

# HOUSE BILL No. 1349

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 36-9-27.

**Synopsis:** Drainage boards. Provides that for purposes of the drainage law, a mutual drain or a private drain may be a natural surface watercourse. Requires that a drainage board of a county (board) must include every tract of land within a watershed affected by a drain that is constructed, reconstructed, or maintained when the board determines benefits or damages attributed to the drain. Provides that a board may use all or part of certain interest generated instead of fees to fund the services provided by the board.

**Effective:** July 1, 2012.

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January 11, 2012, read first time and referred to Committee on Agriculture and Rural Development.

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Second Regular Session 117th General Assembly (2012)

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 2011 Regular Session of the General Assembly.

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**HOUSE BILL No. 1349**



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 36-9-27-2 IS AMENDED TO READ AS  
 2 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 2. As used in this  
 3 chapter:  
 4 "Affected land" means land within a watershed that is affected by  
 5 the construction, reconstruction, or maintenance of a regulated drain.  
 6 "Board" refers to the drainage board of a county.  
 7 "Crossing" means a drainage structure that passes over, under, or  
 8 through a location used for the passage of people, livestock, or  
 9 vehicles.  
 10 "Dam" means a dam or other structure and its appurtenances that  
 11 impounds a small lake at the lake's outlet.  
 12 "Maintenance" means work on a drain as described in section 34(c)  
 13 of this chapter for any of the purposes stated in that section.  
 14 "Mutual drain" means a drain that:  
 15 (1) is located on two (2) or more tracts of land that are under  
 16 different ownership;  
 17 (2) was established by the mutual consent of all the owners; ~~and~~



- 1 (3) was not established under or made subject to any drainage  
 2 statute; **and**  
 3 **(4) may be a natural surface watercourse as defined in**  
 4 **IC 36-9-27.4-3.**  
 5 "Open drain" means a natural or artificial open channel that:  
 6 (1) carries surplus water; and  
 7 (2) was established under or made subject to any drainage statute.  
 8 "Owner" refers to the owner of any interest in land.  
 9 "Private drain" means a drain that:  
 10 (1) is located on land owned by one (1) person or by two (2) or  
 11 more persons jointly; **and**  
 12 (2) was not established under or made subject to any drainage  
 13 statute; **and**  
 14 **(3) may be a natural surface watercourse as defined in**  
 15 **IC 36-9-27.4-3.**  
 16 "Reconstruction" means work on a drain as described in section  
 17 34(b) of this chapter to correct any of the problems with the drain that  
 18 are enumerated in that section up to and including the discharge  
 19 portion of the drain.  
 20 "Regulated drain" means an open drain, a tiled drain, or a  
 21 combination of the two.  
 22 "Rural drain" means a regulated drain that provides adequate  
 23 drainage or impounds water for rural land.  
 24 "Rural land" means affected land that:  
 25 (1) will not appreciably benefit from more drainage than is  
 26 necessary to expediently remove water after frequent or periodic  
 27 flooding; and  
 28 (2) is generally used for crop production, pasture, forest, or  
 29 similar purposes.  
 30 "Small lake" means a lake, pond, or similar body of water that:  
 31 (1) covers less than twenty (20) acres;  
 32 (2) is surrounded by two (2) or more tracts of affected land that  
 33 are under different ownership or a tract of land that is owned by  
 34 a not-for-profit corporation having more than one (1) member;  
 35 (3) is not constructed, reconstructed, or maintained under this  
 36 chapter as part of an open drain;  
 37 (4) is not a private crossing, control dam, or other permanent  
 38 structure referred to under section 72 of this chapter;  
 39 (5) is not owned by a state or any of its political subdivisions; and  
 40 (6) is not designed and constructed primarily for reduction or  
 41 control of pollutants or cooling before discharge of a liquid.  
 42 "Tiled drain" means a tiled channel that:

