

# SENATE BILL No. 326

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 14-8-2; IC 14-25-5.5.

**Synopsis:** Drainage board resolution of ground water disputes. Creates a procedure for resolving surface water disputes. Provides that a person seeking redress for injuries caused to the person's property as a result of a diversion of the natural surface watercourse on a neighboring property may file a petition with the drainage board. Permits the drainage board to investigate, to hold a hearing on the petition, and to issue an order requiring the removal or remedy of the diversion. Permits a person who owns the land that is the subject of the petition to file an action in circuit or superior court to vacate the drainage board's order.

**Effective:** July 1, 1998.

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January 8, 1998, read first time and referred to Committee on Natural Resources.

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Second Regular Session 110th General Assembly (1998)

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 1997 General Assembly.

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## SENATE BILL No. 326



A BILL FOR AN ACT to amend the Indiana Code concerning natural and cultural resources.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 14-8-2-76.5 IS ADDED TO THE INDIANA CODE  
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 1998]: **Sec. 76.5. "Diversion", for purposes of IC 14-25-5.5, has**  
4 **the meaning set forth in IC 14-25-5.5-1.**

5 SECTION 2. IC 14-8-2-79.1 IS ADDED TO THE INDIANA CODE  
6 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
7 1, 1998]: **Sec. 79.1. "Drainage board", for purposes of IC 14-25-5.5,**  
8 **has the meaning set forth in IC 14-25-5.5-2.**

9 SECTION 3. IC 14-8-2-176.5 IS ADDED TO THE INDIANA  
10 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
11 [EFFECTIVE JULY 1, 1998]: **Sec. 176.5. "Natural surface**  
12 **watercourse", for purposes of IC 14-25-5.5, has the meaning set**  
13 **forth in IC 14-25-5.5-3.**

14 SECTION 4. IC 14-8-2-195, AS AMENDED BY P.L.138-1997,  
15 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
16 JULY 1, 1998]: Sec. 195. "Owner" has the following meaning:

17 (1) For purposes of IC 14-11-4, the meaning set forth in



- 1 IC 14-11-4-2.
- 2 (2) For purposes of IC 14-15, a person who has the legal title to
- 3 a watercraft.
- 4 (3) For purposes of IC 14-16-1, the meaning set forth in
- 5 IC 14-16-1-6.
- 6 (4) For purposes of IC 14-16-2, the meaning set forth in
- 7 IC 14-16-2-5.
- 8 (5) For purposes of IC 14-25-4, the meaning set forth in
- 9 IC 14-25-4-4.
- 10 **(6) For purposes of IC 14-25-5.5, the meaning set forth in**
- 11 **IC 14-25-5.5-4.**
- 12 ~~(6)~~ (7) For purposes of IC 14-27-7, the meaning set forth in
- 13 IC 14-27-7-1.
- 14 ~~(7)~~ (8) For purposes of IC 14-36, the term includes the following:
- 15 (A) Owners in fee.
- 16 (B) Life tenants.
- 17 (C) Tenants for years.
- 18 (D) Holders of remainder of reversionary interests.
- 19 (E) Holders of leaseholds or easements.
- 20 (F) Holders of mineral rights.
- 21 ~~(8)~~ (9) For purposes of IC 14-37, a person who has the right to
- 22 drill into and produce from a pool and to appropriate the oil and
- 23 gas produced from the pool for:
- 24 (A) the person or others; or
- 25 (B) the person and others.
- 26 ~~(9)~~ (10) For the purposes of IC 14-22-10-2, the meaning set forth
- 27 in IC 14-22-10-2(c).
- 28 SECTION 5. IC 14-8-2-202, AS AMENDED BY P.L.134-1996,
- 29 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 30 JULY 1, 1998]: Sec. 202. (a) "Person" means, except as provided in
- 31 subsections (b) through ~~(j)~~; **(k)**, an individual, a partnership, an
- 32 association, a fiduciary, an executor or administrator, a limited liability
- 33 company, or a corporation.
- 34 (b) "Person", for purposes of IC 14-12-2, has the meaning set forth
- 35 in IC 14-12-2-3.
- 36 (c) "Person", for purposes of IC 14-16, IC 14-24, IC 14-26-2,
- 37 IC 14-28-1, IC 14-28-3, IC 14-29-6, and IC 14-38-2, means an
- 38 individual, a partnership, an association, a fiduciary, an executor or
- 39 administrator, a limited liability company, a corporation, other legal
- 40 entity, the state, or an agency, a political subdivision, or another
- 41 instrumentality of the state.
- 42 (d) "Person", for purposes of IC 14-12-1, IC 14-12-2, IC 14-20-1,

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1 IC 14-21, IC 14-25 through IC 14-29, except as otherwise provided in  
 2 this section, IC 14-33, IC 14-34, and IC 14-37, means an individual, a  
 3 partnership, an association, a fiduciary, an executor or administrator,  
 4 a limited liability company, a corporation, or a governmental entity.

