

# **The County Drainage Board**

A copy of the Indiana Law pertaining to  
the organization and operation of County  
Drainage Boards in Indiana.

*A publication of*

**Indiana Farm Bureau, Inc.**

## THE COUNTY DRAINAGE BOARD

This manual contains the complete draft of the Indiana law creating and setting forth operating procedures of the County Drainage Board. The law first became effective in January 1966.

At the back of this manual are references to the Indiana Code, by chapter title only, to other laws pertaining to drainage. Among these other laws that are concerned with drainage are those on water rights and resources, flood control, levees, etc.

Indiana Farm Bureau is interested in having farmers, county officials and others adequately informed in order that they may provide the leadership necessary to develop a drainage program beneficial to all citizens of the county. This, along with remaining statutes, provides "the necessary vehicle" for progress in rural-urban drainage programs. It is hoped that this manual will prove to be helpful.



Randy Kron, President  
Indiana Farm Bureau, Inc.

This manual is published by INDIANA FARM BUREAU, INC., POST OFFICE BOX 1290, INDIANAPOLIS, INDIANA 46206, as a service for farmers, agricultural leaders, public officials, engineers and others actively concerned with drainage matters. Single copies are available at no cost. Additional copies of this publication are available at \$5 each to cover cost and mailing. Write Indiana Farm Bureau, Inc., ATTN: Legal Affairs Teams, at the above address, or phone (317) 692-7840.

(Previous revisions July 2001, July 2002, July 2004, July 2006, July 2007, July 2011, July 2012, July 2015, July 2017, July 2019, July 2020)

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### **36-9-27-1**

This chapter applies to all counties. However, sections 6, 7, 9, 10, 30, 31 and 32 do not apply to a county having a consolidated city.

### **36-9-27-2**

As used in this chapter:

“Affected land” means land within a watershed that is affected by the construction, reconstruction or maintenance of a regulated drain.

“Board” refers to the drainage board of a county.

“Crossing” means a drainage structure that passes over, under or through a location used for the passage of people, livestock or vehicles.

“Dam” means a dam or other structure and its appurtenances that impounds a small lake at the lake’s outlet.

“Maintenance” means work on a drain as described in section 34(c) of this chapter for any of the purposes stated in that section.

“Mutual drain” means a drain that:

- (1) is located on two [2] or more tracts of land that are under different ownership;
- (2) was established by the mutual consent of all the owners; and
- (3) was not established under or made subject to any drainage statute.

“Open drain” means a natural or artificial open channel that:

- (1) carries surplus water; and
- (2) was established under or made subject to any drainage statute.

“Owner” refers to the owner of any interest in land.

“Private drain” means a drain that:

- (1) is located on land owned by one [1] person or by two [2] or more persons jointly; and
- (2) was not established under or made subject to any drainage statute.

“Reconstruction” means work on a drain as described in section 34(b) of this chapter to correct any of the problems with the drain that are enumerated in that section up to and including the discharge portion of the drain.

“Regulated drain” means an open drain, a tiled drain, or a combination of the two.

“Rural drain” means an open drain that provides adequate drainage or impounds water for rural land.

“Rural land” means affected land that:

- (1) will not appreciably benefit from more drainage than is necessary to expediently remove water after frequent or periodic flooding; and

- (2) is generally used for crop production, pasture, forest or similar purposes.

“Small lake” means a lake, pond or similar body of water that:

- (1) covers less than twenty [20] acres;
- (2) is surrounded by two [2] or more tracts of affected land that are under different ownership or a tract of land that is owned by a not-for-profit corporation having more than one member;
- (3) is not constructed, reconstructed or maintained under this chapter as part of an open drain;
- (4) is not a private crossing, control dam or other permanent structure referred to under section 72 of this chapter.
- (5) is not owned by a state or any of its political subdivisions; and
- (6) is not designed and constructed primarily for reduction or control of pollutants or cooling before discharge of a liquid.

“Tiled drain” means a tiled channel that:

- (1) carries surplus water; and
- (2) was established under or made subject to any drainage statute.

“Urban land” means affected land that:

- (1) will appreciably benefit from drainage that will provide the maximum practicable protection against flooding or the impounding of water in a small lake; and
- (2) is used or will, in the reasonably foreseeable future, be used generally for commercial, industrial, large estate, higher density residential or similar purposes.

“Watershed” means an area of land from which all runoff water drains to a given point or that is affected by a small lake.

### **36-9-27-2.5**

- (a) For the purposes of this chapter, a reference to “drain,” “drainage” or “ditch” is deemed to include a “dam.” However, sections 16(b), 17, 21, 22, 23, 24, 26, 27, 28, 54 and sections 56 through 66 of this chapter do not apply to a dam.
- (b) Any owner may petition a board to designate a dam as a regulated drain, and any board may assume jurisdiction over a dam in the same manner that an owner may petition and the board may assume jurisdiction over a mutual drain. A board does not otherwise have jurisdiction over a dam.
- (c) A board may reconstruct or maintain a dam over which the board has assumed jurisdiction, but an agency may not construct a new dam.

### **36-9-27-3**

- (a) The rights and powers of a political subdivision under this chapter as an owner shall be exercised on behalf of the political subdivision by:



- (1) the works board, for a municipality;
- (2) the executive, for a county or a township; and
- (3) the fiscal body, for any other political subdivision.

(b) The rights and powers of the state as an owner under this chapter shall be exercised on behalf of the state by the director of the department, office, or institution charged by law with the maintenance, supervision, or control of the affected land owned by the state.

#### **36-9-27-4**

There is established in each county a drainage board, which shall act in the name of "The \_\_\_\_\_ County Drainage Board" (designating the name of the county).

#### **36-9-27-5**

(a) Except in a county having a consolidated city, the drainage board consists of either:

- (1) the county executive; or
- (2) three [3] or five [5] persons, at least one of whom must be a member of the executive, appointed by the executive;

at the option of the executive. Appointees under subdivision (2) must be resident freeholders of the county who are knowledgeable in drainage matters. Freeholders appointed to the board serve for terms of three [3] years, with their initial appointments made so as to provide for staggering of terms on an annual basis. In addition, the county surveyor serves on the board as an ex officio, nonvoting member.

(b) In a county having a consolidated city, the board of public works of the consolidated city comprises the drainage board, subject to IC 36-3-4-23.

(c) In a county having a consolidated city, the department of public works of the consolidated city has all the powers, duties and responsibilities of the county surveyor under this chapter, subject to IC 36-3-4-23.

#### **36-9-27-6**

(a) When the membership of the board is reduced to less than three [3] because of disqualifications, the board shall immediately certify that fact to the circuit court of the county. The court shall then restore the membership of the board to three [3] by appointing the appropriate number of resident freeholders of the county to serve as special members for the particular drainage proceedings.

(b) A special member of the board has the same duties and powers as a regular member of the board, and is entitled to a per diem, to be paid as an expense of the board, in an amount fixed by the county fiscal body for each day or major part of a day spent in actual attendance at any meeting of the board or in the performance of official business of the board.

**36-9-27-7**

- (a) The board shall organize at a meeting each January, by electing one [1] of its members as chair and one [1] of its members as vice chair. At the same time, the board shall elect a secretary, who need not be a member of the board.
- (b) The county surveyor may not hold an office on the board.
- (c) The board shall fix the time and dates for regular meetings, which shall be held in the office of the county surveyor. However, if the surveyor's office is not adequate, the county executive shall provide an adequate meeting place.
- (d) Special meetings of the board may be called by the chair, any two [2] members, or the county surveyor, by mailing a written notice setting forth the time, date, and place of the meeting to each member not less than five [5] days before the date of the meeting. A member may waive the mailing of notice of a special meeting by filing a written waiver with the secretary or by the member's presence at the meeting.
- (e) Meetings of the board may be adjourned from day to day or to a day certain without written notice being given.
- (f) All meetings of the board must be open to the public and the minutes of the meetings are open to public inspection.
- (g) A majority of the voting members of the board constitutes a quorum and the concurrence of a majority of the voting members present at a meeting is necessary to authorize any action under this chapter.

**36-9-27-8**

The board may bring civil actions in its own name to enforce any of the provisions of this chapter.

**36-9-27-9**

The board may employ and fix the compensation of an attorney to represent and advise the board.

