

Ditch Associations and Drainage Maintenance Districts

Brief History of Drainage Acts in Indiana

- 1) Drainage Laws in Indiana leading up to our current Drainage Code
 - a. Drainage Acts of 1881, 1883, 1885, 1905, 1907, 1915, 1917, 1933, 1945, 1947 and 1949
- 2) Drainage Laws that regulated the creation of Ditch Associations and Drainage Maintenance and Repair Districts
 - a. Acts of 1913 and 1949
- 3) The 1965 Indiana Drainage Code
 - a. Summary of how the 1965 Drainage Code and its amendments to date affected Ditch Associations and Drainage Maintenance Districts

(NOTE: Copies of the above drainage acts and instructions for implementing the 1965 Drainage Act as published in 1965 by AIC are available for review by interested persons)

Ditch Associations and Drainage Maintenance Districts

- 4) Examples of these drains and how we handle them in Knox County
- 5) GIS mapping recently developed for all ditch associations, regulated drains and ditch assessments in Knox County

Open discussion

- a. What additional effort is needed to complete and verify this map data?
- b. How can we use this new mapping to improve assessments for ditch associations or maintenance districts?
- c. Can inactive ditch associations or maintenance districts reactivate themselves?
- d. Should we be assessing the entire watershed?.....Can we legally add omitted lands?
- e. Should the Auditor's Office/Surveyor's Office automatically reassess lands when transferred or split and amend the assessment rolls for the ditch?
- f. Open topics.....

History of Drainage Acts

The drainage acts and resolutions of the territorial and commonwealth periods for Indiana may be grouped into four distinct classes:

1799-1883: The highway drainage acts. passed between 1799 and 1883. There were 12 highway laws providing for incidental drainage during this 84-year period.

1799-1852: The special drainage acts passed between 1799 and 1852. Every drainage project undertaken prior to 1852 was authorized and promoted by special legislation. During the 53-year period 38 acts and resolutions were passed for reclamation activities in 18 counties and thirteen small widely separated areas. Eight county drainage acts were passed for land within fourteen counties from 1827-1852.

1850-1913: The acts designed to direct state and federal aide including the redemption of Swamp Lands and the removal of obstructions from the Kankakee and Calumet Rivers.

1852-1913: The statewide drainage acts passed between 1852 and 1913. 118 acts and resolutions passed during this time. These were related to incorporated drainage associations. unincorporated drainage associations. drainage of cities. stream and natural water courses, maintenance and repair of drains, inter-state drains. protection of fresh-water lakes. and sanitary and drainage districts.

Incorporated Drainage Associations: Laws to authorize the incorporation of drainage associations for construction and maintenance of levees, drains and breakwaters and the improvement and repair of natural streams and water courses and previously constructed drains have been in operation in Indiana since 1852. In 1911 this act was restricted to apply exclusively to levees.

Unincorporated Drainage Associations: The method of reclaiming land most widely employed through 1914 was voluntary and unincorporated drainage associations. The authority to establish drainage works resides in the hoards of county commissioners and the circuit and superior courts and this authority is invoked on petition of certain public officers and of any interested person or group of persons. The administrative group empowered to authorize drainage projects falls into one of two categories. From 1863-1905 the function was performed by three disinterested parties appointed by the board of county commissioners. When a consolidation of drainage acts occurred in 1905 this method was superseded by a county drainage board consisting of an experienced county drainage commissioner, appointed biennially by the board of county commissioners, one commissioner appointed from the township in which the proposed drainage system was located and the county surveyor, who was an ex-officio member.

The Drainage Law in 1914: Under this law, all drainage enterprises, except the construction of dikes and levees, are entrusted to a commission composed according to the revisions made in the law in 1905. The commission's responsibilities are to locate and establish all drains and assess benefits and damages. Drains are established on petition of the interested owners, filed with the county commissioners. or with the circuit or superior court if the drain crosses a county line. Any proceeding may be terminated by a remonstrance signed by two thirds of the persons interested. The work of construction is supervised and the assessments are collected by the superintendent of construction who is appointed by the board. Repairs are made by the township trustee, or the county surveyor on petition of the owners subject to assessment.

Contemporary Legislation affecting drainage in Indiana includes the following:

1965: Indiana Drainage Board Act passed that governs drainage activities statewide today.

1972: Clean Water Act passed. Amended in 1977 to include language addressing wetlands as part of the nation's waters. Permits required for discharge of dredged or fill materials into wetland areas.

1985/1990/1996: Farm bills passed. Swampbuster provision requires farmers to protect existing wetlands in order to qualify for FHA farm subsidies and crop insurance.