5 (e) "Person", for purposes of IC 14-22-31.5, has the meaning set  
 6 forth in IC 14-22-31.5-2.

7 (f) "Person", for purposes of IC 14-25-3, has the meaning set forth  
 8 in IC 14-25-3-1.

9 **(g) "Person", for purposes of IC 14-25-5.5, has the meaning set  
 10 forth in IC 14-25-5.5-5.**

11 ~~(g)~~ **(h)** "Person", for the purposes of IC 14-25-7, has the meaning set  
 12 forth in IC 14-25-7-5.

13 ~~(h)~~ **(i)** "Person", for purposes of IC 14-34, means an individual, a  
 14 partnership, a limited liability company, an association, a society, a  
 15 joint stock company, a firm, a company, a corporation, or other  
 16 business organization.

17 ~~(i)~~ **(j)** "Person", for purposes of IC 14-38-1, has the meaning set  
 18 forth in IC 14-38-1-2.

19 ~~(j)~~ **(k)** "Person", for purposes of IC 14-24-12, has the meaning set  
 20 forth in IC 14-24-12-4.

21 SECTION 6. IC 14-8-2-203.5 IS ADDED TO THE INDIANA  
 22 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
 23 [EFFECTIVE JULY 1, 1998]: **Sec. 203.5. "Petitioner", for purposes  
 24 of IC 14-25-5.5, has the meaning set forth in IC 14-25-5.5-6.**

25 SECTION 7. IC 14-8-2-242.5 IS ADDED TO THE INDIANA  
 26 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
 27 [EFFECTIVE JULY 1, 1998]: **Sec. 242.5. "Respondent", for  
 28 purposes of IC 14-25-5.5, has the meaning set forth in  
 29 IC 14-25-5.5-7.**

30 SECTION 8. IC 14-8-2-281.7 IS ADDED TO THE INDIANA  
 31 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
 32 [EFFECTIVE JULY 1, 1998]: **Sec. 281.7. "Tract", for purposes of  
 33 IC 14-25-5.5, has the meaning set forth in IC 14-25-5.5-8.**

34 SECTION 9. IC 14-25-5.5 IS ADDED TO THE INDIANA CODE  
 35 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
 36 JULY 1, 1998]:

37 **Chapter 5.5. Regulation of Surface Water Disputes**

38 **Sec. 1.** As used in this chapter, "diversion" means a condition  
 39 that alters a natural surface watercourse. The term includes the  
 40 following:

- 41 (1) Erecting a wall that keeps surface water from entering or  
 42 leaving a person's property.



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- 1 (2) Diverting or accelerating the flow of surface water.  
 2 (3) Erecting a downspout directed at the property line.  
 3 (4) Paving a substantial portion of a formerly grassy lot.  
 4 (5) Erecting a curb or retaining wall.  
 5 (6) Managing surface water by any other method that causes  
 6 damage to another person's property.

7 Sec. 2. As used in this chapter, "drainage board" means the  
 8 following:

- 9 (1) Except as provided in subdivision (2):  
 10 (A) the county board of commissioners, as provided in  
 11 IC 36-9-27-5(a)(1); or  
 12 (B) the drainage board appointed by the board of  
 13 commissioners under IC 36-9-27-5(a)(2).  
 14 (2) In a county having a consolidated city, the board of public  
 15 works of the consolidated city, as provided in IC 36-9-27-5(b).

16 Sec. 3. As used in this chapter, "natural surface watercourse"  
 17 means an area of the surface of the ground over which water from  
 18 falling rain or melting snow occasionally and temporarily flows in  
 19 a definable direction.

20 Sec. 4. As used in this chapter, "owner" means a person who  
 21 holds a possessory legal interest in land.

22 Sec. 5. As used in this chapter, "person" means an individual, a  
 23 corporation, a limited liability company, a partnership, or any  
 24 other legal entity.

25 Sec. 6. As used in this chapter, "petitioner" means a person who  
 26 files a petition seeking redress for damages caused by a diversion  
 27 under this chapter.

28 Sec. 7. As used in this chapter, "respondent" means an owner of  
 29 a tract of land that is the subject of a petition seeking redress for  
 30 damages caused by a diversion under this chapter.

31 Sec. 8. As used in this chapter, "tract" means an area of land  
 32 that is:

- 33 (1) under common fee simple ownership;  
 34 (2) contained within a continuous border; and  
 35 (3) a separately identified parcel for property tax purposes.