**36-9-27-10**

- (a) Each member of the board and each person employed by the board under this chapter shall be paid at a rate equal to that provided by law for state employees for each mile necessarily traveled while performing the duties of the member's or employee's office.
- (b) The county fiscal body may provide the members of the county executive who serve as members of the board with per diem for their services as members of the board, in an amount fixed by the county fiscal body for each day or major part of a day devoted to the work of the board.
- (c) Each appointed freeholder member serving on the board is entitled to a per diem in an amount fixed by the county fiscal body for each day or major part of a day devoted to the work of the board.

### **36-9-27-11**

All expenses of the board shall be paid from money appropriated from the county general fund. Claims for expense reimbursements and per diem must be:

- (1) accompanied by an itemized written statement;
- (2) approved by the recorded motion of the board; and
- (3) allowed as provided by statute.

### **36-9-27-12**

- (a) This section does not apply to a joint board that includes three (3) or more counties in a drainage basin of more than one hundred thousand (100,000) acres.
- (b) Whenever it appears, in any proceeding for the construction, reconstruction, or maintenance of a regulated drain, that a member of the board has an interest in the proceedings because of the member's ownership of real property affected by the drain, that member shall immediately disqualify himself or herself from serving on the board in those proceedings. However, the fact that county highways will be affected by any proceedings does not disqualify a regular member of the board.

### **36-9-27-13**

- (a) This section applies to a county having a population of more than four hundred thousand (400,000) but less than seven hundred thousand (700,000).
- (b) There is established a county drainage advisory committee. The executive of each township in the county shall appoint one [1] resident of the executive's township to serve on the committee. Committee members serve for four [4] year terms. Members may not receive per diem or mileage for service on the committee.
- (c) The county drainage advisory committee shall advise and assist the board in the performance of its power, duties and functions. The board or the county legislative body may assign responsibilities to the committee concerning drainage. The committee may select one [1] of its members as chair and may meet at the chair's call or at the call of any three [3] of its members.

### **36-9-27-14**

- (a) Whenever it appears to the county surveyor that any proceedings instituted under this chapter may affect land in more than one [1] county, the county surveyor shall immediately forward notification of that fact to the chair of the board of each county in which the land is located, by certified mail with return receipt requested. The notice must state the number of counties involved and fix a date, hour and place for a meeting of a joint board. The date for the meeting may not be less than twenty [20] nor more than thirty [30] days after the notice is mailed.
- (b) After the notice is given, all proceedings in the matter shall be heard and determined by a board appointed from the membership of the board of each county in which lands that may be affected are located, as follows:
  - (1) If land in two [2] counties may be affected, the chair of the board of each county shall appoint two [2] of the members of the chair's board, other than the county surveyor, to serve on the joint board. In addition, a fifth member shall be appointed by the four [4]

members of the joint board. The fifth member must reside in a county that is not affected by the drainage problem.

- (2) If land in more than two [2] counties may be affected, the chair of the board of each county shall appoint one [1] of the members of the chair's board, other than the county surveyor, to serve on the joint board. If, as a result of the appointments, the board has an even number of members, the members of the joint board shall appoint an additional member to the joint board. The additional member must reside in a county that is not affected by the drainage problem.
  - (3) The surveyor of the county having the greatest length of drain or proposed drain serves as an ex officio member of the joint board and has the same duties, powers and responsibilities the county surveyor would have if the proposed construction, reconstruction or maintenance affected lands lying solely within one [1] county.
- (c) A joint board may authorize the employment of one [1] or more persons to assist the county surveyor who serves on the board in the performance of the county surveyor's duties in connection with the joint board. The joint board shall set the rate of compensation for the assistants and authorize an advance on the general drain improvement fund of each county in proportion to the apparent percentage of the total land area in each county to be affected by the drain. The cost of the assistants and the advance is a part of the operating expense of the joint board, which shall be finally adjusted and allocated as provided in subsection (e).
- (d) Whenever the county surveyor finds that a joint board should be appointed and that:
- (1) the area of affected land in the county surveyor's county exceeds eighty percent [80%] of the total area of land affected by the drain; or
  - (2) ninety percent [90%] or more of the length of the affected drain lies within the county surveyor's county;

the county surveyor may request in writing that each board in the lesser affected county or counties waive the right to be represented on a joint board and that the board of the county surveyor's county be the board for the proceedings. The request and all subsequent communications in the proceedings, including notice of any benefits or damages to the lands within a lesser affected county, shall be forwarded by certified mail with return receipt requested to the chair of the board of each lesser affected county. If the county surveyor does not receive a negative response to the county surveyor's request from the board of a lesser affected county within thirty [30] days, the surveyor may request the county surveyor's board to resolve itself as a board for the proceedings. The board shall serve notice only on the board of a lesser affected county and shall certify to the auditor of that county a single claim for all benefits in that county, unless the surveyor or board of that county furnishes to the board full and acceptable information concerning all individual parcels of affected land in that county, including maps.

- (e) If the joint board proceeds with the proposed improvement or maintenance, all operating expense of the joint board, including the compensation of the fifth member appointed under subsection (b)(1) and the additional member appointed under subsection (b)(2) shall be:
- (1) divided among the counties represented on it in the same proportion that the total land assessment allocated to each county bears to the total cost of the improvement or maintenance; or
  - (2) paid from the joint drain's maintenance fund after the fund is established and maintenance funds are collected.

If the joint board does not proceed, all operating expense of the joint board shall be apportioned by the joint board to the counties represented on it as justice requires.

- (f) To the extent applicable, a joint board is governed by the provisions of this chapter concerning:
  - (1) the powers, duties and procedures of a board that serves one [1] county; and
  - (2) the rights and remedies of owners affected by the proceedings of a board that serves one [1] county.

### **36-9-27-15**

Each regulated drain in a county is under the jurisdiction of the board and subject to this chapter, except as otherwise provided by this chapter.

### **36-9-27-16**

- (a) Private and mutual drains are not subject to this chapter.
- (b) Land drained by a private or mutual drain is subject to assessment for the construction or reconstruction, or maintenance of a regulated drain if the land is also drained by the regulated drain.

### **36-9-27-17**

- (a) Whenever:
  - (1) an owner wants to construct or extend a private or mutual drain and outlet that drains into a regulated drain that is subject to this chapter; and
  - (2) the construction or extension will not go through land owned by other persons; the owner shall file with the county surveyor having jurisdiction of the regulated drain for permission to connect the owner's drain with the regulated drain.
- (b) The owner shall file with the owner's request the plans and specifications of the private or mutual drain that will be constructed or extended. However, if the private or mutual drain will have a tiled outlet of twelve [12] inches or less, and the owner alleges this in the owner's request, no specifications need be filed.
- (c) If the county surveyor determines that the regulated drain is adequate to handle the additional flow of water, if any, that would result from the connection and that no harmful pollution is likely to result from the connection, the county surveyor shall grant the request.
- (d) If the county surveyor determines that the regulated drain is not adequate to handle the additional flow of water resulting from the connection without being reconstructed, the county surveyor shall deny the request, and the request may not be granted until the regulated drain is reconstructed under sections 49 through 52 of this chapter.

### **36-9-27-18**

- (a) Whenever all of the owners affected by a private or mutual drain request the board in writing to assume jurisdiction over the private or mutual drain, the board shall refer the request to the county surveyor, who shall determine whether the private or mutual drain meets the standards of design and construction established under section 29 of this chapter.

- (b) If the county surveyor determines that the private or mutual drain meets the standards of design and construction, the county surveyor shall make a written report of that fact to the board, which shall issue an order granting the request. The drain becomes a regulated drain when the request is granted.
- (c) If the county surveyor determines that the private or mutual drain does not meet the standards of design and construction, the county surveyor shall make a written report of that fact to the board, which shall deny the request.

### **36-9-27-19**

- (a) Any owner affected by a mutual drain may file a written request with the board to make the mutual drain a regulated drain under this chapter. Upon receipt of such a request, the board shall fix the date, time, and place for a hearing, which may not be less than thirty [30] days after receipt of the request.
- (b) At least twenty [20] days before the date of the hearing, the owner making the request shall give the owners of all land affected by the request notice of the date, time, place, and purpose of the hearing. Service of the notice shall be made in the manner set forth in section 58 of this chapter or in the manner summonses are served in civil actions.
- (c) Any owner affected by the mutual drain may, on or before the date of the hearing, file with the board written evidence for or against the granting of the request. At the hearing the board shall consider all of the evidence filed, and if it finds that:
  - (1) the owners of more than fifty percent [50%] in acreage of the affected land will be benefited if the drain is made a regulated drain under this chapter; and
  - (2) the benefit to owners benefited is likely to be greater than the damages to owners damaged by reason of the mutual drain being made a regulated drain;it shall make written findings to that effect and issue an order granting the request.
- (d) Before adjourning the hearing, the board shall announce its findings and order. This announcement constitutes notice to all affected persons, and, if judicial review is not requested under section 106 of this chapter within twenty [20] days after the date of notice, the findings and order are conclusive.