1995: Reauthorization of Clean Water Act

1995: Indiana Drainage Code amended with 368 Early Coordination Procedure to require the county surveyor or drainage board to request an on-site field review of the proposed reconstruction or maintenance project. Review conducted by representatives of the county, IDNR, IDEM, and local SWCD. IDNR's recommendations are limited in scope and are binding on the department for two years.

References:

Latta, W.C., *Outline History of Indiana Agriculture*, Purdue University Agricultural Experiment Station and Department of Agricultural Extension & the Indiana County of Agricultural Agents Association, (First Ed.) 1938.

Kettleborough, Charles, *Drainage and Reclamation o/Swamp and Overflowed Lands*, Indiana Bureau of Legislative Information, Bulletin No. 2, Indianapolis, 1914.

A Brief History of Drainage In Indiana

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One of the chief obstacles to agricultural expansion in the early days of the state was the presence of large areas of marshy ground. These marshy areas not only hindered farming but also created health problems such as various fevers. Proper drainage was needed to provide better farms and health.

The first mention of drainage in Indiana statute is an Act in 1816 providing for the Highway Supervisor appointed by the county Commissioners to drain roads. This act allowed them to enter upon lands of others if necessary, to open ditches. Also provided was a \$5.00 fine for filling these ditches.

An Act in 1832 provided for draining swamps, ponds, marshes and other low lands within Tippecanoe, Montgomery, Clinton, and Warren Counties. this construction and repair of drains was done through the Justice of the Peace. The Act also provided for a fine for obstructing drains.

In 1848, the General Assembly set a resolution to Congress calling for wetlands in Jay and Adams Counties to be sold at a reduced price on condition that owners would drain the land. The resolution also called for forfeiture of the land if not drained by the purchaser within a reasonable period of time. Congress responded in 1850 with an Act doing just that for all states. In 1851, Indiana required County Surveyors to locate and designate swamplands. The act set up the procedures required by the Federal Act of 1850.

In 1852, an Act was passed regarding the construction of the levees and drains by five (5) or more landowners forming an Association. These Associations acted much like a Corporation.

An 1861 act provided that landowners had the right to enter upon the land of others in order to deepen or maintain any natural channel, required to drain their land. The great-grandfather of our current Drainage Law is an Act of 1863, which provided that land owners may petition the Board of Commissioners for drainage. The Act also provided that the cost was to be borne by landowners within the drainage shed and those assessments created a lien on the property. In 1867 a penalty of \$1.00 per day was added for any obstruction to these drains.

In Indiana between 1860 and 1890 new acres were constantly being put to the plow as forests were cleared and swamps were drained. The acreage of tillable land in the State almost doubled in the two decades after the Civil War. Towns and cities also sprang up or increased in size thanks in part to the Drainage Laws and the infrastructure they helped provide.

A Brief History of Drainage In Indiana

Many drainage provisions were passed between 1863 and 1965 when a major overhaul of the Drainage Laws was made. The Indiana Drainage Code compiled 40 separate Acts (passed between 1803 and 1964) into one code. The Drainage Code was recodified in 1981 with relatively minor changes and since then has had minor revisions.

Indiana Drainage Code creates a Drainage Board in each County of either the County Commissioners or a Citizen Board with one Commissioner as a member. The County Surveyor serves on the Board as an Ex-Officio Member. This is a non-voting position in which he or she acts as the Board's technical advisor. The Code creates Regulated Drains (also known as legal drains in the original 1965 code or has also been called county drains through the years). A Regulated Drain is a drain which was established through either the Circuit Court or Commissioners Court of the County prior to January 1st, 1966 or by the The Drainage Board since that time.

A regulated Drain can be either an open ditch or a tile drain or a combination of both. The Code gives the board the ability to create new drains when petitioned by 10% of the landowners in the drainage shed by acreage, owners of 25% of the assessed valuation within the drainage shed or by the County Commissioners or the City or Town Council for road and street drainage or a School Board to drain school property.

The Board can construct, maintain, reconstruct or vacate a regulated drain. The Board maintains a drain by putting the drain back to its original specifications by dredging, repair tile, clearing, removing obstructions or other work necessary to keep the drain in proper working order.

The Board must have hearings for the construction, maintenance, reconstruction and vacation. Notice is sent to each property owner by 1st class mail. Land owners within the drainage shed has the opportunity to object to the proposed project. The Board has the discretionary authority to approve, modify or dismiss the project based on the objections. Landowners have the right of judicial review of the Board's decision.

The Code also provides for a 75 foot drainage easement; requires Board approval of crossing on the drain and approval of outlets into the drain. The Code also gives the Board the right to remove obstructions within the drain.

