.98-1993, SEC.10.

IC 36-9-39-16

Sewage works for use by property owners along street, alley, or other public place; assessments; computation

Sec. 16. (a) The primary assessment for each lot abutting on and served by the sewage works shall be determined by dividing the estimated total cost of the sewage works by the total number of lots.

(b) The total number of lots shall be computed as follows:

- (1) If all or any part of the sewage works is located within an area platted or to be platted, each lot abutting on and served by the sewage works as shown in the plat shall be included in the total number of lots.
- (2) If all or any part of the sewage works is located within an area that:
 - (A) is unplatted;
 - (B) contains a residence on each parcel of land; and
 - (C) is subject to zoning restrictions that prevent an increase in the number of residences;

each parcel of land that is abutting on or served by the sewage works and that contains a residence shall be included in the total number of lots as if the parcel was a platted lot.

- (3) Except as provided in subdivision (2), if all or any part of the sewage works is located in an unplatted area, the number of lots to be included in the total number of lots shall be determined by dividing:

(A) the total front footage of the property abutting on and served by the sewage works within the unplatted area on either or both sides of the street, alley, or right-of-way in which the sewage works are located; by

(B) one hundred twenty-five (125) feet.

The result determined under clauses (A) and (B) shall be rounded to the nearest whole number.

(4) The front footage of property may not be used to determine the number of lots included in an unplatted area if the front footage:

(A) is not available for future development; or

(B) is restricted against usage because of:

(i) limited access; or

(ii) any other reasons.

(5) The total number of lots for a particular sewage works is the sum of the number of platted and unplatted lots as determined under subdivisions (1) through (4).

As added by P.L.98-1993, SEC.10.

IC 36-9-39-17

Sewage works for use by property owners along street, alley, or other public place; property abutting on two streets or one street and one alley; assessments; computation

Sec. 17. (a) If a platted lot or parcel of land:

(1) abuts on:

(A) at least two (2) streets or alleys; or

(B) one (1) street and one (1) alley; and

(2) has already been assessed for sewage works constructed for local use in any street or alley;

the works board shall take the previous assessment into account in making a subsequent assessment against the land under this section and sections 15 through 16 of this chapter.

(b) If the works board finds that:

(1) a lot, parcel, or tract of land included in a district, subdistrict, or zone cannot be reasonably connected with or served by the sewage works either directly or by collateral branches or extensions;

(2) the sewage works does not confer benefit on the property;

or

(3) the benefit that may be conferred by the sewage works is less than the amount computed in the manner provided in this section and sections 15 through 16 of this chapter;

the works board may enter upon the primary assessment roll the actual amount, if any, found by the works board as the special benefit to the property.

(c) An amount credited, eliminated, or reduced shall be primarily apportioned over all the other property assessable for the sewage works, as the works board may find the other property to be benefited in addition to the amounts estimated and apportioned under section 16 of this chapter. If all of the amounts credited, eliminated,

or reduced are not reapportioned upon the other property, a deficiency shall be assessed against the municipality.

As added by P.L.98-1993, SEC.10.

IC 36-9-39-18

Sewage works adapted for receiving sewage from collateral sewers; assessments

Sec. 18. (a) The municipal works board shall make a division of the costs of the sewage works under subsection (b) if the municipal works board finds that a sewage works to be constructed or an enlargement of sewage works already constructed, is intended and adapted for the following:

- (1) Use by abutting property owners along the line of the works.
- (2) Receiving sewage from collateral sewers that have been or may be constructed.

(b) If the conditions of subsection (a) are satisfied, the works board shall make a division of the costs of the sewage works in the following manner:

- (1) That part of the cost that is equivalent to the cost of construction of adequate local sewage works not adapted to receive sewage from collateral sewers shall be primarily assessed against the abutting property owners. The assessment shall be in the same manner and to the same extent as assessments are primarily made against property owners for local sewage works under sections 15 through 17 of this chapter.
- (2) The excess of cost above the cost described in subdivision (1) shall be primarily assessed against each lot or parcel of land in the district to be drained. The assessment shall be in the proportion that the area of each lot or parcel bears to the total area of the district, including abutting property owners and the owners not situated on the line of the works.

As added by P.L.98-1993, SEC.10.

IC 36-9-39-19

Sewage works adapted for receiving sewage from collateral sewers; assessments; hearing; review

Sec. 19. All primary or preliminary assessments made under section 18 of this chapter are subject to review and revision by the works board after a hearing under section 23 of this chapter.

As added by P.L.98-1993, SEC.10.

IC 36-9-39-20

Assessments; inclusion of amount determined under IC 36-9-22-5

Sec. 20. An assessment made under sections 15 through 19 of this chapter must include any amount determined under IC 36-9-22-5.

As added by P.L.98-1993, SEC.10.

IC 36-9-39-21

Assessment roll; formulation; contents

Sec. 21. (a) After the contract for the construction of sewage works has been completed, the municipal works board shall make out an assessment roll for the property that is primarily assessed for the sewage works.