### **36-9-27-20**

A board may, by resolution, relinquish its jurisdiction over ditches and drains located in a municipality or a sanitary district, if that jurisdiction is accepted by the municipality or sanitary district.

#### **36-9-27-20.5**

- (a) A municipal or sanitary district drain maintenance fund is established for each drain:
  - (1) that is subject to assessments by the board for periodic maintenance and repair; and
  - (2) jurisdiction over which is transferred by the board to a municipality or sanitary district under section 20 (IC 36-9-27-20) of this chapter.
- (b) Except as provided in subsections (c) and (d), on or after the date the board transfers jurisdiction over a drain to the municipality or sanitary district, the county treasurer shall transfer the following to the municipal or sanitary district drain maintenance fund established under this section:

- (1) The balance of the maintenance fund established under section 44 (IC 36-9-27-44) of this chapter.
- (2) Except as provided in subsection (c), any assessments for periodic maintenance of the drain that:
  - (A) were imposed before the date on which the board transfers jurisdiction of the drain; and
  - (B) are collected after the date on which the board transfers jurisdiction of the drain.
- (c) Except as provided in subsection (d), if the board transfers jurisdiction over part of a drain to a municipality or sanitary district, the county treasurer shall transfer under subsection (b):
  - (1) the part of the balance in the maintenance fund established under section 44 of this chapter that bears the same proportion to the balance in the fund that the length of the part of the drain transferred to the municipality or sanitary district bears to the total length of the drain; and
  - (2) except as provided in subsection (c), the proportion determined under subdivision (1) of assessments for periodic maintenance of the drain that:
    - (A) were imposed before the date on which the board transfers jurisdiction of part of the drain; and
    - (B) are collected after the date on which the board transfers jurisdiction of part of the drain.
- (d) The board and a municipality or sanitary district to which jurisdiction over part of a drain is transferred may agree in writing to an apportionment of the maintenance fund and outstanding assessments different from the apportionment under subsection (c) based on disproportionate maintenance requirements between the part of the drain transferred and the part remaining under the jurisdiction of the board. Subject to subsection (c), a county treasurer who receives a written agreement under this subsection shall transfer under subsection (b) the amounts specified in the agreement.
- (e) If payment for maintenance work for a drain was made from the general drain improvement fund under section 45 (IC 36-9-27-45) of this chapter, the county treasurer shall transfer all or part of the assessment described in subsection (b) (2) to the general drain improvement fund to reimburse the fund for all or part of the cost of the maintenance work.
- (f) The expenses of a municipal or sanitary district drain maintenance fund established by subsection (a) shall be paid from the fund. The municipality or sanitary district to which jurisdiction over a drain is transferred shall deposit money in the fund established for the drain under subsection (a) in accordance with IC 5-13-6. Any interest earned by the fund shall be credited to the fund. Any balance remaining in the fund at the end of a fiscal year shall be carried over in the fund for the following fiscal year.
- (g) A municipal or sanitary district drain maintenance fund established under subsection (a) is subject to the use of the municipality or the sanitary district for the necessary or proper repair, maintenance, study, or evaluation of the particular drain or combination of drains for which the fund was established whenever the municipality or sanitary district finds that it is necessary. Except as provided in subsection (h), payment for all the maintenance work for a drain or combination of drains shall be made out of the municipal or sanitary district drain maintenance fund established for the drain or combination of drains under subsection (a).
- (h) If the balance of a maintenance fund is not sufficient to pay for all of the maintenance work, the municipality or sanitary district shall pay for any deficiency from the funds used by the municipality or sanitary district to pay for maintenance work on drains that are not subject to a municipal or sanitary district maintenance fund. A drain maintenance fund shall close upon payment of all money in the fund.
- (i) If the amount of funds on deposit in a municipal or sanitary district drain maintenance fund is less than five hundred dollars (\$500), the balance of the municipal or sanitary district drain

maintenance fund may be transferred to the fund used by the municipality or the sanitary district to pay for maintenance work on drains that are not subject to a municipal or sanitary district maintenance fund, and the drain maintenance fund shall be closed.

### **36-9-27-20.6**

If jurisdiction over a drain is transferred by the board to a municipality or sanitary district under section 20 (IC 36-9-27-20) of this chapter, the municipality or sanitary district has, with respect to that drain, the same right of entry and right-of-way powers over and upon private land that are given to the county surveyor or drainage board under section 33 (IC 36-9-27-33) of this chapter.

### **36-9-27-21**

- (a) A drain that is located partly or wholly within the corporate boundaries of a municipality is subject to this chapter only if it was constructed by the municipality under this chapter, IC 19-4 (repealed February 26, 1982), or a statute repealed by Acts 1965, c.305, s.1003.
- (b) If a municipal drain not subject to this chapter flows directly or indirectly into a regulated drain that is subject to this chapter, the board shall assess the land benefited by the municipal drain to the extent that it is benefited by the construction, reconstruction, or maintenance of the regulated drain.
- (c) This subsection applies to any parcel of land that is partly within the corporate boundaries of a municipality having a drain affected by subsection (b). Notwithstanding section 38 (IC 36-9-27-38) of this chapter, the drainage board may make only one (1) assessment for the same purpose on each individual drain on the parcel. For purposes of making this one (1) assessment, the total acreage of the parcel must be considered to be located where most of the land in the parcel is situated, either within the boundaries or outside the boundaries.

### **36-9-27-22**

- (a) A municipality acting under a statute other than this chapter may not construct, reconstruct, or maintain a drain that:
  - (1) is located partly or wholly within the corporate boundaries of the municipality; and
  - (2) will flow directly or indirectly into a regulated drain that is subject to this chapter; without the written approval of the board.
- (b) The municipality shall file with the board a written request for consent to use the regulated drain as an outlet, subject to this chapter. The request must be accompanied by:
  - (1) the plans and specifications for the proposed construction, and reconstruction, or maintenance; and
  - (2) an estimate by the municipal civil engineer, or another qualified person, of the amount of water that will be discharged into the regulated drain as a result of the proposed construction, reconstruction, or maintenance.
- (c) The board shall refer the request for consent to the county surveyor, who shall determine whether the regulated drain is adequate to handle the additional flow of water, if any, that would result from the construction, reconstruction, or maintenance proposed by the municipality. If the surveyor finds that the regulated drain is adequate to handle the additional



flow of water, the surveyor shall make a written report of that fact to the board, which shall issue its order consenting to the construction, reconstruction, or maintenance by the municipality. If the surveyor finds that the regulated drain is not adequate, the surveyor shall:

- (1) prepare a preliminary plan for the reconstruction of the regulated drain so that it will be adequate to handle the additional flow of water;
  - (2) estimate the total cost of the reconstruction;
  - (3) file the plan and estimate with the board; and
  - (4) serve a copy of the plan and estimate on the municipality.
- (d) If the municipality binds itself by resolution to pay the cost of the reconstruction of the regulated drain, the county surveyor shall prepare final plans and specifications for the work, reestimate the cost of the work except for damages to affected land, and file the plans and estimate with the board. The board shall determine the amount of damages sustained by any owner as a result of the reconstruction of the regulated drain and shall serve upon each owner a notice:
- (1) describing the owner's lands;
  - (2) stating the amount of each owner's damages;
  - (3) explaining the injury upon which the determination was based; and
  - (4) stating the date, time, and place of a hearing by the board on objections to the amount of damages. The notice shall be served and the hearing held in accordance with sections 49 through 52 of this chapter.
- (e) The board shall add the damages to affected land to the county surveyor's reestimation of the costs of the reconstruction and shall certify that amount to the municipality. When the municipality pays the amount certified by the board into the office of the county treasurer for the use of the board in the reconstruction of the regulated drain, the board shall issue an order consenting to the use of the regulated drain by the municipality and shall proceed with the reconstruction of the regulated drain in accordance with the plans and specifications of the surveyor.
- (f) After the contracts for the reconstruction are let in accordance with sections 77 through 79.1 of this chapter, the board shall compute the actual cost of the reconstruction. If the actual cost is less than the estimated cost, the excess shall be returned to the municipality on certification by the board to the county auditor of the amount to be returned. If the actual cost of the reconstruction is more than the estimated cost, the board shall certify that fact to the municipality, which shall immediately pay the difference into the office of the country treasurer.
- (g) When the board consents to a request made by a municipality under subsection (b), the board shall fix the annual assessment against the municipality for the periodic maintenance of the regulated drain in accordance with sections 38 through 43 of this chapter.
- (h) This section does not prohibit a municipality from petitioning the board for the construction of a new regulated drain under sections 54 through 65 of this chapter.