Summary of Historical Drainage Acts in Indiana

I - Act of 1881, c. 43 (amended in 1883)

- 1) Circuit Court appoints two Drainage Commissioners for staggered 3 year terms (Sec. 1)
- 2) County Surveyor serves as an ex-officio Drainage Commissioner (Sec. 1)
- 3) Landowners file a petition for drainage improvement in Circuit Court (Sec. 2)
- 4) Circuit Court refers matter to the 3 Drainage Commissioners (Sec. 3)
 - a. Determine whether proposed work will be practicable, of public utility, and benefits greater than the costs (Sec. 3)
 - b. Determine best method of drainage; proceed with survey and design; assess benefits prepare cost estimates (Sec. 3)
- 5) After any remonstrances are settled, 1 Drainage Commissioner is assigned by the Circuit Court to proceed with construction (Sec. 4)
 - a. Drainage Commissioner in charge also collects all assessments and pays all costs (Sec. 5)
- 6) This act shall be liberally construed to promote the drainage and reclamation of wet or overflowed lands (Sec. 8)
- 7) Township Trustee is responsible for repair and maintenance of all drains constructed under this act and any previous drainage acts (Sec. 10)
 - a. Schedule of maintenance assessments are provided to Auditor and added to tax statements (Sec. 10)
- 8) Detailed sample legal documents and forms to be used under this act are provided (Sec. 15)
- 9) This Drainage Act of 1881 as amended was repealed by the Drainage Act of 1885, c. 40

II - Act of 1881, c. 44

- 1) County Commissioner's given the power to construct any ditch, drain or water course (Sec. 1)
- 2) Petition to establish ditch, drain or water course filed by landowners with County Auditor (Sec. 2)
- 3) County Commissioner's appoint 3 viewers (disinterested freeholders) (Sec. 2)
 - a. Viewers along with a surveyor (who shall be a civil engineer), proceed with survey, design, excavation calculations, cost estimates, benefits, damages and assessments (Sec. 2)
- 4) All lands benefited shall be assessed whether it passes through the lands or not (Sec. 4)
- 5) County Commissioner's assign 3 "reviewers" (disinterested freeholders) to review any remonstrances and the reports/findings of the original viewers (Sec. 11-12)
- 6) Final order of County Commissioner's can be appealed in Circuit Court (Sec. 17)
- 7) Auditor divides the work into allotments, bids the work and awards contract to lowest bidder on each allotment (Sec. 19)
- 8) County Surveyor responsible for inspecting completed work on each allotment (Sec. 21)
- 9) Landowners are responsible to keep their respective portion of the ditch open and clear of obstructions (Sec. 22)
- 10) Township Trustee is responsible for repair and maintenance of drains constructed under this act and any previous drainage acts (Sec. 23)
 - a. Schedule of maintenance assessments are provided to Auditor and added to tax statements (Sec. 23)
- 11) Rules and procedures recited for joint ditches in more than one county (Sec. 24-27)
- 12) This Drainage Act of 1881 is listed as superseded but does not specify exactly by which acts (probably by the Drainage Act of 1883, c. 132)

Summary of Historical Drainage Acts in Indiana

III - Act of 1883, c. 132

- 1) County Commissioner's given the power to alter, relocate and protect any stream or body of water (Sec. 1)
- 2) Petition for drainage improvement filed by landowners with County Commissioner's (Sec. 2)
- 3) County Commissioner's appoint 3 viewers (disinterested freeholders) and a competent surveyor or engineer (Sec. 2)
 - a. Determine in their opinion public good, convenience and utility; and assess damages and benefits; and estimate of expense (Sec. 3 & 4)
 - b. All lands assessed shall be within 2 miles of the contemplated improvement (Sec. 4)
- 4) Majority of landowners assessed must subscribe to the petition (Sec. 5)
- 5) County Commissioner's have the right at any time to add lands omitted from assessment or to alter the improvements (Sec. 5)
- 6) Engineer is hired to oversee construction and bid/contract the work (Sec. 5)
- 7) Future repairs shall follow same proceedings as original construction (Sec. 11)
- 8) This Drainage Act of 1883 was repealed by the Drainage Act of 1965, c. 305 (current drainage code)

IV - Act of 1885, c. 40

- 1) County Commissioners appoint one Drainage Commissioner for 2 year term (Sec. 1)
- 2) County Surveyor serves as an ex-officio Drainage Commissioner (Sec. 1)
- 3) Petition for drainage improvement filed by landowners in Circuit Court or Superior Court (Sec. 2)
- 4) Court appoints a third Drainage Commissioner (disinterested freeholder Sec. 3)
- 5) Drainage Commissioners:
 - a. Determine whether proposed work will be practicable, of public utility, and benefits greater than the costs (Sec. 3)
 - b. Determine best method of drainage; proceed with survey, design, excavation calculations, cost estimates, benefits, damages and assessments (Sec. 3)
- 6) After any remonstrances are settled, 1 Drainage Commissioner or any disinterested freeholder of the county is assigned by the court to proceed with construction (Sec. 4)
 - a. Person in charge also collects all assessments and pays all costs (Sec. 5)
- 7) Work can be divided into sections and awarded to lowest bidder; preferential rights are given to respective landowners to perform the work on their lands at the same lowest rate (Sec. 5)
- 8) Unpaid assessments are provided to Auditor for addition to the delinquent tax duplicates (Sec. 5)
- 9) This act shall be liberally construed to promote the drainage and reclamation of wet or overflowed lands (Sec. 8)
- 10) County Surveyor is responsible for repair and maintenance of drains constructed under this act (Sec. 10)
 - a. Schedule of assessments are provided to Auditor and added to tax statements (Sec. 10)
 - b. This responsibility applies to all drainage works constructed under any drainage law (Sec. 10)
- 11) This Drainage Act of 1885 is was superseded by the Drainage Act of 1905, c. 157

