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# SENATE BILL No. 288

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 8-1.5-5; IC 36-9-27-114.

**Synopsis:** Storm water management. Authorizes a county other than Marion County to establish a department of storm water management. (Under current law, the department of public works acts as the department of storm water management in Marion County.) Makes conforming changes.

**Effective:** Upon passage.

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January 15, 2003, read first time and referred to Committee on Environmental Affairs.

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First Regular Session 113th General Assembly (2003)

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 2002 Regular or Special Session of the General Assembly.

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# SENATE BILL No. 288



A BILL FOR AN ACT to amend the Indiana Code concerning utilities and transportation.

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

- 1 SECTION 1. IC 8-1.5-5-1 IS AMENDED TO READ AS
- 2 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. This chapter
- 3 applies to each:
- 4 (1) municipality; and
- 5 (2) county not having a consolidated city;
- 6 that adopts the provisions of this chapter by ordinance.
- 7 SECTION 2. IC 8-1.5-5-1.5 IS ADDED TO THE INDIANA CODE
- 8 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE
- 9 UPON PASSAGE]: **Sec. 1.5. The definitions set forth in IC 36-1-2**
- 10 **apply throughout this chapter.**
- 11 SECTION 3. IC 8-1.5-5-2 IS AMENDED TO READ AS
- 12 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. As used in this
- 13 chapter, "board" means the following:
- 14 (1) For a consolidated city, the board of public works established
- 15 by IC 36-3-5-6.
- 16 (2) For all other municipalities, the board of directors described
- 17 in section 4 of this chapter.



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- (3) For a county:**
    - (A) the county executive and the county surveyor (or the surveyor's designee);**
    - (B) the drainage board of the county; or**
    - (C) the board of directors described in section 4.5(c)(3) of this chapter;**
- as specified in the ordinance adopted under section 4.5 of this chapter.**

SECTION 4. IC 8-1.5-5-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 3. As used in this chapter, "department" means the following:

- (1) For a consolidated city, the department of public works.
- (2) For all other municipalities, the department of storm water management established under section 4 of this chapter.
- (3) For a county, the department of storm water management established under section 4.5 of this chapter.**

SECTION 5. IC 8-1.5-5-4.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 4.5. **(a) This section applies to a county.**

**(b) If the county executive adopts the provisions of this chapter by ordinance, a department of storm water management is established for the county. The department established by this section is controlled by a board of directors appointed under subsection (c).**

**(c) An ordinance adopted under this section shall provide for the appointment of:**

- (1) the members of the county executive and the county surveyor (or the surveyor's designee);**
- (2) the drainage board of the county, as identified in IC 36-9-27-5; or**
- (3) three (3) directors appointed by the county executive, not more than two (2) of whom may be of the same political party;**

**as the board of directors of the department. The term of office of a member of the board who is appointed from the membership of the county executive or the drainage board under subdivision (1) or (2), respectively, is coextensive with the member's term of office on the county executive or the drainage board. If the county surveyor or the county surveyor's designee is appointed under subdivision (1), the term of the surveyor or designee as a member of the board is coextensive with the surveyor's term of office. If an ordinance adopted under this section provides for the appointment**

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1 of a board of directors under subdivision (3), the ordinance must  
 2 prescribe the terms of the directors and provide for the initial  
 3 terms of the directors to be staggered.

4 (d) The county executive may remove a director appointed  
 5 under subsection (c)(3) at any time when, in the judgment of the  
 6 executive, it is in the best interest of the department.

7 (e) A member of the board of directors appointed under  
 8 subsection (c)(1) or (c)(2) is not entitled to a salary or per diem for  
 9 serving as a member of the board of directors. However, a member  
 10 shall be reimbursed for necessary expenses incurred by the  
 11 member in the performance of official duties.

12 SECTION 6. IC 8-1.5-5-5 IS AMENDED TO READ AS  
 13 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. (a) The  
 14 legislative body shall, in the ordinance adopting the provisions of this  
 15 chapter ~~create~~ **creates** a special taxing district that includes the  
 16 following:

17 (1) For a consolidated city, all of the territory of the county  
 18 containing the consolidated city.