(b) The assessment roll prepared under subsection (a) must include the following:

- (1) The name of the owner of each lot or parcel of land.
- (2) A description of each lot or parcel of land.
- (3) The total primary assessment against each lot or parcel of land, as determined under sections 15 through 19 of this chapter. The amount of the total primary assessment shall be listed opposite each name and description.

As added by P.L.98-1993, SEC.10.

IC 36-9-39-22

Assessment roll; finality of primary or preliminary assessments; notice of works, assessment roll, and hearing on assessments

Sec. 22. (a) The primary or preliminary assessments indicated on the assessment roll are considered the special benefits accruing to the land assessed and are final and absolute unless changed under sections 23 and 24 of this chapter.

(b) Immediately after the assessment roll is completed and filed, the municipal works board shall publish a notice in accordance with IC 5-3-1. The notice must do the following:

- (1) Describe the general character of the sewage works.
- (2) Describe the street, alley, or other public place on or in which the sewage works have been constructed.
- (3) Describe the terminals of the sewage works.
- (4) If the sewage works are intended to serve a district, describe the boundaries of the district benefited and to be assessed.
- (5) State that the assessment roll, with:
 - (A) the names of the owners;
 - (B) descriptions of property to be assessed; and
 - (C) amounts of the preliminary or primary assessments;is on file and may be inspected in the office of the works board.
- (6) Establish the date and time for a hearing at which the works board will, at the works board's office, do the following:
 - (A) Receive and hear remonstrances against the amounts assessed on the assessment roll.
 - (B) Determine whether the lots and parcels of land have been or will be specially benefited by the sewage works in the amounts listed on the assessment roll.

As added by P.L.98-1993, SEC.10.

IC 36-9-39-23

Hearing on assessments; findings; modification of preliminary or primary assessments

Sec. 23. (a) At the hearing fixed under section 22 of this chapter, owners of assessed property may appear before the municipal works board and file remonstrances against the assessments. The works

board may continue proceedings from day to day, as necessary to hear the evidence concerning the assessments.

(b) The works board shall determine at the hearing whether the several lots and parcels of land primarily assessed are specially benefited in the amounts respectively assessed against the lots and parcels of land in the preliminary or primary assessment.

(c) The works board shall sustain or modify, in whole or in part, the preliminary assessment as indicated on the assessment roll, by confirming, increasing, or reducing the preliminary or primary assessment against all or part of the property described in the assessment roll. The decision of the works board must be based on the works board's findings concerning the special benefits received on account of the sewage works.

(d) The works board shall also determine at the hearing what part, if any, of the benefits resulting from the sewage works accrue to the municipality and shall be assessed against the municipality on the assessment roll.

As added by P.L.98-1993, SEC.10.

IC 36-9-39-24

Hearing on assessments; modification of assessment roll; delivery to fiscal officer

Sec. 24. The works board shall do the following:

- (1) Complete the assessment roll and make a decision by modifying or confirming the assessment roll.
- (2) Show the amount of special benefits opposite each name and description. The works board shall show the amount of special benefit against the municipality if the works board finds that the municipality is specially benefited.
- (3) Deliver the completed assessment roll to the municipal fiscal officer.

As added by P.L.98-1993, SEC.10.

IC 36-9-39-25

Hearing on assessments; finality of decision; appeals; effect of defective procedures

Sec. 25. (a) Except as provided in subsection (b), the decision of the works board concerning all benefits is final and conclusive on all parties.

(b) An owner of an assessed lot or parcel of land who has filed a written remonstrance with the board may appeal in the manner prescribed by IC 34-13-6. The appeal does not delay the delivery of the assessment roll to the municipal fiscal officer and does not affect the rights of any other property owner.

(c) If an assessment is reduced on appeal, the works board shall certify the correction to the municipal fiscal officer. The municipal fiscal officer shall then enter the proper amount of the assessment on the roll.

(d) The following applies if there is a defect in the assessment proceedings with respect to at least one (1) interested person:

- (1) The defect affects the proceedings only to the extent that the defect affects the interest or property of the person or persons.
- (2) Supplementary proceedings of the same general character as those described by this chapter may be had to correct or supply the defect.

As added by P.L.98-1993, SEC.10. Amended by P.L.1-1998, SEC.219.

IC 36-9-39-26

Duties of fiscal officer

Sec. 26. When the assessment roll has been delivered to the municipal fiscal officer, the municipal fiscal officer shall discharge the same duties in respect to the assessments as are prescribed by the statutes concerning street, alley, and other improvement assessments in the municipality.

As added by P.L.98-1993, SEC.10.

IC 36-9-39-27

Assessments against municipality; payment; property not liable for assessments; subrogation rights of municipality

Sec. 27. (a) The municipal works board shall pay assessments made against the municipality under section 23(d) of this chapter from money appropriated to the use of the municipal works board for that purpose. The payment shall be made upon the completion and acceptance of the sewage works.