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1 (1) carries surplus water; and  
 2 (2) was established under or made subject to any drainage statute.  
 3 "Urban land" means affected land that:  
 4 (1) will appreciably benefit from drainage that will provide the  
 5 maximum practicable protection against flooding or the  
 6 impounding of water in a small lake; and  
 7 (2) is used or will, in the reasonably foreseeable future, be used  
 8 generally for commercial, industrial, large estate, higher density  
 9 residential, or similar purposes.  
 10 "Watershed" means an area of land from which all runoff water  
 11 drains to a given point or that is affected by a small lake.  
 12 SECTION 2. IC 36-9-27-112 IS AMENDED TO READ AS  
 13 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 112. **(a) The board**  
 14 **shall include every tract of land within a watershed affected by the**  
 15 **construction, reconstruction, or maintenance of a drain in**  
 16 **determining benefits or damages to land under sections 39, 50, and**  
 17 **62 of this chapter.**  
 18 ~~(a)~~ **(b)** In determining benefits to land under sections 39, 50, and 62  
 19 of this chapter, the board may consider:  
 20 (1) the watershed affected by the drain to be constructed,  
 21 reconstructed, or maintained;  
 22 (2) the number of acres in each tract;  
 23 (3) the total volume of water draining into or through the drain to  
 24 be constructed, reconstructed, or maintained, and the amount of  
 25 water contributed by each land owner;  
 26 (4) the land use;  
 27 (5) the increased value accruing to each tract of land from the  
 28 construction, reconstruction, or maintenance;  
 29 (6) whether the various tracts are adjacent, upland, upstream, or  
 30 downstream in relation to the main trunk of the drain;  
 31 (7) elimination or reduction of damage from floods;  
 32 (8) the soil type; and  
 33 (9) any other factors affecting the construction, reconstruction, or  
 34 maintenance.  
 35 ~~(b)~~ **(c)** In determining benefits or damages to land under sections 39,  
 36 50, and 62 of this chapter, the board may examine aerial photographs  
 37 and topographical or other maps, and may adjourn the hearing to the  
 38 site of the construction, reconstruction, or maintenance in order to  
 39 personally view the affected land.  
 40 ~~(c)~~ **(d)** In determining percentages of benefit under sections 39, 50,  
 41 and 62 of this chapter, the board may consider the percentage of the  
 42 total cost that was assessed to each tract in the initial construction or in

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1 any reconstruction of the drain. However, that percentage is not  
 2 binding on the board in its current determination, and the board may  
 3 vary from it as justice requires.

4 SECTION 3. IC 36-9-27-114 IS AMENDED TO READ AS  
 5 FOLLOWS [EFFECTIVE JULY 1, 2012]: Sec. 114. (a) This section  
 6 applies to a county that:

7 (1) receives notification from the department of environmental  
 8 management that the county will be subject to regulation under  
 9 327 IAC 15-13; and

10 (2) has not adopted an ordinance to adopt the provisions of  
 11 IC 8-1.5-5.

12 (b) As used in this section, "storm water improvements" means  
 13 storm sewers, drains, storm water retention or detention structures,  
 14 dams, or any other improvements used for the collection, treatment,  
 15 and disposal of storm water.

16 (c) The drainage board of a county may establish fees for services  
 17 provided by the board to address issues of storm water quality and  
 18 quantity, including the costs of constructing, maintaining, operating,  
 19 and equipping storm water improvements.

20 (d) Fees established under this chapter after a public hearing with  
 21 notice given under IC 5-3-1 are presumed to be just and equitable.

22 (e) The fees are payable by the owner of each lot, parcel of real  
 23 property, or building that uses or is served by storm water  
 24 improvements that address storm water quality and quantity. Unless the  
 25 board finds otherwise, the storm water improvements are considered to  
 26 benefit every lot, parcel of real property, or building that uses or is  
 27 served by the storm water improvements, and the fees shall be billed  
 28 and collected accordingly.

29 (f) The board shall use one (1) or more of the following factors to  
 30 establish the fees:

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

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

33 (3) The number and size of storm water outlets on the property.

34 (4) The amount, strength, or character of storm water discharged.

35 (5) The existence of improvements on the property that address  
 36 storm water quality and quantity issues.

37 (6) The degree to which storm water discharged from the property  
 38 affects water quality in the district.

39 (7) Any other factors the board considers necessary.

40 (g) The board may exercise reasonable discretion in adopting  
 41 different schedules of fees, or making classifications in schedules of  
 42 fees, based on:

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- 1 (1) variations in the costs, including capital expenditures, of
- 2 addressing storm water quality and quantity for various classes of
- 3 users or for various locations;
- 4 (2) variations in the number of users in various locations; and
- 5 (3) whether the property is used primarily for residential,
- 6 commercial, or agricultural purposes.
- 7 **(h) Instead of using fees to fund the services described in**
- 8 **subsection (c), the board may use all or part of the interest**
- 9 **generated under section 113(b) and 113(c) of this chapter.**

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