



March 6, 2013

**ENGROSSED
HOUSE BILL No. 1169**

DIGEST OF HB 1169 (Updated March 4, 2013 12:09 pm - DI 109)

Citations Affected: IC 36-9.

Synopsis: Drainage issues. Provides that the drainage board of a county, upon the recommendation of the county surveyor, may reduce any tiled drain, including a tiled urban drain, to less than 15 feet from the center line as measured at right angles but not less than seven feet from each side of the center line or less than the recommendation made by the county surveyor. Provides that in regards to a platted subdivision, the drainage board of a county shall not make a reduction that results in an allowance that is less than 7 feet from each side of the center line as measured at right angles; or less than the recommendation made by the county surveyor. Provides that a drainage board's reduction of a drainage easement does not affect a public utility's placement of a structure in the easement if the structure is located in the easement at the time the easement is reduced.

Effective: July 1, 2013.

Heuer, GiaQuinta

(SENATE SPONSORS — WYSS, KRUSE)

January 10, 2013, read first time and referred to Committee on Local Government.
January 28, 2013, reported — Do Pass.
January 31, 2013, read second time, ordered engrossed. Engrossed.
February 4, 2013, read third time, passed. Yeas 96, nays 0.

SENATE ACTION

February 25, 2013, read first time and referred to Committee on Agriculture and Natural Resources.
March 5, 2013, amended, reported favorably — Do Pass.

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March 6, 2013

First Regular Session 118th General Assembly (2013)

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 2012 Regular Session of the General Assembly.

ENGROSSED HOUSE BILL No. 1169

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 36-9-27-33 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 33. (a) The county
3 surveyor, the board, or an authorized representative of the surveyor or
4 the board acting under this chapter has the right of entry over and upon
5 land lying within seventy-five (75) feet of any regulated drain. The
6 seventy-five (75) foot limit shall be measured at right angles to:
7 (1) the center line of any tiled drain; and
8 (2) the top edge of each bank of an open drain;
9 as determined by the surveyor.
10 (b) Spoil bank spreading resulting from the construction,
11 reconstruction, or maintenance of an open drain may extend beyond the
12 seventy-five (75) foot right-of-way if:
13 (1) the county surveyor finds that the extension is necessary; and
14 (2) the extension has been provided for in the engineer's report on
15 the construction, reconstruction, or maintenance.
16 (c) All persons exercising the right given by this section shall, to the
17 extent possible, use due care to avoid damage to crops, fences,

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1 buildings, and other structures outside of the right-of-way, and to crops
2 and approved structures inside the right-of-way. The county surveyor
3 shall give oral or written notice of the entry on the land to the property
4 owner of record, and in the case of a municipality, to the executive of
5 that municipality. The notice must state the purpose for the entry.

6 (d) The owners of land over which the right-of-way runs may use
7 the land in any manner consistent with this chapter and the proper
8 operation of the drain. Permanent structures may not be placed on any
9 right-of-way without the written consent of the board. Temporary
10 structures may be placed upon or over the right-of-way without the
11 written consent of the board, but shall be removed immediately by the
12 owner when so ordered by the board or by the county surveyor. Crops
13 grown on a right-of-way are at the risk of the owner, and, if necessary
14 in the reconstruction or maintenance of the drain, may be damaged
15 without liability on the part of the surveyor, the board, or their
16 representatives. Trees, shrubs, and woody vegetation may not be
17 planted in the right-of-way without the written consent of the board,
18 and trees and shrubs may be removed by the surveyor if necessary to
19 the proper operation or maintenance of the drain.

20 (e) This subsection applies to new regulated drains established after
21 September 1, 1984, and to urban drains. **Except as provided in**
22 **subsection (f)**, the board may reduce the seventy-five (75) foot
23 **right-of-way** requirement of subsections (a) and (b) to any distance of
24 not less than:

- 25 (1) twenty-five (25) feet from the top of each bank of an open
26 ditch; and
- 27 (2) fifteen (15) feet from the center line of any tiled drain;
28 as measured at right angles.

29 (f) **This subsection applies only to a platted subdivision. Upon**
30 **the recommendation of the county surveyor, the board may further**
31 **reduce the right-of-way for any tiled drain, including a tiled urban**
32 **drain that was reduced under subsection (e)(2). However, the**
33 **board shall not make a reduction that results in a right-of-way that**
34 **is:**

- 35 (1) **less than seven (7) feet from each side of the center line as**
36 **measured at right angles; or**
- 37 (2) **less than the recommendation made by the county**
38 **surveyor.**

39 (g) **A reduction of a right-of-way under subsection (e) or (f) does**
40 **not:**

- 41 (1) **affect a public utility's use of; or**
- 42 (2) **deprive a public utility of the use of;**

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1 **the right-of-way if, at the time the right-of-way is reduced, the**
2 **public utility is occupying and using the right-of-way for the**
3 **location of the public utility's structures, including pipelines,**
4 **electric lines, or any related structures.**

5 ~~(f)~~ **(h)** The surveyor, the board, or an authorized representative of
6 the surveyor or the board acting under this chapter does not commit
7 criminal trespass under IC 35-43-2-2.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Local Government, to which was referred House Bill 1169, 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.

NEESE, Chair

Committee Vote: yeas 9, nays 0.

 COMMITTEE REPORT

Madam President: The Senate Committee on Agriculture and Natural Resources, to which was referred House Bill No. 1169, 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 2, line 22, after "foot" insert "**right-of-way**".

Page 2, line 30, delete "allowance under subsection (e)(2)" and insert "**right-of-way**".

Page 2, line 31, delete ". The board may" and insert "**that was reduced under subsection (e)(2). However, the board shall**".

Page 2, line 32, delete "an allowance" and insert "**a right-of-way**".

Page 2, between lines 36 and 37, begin a new paragraph and insert: "**(g) A reduction of a right-of-way under subsection (e) or (f) does not:**

(1) affect a public utility's use of; or

(2) deprive a public utility of the use of;

the right-of-way if, at the time the right-of-way is reduced, the public utility is occupying and using the right-of-way for the location of the public utility's structures, including pipelines, electric lines, or any related structures."

Page 2, line 37, beginning with "(f)" begin a new paragraph.

Page 2, line 37, delete "(g)" and insert "**(h)**".

and when so amended that said bill do pass.

(Reference is to HB 1169 as printed January 29, 2013.)

YODER, Chairperson

Committee Vote: Yeas 7, Nays 0.

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