Summary of Historical Drainage Acts in Indiana

V - Act of 1905, c. 157

- 1) This Drainage Act of 1905 was superseded by the Drainage Act of 1907, c. 252, which was very similar with only minor differences not worth detailing

VI - Act of 1907, c. 252

- 1) County Commissioners appoint one Drainage Commissioner for 2 year term (Sec. 1)
- 2) County Surveyor serves as an ex-officio Drainage Commissioner (Sec. 1)
- 3) Petition for drainage improvement filed by landowners in Circuit Court or Superior Court (Sec. 2) or County Commissioners (Sec. 17)
- 4) Court appoints a third Drainage Commissioner (disinterested freeholder Sec. 3)
- 5) Drainage Commissioners:
 - a. Determine whether proposed work will be practicable, of public utility, and benefits greater than the costs (Sec. 3)
 - b. Determine best method of drainage; proceed with survey, design, excavation calculations, cost estimates, benefits, damages and assessments (Sec. 3)
- 6) All trees within 25 feet of any part of tile drain to be cleared (Sec. 3)
- 7) Drain shall not be within 40 rods of the high water mark of any lake 10 acres or larger (Sec. 3)
- 8) After any remonstrances are settled, 1 Drainage Commissioner or any disinterested freeholder of the county is assigned by the court to proceed with construction (Sec. 4)
 - a. Person in charge also collects all assessments and pays all costs (Sec. 5)
- 9) Work can be divided into sections and awarded to lowest bidder; preferential rights are given to respective landowners to perform the work on their lands at the same lowest rate (Sec. 5)
- 10) Unpaid assessments are provided to Auditor for addition to the delinquent tax duplicates (Sec. 5)
- 11) This act shall be liberally construed to promote the drainage and reclamation of wet or overflowed lands (Sec. 8)
- 12) Township Trustee is responsible for repair and maintenance of drains constructed under this act (Sec. 10 & 20)
- 13) Surveyor shall make allotments to each landowner for biennial clean-out, weed removal and maintenance for his portion of the ditch (Sec. 11)
 - a. Provisions/procedures are cited for installing tiles, altering the route and clearing obstructions (Sec. 11 & 18 & 19)
 - b. Record of allotments are to be kept in a book called the "Drainage Record" (Sec. 12)
- 14) Township Trustee establishes a time schedule for completing allotments and inspects and tracks the work performed (Sec. 15)
 - a. If landowners allotment is not completed by scheduled date then the Township Trustee shall conduct that portion of the clean-out and landowner is assessed (Sec. 15 & 16)
- 15) County Auditor acts as clerk of the court if proceedings under this act are filed with County Commissioners (Sec. 17)
- 16) This Drainage Act of 1907 was repealed by the Drainage Acts of 1915, c. 100, and 1933, c. 264

Summary of Historical Drainage Acts in Indiana

VII - Act of 1907, c. 275

- 1) County Surveyor can be petitioned by landowners to view and determine repairs on any drain established under any drainage act (Sec. 1)
 - a. Petition requires a majority of landowners for any ditch constructed by a dredge machine but only 1/8 of landowners on other drains (Sec. 1)
 - b. Prepares assessments of benefits and damages (Sec. 1 & 2)
 - c. Divides the work into allotments for repairs along each landowners tract (Sec. 1 & 2)
- 2) Township trustee sells work allotments to lowest bidder; preferential rights are given to respective landowners to perform the work on their lands at the same lowest rate (Sec. 1)
 - a. Township Trustee establishes a time schedule for completing allotments and inspects and tracks the work performed (Sec. 1 & 2)
 - b. If landowners allotment is not completed by scheduled date then the Township Trustee shall conduct that portion of the clean-out and landowner is billed (Sec. 1 & 2)
 - c. If bill not paid, then landowner is assessed on tax duplicate plus 5% penalty (Sec. 1 & 2)
- 3) All cleaning and repairs should be done according to the original specifications (Sec. 2)
- 4) Landowners are responsible to keep their respective portion of the ditch clear of noxious weeds, grass and obstructions (Sec. 2)
- 5) This Drainage Act of 1907 was repealed by the Drainage Acts of 1915, c. 100 & 107