19 (2) For all other municipalities, all territory within the corporate  
 20 boundaries of the municipality.

21 (3) **For a county, all the territory in the county that is not**  
 22 **located in a municipality that has adopted the provisions of**  
 23 **this chapter by ordinance.**

24 (b) ~~As to each municipality to which this chapter applies, including~~  
 25 ~~a consolidated city,~~ All the territory within the district constitutes a  
 26 special taxing district for the purpose of providing for the collection  
 27 and disposal of storm water of the district in a manner that protects the  
 28 public health and welfare and for the purpose of levying special benefit  
 29 taxes for purposes of storm water collection and disposal. All ~~area~~  
 30 **territory** in the district and all ~~area~~ **territory** added to the district is  
 31 considered to have received a special benefit from the storm water  
 32 collection and disposal facilities of the district equal to or greater than  
 33 the special taxes imposed on the ~~area by territory under~~ this chapter  
 34 in order to pay all or part of the costs of such facilities.

35 SECTION 7. IC 8-1.5-5-6 IS AMENDED TO READ AS  
 36 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 6. (a) The board  
 37 has the powers and duties prescribed by IC 8-1.5-3-4(a). In addition,  
 38 the board may:

39 (1) hold hearings following public notice;

40 (2) make findings and determinations;

41 (3) install, maintain, and operate a storm water collection and  
 42 disposal system;



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- 1 (4) make all necessary or desirable improvements of the grounds
- 2 and premises under its control; and
- 3 (5) issue and sell bonds of the district in the name of the
- 4 **municipality unit served by the department** for the acquisition,
- 5 construction, alteration, addition, or extension of the storm water
- 6 collection and disposal system or for the refunding of any bonds
- 7 issued by the board.

8 (b) The board has exclusive jurisdiction over the collection and  
 9 disposal of storm water within the district.

10 SECTION 8. IC 8-1.5-5-7, AS AMENDED BY P.L. 176-2002,  
 11 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 12 UPON PASSAGE]: Sec. 7. (a) The acquisition, construction,  
 13 installation, operation, and maintenance of facilities and land for storm  
 14 water systems may be financed through:

- 15 (1) proceeds of special taxing district bonds of the storm water
- 16 district;
- 17 (2) the assumption of liability incurred to construct the storm
- 18 water system being acquired;
- 19 (3) service rates;
- 20 (4) revenue bonds; or
- 21 (5) any other available funds.

22 (b) The board, after approval by the ~~legislative~~ **fiscal** body of the  
 23 **municipality, unit served by the department**, may assess and collect  
 24 user fees from all of the property of the storm water district for the  
 25 operation and maintenance of the storm water system.

26 (c) The collection of the fees authorized by this section may be  
 27 effectuated through a periodic billing system or through a charge  
 28 appearing on the semiannual property tax statement of the affected  
 29 property owner.

30 SECTION 9. IC 8-1.5-5-12 IS AMENDED TO READ AS  
 31 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 12. (a) If the board  
 32 acquires a storm water system and assumes the liability incurred by the  
 33 seller to construct the storm water system, the principal and interest on  
 34 the liability so assumed shall be paid from the bond and interest  
 35 redemption account in the same manner as bonds of the district would  
 36 be paid, and the board shall set aside sufficient revenues to comply  
 37 with the requirements of the instrument creating the liability.

38 (b) A **municipality unit** acquiring a storm water system may not  
 39 assume any liability for the payment of a secured debt or charge other  
 40 than the obligation to apply the revenues in the manner prescribed in  
 41 the ordinance.

42 (c) The board may issue bonds in exchange for, or satisfaction of,

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1 the liability assumed in the acquisition of a storm water system. The  
 2 bonds so issued may not be issued at less than ninety-seven percent  
 3 (97%) of the par value thereof in exchange for, or satisfaction of, the  
 4 liability. Notwithstanding section 13(c) of this chapter, bonds issued in  
 5 exchange for, or satisfaction of, the liability need not be sold in  
 6 accordance with IC 5-1-11. However, the interest rate on such bonds  
 7 may not exceed the average yield on municipal revenue bonds of  
 8 comparable credit rating and maturity as of the end of the week  
 9 immediately preceding the issuance of the bonds.