### **36-9-27-23**

(a) Whenever:

- (1) a person wants to connect a drain with a regulated drain that is subject to this chapter; and
- (2) the connection would result in the discharge into the regulated drain of liquid wastes that would cause or contribute to pollution of the receiving waters;

the person seeking the connection must obtain written approval from the department of environmental management for the discharge, and shall file that written approval with the board having jurisdiction of the regulated drain when filing the person's request to connect.

- (b) The board may deny a connection request, even though approval of the department of environmental management is given or is not required.
- (c) The board shall deny a connection request whenever the approval of the department of environmental management is required and is not obtained.
- (d) The provisions of this section requiring the department of environmental management do not apply to the charge of sewage from a single or a two (2) family residence.

### **36-9-27-24**

(a) A regulated drain that is located within a conservancy district is not subject to this chapter if:

- (1) the drain has been designated for construction, reconstruction or maintenance in the district plan of the conservancy district; and
- (2) the district plan was approved before January 1, 1966. However, if the drain has a direct or indirect outlet into any other drain that is subject to this chapter, the board shall assess the district for any benefits it receives from the construction, reconstruction or maintenance of the other drain.

(b) A court may not approve the district plan or an amendment to the district plan of a conservancy district if it includes the construction, reconstruction, or maintenance of a regulated drain in the district, unless written approval for the district to perform the work is filed with the court by the board or by the department of natural resources.

(c) When a drain located in a conservancy district is not subject to this chapter, the district, with the approval of the court having jurisdiction over the district, may file a written request with the board for the board to assume jurisdiction over the drain. The drain becomes subject to this chapter when the request is filed.

### **36-9-27-25**

Whenever a regulated drain that is subject to this chapter is included in a flood control project approved by the department of natural resources, the drain ceases to be subject to this chapter. The construction, reconstruction and maintenance of such a drain is the responsibility of the local agency that constructs and maintains the project.

**36-9-27-26**

A drain that is under the jurisdiction of:

- (a) a drainage maintenance and repair district established under IC 13-2-21 (before its repeal) or under IC 14-27-8; or
- (b) an association established under Acts 1913, c. 165, is not subject to annual assessments for periodic maintenance under this chapter and the district or association is solely responsible for the maintenance of the drain. However, if the drain flows directly or indirectly into a regulated drain that is subject to this chapter, the board shall assess the land within the district or association for any benefits it receives from the construction, reconstruction, or maintenance of the regulated drain.

**36-9-27-26.5**

- (a) A county executive may change a regulated drain that is subject to this chapter into a drain that is subject to the jurisdiction of a drainage maintenance and repair district under IC 14-27-8.
- (b) When a drain that is subject to assessments for periodic maintenance and repair under this chapter becomes subject to the jurisdiction of a drainage maintenance and repair district under IC 14-27-8, the county treasurer shall transfer all money in the drain's maintenance fund established under IC 36-9-27-44 to the drain's drainage maintenance fund established under IC 14-27-8-19.
- (c) The county executive shall establish procedures for the transition of a drain from administration under this chapter to administration under IC 14-27-8.

**36-9-27-27**

- (a) A written statement alleging that a drainage maintenance and repair district established under IC 13-2-21 (before its repeal) or under IC 14-27-8 is not active and is not properly maintaining the drains under its control may be filed with the board by:
  - (1) the owners of fifty-one percent [51%] in area of the land located in the district; or
  - (2) fifty-one percent [51%] of the owners of land located in the district.

When the statement is filed, the board may file with the court that established the district a complaint that sets forth the allegations in the statement and requests the court to dissolve the district.

- (b) The drainage maintenance and repair district shall be named defendant in the action, and a summons shall be served:
  - (1) on any commissioner of the district; or
  - (2) on the district by publication, if a commissioner cannot be found.

The issues shall be considered closed by a general denial, without the filing on any specific pleadings.

- (c) The court shall hear the action without a jury. A change of venue from the county may not be granted.

- (d) If the court finds that the allegations in the complaint are true, it shall dissolve the district. All the drains formerly under the jurisdiction of the district become regulated drains subject to this chapter when the district is dissolved.

**36-9-27-28**

- (a) A written statement alleging that an association established under Acts 1913, c. 165 for the purpose of maintaining and repairing a drain is not active and is not properly maintaining the drain may be filed with the board by:
  - (1) members of the association who own fifty-one percent [51%] in area of the land within the jurisdiction of the association; or
  - (2) fifty-one percent [51%] of the members of the association.

When the statement is filed, the board may notify the association of its intention to declare the drain to be subject to this chapter.

- (b) The notice must fix a date, time and place for a hearing on the matter and shall be:
  - (1) served personally or by registered mail upon any director or officer of the association who did not sign the statement filed with the board; or
  - (2) published in accordance with IC 5-3-1, if such a director or officer cannot be found.
- (c) On or before the date of the hearing, any member of the association may file written evidence with the board.
- (d) If the board finds that the allegations in the statement are true, it shall issue an order declaring the drain to be a regulated drain that is subject to this chapter. The finding and order shall be marked Filed and shall be announced publicly at the hearing. The board shall then publish a notice setting forth its order in accordance with IC 5-3-1. Judicial review of the order under Section 106 of this chapter may be requested by any member of the association within twenty [20] days after publication of the notice. The drain becomes subject to this chapter when the order becomes final and conclusive.
- (e) If the board finds that the allegations in the statement are not true, it shall dismiss the proceedings.

**36-9-27-29**

The county surveyor is the technical authority on the construction, reconstruction and maintenance of all regulated drains or proposed regulated drains in the county and the county surveyor shall:

- (1) investigate, evaluate and survey all regulated drains or proposed regulated drains and prepare all reports, plans, profiles and specifications necessary or incident to any proposed construction, reconstruction or maintenance of regulated drains;
- (2) prepare and make public standards of design, construction and maintenance that will apply to all regulated drains and their appurtenances, taking into consideration in preparing these standards the published recommendations made by Purdue University, the American Society of Agricultural Engineers, and American Society of Civil Engineers, the United States Department of Agriculture, the Department of Natural Resources, the United States Army Corps of Engineers and other reliable sources of information;

- (3) supervise all construction, reconstruction and maintenance work performed under this chapter;
- (4) catalog and maintain a record of all surveying notes, plans, profiles and specifications of all regulated drains in the county and of all mutual and private drains when available; and
- (5) perform the functions set forth in Sections 67 through 69 of this chapter concerning all urban drains under the county surveyor's jurisdiction.

In preparing plans under subdivision (1), the county surveyor shall, when feasible, include the seeding of the banks of all open drains. The surveyor shall, when feasible, use United States Geological Survey data on plans and profiles prepared under subdivision (1).

### **36-9-27-30**

- (a) Whenever the county surveyor is not registered under IC 25-21.5 or IC 25-31 and that statute prohibits an unregistered person from performing any function that the county surveyor is directed to do under this chapter, the surveyor shall employ and fix the compensation of a person who is so registered to work with the surveyor in performing those functions. However, if the county surveyor does not employ a registered person within one [1] year of the acceptance of a petition for construction or reconstruction of a drain, the board may make the appointment of a registered person that this section requires.
- (b) The person employed by the surveyor, who shall be known as a qualified deputy, shall file with the county surveyor the original of all plans, specifications, and other documents made by the person in performing the work for which the person was employed. Those plans, specifications, and other documents become a part of the permanent file of the surveyor's office, which the surveyor shall maintain for the use of the board as provided in Section 109 of this chapter.
- (c) The rate of compensation paid to a qualified deputy shall be assessed against the drainage project for which the deputy was employed.
- (d) This subsection applies whenever the county surveyor is not registered under IC 25-21.5 or IC 25-31, and the county surveyor has not employed a registered person as provided in subsection (a). If the county has a full-time employee who is registered as a land surveyor under IC 25-21.5 or as a professional engineer under IC 25-31, the board may, subject to the approval of the county executive and the county surveyor, designate that person to perform the functions of the county surveyor under this chapter that are allowed under the employee's license as a land surveyor or professional engineer. If a designation is made and approved under this subsection, the county surveyor may not employ a registered person under subsection (a) to perform that same function.