Summary of Historical Drainage Acts in Indiana

VIII - Act of 1913, c. 165

- 1) Articles of Association recorded in Recorder's Office and filed with Secretary of State (Sec. 1)
 - a. Also used for levees, dikes, dams, sewers, pumping stations, floodgates, etc. (Sec. 1)
 - b. These associations have no capital stock (Sec. 1)
- 2) 3 to 7 directors elected by the Association membership (Sec. 1)
- 3) All engineering and surveying conducted by hired professionals (Sec. 11)
- 4) 3 appraisers appointed by County Commissioners (disinterested freeholders) (Sec. 13)
 - a. Determine lands affected by proposed work (Sec. 13)
 - b. Assess benefits and damages (Sec. 13)
 - c. Determine whether proposed work will be of public utility, convenience, welfare, etc. (Sec. 15)
 - d. Make a schedule of assessments utilizing tax duplicate descriptions (Sec. 15)
- 5) Directors have power to add omitted lands & supplement assessment at any time (Sec. 20)
- 6) Appeals to Circuit Court (Sec. 21)
- 7) Assessments added to tax duplicates (Sec. 21)
- 8) Landowners are entitled to perform that portion of the work located on their land (Sec. 22)
- 9) Associations given power of Eminent Domain
- 10) Alteration, extension or construction of branches or tributaries allowed by 2/3 vote of association members(sec. 27)
- 11) Repairs, operation and maintenance costs are assessed in same proportion as original assessment (Sec. 29)
- 12) Repair and maintenance assessments added to tax duplicates (Sec 29)
- 13) This Drainage Act of 1913 was repealed by the Drainage Act of 1967, c. 231 (which actually amended the Conservancy District Act of 1957)
 - a. The Conservancy District Act of 1957 was first codified as IC 19-3-2, repealed/rewritten/recodified in 1980 as 13-3-3, and then repealed/rewritten/recodified in 1995 as IC 14-33 -1 thru 23 (current code)

Summary of Historical Drainage Acts in Indiana

IX - Act of 1915, c. 100

- 1) Township Trustee is responsible for cleaning, repair and general superintendence of all ditches or drains constructed under state laws except dredge ditches (Sec. 1)
- 2) Cleaning of all open ditches and drains to be set up on an alternating biennial schedule (Sec. 2)
- 3) County Surveyor or competent engineer to provide assistance with specifications, surveys and computation of excavations (Sec. 3)
- 4) Trustee can divided work into sections or allotments and award to lowest bidder; preferential rights are given to respective landowners to perform the work on their lands at the same lowest rate (Sec. 5)
- 5) All brush, weeds, willows, trees or other natural growth shall be removed for a distance of 20 feet on either side of a ditch or tile (Sec. 8)
- 6) Tile drains only cleaned or repaired when necessary (Sec. 9)
- 7) Established an emergency fund to cover the cost of maintenance and repair (Sec. 10)
 - a. Funded by the assessments apportioned to the lands benefited by the repairs (Sec. 10)
 - b. Also funded by a tax levy at a flat or uniform rate upon all lands benefited (Sec. 11)
 - c. Township Trustee responsible for collecting the above funds (Sec. 16)
- 8) Provisions/procedures are cited for installing tiles by landowners (Sec. 17)
- 9) This Drainage Act of 1915 was repealed by the Drainage Act of 1933, c. 264

