



March 2, 2018

ENGROSSED HOUSE BILL No. 1155

DIGEST OF HB 1155 (Updated February 28, 2018 3:39 pm - DI 87)

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

Synopsis: Subdivision drain repair pilot program. Creates a pilot program for Indianapolis (excluding Lawrence, Speedway, Beech Grove, and Southport) and Johnson County (not including incorporated areas) regarding subdivision drain repairs. Authorizes the executive of a county or a consolidated city (unit) to enter into a contract with a subdivision homeowners association providing: (1) for the unit to repair subdivision drains located in the subdivision; and (2) for owners of property in the subdivision to pay assessments to fund the repairs; if a majority of the members of the homeowners association approve the contract. Provides that a contract between the unit and the homeowners association must be executed not later than June 30, 2021. Requires notice to or written consent of the owner of the property before an employee of the unit or contractor, or the county surveyor, may enter onto the property to perform repair work. Provides for the
(Continued next page)

Effective: July 1, 2018.

Burton, Miller D

(SENATE SPONSORS — BRAY, DORIOT)

January 8, 2018, read first time and referred to Committee on Local Government.
January 25, 2018, reported — Do Pass.
January 30, 2018, read second time, amended, ordered engrossed.
January 31, 2018, engrossed. Read third time, passed. Yeas 90, nays 0.

SENATE ACTION

February 1, 2018, read first time and referred to Committee on Local Government.
March 1, 2018, amended, reported favorably — Do Pass.

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Digest Continued

creation of a subdivision drain repair fund with a separate account for each participating subdivision into which the assessments paid by the owners of property in the subdivision are deposited. Requires the assessments imposed on a subdivision's homeowners to be set by the executive 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.

EH 1155—LS 6657/DI 55



March 2, 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.

ENGROSSED 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 under IC 36-9-27.8.

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

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

15 (2) the contract is approved by the affirmative vote of at least
16 two-thirds (2/3) of the affected members of the homeowners
17 association.

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1 (c) A board shall give notice of the first homeowners association
2 meeting held under subsection (b):

3 (1) to each member of the homeowners association; and

4 (2) at least seven (7) calendar days before the date the meeting
5 occurs.

6 SECTION 2. IC 36-9-27.8 IS ADDED TO THE INDIANA CODE
7 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
8 JULY 1, 2018]:

9 **Chapter 27.8. Subdivision Drain Repair Pilot Program**

10 **Sec. 1. As used in this chapter, "executive" means:**

11 (1) the board of county commissioners, in the case of Johnson
12 County; or

13 (2) the mayor, in the case of a consolidated city.

14 **Sec. 2. As used in this chapter "fiscal officer" means:**

15 (1) the county auditor, in the case of Johnson County; or

16 (2) the controller, in the case of a consolidated city.

17 **Sec. 3. As used in this chapter, "governing documents" has the
18 meaning set forth in IC 32-25.5-2-3.**

19 **Sec. 4. As used in this chapter, "homeowners association" has
20 the meaning set forth in IC 32-25.5-2-4.**

21 **Sec. 5. As used in this chapter, "subdivision" has the meaning
22 set forth in IC 32-25.5-2-5.**

23 **Sec. 6. As used in this chapter, "subdivision drain" means a
24 system that:**

25 (1) consists of:

26 (A) underground pipes; and

27 (B) one (1) or more inlets;

28 (2) may also include one (1) or more streams, swales, ditches,
29 natural drains, catch basins, and other components;

30 (3) is designed to drain excess water from impervious surfaces
31 like paved streets and parking areas;

32 (4) is located in a subdivision; and

33 (5) has not been dedicated to public use and accepted by the
34 county or any other political subdivision in which the system
35 is located.

36 **Sec. 7. As used in this chapter, "unit" means:**

37 (1) Johnson County; or

38 (2) the consolidated city in Marion County.

39 **Sec. 8. This chapter applies to the following:**

40 (1) A subdivision located in an unincorporated area of
41 Johnson County.