10 SECTION 10. IC 8-1.5-5-15 IS AMENDED TO READ AS  
 11 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 15. (a) All money  
 12 received from bonds issued under this chapter shall be applied solely  
 13 to the acquisition, construction, repair, and maintenance of the storm  
 14 water system, the cost of the issuance of the bonds, and the creation of  
 15 any reserve for the bonds.

16 (b) Any holder of the bonds may bring a civil action to compel  
 17 performance of all duties required by this chapter of the board issuing  
 18 the bonds or of any officer of the board, including the following:

- 19 (1) Making and collecting reasonable and sufficient user fees  
 20 lawfully established for service rendered by the storm water  
 21 system.
- 22 (2) Segregating the income and revenues of the department.
- 23 (3) Applying the respective funds created under this chapter.

24 (c) If there is any default in the payment of the principal or interest  
 25 of any of the bonds, a court having jurisdiction of the action may:

- 26 (1) appoint an administrator or receiver to administer the storm  
 27 water system on behalf of the **municipality unit served by the**  
 28 **department** and the bondholders, with power to:

29 (A) charge and collect user fees lawfully established sufficient  
 30 to provide for the payment of the operating expenses and also  
 31 to pay any bonds or obligations outstanding against the storm  
 32 water system; and

33 (B) apply the income and revenues in conformity with this  
 34 chapter and the ordinance; or

- 35 (2) declare the whole amount of the bonds due and payable and  
 36 direct the sale of the storm water system.

37 Under a sale ordered under subdivision (2), the purchaser is vested  
 38 with an indeterminate permit as defined in IC 8-1-2-1 to maintain and  
 39 operate the storm water system to collect and dispose of storm water  
 40 for the **municipality unit served by the department** and its citizens.

41 SECTION 11. IC 8-1.5-5-16 IS AMENDED TO READ AS  
 42 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 16. (a) **This**

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1 **section applies to a municipality.**

2 (b) The reasonable cost and value of any service rendered to the  
3 municipality by the storm water system by furnishing storm water  
4 collection and disposal shall be:

- 5 (1) charged against the municipality; and  
6 (2) paid for in monthly installments as the service accrues out of  
7 the:

8 (A) current revenues of the municipality, collected or in  
9 process of collection; and

10 (B) tax levy of the municipality made by it to raise money to  
11 meet its necessary current expenses.

12 ~~(b)~~ (c) The compensation for the service provided to the  
13 municipality shall, in the manner prescribed by this chapter, be treated  
14 as revenues of the system and paid into the funds created under this  
15 chapter.

16 SECTION 12. IC 8-1.5-5-16.5 IS ADDED TO THE INDIANA  
17 CODE AS A NEW SECTION TO READ AS FOLLOWS  
18 [EFFECTIVE UPON PASSAGE]: **Sec. 16.5. (a) This section applies  
19 to a county.**

20 (b) The reasonable cost and value of any service rendered to the  
21 county by the storm water system by furnishing storm water  
22 collection and disposal shall be:

23 (1) charged against all the territory in the county, except  
24 territory within a municipality that has adopted the  
25 provisions of this chapter by ordinance; and

26 (2) paid for in monthly installments as the service accrues out  
27 of the:

28 (A) current revenues of the county, collected or in process  
29 of collection; and

30 (B) tax levy of the county made by the county to raise  
31 money to meet the county's necessary current expenses.

32 (c) The compensation for the service provided to the county  
33 shall, in the manner prescribed by this chapter, be treated as  
34 revenues of the system and paid into the funds created under this  
35 chapter.

