

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 ENROLLED ACT No. 1155

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

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

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

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

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

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

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

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

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

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

Chapter 27.8. 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.

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

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

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

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

- (1) consists of:
 - (A) underground pipes; and
 - (B) one (1) or more inlets;
- (2) may also include one (1) or more streams, swales, ditches, natural drains, catch basins, and other components;
- (3) is designed to drain excess water from impervious surfaces like paved streets and parking areas;
- (4) is located in a subdivision; and
- (5) has not been dedicated to public use and accepted by the county or any other political subdivision in which the system is located.

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).

Sec. 9. This chapter applies to a subdivision regardless of whether IC 32-25.5 applies to the subdivision in its entirety under IC 32-25.5-1-1(a).



Sec. 10. (a) The executive may enter into a contract under this chapter with the homeowners association of a subdivision if the following requirements are satisfied:

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

(2) Each member of the homeowners association must be provided with a copy of the proposed contract through one (1) of the following:

(A) Physical delivery of a printed copy.

(B) Delivery by electronic mail of an electronic copy.

(C) Notification by electronic mail or other means that an electronic copy can be viewed on or downloaded from the Internet web site of the homeowners association.

(3) 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)(3)(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. 11. A contract between the executive and the homeowners association of a subdivision under this chapter must include provisions that do the following:

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

(A) through the work of employees of the unit; or

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

(2) Authorize the unit 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:

- (A) employees of:
 - (i) the unit; or
 - (ii) a contractor of the unit; and
- (B) the county surveyor or the county surveyor's employees;

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 located on the property.

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

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:

- (1) establish a subdivision drain repair fund; and
- (2) create a separate account within the fund for each subdivision with which the executive enters into a contract



under this chapter.

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

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

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

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

(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

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

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

(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

(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).

Sec. 18. (a) All assessments that are imposed on an owner of property in a subdivision under this chapter but are unpaid



constitute a subdivision drain repair lien on the property as provided in section 19 of this chapter.

(b) The priority of a subdivision drain repair lien is established on the date on which the notice of the lien is recorded under section 19 of this chapter.

Sec. 19. (a) A subdivision drain repair lien under this chapter attaches to real estate upon the recording of a notice of lien by the fiscal officer in the office of the recorder of the county in which the real estate is located.

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

(1) contains:

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

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

(C) the amount of the lien; and

(2) is:

(A) signed by the fiscal officer and

(B) acknowledged as in the case of deeds.

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

Sec. 20. (a) In the case of a voluntary conveyance of property in a subdivision, the grantee of the property is jointly and severally liable with the grantor for all unpaid subdivision drain repair assessments that were imposed on the grantor under this chapter before the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts of the subdivision drain repair assessments paid by the grantee.

(b) If the mortgagee of a first mortgage of record or another purchaser obtains title to a property in a subdivision as a result of foreclosure of the first mortgage, the acquirer of title or the acquirer's successors and assigns are not liable for the share of the subdivision drain repair assessments that are chargeable to the property and that became due before the acquirer acquired title to the 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.

Sec. 21. Subdivision drain repair assessments imposed under



this chapter may be enforced and collected as special assessments under IC 6-1.1-22 and IC 6-1.1-24 and under IC 6-1.1-25.

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.



Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Governor of the State of Indiana

Date: _____ Time: _____

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