42 (2) A subdivision located within a consolidated city. This



- 1 chapter does not apply to a subdivision located within the
 2 boundaries of an excluded city (as defined in IC 36-3-1-7).
- 3 **Sec. 9.** This chapter applies to a subdivision regardless of
 4 whether IC 32-25.5 applies to the subdivision in its entirety under
 5 IC 32-25.5-1-1(a).
- 6 **Sec. 10. (a)** The executive may enter into a contract under this
 7 chapter with the homeowners association of a subdivision if the
 8 following requirements are satisfied:
- 9 (1) The contract must be executed not later than June 30,
 10 2021.
- 11 (2) Each member of the homeowners association must be
 12 provided with a copy of the proposed contract through one (1)
 13 of the following:
- 14 (A) Physical delivery of a printed copy.
 15 (B) Delivery by electronic mail of an electronic copy.
 16 (C) Notification by electronic mail or other means that an
 17 electronic copy can be viewed on or downloaded from the
 18 Internet web site of the homeowners association.
- 19 (3) The proposed contract:
- 20 (A) must be approved by a majority of the members of the
 21 homeowners association in attendance at a meeting called
 22 and conducted in accordance with the requirements of the
 23 homeowners association's governing documents; or
 24 (B) must be approved by a majority of the members of the
 25 homeowners association through alternative means, such
 26 as voting by electronic mail, that are allowed under the
 27 homeowners association's governing documents.
- 28 (b) For purposes of subsection (a)(3)(A), a member of a
 29 homeowners association is considered to be in attendance at a
 30 meeting if the member attends:
- 31 (1) in person;
 32 (2) by proxy; or
 33 (3) by any other means allowed under:
- 34 (A) state law; or
 35 (B) the governing documents of the homeowners
 36 association.
- 37 (c) IC 32-25.5-3-4 does not apply to the approval of a contract
 38 under this section.
- 39 **Sec. 11.** A contract between the executive and the homeowners
 40 association of a subdivision under this chapter must include
 41 provisions that do the following:
- 42 (1) Authorize the unit to repair subdivision drains located in



- 1 the subdivision either:
- 2 (A) through the work of employees of the unit; or
- 3 (B) by contracting for the repair work to be performed by
- 4 a third party.
- 5 (2) Authorize the unit to impose assessments on owners of
- 6 property in the subdivision to:
- 7 (A) recover the cost of repairing subdivision drains in the
- 8 subdivision; and
- 9 (B) accumulate funds to defray the cost of future projects
- 10 to repair subdivision drains in the subdivision.
- 11 (3) Authorize:
- 12 (A) employees of:
- 13 (i) the unit; or
- 14 (ii) a contractor of the unit; and
- 15 (B) the county surveyor or the county surveyor's
- 16 employees;
- 17 to enter upon property that is located in the subdivision and
- 18 is owned by a member of the homeowners association of the
- 19 subdivision for the purpose of repairing subdivision drains
- 20 located on the property.
- 21 (4) Authorize the unit to determine the order in which
- 22 subdivision drains will be repaired by the unit.
- 23 Sec. 12. (a) A person authorized under section 11(3) of this
- 24 chapter that is engaged in subdivision drain repair in performance
- 25 of a contract under this chapter may enter upon, over, or under
- 26 land, water, or property within a subdivision to perform the
- 27 subdivision drain repair work.
- 28 (b) Except as provided in subsection (c), before a person
- 29 authorized under section 11(3) of this chapter may enter property
- 30 within the subdivision, the record owner of the property shall be
- 31 notified in writing by registered or certified mail not later than
- 32 twenty (20) days before the date of entry. The person shall present
- 33 written identification or authorization to the occupant of the
- 34 property before entering the property.
- 35 (c) If the owner of the property consents in writing to the entry,
- 36 notice is not required under subsection (b).
- 37 Sec. 13. While performing work under a contract entered into
- 38 under this chapter, persons authorized under section 11(3) of this
- 39 chapter are not considered trespassers and are liable only for the
- 40 actual damages they cause to property.
- 41 Sec. 14. Not later than ten (10) business days after the date a
- 42 contract is executed under this chapter, the executive shall record



1 the contract with the county recorder.

2 **Sec. 15. (a) The fiscal officer shall:**

3 (1) establish a subdivision drain repair fund; and

4 (2) create a separate account within the fund for each
5 subdivision with which the executive enters into a contract
6 under this chapter.

7 (b) The fund established under subsection (a) shall be
8 administered by the fiscal officer. Money in the fund not currently
9 needed to meet the obligations of the fund may be invested in the
10 same manner as other public funds may be invested. Interest that
11 accrues from these investments shall be deposited in the fund.
12 Money in the fund at the end of a fiscal year does not revert to the
13 unit's general fund.

