



January 26, 2018

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## HOUSE BILL No. 1155

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DIGEST OF HB 1155 (Updated January 25, 2018 10:02 am - DI 84)

**Citations Affected:** IC 32-25.5; IC 36-9.

**Synopsis:** County repair of subdivision drains. Authorizes the executive of a county to enter into a contract with a subdivision homeowners association providing: (1) for the county to repair subdivision drains located in the subdivision; and (2) for owners of property in the subdivision to pay assessments to pay the cost of the repairs; if a majority of the members of the homeowners association approve the contract. Requires the county treasurer of a county that enters into such contracts to establish a county subdivision drain repair fund, to create a separate account within the fund for each subdivision with which the county enters into a contract, and to deposit assessments paid by the owners of property in a subdivision into the account created for that subdivision. Provides that the assessments imposed on a subdivision's homeowners shall be set by the county treasurer at an amount not greater than reasonably necessary to meet the cost of repairing the subdivision's drains and that the charge for a homeowner's assessment may appear on the homeowner's semiannual property tax statement. Provides that unpaid assessments may be collected in the manner in which other unpaid special assessments are collected.

**Effective:** July 1, 2018.

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January 8, 2018, read first time and referred to Committee on Local Government.  
January 25, 2018, reported — Do Pass.

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HB 1155—LS 6657/DI 55





January 26, 2018

Second Regular Session of the 120th General Assembly (2018)

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 2017 Regular Session of the General Assembly.

## HOUSE BILL No. 1155

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 32-25.5-3-4, AS ADDED BY P.L.167-2009,  
2 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2018]: Sec. 4. (a) This section does not apply to:

4 (1) a contract entered into by a board that would resolve, settle, or  
5 otherwise satisfy an act of enforcement against a homeowners  
6 association for violating a state or local law; or

7 (2) a contract between the county executive of a county and  
8 the homeowners association of a subdivision under  
9 IC 36-9-27.8.

10 (b) A board may not enter into any contract that would result in a  
11 new assessment or the increase in an existing assessment payable by  
12 the affected members of the homeowners association in the amount of  
13 more than five hundred dollars (\$500) per year for each affected  
14 member of the homeowners association unless:

15 (1) the board holds at least two (2) homeowners association  
16 meetings concerning the contract; and

17 (2) the contract is approved by the affirmative vote of at least

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- 1 two-thirds (2/3) of the affected members of the homeowners  
 2 association.
- 3 (c) A board shall give notice of the first homeowners association  
 4 meeting held under subsection (b):
- 5 (1) to each member of the homeowners association; and  
 6 (2) at least seven (7) calendar days before the date the meeting  
 7 occurs.
- 8 SECTION 2. IC 36-9-27.8 IS ADDED TO THE INDIANA CODE  
 9 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
 10 JULY 1, 2018]:
- 11 **Chapter 27.8. County Repair of Subdivision Drains**
- 12 **Sec. 1. As used in this chapter, "governing documents" has the**  
 13 **meaning set forth in IC 32-25.5-2-3.**
- 14 **Sec. 2. As used in this chapter, "homeowners association" has**  
 15 **the meaning set forth in IC 32-25.5-2-4.**
- 16 **Sec. 3. As used in this chapter, "subdivision" has the meaning**  
 17 **set forth in IC 32-25.5-2-5.**
- 18 **Sec. 4. As used in this chapter, "subdivision drain" means a**  
 19 **system that:**
- 20 (1) consists of:
- 21 (A) underground pipes; and  
 22 (B) one (1) or more inlets;
- 23 (2) may also include one (1) or more streams, swales, ditches,  
 24 natural drains, catch basins, and other components;
- 25 (3) is designed to drain excess water from impervious surfaces  
 26 like paved streets and parking areas;
- 27 (4) is located in a subdivision; and  
 28 (5) has not been dedicated to public use and accepted by the  
 29 county or any other political subdivision in which the system  
 30 is located.
- 31 **Sec. 5. This chapter applies to a subdivision regardless of**  
 32 **whether IC 32-25.5 applies to the subdivision in its entirety under**  
 33 **IC 32-25.5-1-1(a).**
- 34 **Sec. 6. (a) The county executive of a county may enter into a**  
 35 **contract under this chapter with the homeowners association of a**  
 36 **subdivision if the following requirements are satisfied:**
- 37 (1) Each member of the homeowners association must be  
 38 provided with a copy of the proposed contract through one (1)  
 39 of the following:
- 40 (A) Physical delivery of a printed copy.  
 41 (B) Delivery by electronic mail of an electronic copy.  
 42 (C) Notification by electronic mail or other means that an