Summary of Historical Drainage Acts in Indiana

X - Act of 1915, c. 107

- 1) County Commissioners are responsible for cleaning, repair, improvement and general superintendence of all ditches or drains under this act (Sec. 1)
- 2) This act is specifically listed as optional to the above Drainage Act of 1915, c. 100 (Sec. 35)
- 3) Petition by landowners may be filed with County Commissioners or in Circuit or Superior Court for work to be performed on an existing ditch (Sec. 2)
- 4) After verifying all requirements are met and resolving remonstrances, County Commissioners refer the matter to the County Surveyor (Sec. 8)
- 5) County Survey proceeds with the following:
 - a. Examines ditch and original assessments; determines any proposed alterations to ditch design and additional lands to be assessed; conducts survey and estimates costs of excavation (Sec. 10)
 - b. Determines any benefits and damages to be assessed in proportion to the original assessments for the last construction or reconstruction of the ditch (Sec. 11)
 - c. Prepares all maps, profiles, estimates, calculations, recommendations into a report and prepares an assessment roll for all benefits and damages (Sec. 12)
- 6) If petitioners request an emergency fund, 10% is added to the assessments (Sec. 13)
 - a. Specific uses of the emergency fund are listed but others may be determined by the County Commissioners (Sec. 22)
- 7) After hearing and resolving appeals, exceptions or remonstrances to the surveyor's report, the County Surveyor contracts the work to lowest bid on whole or in sections (Sec. 16 & 17)
 - a. preferential rights are given to respective landowners to perform the work on their lands at the same lowest rate and an allotment is established for that portion (Sec. 18)
- 8) County Surveyor inspects and approves all completed work (Sec. 19)
- 9) County Surveyor provides his assessment roll to the County Auditor to be entered upon the "Drainage Tax Duplicate" record for billing and collection (Sec. 20)
 - a. If 1/10 of landowners or the ditch overseer request a maintenance tax, another 10% of the assessments is added to replenish the emergency fund (Sec. 23)
- 10) County Commissioners appoint one of the landowners as an Overseer of the ditch to make regular inspections and recommendations (Sec. 24)
- 11) All brush, weeds, shrubs, trees or other natural growth shall be removed for a distance of 25 feet on either side of a ditch or tile (Sec. 25)
- 12) Exceptions and special provisions are cited for all drains organized under any drainage, sanitary or reclamation district (Sec. 26 & 27 & 30 & 35)
- 13) Specific definitions are cited for use under this act:
 - a. "Cleaning and repairing" is "the restoration of the ditch or drain to its original condition and in strict accordance with the original specifications, and not in excess thereof" (Sec. 29)
 - b. Items considered to be "improvement and betterment" are specifically defined but limited to an aggregate increase of \$100.00 (Sec. 29)
 - c. "Ditch or drain" is broadly defined to include the whole or part or tributary of any open or tiled ditch or drain; except those organized under the Drainage, Sanitary or Reclamation District Act of 1915, or any other legally organized maintenance district (Sec. 30)
- 14) Provisions/procedures are cited for installing tiles by landowners (Sec. 31)
- 15) County Surveyor shall proportion the assessments for any tract split upon transfer (Sec. 32)
- 16) This Drainage Act of 1915 was repealed by the Drainage Act of 1917, c.124

Summary of Historical Drainage Acts in Indiana

XI - Act of 1917, c. 124

- 1) Petition by landowners for clean or repair of a dredge ditch may be filed with whatever court or board under which the original proceedings for construction were filed (Sec. 1)
- 2) After verifying all requirements are met and resolving remonstrances, the court refers the matter to the County Drainage Commissioner who was appointed under Act of 1907, c. 252 (Sec. 1)
 - a. Inspects lands described; compute excavation amounts and estimate costs; assess and apportion to lands affected, and prepare a report of same (Sec. 1)
 - b. County Surveyor may assist with the above (Sec. 1)
- 3) After the court hears and resolves appeals, exceptions or objections to his report, the Drainage Commissioner enters the apportionments and assessments onto his "County Drainage Commissioners Clean-Out Record" (Sec. 2)
- 4) Drainage Commissioner proceeds to clean the ditch according to original specifications (Sec. 4)
 - a. Collects all assessments and pays all costs (Sec. 4)
 - b. Contracts the work to lowest bid on whole or in sections (Sec. 4)
 - c. Landowners can bid and perform work on their own allotment and apply the cost to their assessment (Sec. 4)
- 5) Unpaid assessments are provided to Auditor for addition to the delinquent tax duplicates (Sec. 4)
- 6) This act shall be liberally construed to promote the cleaning and repair of dredge ditches (Sec. 8)
- 7) Landowners are responsible to keep their respective portion of the ditch open, clean and clear of obstructions and remove noxious weeds, grass and willows from the banks and channel (Sec. 9)
- 8) This Drainage Act of 1917 was repealed by the Drainage Act of 1933, c. 264