14 (c) The fiscal officer shall deposit assessments imposed on
15 owners of property in a subdivision into the account created under
16 subsection (a)(2) for that subdivision unless the assessments are
17 immediately needed to pay the cost of repairing subdivision drains
18 in that subdivision.

19 (d) The fiscal officer may withdraw money from the account of
20 a subdivision as needed to pay the cost of repairing subdivision
21 drains in that subdivision.

22 **Sec. 16. Assessments imposed on the owners of property in a**
23 **subdivision under section 11(2) of this chapter:**

24 (1) shall be set by the executive or the executive's designee at
25 an amount not greater than is necessary to meet the cost of
26 repairs needed at the time the contract is entered into with
27 respect to subdivision drains located on property in the
28 subdivision; and

29 (2) may be collected by the fiscal officer through a charge
30 appearing on the semiannual property tax statement of the
31 affected property owner.

32 **Sec. 17. If the balance in the account created for a subdivision**
33 **under section 15(a)(2) of this chapter is insufficient to pay the cost**
34 **of repairing a subdivision drain in the subdivision, the unit may:**

35 (1) pay the expenses of the repair initially from:

36 (A) the county general fund, in the case of Johnson
37 County; or

38 (B) the stormwater fund, in the case of a consolidated city;
39 and

40 (2) later deposit in the fund from which the expenses were
41 paid under subdivision (1), from funds obtained through
42 assessments imposed under this chapter on owners of



- 1 property in the subdivision in which the subdivision drain is
2 located, an amount equal to the amount paid under
3 subdivision (1).
- 4 **Sec. 18. (a)** All assessments that are imposed on an owner of
5 property in a subdivision under this chapter but are unpaid
6 constitute a subdivision drain repair lien on the property as
7 provided in section 19 of this chapter.
- 8 **(b)** The priority of a subdivision drain repair lien is established
9 on the date on which the notice of the lien is recorded under section
10 19 of this chapter.
- 11 **Sec. 19. (a)** A subdivision drain repair lien under this chapter
12 attaches to real estate upon the recording of a notice of lien by the
13 fiscal officer in the office of the recorder of the county in which the
14 real estate is located.
- 15 **(b)** A notice of lien may not be recorded under this section
16 unless the notice of lien:
- 17 **(1)** contains:
- 18 **(A)** the address and legal description of the property that
19 is subject to the lien;
20 **(B)** the name of the property owner who is subject to the
21 lien; and
22 **(C)** the amount of the lien; and
- 23 **(2)** is:
- 24 **(A)** signed by the fiscal officer and
25 **(B)** acknowledged as in the case of deeds.
- 26 **(c)** A subdivision drain repair lien attaches on the date of the
27 recording of the notice of the lien under this section and does not
28 relate back to the date of the subdivision drain repairs for which
29 the assessments were imposed on the property owner.
- 30 **Sec. 20. (a)** In the case of a voluntary conveyance of property in
31 a subdivision, the grantee of the property is jointly and severally
32 liable with the grantor for all unpaid subdivision drain repair
33 assessments that were imposed on the grantor under this chapter
34 before the grant or conveyance, without prejudice to the grantee's
35 right to recover from the grantor the amounts of the subdivision
36 drain repair assessments paid by the grantee.
- 37 **(b)** If the mortgagee of a first mortgage of record or another
38 purchaser obtains title to a property in a subdivision as a result of
39 foreclosure of the first mortgage, the acquirer of title or the
40 acquirer's successors and assigns are not liable for the share of the
41 subdivision drain repair assessments that are chargeable to the
42 property and that became due before the acquirer acquired title to



1 the property, and any subdivision drain repair lien on the property
2 relating to the share of the subdivision drain repair assessment that
3 became due before the mortgagee or other purchaser acquired title
4 to the property shall be released.

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

8 Sec. 22. The executive may not enter into a contract under this
9 chapter with a homeowners association of a subdivision after June
10 30, 2021. The rights and obligations of a contract executed under
11 this chapter before July 1, 2021, are not affected after June 30,
12 2021, and do not impair a unit's ability to enforce liens and collect
13 subdivision drain repair assessments authorized under this chapter
14 for work performed under a contract.



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

 HOUSE MOTION

Mr. Speaker: I move that House Bill 1155 be amended to read as follows:

Page 1, line 7, delete "county executive of a county" and insert **"executive of a county or consolidated city"**.

Page 2, line 11, after "County" insert **"and Consolidated City"**.