### **36-9-27-31**

If for any reason there is no elected county surveyor in any county, the board shall employ and fix the compensation of a part-time or full-time engineer or surveyor. The engineer or surveyor, who must be registered under IC 25-21.5 or IC 25-31 and must be or become a resident of Indiana, shall perform the functions required of the county surveyor in this chapter.

### **36-9-27-32**

- (a) Whenever the board finds that it is necessary to advance the work of construction or reconstruction, as determined from the long-range plan established under Section 36 of this chapter, to a degree inconsistent with the work load of the county surveyor, the board shall publicly declare an emergency and shall authorize the employment of an engineer, firm of engineers or land surveyor as a contract deputy to perform the necessary work, including:
  - (1) the preparation of the surveyor's report or specified parts of it; and

- (2) the supervision of the construction or reconstruction.
- (b) A contract deputy shall be employed by contract. Each contract must be for work on a specific drainage project and may be on a per project fee basis or on a per diem basis of compensation.
- (c) A contract deputy must have the same qualifications as an engineer or surveyor employed or appointed by the board under Section 30 or 31 of this chapter.
- (d) The original of all plans, specifications and other documents made by a contract deputy in performing the work for which he was employed or facsimiles of them in reproducible form, shall be transmitted to the board and shall be permanently retained by the board or by the surveyor in the manner in which similar documents prepared by the surveyor or the board are retained.
- (e) The compensation of a contract deputy shall be assessed against the drainage project for which the deputy was employed and may be paid from the general drain improvement fund before the order for the construction or reconstruction.

### **36-9-27-33**

- (a) The county surveyor, the board or an authorized representative of the surveyor or the board acting under this chapter has the right of entry over and upon land lying within seventy-five feet [75'] of any regulated drain. The seventy-five foot [75'] limit shall be measured at right angles to:
  - (1) the center line of any tiled drain; and
  - (2) the top edge of each bank of an open drain; as determined by the surveyor.
- (b) Spoil bank spreading resulting from the construction, reconstruction or maintenance of an open drain may extend beyond the seventy-five foot [75'] right-of-way if:
  - (1) the county surveyor finds that the extension is necessary; and
  - (2) the extension has been provided for in the engineer's report on the construction, reconstruction or maintenance.
- (c) All persons exercising the right given by this section shall, to the extent possible, use due care to avoid damage to crops, fences, buildings and other structures outside of the right-of-way, and to crops and approved structures inside the right-of-way. The county surveyor shall give oral or written notice of the entry on the land to the property owner of record and in the case of municipality, to the executive of that municipality. The notice must state the purpose for the entry.
- (d) The owners of land over which the right-of-way runs may use the land in any manner consistent with this chapter and the proper operation of the drain. Permanent structures may not be placed on any right-of-way without the written consent of the board. Temporary structures may be placed upon or over the right-of-way without the written consent of the board, but shall be removed immediately by the owner when so ordered by the board or by the county surveyor. Crops grown on a right-of-way are at the risk of the owner, and, if necessary in the reconstruction or maintenance of the drain, may be damaged without liability on the part of the surveyor, the board or their representatives. Trees, shrubs and woody vegetation may not be planted in the right-of-way without the written consent of the board, and trees and shrubs may be removed by the surveyor if necessary to the proper operation or maintenance of the drain.

- (e) This subsection applies to new regulated drains established after September 1, 1984, and to urban drains. Except as provided in subsection (f), the board may reduce the seventy-five foot [75'] right-of-way requirement of subsections (a) and (b) to any distance of not less than:
- (1) twenty-five feet [25'] from the top of each bank of an open ditch; and
  - (2) fifteen feet [15'] from the center line of any tiled drain;
- as measured at right angles.
- (f) This subsection applies only to a platted subdivision. Upon the recommendation of the county surveyor, the board may further reduce the right-of-way for any tiled drain, including a tiled urban drain that was reduced under subsection (e)(2). However, the board shall not make a reduction that results in a right-of-way that is:
- (1) less than seven feet [7'] from each side of the center line as measured at right angles; or
  - (2) less than the recommendation made by the county surveyor.
- (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.
- (h) The surveyor, the board or an authorized representative of the surveyor or the board acting under this chapter does not commit criminal trespass under IC 35-43-2-2.

**36-9-27-34**

- (a) The county surveyor shall classify all regulated drains in the county as:
- (1) drains in need of reconstruction;
  - (2) drains in need of periodic maintenance; or
  - (3) drains that should be vacated.

The surveyor shall also consider the designation of urban drains under Section 67 of this chapter.

- (b) A regulated drain is in need of reconstruction when:
- (1) it will not perform the function for which it was designed and constructed;
  - (2) it no longer conforms to the maps, profiles and plans prepared at the time when the legal drain was established; or
  - (3) topographical or other changes have made the drain inadequate to properly drain the lands affected without extensive repairs or changes, including:
    - (A) converting all or part of an open drain to a tiled drain or a tiled drain to an open drain;

- (B) adding an open drain to a tiled drain or a tiled drain to an open drain;
  - (C) increasing the size of the tile;
  - (D) deepening or widening an open drain;
  - (E) extending the length of a drain;
  - (F) changing the course of a drain;
  - (G) constructing drainage detention basins and drainage control dams;
  - (H) providing for erosion control and for grade stabilization structures; or
  - (I) making any major change to a drainage system that would be of public utility.
- (c) A regulated drain is in need of periodic maintenance when, with or without the use of mechanical equipment, it can be made to perform the function for which it was designed and constructed and to properly drain all affected land under current conditions, by periodically:
- (1) cleaning it;
  - (2) spraying it;
  - (3) removing obstructions from it; and
  - (4) making minor repairs to it.
- (d) A regulated drain should be vacated when:
- (1) the drain does not perform the functions for which it was designed and constructed or it has become inadequate to properly drain all affected land under current conditions;
  - (2) the expense of reconstruction outweighs the benefits of reconstruction; and
  - (3) the vacation will not be detrimental to the public welfare.

**36-9-27-35**

- (a) The county surveyor shall submit to the board a written report setting forth the county surveyor's classification of regulated drains in order of priority for action by the board. This report may be made from time to time during the county surveyor's process of classification.
- (b) The board may adopt the classifications and order of work priority as made by the county surveyor or may modify them.
- (c) If ten percent [10%] of the owners request the board to classify or reclassify a drain affecting their land, the board shall, after giving notice to all affected owners, conduct a hearing on the request and adopt a proper classification. The notice shall be given by publication in accordance with IC 5-3-1. Notice shall be given to an attorney of record in the manner provided in section 110 of this chapter.



**36-9-27-36**

- (a) When the classification of drains or a partial classification of drains, has been adopted by the board, the county surveyor shall prepare a long-range plan for:
- (1) the reconstruction of regulated drains classified as in need of reconstruction;
  - (2) the establishment of an annual maintenance assessment for regulated drains classified as in need of periodic maintenance; and
  - (3) the vacating of regulated drains classified as drains that should be vacated.

The plan must set forth the approximate date each drain will be referred to the surveyor for report, taking into consideration the workload of the surveyor and the estimation by the surveyor of the time it will take to prepare each report.

- (b) The long-range plan is subject to approval by the board, may be amended by the board at any time, and shall be reconsidered and brought up-to-date before June 1 of each year.
- (c) The board shall refer each regulated drain to the county surveyor for a report in accordance with the long-range plan. If no long-range plan has been adopted by the board and if the surveyor has classified only part of the regulated drains, the board may refer the regulated drains that have been classified to the surveyor for a report in the order of priority set forth in the partial classification.
- (d) Ten percent [10%] of the owners of land affected by the regulated drain that has been classified as a drain that:
- (1) is in need of reconstruction;
  - (2) is in need of periodic maintenance; or
  - (3) should be vacated;

may file with the board a written request that the board advance the proposed date when the drain will be referred to the county surveyor for report. Upon receipt of such a request, the board shall set the request for hearing at its next regular meeting and shall promptly mail notice of the time, date and place of the hearing to the owners making the request. At the meeting any affected owner or the surveyor may present evidence for or against the request. After the hearing, the board may advance the date the drain will be referred to the surveyor if it is practicable to do so.