Summary of Historical Drainage Acts in Indiana

XII - Act of 1933, c. 264

- 1) Significant amendments in 1935, 1937, 1945, 1947 and 1949
- 2) County Surveyor shall have charge of all ditches in his county with Township Trustee acting as an ex officio deputy (Sec. 1 & 2)
- 3) Owners of 10% of land in unincorporated areas, county commissioners, township trustee, or city government can initiate a petition for drain improvements (Sec. 4)
- 4) Petitions for new drain improvements may be filed with County Commissioners, Circuit Court or Superior Court (Sec. 4)
- 5) Utilize tax duplicate descriptions for lands assessed (Sec. 4)
- 6) Court assigns 2 viewers to work with County Surveyor (disinterested freeholders) (Sec. 6)
 - a. Determine whether proposed work will be practicable, of public utility, and benefits greater than the costs (Sec. 9)
- 7) County Surveyor proceeds with survey, design and excavation calculations (Sec. 9)
 - a. All trees within 25 feet of top of bank or any part of tile drain to be cleared (Sec. 10)
- 8) After remonstrance/appeals resolved, surveyor proceeds with bidding and construction (Sec. 18)
- 9) Landowners may petition for cleaning, repairs or alterations of ditch design (Sec. 20)
 - a. Costs shall be apportioned in the same manner as for a new ditch (Sec. 20)
- 10) Special provisions for drains running into or through lakes and swamplands (Sec. 24-27)
- 11) Commissioners may establish a General Ditch Improvement Fund to be used as a "sinking fund" for all payments, collections, reversions and bond proceeds for construction, repair and maintenance of ditches (Sec. 31)
 - a. Limited to \$10,000.00 max; raised to \$100,000.00 by amendments of 1949 (Sec. 31)
 - b. If Commissioner's do not create said fund, then they shall utilize the General Fund (Sec. 31)
- 12) All assessments entered upon a "Ditch Duplicate".....not added to tax duplicates (Sec. 34)
- 13) Cleaning, repairing and general superintendence of all ditches or drains that may have been, or may hereafter be constructed under and by virtue of any law of this state, shall be under the exclusive charge and supervision of the county surveyor...(Sec. 39)
 - a. Equipment could be purchased and personnel could be hired for operation, maintenance and repair of ditches or drains with expenses/costs/salaries charged to "all land or tracts of land in the water shed" of respective ditches (Sec. 39a as added by amendments in 1945)
- 14) Surveyor shall make allotments to each landowner for biennial clean-out and annual weed removal for his portion of the ditch (Sec. 41 & 49)
 - a. If landowners allotment is not completed by scheduled date then the County Surveyor shall conduct that portion of the clean-out and landowner is assessed (Sec. 41-44)
 - b. Provisions/procedures are cited for installing tiles and removing obstructions (Sec. 45-48)
- 15) Surveyor shall make a Drainage Map of his county (Sec. 54)
 - a. Such map shall show owner names, tracts, sections, corporate lines, roads, railroads, bridges, culverts, streams, waterways, ditches, tiles and the "water shed of each county ditch" (Sec. 54)
- 16) Persons performing cleaning and repairing of open public drains have a right-of-way of 75 feet from the center of the drain on each side (Sec. 58)
- 17) Private Drains can be made subject to the above drainage laws upon petition to County Surveyor by 10% of landowners (as added by Sec 38.5 Act of 1945)
- 18) The Drainage Act of 1933 as amended by the Acts of 1935, 1937, 1945, 1947 and 1949 were repealed by the Drainage Act of 1965, c. 305 (current drainage code)

Summary of Historical Drainage Acts in Indiana

XIII - Act of 1949, c. 197

- 1) The term "ditch" or "drain" includes not only the main dredge ditch but all laterals tributary and constructed as one system (Sec. 1)
- 2) Petitions to create drainage maintenance and repair districts for a public ditch or court established drain may be filed with Circuit Court or Superior Court by 20% of landowners by number or area (Sec. 2)
- 3) Court determines if establishing district is necessary and useful as a public utility (Sec. 4)
- 4) Court appoints 3 owners of land within the district as commissioners for 3 year staggered terms (Sec. 4) (This responsibility was given to the County Commissioners in 1995 (IC 14-27-8-11)
 - a. District Commissioners maintain the ditch in proper condition and have full power to hire labor and purchase materials (Sec. 5)
 - b. District Commissioners estimate annual maintenance costs (Sec. 5)
 - c. Determine what percent of the total annual costs is assessed to each land owner in accordance with the original assessments from the original court proceedings for constructing the ditch (Sec. 5)
- 5) A Drainage Maintenance Fund is created for the district (Sec. 5)
- 6) District Commissioners file assessments with County Auditor prior to November 1st each year to be billed and collected the same as tax duplicates (Sec. 5)
 - a. However, the entire ditch assessment amount is due with the spring installment (Sec. 5)
- 7) After 1 year, a petition by 2/3 of the owners can dissolve the district (Sec. 6.5)
- 8) This act is supplemental to all existing drainage acts and does not repeal any in force at the time (Sec. 7)
- 9) This Drainage Act of 1949 was first codified as IC 13-2-21 and then repealed/rewritten/recodified in 1995 as IC 14-27-8 (current code)
 - a. A Drainage Maintenance and Repair District cannot be established under these laws after June 30, 2001 (as amended in 2001 by IC 14-27-8-4-(a))