Page 2, line 34, delete "The county" and insert **"The"**.

Page 2, line 34, after "a county" insert **"or consolidated city"**.

Page 3, line 23, delete "county executive of a county" and insert **"executive of a county or consolidated city"**.

Page 3, line 26, after "county" insert **"or consolidated city"**.

Page 3, line 28, delete "county employees;" and insert **"employees of the county or consolidated city;"**.

Page 3, line 31, after "county" insert **"or consolidated city"**.

Page 3, line 38, delete "county;" and insert **"county or consolidated city;"**.

Page 3, line 39, delete "county;" and insert **"county or consolidated city;"**.

Page 4, line 2, after "county" insert **"or consolidated city"**.

Page 4, line 3, delete "county." and insert **"county or consolidated city."**

Page 4, line 4, delete "The county" and insert **"The"**.

Page 4, line 5, after "chapter" insert **"or the treasurer of a county containing a consolidated city that enters into one (1) or more contracts under this chapter"**.

Page 4, line 6, delete "county".

Page 4, line 11, delete "treasurer, and the expenses of" and insert **"treasurer."**

Page 4, delete line 12.

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Page 4, line 28, delete "county treasurer" and insert "**executive of the county or consolidated city**".

Page 4, delete lines 39 through 42, begin a new paragraph and insert:

"Sec. 10. If the balance in the account created for a subdivision under section 8(a)(2) of this chapter is insufficient to pay the cost of repairing a subdivision drain in the subdivision, the county or consolidated city may:

(1) pay the expenses of the repair initially from:

(A) the county general fund, in the case of a county; or

(B) the consolidated county general fund or county general fund, in the case of a county containing a consolidated city;

AND

(2) later deposit in the fund from which the expenses were paid under subdivision (1), from funds obtained through assessments imposed under this chapter on owners of property in the subdivision in which the subdivision drain is located, an amount equal to the amount paid under subdivision (1)."

Page 5, delete lines 1 through 7.

Page 5, line 34, delete "Except as provided in subsection (b), in" and insert "**In**".

Page 5, delete line 42.

Page 6, delete lines 1 through 9.

Page 6, line 10, delete "(d)" and insert "**(b)**".

Page 6, line 16, delete "property." and insert "**property, and any subdivision drain repair lien on the property relating to the share of the subdivision drain repair assessment that became due before the mortgagee or other purchaser acquired title to the property shall be released.**".

Page 6, line 16, delete "The unpaid subdivision drain repair assessments are".

Page 6, delete lines 17 through 19.

(Reference is to HB 1155 as printed January 26, 2018.)

BURTON



COMMITTEE REPORT

Madam President: The Senate Committee on Local Government, to which was referred House Bill No. 1155, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, delete lines 7 through 9, begin a new line block indented and insert:

"(2) a contract under IC 36-9-27.8."

Page 2, line 11, delete "County and Consolidated City Repair of" and insert **"Subdivision Drain Repair Pilot Program**

Sec. 1. As used in this chapter, "executive" means:

(1) the board of county commissioners, in the case of Johnson County; or

(2) the mayor, in the case of a consolidated city.

Sec. 2. As used in this chapter "fiscal officer" means:

(1) the county auditor, in the case of Johnson County; or

(2) the controller, in the case of a consolidated city."

Page 2, delete line 12.

Page 2, line 13, delete "1." and insert "3."

Page 2, line 15, delete "2." and insert "4."

Page 2, line 17, delete "3." and insert "5."

Page 2, line 19, delete "4." and insert "6."

Page 2, between lines 31 and 32, begin a new paragraph and insert:

"Sec. 7. As used in this chapter, "unit" means:

(1) Johnson County; or

(2) the consolidated city in Marion County.

Sec. 8. This chapter applies to the following:

(1) A subdivision located in an unincorporated area of Johnson County.

(2) A subdivision located within a consolidated city. This chapter does not apply to a subdivision located within the boundaries of an excluded city (as defined in IC 36-3-1-7)."

Page 2, line 32, delete "5." and insert "9."

Page 2, line 35, delete "6. (a) The executive of a county or consolidated city" and insert **"10. (a) The executive"**.

Page 2, between lines 38 and 39, begin a new line block indented and insert:

"(1) The contract must be executed not later than June 30, 2021."

Page 2, line 39, delete "(1)" and insert "(2)".

Page 3, line 5, delete "(2)" and insert "(3)".