36 Sec. 9. (a) If:

- 37 (1) a person who owns a tract of land seeks the removal or  
 38 remedy of a natural surface watercourse diversion located  
 39 outside the person's tract in order to promote better drainage  
 40 of the person's tract; and  
 41 (2) the owner of the land on which the diversion is located,  
 42 upon request, does not remove or remedy the diversion;



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1 the person seeking the removal or remedy of the diversion may file  
2 a petition under this chapter.

3 (b) A petition filed under this section may request the drainage  
4 board in the county in which the diversion is located to:

5 (1) remove or remedy the diversion; or

6 (2) authorize or order the removal of, or remedy of, the  
7 diversion;

8 under this chapter.

9 **Sec. 10.** A petition filed by a person described in section 9(1) of  
10 this chapter must include the following:

11 (1) A general description of the tract of land owned by the  
12 petitioner.

13 (2) A general explanation of the need for the removal of the  
14 diversion and a list of other ways to remedy the damage  
15 caused to the land owned by the petitioner if removal of the  
16 diversion is not practical.

17 (3) A general description of the location of the diversion and  
18 how the diversion operates.

19 **Sec. 11.** The drainage board may require, as a condition of filing  
20 a petition under this chapter, the payment of a filing fee. The  
21 drainage board may not set the filing fee at an amount greater than  
22 is reasonably necessary to defray the expenses incurred by the  
23 board in processing a petition.

24 **Sec. 12.** (a) If a petition filed under this chapter alleges the  
25 diversion of a natural surface watercourse, the county surveyor of  
26 the county in which the diversion is alleged to exist shall promptly  
27 investigate whether the diversion:

28 (1) exists; and

29 (2) causes damage to the petitioner's property.

30 (b) If the county surveyor, upon investigation, finds an existing  
31 natural surface watercourse diversion in the location alleged in the  
32 petition, the county surveyor shall report the existence of the  
33 diversion, and any damage that the diversion appears to be  
34 causing, to the drainage board.

35 (c) Upon receiving a report from the county surveyor under  
36 subsection (b), the drainage board shall:

37 (1) set a date for a hearing on the petition; and

38 (2) serve notice of the hearing on each owner of the land on  
39 which the diversion exists who can be identified in the records  
40 of the county recorder.

41 (d) The hearing must be held at least thirty (30) days but less  
42 than ninety (90) days after the date of the filing of the petition.

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1 (e) Notice of a hearing must be served on each respondent in the  
2 manner prescribed in:

3 (1) Rule 4.1 of the Indiana Rules of Trial Procedure, in the  
4 case of a respondent who is an individual; or

5 (2) Rule 4.6 of the Indiana Rules of Trial Procedure, in the  
6 case of a respondent that is an organization.

7 Sec. 13. Before or on the date of a hearing held under this  
8 chapter, the drainage board may postpone and reschedule the  
9 hearing if:

10 (1) it appears that a respondent has not been served with  
11 notice; or

12 (2) the interests of fairness otherwise compel a postponement.

13 Sec. 14. (a) If, after a hearing held under this chapter, the  
14 drainage board finds that:

15 (1) the diversion of a natural surface watercourse that is  
16 alleged in the petition exists; and

17 (2) the removal or remedy of the diversion will:

18 (A) promote better drainage of the petitioner's land; and

19 (B) not cause unreasonable damage to the land of the  
20 respondents;

21 the drainage board shall find for the petitioner.

22 (b) If, after a hearing held under this chapter, the drainage  
23 board is unable to make the findings described in subsection (a),  
24 the drainage board shall deny the petition.

25 Sec. 15. If the drainage board finds for the petitioner under  
26 section 14(a) of this chapter, the board shall determine, based upon  
27 a preponderance of the evidence, whether the respondent acted  
28 unreasonably in creating the diversion.

29 Sec. 16. (a) If the drainage board finds:

30 (1) for the petitioner under section 14(a) of this chapter; and

31 (2) under section 15 of this chapter that at least one (1) of the  
32 respondents acted unreasonably in creating the diversion;

33 the drainage board shall enter an order directing the respondents  
34 to remove or remedy the diversion at their own expense or  
35 directing the county surveyor to remove or remedy the diversion  
36 at the expense of the respondents.

37 (b) A respondent against whom an order is entered under  
38 subsection (a) is subject to an action under section 20 of this  
39 chapter if the respondent fails to pay the amount for which the  
40 respondent is responsible under the order.

41 Sec. 17. If the drainage board:

42 (1) finds for the petitioner under section 14(a) of this chapter;

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1 and

2 (2) does not find under section 15 of this chapter that the  
3 respondent acted unreasonably in creating the diversion;  
4 the drainage board shall enter an order under section 18 of this  
5 chapter concerning the removal or remedy of the diversion.