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electronic copy can be viewed on or downloaded from the Internet web site of the homeowners association.

**(2) The proposed contract:**

**(A) must be approved by a majority of the members of the homeowners association in attendance at a meeting called and conducted in accordance with the requirements of the homeowners association's governing documents; or**

**(B) must be approved by a majority of the members of the homeowners association through alternative means, such as voting by electronic mail, that are allowed under the homeowners association's governing documents.**

**(b) For purposes of subsection (a)(2)(A), a member of a homeowners association is considered to be in attendance at a meeting if the member attends:**

**(1) in person;**

**(2) by proxy; or**

**(3) by any other means allowed under:**

**(A) state law; or**

**(B) the governing documents of the homeowners association.**

**(c) IC 32-25.5-3-4 does not apply to the approval of a contract under this section.**

**Sec. 7. A contract between the county executive of a county and the homeowners association of a subdivision under this chapter must include provisions that do the following:**

**(1) Authorize the county to repair subdivision drains located in the subdivision either:**

**(A) through the work of county employees; or**

**(B) by contracting for the repair work to be performed by a third party.**

**(2) Authorize the county to impose assessments on owners of property in the subdivision to:**

**(A) recover the cost of repairing subdivision drains in the subdivision; and**

**(B) accumulate funds to defray the cost of future projects to repair subdivision drains in the subdivision.**

**(3) Authorize employees:**

**(A) of the county; or**

**(B) of a contractor of the county;**

**to enter upon property that is located in the subdivision and is owned by a member of the homeowners association of the subdivision for the purpose of repairing subdivision drains**



1 located on the property.

2 (4) Authorize the county to determine the order in which  
3 subdivision drains will be repaired by the county.

4 **Sec. 8. (a) The county treasurer of a county that enters into one  
5 (1) or more contracts under this chapter shall:**

6 (1) establish a county subdivision drain repair fund; and

7 (2) create a separate account within the fund for each  
8 subdivision with which the county enters into a contract  
9 under this chapter.

10 (b) The fund established under subsection (a) shall be  
11 administered by the county treasurer, and the expenses of  
12 administering the fund shall be paid from money in the fund.  
13 Money in the fund not currently needed to meet the obligations of  
14 the fund may be invested in the same manner as other public funds  
15 may be invested. Interest that accrues from these investments shall  
16 be deposited in the fund. Money in the fund at the end of a fiscal  
17 year does not revert to the county's general fund.

18 (c) The county treasurer shall deposit assessments imposed on  
19 owners of property in a subdivision into the account created under  
20 subsection (a)(2) for that subdivision unless the assessments are  
21 immediately needed to pay the cost of repairing subdivision drains  
22 in that subdivision.

23 (d) The county treasurer may withdraw money from the  
24 account of a subdivision as needed to pay the cost of repairing  
25 subdivision drains in that subdivision.

26 **Sec. 9. Assessments imposed on the owners of property in a  
27 subdivision under section 7(2) of this chapter:**

28 (1) shall be set by the county treasurer at an amount not  
29 greater than is reasonably necessary to meet:

30 (A) the cost of repairs needed at the time the contract is  
31 entered into; and

32 (B) the anticipated cost of repairs that can be reasonably  
33 expected to be needed;

34 with respect to subdivision drains located on property in the  
35 subdivision; and

36 (2) may be collected by the county treasurer through a charge  
37 appearing on the semiannual property tax statement of the  
38 affected property owner.