**36-9-27-37**

- (a) When instituting proceedings to vacate a regulated drain, the board shall:
- (1) serve a notice of intention to vacate on all owners of affected land;
  - (2) fix a date for a hearing;
  - (3) receive all objections filed;
  - (4) hold the hearing; and
  - (5) issue an order vacating or reclassifying the drain.

(b) A board acting under this section shall:

- (1) comply with the applicable provisions of Sections 49 through 52 of this chapter; and
- (2) consider Section 34(d) of this chapter in determining whether a drain should be vacated.

(c) An owner aggrieved by the final order of the board may obtain judicial review of the order under section 106 of this chapter.

(d) When a drain is vacated, the county treasurer shall transfer all money in that drain's maintenance fund to the general drain improvement fund.

### **36-9-27-38**

When the board refers a regulated drain classified in need of periodic maintenance to the county surveyor, the county surveyor shall prepare a maintenance report that includes the following items:

- (1) The estimated annual cost of periodically maintaining the drain.
- (2) The name and address of each owner of land that will be affected by the proposed maintenance and the legal description of the land of each owner, as shown by the tax duplicate or record of transfers of the county in which the land is located. However, a public way owned by a county or by the state shall be described by its name or number and the right-of-way of a railroad may be described as the right-of-way of the owner through section, township and range. If the name of an owner is not known and cannot be discovered through diligent inquiry, the report may describe the land as belonging to the person who appears to be the owner according to the last tax duplicate or record of transfers of the county where the land is located.
- (3) The nature of the maintenance work required and how frequently the work should be performed.

### **36-9-27-39**

When the board receives a maintenance report under section 38 of this chapter, it shall prepare a schedule of assessments that include the following items:

- (1) A description of each tract of land determined to be benefited and the name and address of the owner, as listed on the county surveyor's report.
- (2) The percentage of the estimated cost of periodically maintaining the drain to be assessed against each tract of land. The percentage shall be based upon the benefit accruing to each tract of land from the maintenance and must be at least one hundred percent [100%] and as near to one hundred percent [100%] as is practicable.
- (3) The amount annually assessed against each tract of land for maintenance.

The board may consider the factors listed in section 112 of this chapter in preparing the schedule.

### **36-9-27-40**

(a) The board shall fix a date, time and place for a hearing on the maintenance report of the county surveyor and on the schedule of assessments, and shall prepare a written notice for each owner of land proposed to be assessed. The notice, which must describe the land to be assessed, must state:

- (1) the name and identifying number by which the drainage proceedings are known;

- (2) that the maintenance report of the county surveyor and the schedule of assessments made by the board have been filed and are available for public inspection in the office of the surveyor;
  - (3) that the county surveyor has estimated that the annual cost of periodically maintaining the drain is in the sum of \_\_\_\_\_ dollars;
  - (4) that the land of the owner is shown by the schedule of assessments to be annually assessed \_\_\_\_\_ percent of the total cost of periodically maintaining the drain;
  - (5) that the land of the owner is shown by the schedule of assessments to be annually assessed in the sum of \_\_\_\_\_ dollars for periodically maintaining the drain; and
  - (6) the date, hour and place of the hearing before the board on the county surveyor's maintenance report and on the schedule of assessments.
- (b) Not less than thirty [30] nor more than forty [40] days before the date of the hearing, the board shall mail a copy of the notice in a five [5] day return envelope to each owner named in the schedule of assessments.
- (c) The board shall publish a notice in accordance with IC 5-3-1. The notice must:
- (1) identify the drainage proceedings;
  - (2) be addressed to whom it may concern and to the addressee on each letter that was mailed under subsection (b) and was returned undelivered; and
  - (3) state that:
    - (A) the maintenance report of the county surveyor and the schedule of assessments made by the board have been filed and are available for public inspection in the office of the county surveyor; and
    - (B) a hearing will be held before the board on the schedule of assessments, specifying the time and place of the hearing.
- (d) Not less than five [5] days before the hearing, any owner of land named in the schedule of assessments may file with the board a written objection alleging that the objector is the owner of land assessed as benefited and the benefits assessed against the objector's land are excessive. Each objector may file written evidence in support of the objector's objection. The failure of an owner to file an objection constitutes a waiver of the owner's right to subsequently object, on the ground stated in this subsection, to any final action of the board.
- (e) On or before the day of the hearing, the surveyor shall, and any owner of land named in the schedule of assessments may, cause written evidence to be filed in support of or in rebuttal to any objection filed under subsection (d).
- (f) The board shall consider the objections and evidence filed, may adjourn the hearing from day to day or to a day certain and may issue an order permitting additional written evidence to be filed in support of or in rebuttal to the objections and evidence previously filed.
- (g) After considering all objections and evidence, the board may amend the schedule of assessments as justice may require. Before final adjournment of the hearing, the board shall issue an order adopting the schedule of assessments as originally filed or as amended, mark the order filed and

publicly announce the order at the hearing. Immediately after that, the board shall publish a notice in accordance with IC 5-3-1. The notice must identify the drainage proceedings and state that the findings and order of the board have been filed and are available for inspection in the office of the county surveyor.

- (h) If judicial review of the findings and order of the board is not requested under section 106 of this chapter within twenty [20] days after the date of publication of the notice, the order becomes conclusive.
- (i) The notice required by subsections (a) and (b) for each owner of land proposed to be assessed is not required for a joint board that includes three [3] or more counties in a drainage basin that exceeds eighty thousand [80,000] acres, except that when the proposed assessment affects land owned by a public utility or railroad the requirements of Subsections (a) and (b) shall be met as to the public utility or railroad.

**36-9-27-41**

- (a) If recommended by the county surveyor, the board may, after notice and hearing to affected owners, combine regulated drains located in the same watershed for the purpose of annually assessing the owners benefited for periodic maintenance.
- (b) The notice shall be published in accordance with IC 5-3-1. Notice shall also be given to an attorney of record in the manner provided in section 110 of this chapter.
- (c) In combining drains, the board shall consider:
  - (1) whether the drains are tiled or open; and
  - (2) the uniformity of topography and soil types;

so that the drains that are combined represent substantially the same maintenance problem and can be kept in proper repair at a cost sufficiently uniform as to constitute no substantial inequity for any owner included in the combination of drains.

- (d) The board may, from time to time, add regulated drains to a combination of drains established under this section.

**36-9-27-42**

- (a) The board may at any time increase or decrease the amount annually assessed for periodic maintenance of a regulated drain if the board finds that the county surveyor's estimate of the cost of maintaining the drain was insufficient or excessive.
- (b) The board may decrease the amount annually assessed without notice to the affected owners if the percentage of benefit assigned to all tracts of land affected is not changed from that originally determined by the board.
- (c) The board may increase the amount annually assessed once without notice to the affected owners if:
  - (1) the percentage of benefits assigned to all tracts of land affected is not changed from that originally determined by the board; and
  - (2) the increase does not exceed twenty-five percent [25%] of the amount initially established.

(d) If the board:

- (1) finds that the percentage of benefits assigned to any particular tract or tracts of land should be increased due to a change in land use or for any other reason; or
- (2) proposes an increase or decrease that would affect all of the lands assessed for the maintenance of the drain and that is not exempted from the giving of notice under subsection (b) or (c);

the board shall mail a notice to the owner or owners of the land. The notice must state the proposed change in the assessment and specify a date, time and place, not less than ten [10] days after the notice is mailed, when the board will hear objections to the change. An owner may file written objections to the proposed change on or before the date of the hearing. At the hearing, the board shall consider all objections and evidence filed and shall enter an order as justice may require. The board shall mail a copy of its order to the owner or owners affected. If an owner does not request judicial review of the order under Section 106 of this chapter within twenty [20] days after the owner's receipt of the copy of the order, the order becomes conclusive.

(e) A joint board that includes three [3] or more counties in a drainage basin that exceeds one hundred thousand [100,000] acres shall publish notice in accordance with IC 5-3-1 instead of mailing notice to the owner or owners of land as required by subsection (d).