6 Sec. 18. (a) Upon a determination made under section 17 of this  
7 chapter, the drainage board shall enter an order:

8 (1) authorizing the petitioner to remove or remedy the  
9 diversion;

10 (2) authorizing the respondents to remove or remedy the  
11 diversion;

12 (3) directing the county surveyor to remove or remedy the  
13 diversion; or

14 (4) directing that the diversion be removed or remedied  
15 through the joint efforts of at least two (2) of the persons  
16 referred to in this subsection.

17 (b) The drainage board shall consult with the:

18 (1) petitioner;

19 (2) respondents; and

20 (3) county surveyor;

21 before deciding whether to enter an order under subsection (a)(1),  
22 (a)(2), (a)(3), or (a)(4).

23 (c) If the drainage board enters an order under subsection (a),  
24 the order may:

25 (1) require the petitioner to bear the expenses of removing or  
26 remedying the diversion, including the monetary value of the  
27 harm and inconvenience that the respondents will incur as a  
28 result of the removal or remedy of the diversion; or

29 (2) apportion responsibility for the expenses of removing or  
30 remedying the diversion among all the owners of a tract that  
31 is the subject of an order.

32 Sec. 19. In entering an order concerning the removal of a  
33 diversion under this chapter, a drainage board may:

34 (1) provide for the costs of the removal work to be paid  
35 directly by one (1) or more of the persons subject to the order;  
36 or

37 (2) authorize an advance on the general drain improvement  
38 fund established in the county under IC 36-9-27-73 for the  
39 payment of the costs of the removal work and provide for the  
40 amount advanced to be reimbursed by one (1) or more of the  
41 persons subject to the order.

42 Sec. 20. (a) If a person who is required by an order of a drainage

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1 board under this chapter to pay an amount or bear an expense  
 2 does not comply with the order, the amount for which the person  
 3 is responsible may be recovered by:

4 (1) the drainage board, as custodian of the general drain  
 5 improvement fund, if the amount was advanced from the  
 6 general drain improvement fund; or

7 (2) another person subject to the order who has paid the  
 8 amount and is entitled to reimbursement.

9 (b) An amount may be recovered from a person under  
 10 subsection (a) through an action in a court having jurisdiction in  
 11 the same manner that a creditor may recover an amount owed  
 12 under a contract. In an action brought under this subsection, the  
 13 plaintiff may also be awarded costs and reasonable attorney's fees.

14 **Sec. 21. (a)** If the drainage board finds for a petitioner after a  
 15 hearing held under this chapter, a respondent may file an action in  
 16 the circuit or superior court of the county in which the alleged  
 17 diversion exists seeking to have the order entered by the drainage  
 18 board vacated.

19 (b) An action filed under subsection (a) must be based on at least  
 20 one (1) of the following assertions by the respondent:

21 (1) The drainage board lacked authority to act under this  
 22 chapter.

23 (2) The drainage board erred in making the findings  
 24 described in section 14(a) of this chapter.

25 (3) The respondent should have been awarded compensation  
 26 for harm and inconvenience, or the amount awarded to the  
 27 respondent for harm and inconvenience is insufficient.

28 (4) The drainage board did not follow the procedure required  
 29 by this chapter.

30 **Sec. 22. (a)** In an action filed under section 21 of this chapter,  
 31 the court:

32 (1) shall enter an order vacating the order of the drainage  
 33 board directing the county surveyor to remove or remedy the  
 34 diversion; and

35 (2) may issue an injunction against the removal or remedy of  
 36 the diversion;

37 if the court makes a finding under subsection (b).

38 (b) The court is required or authorized to act under subsection  
 39 (a) if the court finds that the drainage board:

40 (1) was clearly in error in making its findings under section  
 41 14(a) of this chapter with respect to the alleged diversion; or

42 (2) exceeded its authority or discretion under the law in

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1           authorizing the removal or remedy of the diversion.  
2           **Sec. 23. (a) For purposes of this chapter:**  
3               (1) a county surveyor;  
4               (2) a member of a drainage board; or  
5               (3) an authorized representative of a county surveyor or  
6               drainage board;  
7           has a right of entry over and upon a tract of land that is the subject  
8           of a petition filed under this chapter.  
9           (b) The right of entry granted by this section is limited to the  
10          land lying within seventy-five (75) feet of the alleged diversion.  
11          (c) A person exercising a right of entry under this section shall,  
12          to the extent possible, use due care to avoid damage to:  
13               (1) crops, fences, buildings, and other structures located  
14               outside the right-of-way; and  
15               (2) crops and approved structures located inside the  
16               right-of-way.  
17          (d) Before exercising a right of entry under this section, an  
18          individual must give oral or written notice of the entry on the land  
19          to the property owner of record. The notice must state the purpose  
20          for the entry.  
21          (e) A right of entry under this section is not criminal trespass  
22          under IC 35-43-2-2, and an individual exercising a right of entry  
23          under this section may not be arrested or prosecuted for criminal  
24          trespass under IC 35-43-2-2.

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