39 **Sec. 10. In repairing a subdivision drain under this chapter, a  
40 county may, if the balance in the account created for the  
41 subdivision under section 8(a)(2) of this chapter is insufficient to  
42 pay the cost of the repair:**



1 (1) pay the expenses of the repair initially from the county  
2 general fund; and

3 (2) later deposit in the county general fund an amount equal  
4 to the amount expended under subdivision (1) from funds  
5 obtained through assessments imposed under this chapter on  
6 owners of property in the subdivision in which the subdivision  
7 drain is located.

8 Sec. 11. (a) All assessments that are imposed on an owner of  
9 property in a subdivision under this chapter but are unpaid  
10 constitute a subdivision drain repair lien on the property as  
11 provided in section 12 of this chapter.

12 (b) The priority of a subdivision drain repair lien is established  
13 on the date on which the notice of the lien is recorded under section  
14 12 of this chapter.

15 Sec. 12. (a) A subdivision drain repair lien under this chapter  
16 attaches to real estate upon the recording of a notice of lien by the  
17 county treasurer in the office of the recorder of the county in which  
18 the real estate is located.

19 (b) A notice of lien may not be recorded under this section  
20 unless the notice of lien:

21 (1) contains:

22 (A) the address and legal description of the property that  
23 is subject to the lien;

24 (B) the name of the property owner who is subject to the  
25 lien; and

26 (C) the amount of the lien; and

27 (2) is:

28 (A) signed by the county treasurer; and

29 (B) acknowledged as in the case of deeds.

30 (c) A subdivision drain repair lien attaches on the date of the  
31 recording of the notice of the lien under this section and does not  
32 relate back to the date of the subdivision drain repairs for which  
33 the assessments were imposed on the property owner.

34 Sec. 13. (a) Except as provided in subsection (b), in the case of  
35 a voluntary conveyance of property in a subdivision, the grantee of  
36 the property is jointly and severally liable with the grantor for all  
37 unpaid subdivision drain repair assessments that were imposed on  
38 the grantor under this chapter before the grant or conveyance,  
39 without prejudice to the grantee's right to recover from the  
40 grantor the amounts of the subdivision drain repair assessments  
41 paid by the grantee.

42 (b) The grantee of property in a subdivision is entitled to a



1 statement from the county treasurer that sets forth the amount of  
2 the unpaid subdivision drain repair assessments imposed under  
3 this chapter against the grantor.

4 (c) The grantee of property in a subdivision is not liable for, and  
5 the property conveyed is not subject to a lien for, any unpaid  
6 subdivision drain repair assessments imposed on the grantor under  
7 this chapter unless the lien for unpaid assessments is recorded  
8 under section 12 of this chapter before the recording of the deed by  
9 which the grantee takes title to the property.

10 (d) If the mortgagee of a first mortgage of record or another  
11 purchaser obtains title to a property in a subdivision as a result of  
12 foreclosure of the first mortgage, the acquirer of title or the  
13 acquirer's successors and assigns are not liable for the share of the  
14 subdivision drain repair assessments that are chargeable to the  
15 property and that became due before the acquirer acquired title to  
16 the property. The unpaid subdivision drain repair assessments are  
17 considered to be common expenses collectible from all of the  
18 owners of property in the subdivision, including the acquirer or the  
19 acquirer's successors and assigns.

20 Sec. 14. Subdivision drain repair assessments imposed under  
21 this chapter may be enforced and collected as special assessments  
22 under IC 6-1.1-22 and IC 6-1.1-24 and under IC 6-1.1-25.





COMMITTEE REPORT

Mr. Speaker: Your Committee on Local Government, to which was referred House Bill 1155, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

(Reference is to HB 1155 as introduced.)

ZENT

Committee Vote: Yeas 11, Nays 0