36 SECTION 13. IC 8-1.5-5-20 IS AMENDED TO READ AS  
37 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 20. All real  
38 property, rights-of-way, or other property acquired by purchase or  
39 appropriation shall be taken and held in the name of the ~~municipality~~  
40 **unit served by the department.**

41 SECTION 14. IC 8-1.5-5-21 IS AMENDED TO READ AS  
42 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 21. (a) To procure

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1 money to pay for the required property and the acquisition, erection,  
 2 and construction of the proposed work, and in anticipation of the  
 3 collection of the special benefit tax, the board may issue, in the name  
 4 of the ~~municipality~~, **unit served by the department**, special taxing  
 5 district bonds of the storm water district. The bonds may not exceed the  
 6 total estimated cost of the work and property to be acquired as provided  
 7 for in the resolution, including:

8 (1) all expenses necessarily incurred for supervision and  
 9 inspection during the period of construction; and

10 (2) expenses actually incurred preliminary to the acquiring of the  
 11 necessary property and the construction of the work, including the  
 12 cost of records, engineering expenses, publication of notices,  
 13 salaries, and other expenses incurred, before and in connection  
 14 with the acquiring of the property, the letting of the contract, and  
 15 the sale of bonds.

16 (b) After adopting a resolution authorizing the bonds, the board  
 17 shall certify a copy of the resolution to the ~~municipal~~ fiscal officer of  
 18 **the unit**, who shall then prepare the bonds. The ~~municipal~~ executive  
 19 shall execute the bonds, and the fiscal officer shall attest the bonds.

20 (c) The board may not issue bonds of the storm water district,  
 21 payable by a special benefit property tax, when the total of the  
 22 outstanding bonds of the district that are payable from a special benefit  
 23 property tax, including the bonds already issued and to be issued,  
 24 exceeds eight percent (8%) of the total adjusted value of taxable  
 25 property in the district as determined under IC 36-1-15. For purposes  
 26 of this section, bonds are not considered to be outstanding bonds if the  
 27 payment has been provided for by an irrevocable deposit in escrow of  
 28 government obligations sufficient to pay the bonds when due or called  
 29 for redemption.

30 (d) The bonds are not a corporate obligation or indebtedness of the  
 31 ~~municipality~~ **unit** but are an indebtedness of the storm water district.  
 32 The bonds and interest are payable:

33 (1) out of a special benefit tax levied upon all of the property of  
 34 the storm water district; or

35 (2) by any other means including revenues, cash on hand, and  
 36 cash in depreciation or reserve accounts.

37 (e) The bonds must recite the terms upon their face, together with  
 38 the purpose for which they are issued.

39 SECTION 15. IC 8-1.5-5-22 IS AMENDED TO READ AS  
 40 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 22. (a) To raise the  
 41 necessary revenues to pay for the bonds issued and the interest on the  
 42 bonds, the board:

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1 (1) after approval by the ~~legislative~~ **fiscal** body of the  
 2 ~~municipality, unit served by the department~~, shall levy a special  
 3 benefit tax upon all the property of the storm water district in the  
 4 amount necessary to meet and pay the principal of the bonds as  
 5 they severally mature, together with all accruing interest; and  
 6 (2) shall certify the tax levied each year to the fiscal ~~officers~~  
 7 **officer** of the ~~municipality and of the county in which the storm~~  
 8 ~~water district is located, unit served by the department~~ at the  
 9 same time ~~the levy of the municipality is and in the same~~  
 10 **manner as other levies of the unit are certified.**

11 The tax levied and certified shall be estimated and entered upon the tax  
 12 duplicate and shall be collected and enforced in the same manner as  
 13 state and county taxes are estimated, entered, and enforced.

14 (b) In fixing the amount of the necessary levy, the board:

15 (1) shall consider the amount of revenues derived by the board  
 16 from the operation of the storm water system under its jurisdiction  
 17 above the amount of revenues required to pay the cost of  
 18 operation and maintenance of the storm water system; and  
 19 (2) may, in lieu of making the levy in this section, set aside by  
 20 resolution a specific amount of the surplus revenues to be  
 21 collected before maturity of the principal and interest of the bonds  
 22 payable in the following calendar year.

23 (c) The special tax shall be deposited in the bond and interest  
 24 redemption account.