Summary of Historical Drainage Acts in Indiana

XIV - Act of 1965, c. 305

- 1) Significant amendments in the Act of 1969, c. 257; with various other amendments over following years
- 2) "Legal drain" defined as any open or tiled ditch established pursuant to or made subject to any drainage statute of the State of Indiana (Sec. 102)
 - a. Term "legal drain " was changed to "regulated drain" in 1984
 - i. Other common terms referring to these type of drains are "court drains" and "county ditches"
 - ii. This would include any ditch or drain established under one of the Drainage Acts discussed above
- 3) "Private drains" and "mutual drains" were not established pursuant to or made subject to any drainage statute of the State of Indiana and are not subject to this Drainage Law (Sec. 102 & 503a)
 - a. Private and mutual drains connecting to legal drains must be approved by the County Surveyor and their lands are subject to assessment for said legal drain (Sec. 503 & 608)
 - b. Upon petition of owners, these drains can be converted to full jurisdiction and provisions of the drainage law after due process (Sec. 503)
- 4) Established a County Drainage Board in each county having jurisdiction and control of all "legal drains" (Sec. 103)
 - a. Originally composed of County Commissioners (as voting members) and County Surveyor as ex officio member; City Engineer also included if there is a 1st class city (Sec. 104)
 - b. Act of 1969, c. 257 specifically listed County Surveyor and City Engineer both as voting members if there is a 1st class city (Sec. 104)
 - c. 3 to 5 member appointed boards were allowed after amendments in 1971 and 1973
 - d. As of 1981, City Engineer in a 1st class city no longer included but added special consideration of acting Drainage Boards for consolidated cities
- 5) All expenses of the Drainage Board shall be paid from the county general fund (Sec. 106)
- 6) County Surveyor shall be the technical authority on all legal drains (Sec. 109)
- 7) "Watershed" defined as an area of land from which all runoff water drains to a given point (Sec. 102)
- 8) The Drainage Board may give consideration to the watershed, or entire area of land area drained or affected by the improvement (Sec. 113)
 - a. All related references in previous laws and current statutes use the term "affected lands" or "lands benefited"
- 9) Procedures and regulations for legal drains fall under the following categories or classifications:
 - a. Construction of new drains (Sec. 201 thru 214)
 - b. Existing drains in need of reconstruction (Sec. 301 thru 306)
 - c. Existing drains in need of periodic maintenance (Sec. 401 thru 408)
 - d. Existing drains that should be vacated (Sec. 111)
- 10) Multiple legal drains in the same watershed can be combined or consolidated into one single legal drain unit (Sec. 307 & 406)
- 11) Maintenance fund created for each legal drain (Sec. 407 & 702)
 - a. Periodic maintenance assessments are based upon the estimated annual cost (Sec. 401)
 - b. Annual assessments may be increased or decreased by the board at any time after due process (Sec. 408)

Summary of Historical Drainage Acts in Indiana

- 12) Legal drains with full exemption from provisions of the Drainage Law:
 - a. Drains included as part of a Conservancy District (Sec. 502a)
 - b. Drains included as part of a state approved flood control project (Sec. 502b)
 - c. Municipal drains constructed by a city or incorporated town (Sec. 504)
 - d. Above drains are still subject to assessment if they flow into another legal drain subject to the provisions of the drainage law
- 13) Legal drains with limited exemption from provisions of the Drainage Law:
 - a. Drains under jurisdiction of a drainage maintenance and repair district established under Act of 1949, c. 197; a.k.a IC 13-2-21; a.k.a. IC 14-27-8 (Sec. 506)
 - b. Drains under jurisdiction of a drainage association established under Act of 1913, c. 165 (Sec. 506)
 - c. Above drains are specifically only exempted from those provisions of the drainage law relating to the annual assessment and performance of periodic maintenance (Sec. 506)
 - i. In all other respects they are still under jurisdiction of the Drainage Board and subject to the remaining provisions of the drainage law (i.e. reconstruction, vacating, approval of crossings, tiles or connecting drains, etc.)
 - d. Above drains are still subject to assessment if they flow into another legal drain subject to the provisions of the drainage law
 - e. Upon petition of association or district members, these drains can be converted to full jurisdiction and provisions of the drainage law after due process (Sec. 506)
- 14) The surveyor, board and duly authorized representatives have right-of-entry of 75 feet on each side of the drain (Sec. 601)
 - a. Also referred to as a right-of-way describing limited non-exclusive rights (Sec. 601)
- 15) A General Drain Improvement Fund is created for each county (Sec. 701)
- 16) All assessments entered upon a "Ditch Duplicate" and ditch assessments are added to tax duplicates (Sec. 710 & 711)
- 17) When land is transferred or subdivided, owner must request board to reassess the land following due process (Sec 722 as added by Act of 1969, c. 257)
- 18) Classifications and regulations for "rural drains" and "urban drains" were added by the Act of 1969, c. 257 (Sec. 102 & 1101 thru 1105)
- 19) Allowances and rules for optional Cumulative Drainage Fund were added by Acts of 1972 and 1975
- 20) This Drainage Act of 1965 as amended was first codified as IC 19-4-1 thru 10.1 and then repealed/rewritten/recodified in 1981 as IC 36-9-27 (current code)