Page 3, line 14, delete "(a)(2)(A)," and insert "**(a)(3)(A),**".

Page 3, line 25, delete "7." and insert "**11.**".

Page 3, line 25, delete "of a county or".

Page 3, line 26, delete "consolidated city".

Page 3, line 28, delete "county or consolidated city" and insert "**unit**".

Page 3, line 30, delete "county or" and insert "**unit; or**".

Page 3, line 31, delete "consolidated city; or".

Page 3, line 34, delete "county or consolidated city" and insert "**unit**".

Page 3, delete lines 40 through 42, begin a new line block indented and insert:

"(3) Authorize:

(A) employees of:

(i) the unit; or

(ii) a contractor of the unit; and

(B) the county surveyor or the county surveyor's employees;".

Page 4, line 5, delete "county or consolidated city" and insert "**unit**".

Page 4, line 7, delete "county or consolidated city." and insert "**unit.**".

Page 4, delete lines 8 through 11, begin a new paragraph and insert:

"Sec. 12. (a) A person authorized under section 11(3) of this chapter that is engaged in subdivision drain repair in performance of a contract under this chapter may enter upon, over, or under land, water, or property within a subdivision to perform the subdivision drain repair work.

(b) Except as provided in subsection (c), before a person authorized under section 11(3) of this chapter may enter property within the subdivision, the record owner of the property shall be notified in writing by registered or certified mail not later than twenty (20) days before the date of entry. The person shall present written identification or authorization to the occupant of the property before entering the property.

(c) If the owner of the property consents in writing to the entry, notice is not required under subsection (b).

Sec. 13. While performing work under a contract entered into under this chapter, persons authorized under section 11(3) of this chapter are not considered trespassers and are liable only for the actual damages they cause to property.

Sec. 14. Not later than ten (10) business days after the date a contract is executed under this chapter, the executive shall record



the contract with the county recorder.

Sec. 15. (a) The fiscal officer shall:"

Page 4, line 14, delete "county" and insert "**executive**".

Page 4, line 17, delete "county treasurer." and insert "**fiscal officer.**".

Page 4, line 22, delete "county's" and insert "**unit's**".

Page 4, line 23, delete "county treasurer" and insert "**fiscal officer**".

Page 4, line 28, delete "county treasurer" and insert "**fiscal officer**".

Page 4, line 31, delete "9." and insert "**16.**".

Page 4, line 32, delete "7(2)" and insert "**11(2)**".

Page 4, delete lines 33 through 41, begin a new line block indented and insert:

"(1) shall be set by the executive or the executive's designee at an amount not greater than is necessary to meet the cost of repairs needed at the time the contract is entered into with respect to subdivision drains located on property in the subdivision; and"

Page 4, line 42, delete "county treasurer" and insert "**fiscal officer**".

Page 5, line 3, delete "10." and insert "**17.**".

Page 5, line 4, delete "8(a)(2)" and insert "**15(a)(2)**".

Page 5, line 5, delete "county or".

Page 5, line 6, delete "consolidated city" and insert "**unit**".

Page 5, delete lines 7 through 11, begin a new line block indented and insert:

"(1) pay the expenses of the repair initially from:

(A) the county general fund, in the case of Johnson County; or

(B) the stormwater fund, in the case of a consolidated city; and"

Page 5, line 18, delete "11." and insert "**18.**".

Page 5, line 21, delete "12" and insert "**19**".

Page 5, line 24, delete "12" and insert "**19**".

Page 5, line 25, delete "12." and insert "**19**".

Page 5, line 27, delete "county treasurer" and insert "**fiscal officer**".

Page 5, line 38, delete "county treasurer;" and insert "**fiscal officer**".

Page 6, line 2, delete "13." and insert "**20.**".

Page 6, line 19, delete "14." and insert "**21.**".

Page 6, after line 21, begin a new paragraph and insert:

"Sec. 22. The executive may not enter into a contract under this chapter with a homeowners association of a subdivision after June 30, 2021. The rights and obligations of a contract executed under this chapter before July 1, 2021, are not affected after June 30,



2021, and do not impair a unit's ability to enforce liens and collect subdivision drain repair assessments authorized under this chapter for work performed under a contract."

and when so amended that said bill do pass.

(Reference is to HB 1155 as reprinted January 31, 2018.)

BUCK, Chairperson

Committee Vote: Yeas 7, Nays 0.