25 SECTION 16. IC 8-1.5-5-23 IS AMENDED TO READ AS  
 26 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 23. (a) The board  
 27 may not issue any bonds authorized by this chapter until it has secured  
 28 the approval for the issuance of the bonds from the ~~legislative~~ **fiscal**  
 29 body of the ~~municipality, unit served by the department~~.

30 (b) IC 6-1.1-20 applies to the issuance of bonds under this chapter  
 31 which are or may be payable from the special benefit property tax.

32 SECTION 17. IC 8-1.5-5-27 IS ADDED TO THE INDIANA CODE  
 33 AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE  
 34 UPON PASSAGE]: Sec. 27. (a) **Two (2) or more storm water**  
 35 **management districts established under this chapter may enter**  
 36 **into an agreement under IC 36-1-7 to cooperate for the collection**  
 37 **and disposal of storm water.**

38 (b) **The drainage board of a county and one (1) or more storm**  
 39 **water management districts established under this chapter may**  
 40 **enter into an agreement under IC 36-1-7 to cooperate for the**  
 41 **collection and disposal of storm water.**

42 SECTION 18. IC 36-9-27-114 IS ADDED TO THE INDIANA

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1 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 2 [EFFECTIVE UPON PASSAGE]: **Sec. 114. (a) This section applies**  
 3 **to a county that has not adopted an ordinance to adopt the**  
 4 **provisions of IC 8-1.5-5.**

5 **(b) As used in this section, "storm water improvements" means**  
 6 **storm sewers, drains, storm water retention or detention**  
 7 **structures, dams, or any other improvements used for the**  
 8 **collection, treatment, and disposal of storm water.**

9 **(c) The drainage board of a county may establish fees for**  
 10 **services provided by the board to address issues of storm water**  
 11 **quality and quantity, including the costs of constructing,**  
 12 **maintaining, operating, and equipping storm water improvements.**

13 **(d) Fees established after notice and hearing under this chapter**  
 14 **are presumed to be just and equitable.**

15 **(e) The fees established under this section are payable by the**  
 16 **owner of each lot, parcel of real property, or building that uses or**  
 17 **is served by storm water improvements that address storm water**  
 18 **quality and quantity. Unless the board finds otherwise, the storm**  
 19 **water improvements are considered to benefit every lot, parcel of**  
 20 **real property, or building that uses or is served by the storm water**  
 21 **improvements, and the fees shall be billed and collected**  
 22 **accordingly.**

23 **(f) The board may use one (1) or more of the following factors**  
 24 **to establish the fees:**

25 **(1) A flat charge for each lot, parcel of property, or building.**

26 **(2) The amount of impervious surface on the property.**

27 **(3) The number and size of storm water outlets on the**  
 28 **property.**

29 **(4) The amount, strength, or character of storm water**  
 30 **discharged into the county drainage system.**

31 **(5) The existence of improvements on the property that**  
 32 **address storm water quality and quantity issues.**

33 **(6) Whether the property has been or will be required to pay**  
 34 **separately for any part of the storm water improvements.**

35 **(7) Whether the property, although vacant or unimproved, is**  
 36 **benefited by the availability of storm water improvements.**

37 **However, the owner must have been notified, by recorded**  
 38 **covenants and restrictions or deed restrictions in the chain of**  
 39 **title of the owner's property, that a fee or assessment for the**  
 40 **availability of storm water improvements may be charged,**  
 41 **and the fee may reflect only the capital cost of the storm water**  
 42 **improvements and not the cost of operation and maintenance**

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- 1           **of the storm water improvements.**
- 2           **(8) The amount of money sufficient to compensate the county**
- 3           **for the property taxes that would be paid on the storm water**
- 4           **improvements if the storm water improvements were**
- 5           **privately owned.**
- 6           **(9) Any other factors the board considers necessary.**
- 7           **(g) The board may exercise reasonable discretion in adopting**
- 8           **different schedules of fees or making classifications in schedules of**
- 9           **fees based on variations in:**
- 10           **(1) the costs, including capital expenditures, of furnishing**
- 11           **services to various classes of users or to various locations; or**
- 12           **(2) the number of users in various locations.**
- 13           **SECTION 19. An emergency is declared for this act.**

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