(b) Unless an ordinance expressly appropriates a greater amount for the specific sewage works, a payment under subsection (a) is limited to the following:

- (1) Not more than five thousand dollars (\$5,000) in a city.
- (2) Not more than five hundred dollars (\$500) in a town.

(c) The municipality shall also pay the part of the cost of the sewage works that would be assessable against property not liable for assessment if the property was liable for assessment. The payment shall be made from the municipal general fund upon the completion and acceptance of the sewage works.

(d) A municipality that pays assessments under this section is subrogated to the rights and remedies of the contractor constructing the sewage works.

As added by P.L.98-1993, SEC.10.

IC 36-9-39-28

Enforcement of assessments and bonds; statutes applicable

Sec. 28. (a) The statutes described in subsection (b) apply to the enforcement of assessments made and bonds issued for the construction of sewage works or levees for the following:

- (1) The drainage of a parcel, lot, or tract of land.
- (2) A change in a stream or watercourse.

(b) Statutes concerning the following are subject to subsection (a):

- (1) Liens for street, alley, and other improvements.
- (2) The payment of street, alley, and other improvement

assessments by installments.

- (3) The interest rates on the assessments.
- (4) The deposit of the proceeds of the assessments into a separate special fund for a particular improvement.
- (5) The application of the proceeds of the assessments under a separate special fund for a particular improvement.
- (6) The issuance, sale, and redemption of bonds to anticipate the assessments.
- (7) The duties of the municipal fiscal officer.
- (8) The enforcement of assessment liens for street, alley, and other improvements.
- (9) Actions foreclosing liens, attorney's fees in those foreclosure actions, and the procedure in those foreclosure actions.
- (10) The conduct of sales by the sheriff under any decree of foreclosure issued in a foreclosure action.
- (11) The execution of certificates and deeds.
- (12) All matters of a similar nature regarding any of the following:
 - (A) The enforcement and collection of assessments for street, alley, and other improvements.
 - (B) The rights of contractors, assignees, and bondholders under the assessments.

As added by P.L.98-1993, SEC.10.

IC 36-9-39-29

Contractors; submission of monthly estimates of work done; issuance of certificates in payment; negotiability; interest; retainage

Sec. 29. (a) A contractor for construction under this chapter is entitled to monthly estimates of the work done during each month. The estimates shall be made by the engineer and approved by the municipal works board.

(b) The works board shall issue to the contractor certificates for sixty-five percent (65%) of the amount shown by the estimates to be due to the contractor. The contractor is entitled to receive the amounts named in the certificates in cash or sewer improvement bonds to be collected or issued by the municipality, as is provided for in the construction of street, alley, and other improvements.

(c) Certificates issued under this section (or under IC 36-9-21 before its repeal in 1993) are negotiable instruments.

(d) Interest on the certificates is payable out of the contract price and the special fund collected from the special assessments against the benefited property.

(e) If the municipality in issuing a contract for construction has required and obtained performance and payment bonds covering one hundred percent (100%) of the cost of construction, retainage shall be withheld as follows:

- (1) This subdivision applies until the public work is fifty percent (50%) complete. The works board shall, on approval of

contractor monthly payment estimates, issue to the contractor certificates for ninety percent (90%) of the amount shown to be due to the contractor.

(2) This subdivision applies after the public work is fifty percent (50%) complete. If the works board determines that the contractor is being responsive and responsible in carrying out the construction, the works board may, on approval of contractor monthly payment estimates, issue to the contractor certificates for one hundred percent (100%) of the amount shown to be due to the contractor.

As added by P.L.98-1993, SEC.10. Amended by P.L.1-1994, SEC.183.

IC 36-9-39-30

Sewage works through cemeteries; purchase or condemnation of rights-of-way; assessments prohibited; removal of bodies; record

Sec. 30. (a) Except as provided in subsection (b), if the municipal works board finds it necessary to extend any sewage works through or adjacent to a lot or parcel of land held or used for cemetery purposes, the municipality may purchase or condemn all rights-of-way necessary for the extension.

(b) A lot or parcel of land held or used for cemetery purposes may not be assessed for the construction of the sewage works. The cost of the sewage works that would otherwise be assessable against the lot or parcel of land shall be assessed against and paid by the municipality.

(c) If the municipality acquires a right-of-way under this section by condemnation, an owner of property or valuable interests sought to be taken or to be injuriously affected who is unknown may be designated as unknown upon the list required by the statute governing municipal condemnation proceedings and in all subsequent steps in the proceedings, including notice by publication.

(d) If a body remains buried within the limits of a right-of-way acquired under this section, the friends or relatives of the decedent shall promptly remove the body. If the friends or relatives fail to remove the body, the works board shall have the body removed and decently buried in a public cemetery before proceeding with construction in the right-of-way. The works board shall do the following:

(1) Plainly mark in an appropriate manner the place of burial and the names of the persons buried, if known.

(2) Enter the place of burial in the records of the works board.

As added by P.L.98-1993, SEC.10.