#### **36-9-27-43**

- (a) If in any year a maintenance fund established under section 44 of this chapter has an unencumbered balance equal to or greater than four [4] times the estimated annual cost of periodically maintaining the drain for which the fund was established, the annual assessment for the maintenance of that drain may be omitted for that year.
- (b) The county drainage board may collect the drain assessment even though the unencumbered balance of the maintenance fund is equal to or greater than four [4] times the estimated annual cost of periodic maintenance of the drain for which the fund was established if the drainage board does the following:
  - (1) Conducts a public hearing in accordance with section 40 of this chapter.
  - (2) At the public hearing estimates what the unencumbered balance of the maintenance fund would be, as a multiple of the estimated annual cost of periodic maintenance of the drain, after the collection of the total amount that the board intends to collect in assessments.

However, the annual assessment for the maintenance of the drain shall be omitted if, according to the estimate of the board, the collection of the intended total amount of assessments would increase the unencumbered balance of the maintenance fund to equal or exceed eight [8] times the estimated annual cost of periodic maintenance of the drain for which the fund was established.

#### **36-9-27-44**

- (a) A maintenance fund is established for each regulated drain and for each combination of drains established under section 41 of this chapter. A maintenance fund consists of:
  - (1) money received from annual assessments upon land benefited by the periodic maintenance of a drain;
  - (2) penalties received on collection of delinquent annual assessments made for the periodic maintenance of a drain; and
  - (3) money received from any person as compensation for damages suffered to a drain.

- (b) The county auditor shall:
- (1) set up a separate ledger account for each regulated drain or combination of drains whenever the board fixes an annual assessment for the periodic maintenance of the drain or combination; and
  - (2) extend the assessments upon the ditch duplicate in each year that the assessments are to be made.
- (c) Whenever the county surveyor's estimate for annual maintenance of any drain is not more than one thousand five hundred dollars (\$1,500), the board may exempt that drain from the requirement that a maintenance fund be established. Expenses up to one thousand five hundred dollars (\$1,500) in each year for the drain shall be paid from the general drain improvement fund established under section 73 [36-9-27-73] of this chapter. The surveyor may make these minor repairs without advertising or letting a contract or contracts, but the total of these expenditures in any one (1) county in each year may not exceed ten dollars [\$10.00] per mile of regulated drains in the county. Expenditures under this subsection may not be assessed to the affected owners.
- (d) The board may deposit money that is in a maintenance fund in the manner and to the extent provided by IC 5-13-6.

### **36-9-27-45**

A maintenance fund established under section 44 of this chapter is subject to the use of the board: For the necessary or proper repair, maintenance, study, or evaluation of the particular drain or combination of drains, which may be done, whenever the board, upon the recommendation of the county surveyor, finds that it is necessary. The payment for all such maintenance work shall be made out of the appropriate maintenance fund. However, if:

- (1) a maintenance fund has not been established for the drain or combination of drains; or
- (2) a maintenance fund has been established but it is not sufficient to pay for the work;

the general drain improvement fund shall be used to pay the cost of the work or to pay for the deficiency and the general drain improvement fund shall be reimbursed from the appropriate maintenance fund when it is established or becomes sufficient.

### **36-9-27-45.5**

- (a) This section applies when a county surveyor advises the drainage board that in the county surveyor's opinion a maintenance fund has a balance in excess of the amount reasonably needed in that fund for maintenance work in the foreseeable future.
- (b) The board may transfer an amount up to a maximum of seventy-five percent (75%) of the money in the maintenance fund to a reconstruction fund that covers the same watershed as the maintenance fund from which the money is transferred.

### **36-9-27-46**

- (a) When a regulated drain is obstructed or damaged by logs, trees, brush, unauthorized structures, trash, debris, excavating, filling or pasturing livestock, or in any other way, the county surveyor shall immediately remove the obstruction and repair any damage.
- (b) Notwithstanding subsection (a), if the obstruction or damage is caused by an owner of land affected by the drain, the county surveyor shall first mail a notice to the owner, with return receipt requested, requiring the owner to remove the obstruction and repair the damage. If the

owner fails to comply within ten [10] days after receipt of the notice, the surveyor shall perform the work and the cost of the work shall be paid out of the annual maintenance fund of the drain if one has been established, or, if no such fund has been established, out of the general drain improvement fund.

- (c) If the obstruction or damage has been caused by the acts or omissions of an owner of land affected by the drain, the board may, after a hearing with written notice served on the owner, add an amount sufficient to pay for the damage to the next annual assessment made against the land of the owner. The board shall certify the assessment to the county auditor in the same manner as any other assessment.
- (d) If the obstruction or damage is caused by the acts or omissions of a person other than the owner of land affected by the drain, the board may bring an action against that person in court. The board is entitled to recover the reasonable value of removing the obstruction and repairing the damage, plus a reasonable attorney's fee.

**36-9-27-47**

- (a) Whenever any person:
  - (1) goes upon any land under any contract, easement or statute; and
  - (2) damages a regulated drain or impedes the flow of such a drain by placing pipe, cable or other material over, under or through the drain; the board shall serve upon the person an order requiring the person to immediately repair the damages and remove the obstruction.
- (b) If the person fails to comply with the order, the county surveyor shall repair the damage and remove the obstruction. The board may then bring an action against the person to recover damages, including the reasonable cost of repairing the damage and removing the obstruction, along with reasonable attorney's fees.

**36-9-27-48**

- (a) Whenever, in the construction or reconstruction of a regulated drain, the county surveyor determines that:
  - (1) he proposed drain will cross a pipeline, cable or similar equipment of a public utility; and
  - (2) the equipment will interfere with the proper operation of the drain; the county surveyor shall include in the county surveyor's plans the relocation requirements of the equipment. The surveyor shall, by registered mail, send a copy of the requirements to the public utility owning the equipment.
- (b) If requested by the public utility, the county surveyor shall meet with the public utility at a time and place to be fixed by the county surveyor and hear objections to the requirements. After the hearing, the county surveyor may change the requirements as justice may require.
- (c) If the board finds that the relocation of a pipeline, cable or similar equipment owned by a public utility is necessary in the construction or reconstruction of a regulated drain, the cost of relocation shall be paid by the public utility.

**36-9-27-49**

- (a) When the board refers a regulated drain to the county surveyor for a reconstruction report, the county surveyor shall determine and set forth in the county surveyor's report the best and cheapest method of reconstructing the drain so that it will adequately drain all affected land.
- (b) The county surveyor shall make the necessary surveys, maps, profiles, plans and specifications, and the county surveyor may include in them:
  - (1) all of the repairs or changes specifically set forth in Section 34(b) of this chapter; and
  - (2) any other repairs or changes that good engineering practice requires, including arms where none existed before.
- (c) The county surveyor shall estimate the costs of the proposed reconstruction, including costs of notices and advertising and the county surveyor shall also estimate the annual cost of periodically maintaining the proposed reconstruction.
- (d) The county surveyor shall include in the county surveyor's report the name and address of each owner of land that will be affected by the proposed reconstruction and the legal description of the land of each owner as shown by the tax duplicate or record of transfers of the county in which the land is located. However, a public way owned by a county or by the state shall be described by its name or number and the right-of-way of a railroad may be described as the right-of-way of the owner through section, township and range. If the name of an owner is not known and cannot be discovered through diligent inquiry, the report may describe the land as belonging to the person who appears to be the owner according to the last tax duplicate or record of transfers of the county where the land is located.

**36-9-27-50**

When the county surveyor files a reconstruction report, the county surveyor shall consult with the board and the board shall take the following actions:

- (1) Prepare a schedule of assessments containing a description of each tract of land determined to be benefited by the reconstruction and the name and address of the owner of the land. The name, address and description shall be taken from the county surveyor's report. The board shall enter in the assessment schedule the percentage of the total cost of the reconstruction to be assessed against each tract of land, with the percentage to be based upon the benefit accruing to the land from the reconstruction. The percentage allocated to all lands benefited must be at least one hundred percent [100%] and as near to one hundred percent [100%] as is practicable.
- (2) Determine the amount of damages sustained by any owner as a result of the reconstruction and prepare a schedule of damages containing:
  - (A) the name and address of each owner determined to be damaged and a description of the owner's land, as shown by the county surveyor's report;
  - (B) the amount of each owner's damages; and
  - (C) an explanation of the injury upon which the determination was based.

The county surveyor shall add the damages to all lands as determined by the board to the estimated costs and expenses contained in the county surveyor's report and the result constitutes the total estimated cost of the reconstruction.



- (3) Set forth the amount of each owner's assessment based on the total estimated cost of the reconstruction.
- (4) Set forth the amount of each owner's annual assessment based on the estimated periodic maintenance cost of the reconstruction. The percentage used in computing the annual assessment may, but need not be, the same for each tract of land as the percentage used in computing the general assessment.

The board may consider the factors listed in section 112 of this chapter in preparing the schedules.

### **36-9-27-51**

Whenever it becomes necessary to reconstruct a regulated drain that has become inadequate due to an increased flow of drainage resulting, in whole or in part, from a change in land use by one or more owners of land affected by the drain, the board shall consider that fact in assessing benefits to pay the cost of the reconstruction and the owner or owners necessitating the reconstruction shall be assessed accordingly.

### **36-9-27-52**

- (a) When the schedules of damages and assessments are completed and marked filed, the board shall fix a date, time and place for a hearing on the reconstruction report of the county surveyor and on the schedules of damages and assessments and shall prepare a notice for each owner of land affected by the reconstruction. The notice must state:
  - (1) the name and identifying number by which the proposed reconstruction is known;
  - (2) that the reconstruction report of the county surveyor and the schedules of damages and benefits as determined by the board have been filed and are available for inspection in the office of the surveyor;
  - (3) that the land of the owner is shown by the schedule of damages to be damaged in the sum of \_\_\_\_\_dollars;
  - (4) that the land of the owner is shown by the schedule of assessments to be assessed \_\_\_\_\_ percent of the total cost of reconstruction and that \_\_\_\_\_ percent of the estimated total cost of the reconstruction is in the sum of \_\_\_\_\_ dollars;
  - (5) that the land of the owner is shown by the schedule of assessments to be annually assessed in the sum of \_\_\_\_\_ dollars for estimated periodic maintenance of the reconstruction; and
  - (6) the date, hour and place of the hearing on the surveyor's reconstruction report and on the schedules of damages and assessments.
- (b) Not less than thirty [30] nor more than forty [40] days before the date of the hearing, the board shall mail a copy of the notice in a five-day return envelope to each owner named in the schedules of damages and assessments.
- (c) The board shall publish a notice in accordance with IC 5-3-1. The notice must:
  - (1) identify the proposed reconstruction;
  - (2) be addressed to whom it may concern and to the addressee on each letter that was mailed under subsection (b) and was returned undelivered; and

- (3) state that:
- (A) the reconstruction report of the county surveyor and the schedules of damages and assessments made by the board have been filed and are available for public inspection in the office of the county surveyor; and
  - (B) a hearing will be held before the board on the report and schedules, specifying the time and place of hearing.
- (d) Not less than five [5] days before the board's hearing on a reconstruction report, an owner of lands affected by the report or by the schedules of damages and assessments may file with the board written objections to the report, schedules or both. The objections may be for one [1] or more of the following causes:
- (1) The costs, damages and expenses of the proposed reconstruction will exceed the benefits that will result to the owners of all land benefited.
  - (2) The objector is the owner of land assessed as benefited and the benefits assessed against the objector's land are excessive.
  - (3) The objector is the owner of land damaged by the reconstruction and:
    - (A) the board failed to find that the objector's land is damaged; or
    - (B) the damages assessed to the objector's land are inadequate.

Each objector may file written evidence in support of the objector's objections. The failure of an owner to file objections constitutes a waiver of the owner's right to subsequently object, on the grounds stated in this subsection, to any final action of the board.

- (e) On or before the day of the hearing, the county surveyor shall and any owner of land affected by the proposed reconstruction may, cause written evidence to be filed in support of or in rebuttal to any objection filed under subsection (d).
- (f) The board shall consider the objections and evidence filed, may adjourn the hearing from day to day or to a day certain and may issue an order permitting additional written evidence to be filed in support of or in rebuttal to the objections and evidence previously filed.
- (g) After considering all of the objections and evidence, the board may amend the schedules of damages and assessments and the county surveyor may modify the county surveyor's report, as justice may require.
- (h) Before final adjournment of the hearing, the board shall determine in writing whether the costs, damages and expenses of the proposed reconstruction will be less than the benefits accruing to the owners of lands benefited by the construction. If the board answers this question in the negative, it shall dismiss the proceedings. If the board answers the question in the affirmative, it shall adopt the reconstruction report of the county surveyor and the schedule of damages and assessments, including annual assessments for periodic maintenance, as originally filed or as amended, into its findings and issue an order declaring the proposed reconstruction established. The board shall mark the findings and order filed and publicly announce the findings and order at the hearing. Immediately after that, the board shall publish a notice in accordance with IC 5-3-1. The notice must identify the drainage proceedings and state that the findings and order of the board have been filed and are available for inspection in the office of the surveyor.

- (i) If judicial review of the findings and order of the board is not requested under section 106 of this chapter within twenty [20] days after the date of publication of the notice, the findings and order become conclusive.

**36-9-27-52.5**

(a) If:

- (1) a proposed project for the reconstruction of a regulated drain is presented to the board for approval;
- (2) the proposed project consists exclusively of the relocation of a regulated drain from one (1) site on property owned by a person to another site on property owned by the same person;
- (3) the specifications for the project have been approved by the county surveyor;
- (4) the project will be completed under the supervision of the county surveyor;
- (5) the person who owns the property on which the regulated drain will be relocated will pay the entire cost of the project;
- (6) the county surveyor has investigated whether any other owner of land in the watershed in which the regulated drain is located will be adversely affected by the proposed project, and has communicated the results of the investigation to the board;
- (7) the board finds that no owner of land in the watershed in which the regulated drain is located will be adversely affected by the proposed project; and
- (8) the board, at a public meeting, votes to approve the proposed project;

the board may issue an order authorizing the reconstruction of a regulated drain.

- (b) The board may issue an order authorizing the reconstruction of a regulated drain under subsection (a) without:

- (1) the preparation and filing of a reconstruction report under Sections 49 and 50 of this chapter;
- (2) the preparation by the county surveyor of a schedule of damages and assessments under Section 50 of this chapter; and
- (3) a hearing on the reconstruction report and the schedules of damages and assessments under Section 52 of this chapter.

**36-9-27-53**

(a) Whenever:

- (1) the board has initiated or is considering initiating, a proceeding to reconstruct a regulated drain under this chapter;
- (2) one or more other regulated drains in the same watershed are in need of reconstruction;

(3) the board finds that no substantial injustice would result from treating the drains as a single drain; and

(4) the board has given notice and a hearing to the owners of affected land;

the board may issue an order combining the drains.

(b) The notice shall be published:

(1) at least once; and

(2) not less than ten [10] nor more than thirty [30] days before the date of the hearing;

in a newspaper of general circulation in the area affected. Notice shall also be given to an attorney of record in the manner provided in section 110 of this chapter.

(c) After an order is issued under this section, this chapter applies to the combined drains as if they were a single drain.

### **36-9-27-53.5**

(a) A county surveyor or board planning to perform a project for the reconstruction or maintenance of a regulated drain under IC 36-9-27 that:

(1) is subject to regulation under:

(A) IC 14-26-5; or

(B) IC 14-28-1; or

(2) requires an individual permit under Section 404 of the federal Clean Water Act (33 U.S.C. 1344);

shall request a review of the project through a written notification to the division of water of the department of natural resources (referred to as “the division” in this section). The notification may include a request to schedule an onsite field review of the project.

(b) If an onsite field review is requested, not more than fourteen [14] days after it receives a notification under subsection (a), the division shall contact the county surveyor or the designee of the county surveyor and the department of environmental management to establish a date, time, and location for the on-site field review.

(c) If an on-site field review is scheduled, it shall be conducted by a team consisting of:

(1) one [1] or more representatives of the county;

(2) one [1] or more representatives of the department of natural resources, including an engineer from the division of water;

(3) one [1] or more representatives of the department of environmental management; and

(4) if applicable, representatives of the local soil and water conservation district.

- (d) Not more than thirty [30] calendar days after the completion of a review under this section, the division shall provide the county surveyor with a written summary of the review. The summary must contain the following:
- (1) A narrative and map defining the project location.
  - (2) A description of the proposed work.
  - (3) A list of conditions that:
    - (A) the department of natural resources would place on a permit to mitigate any unreasonable or detrimental effects that may occur as a result of the proposed work;
    - (B) the department of environmental management would place on a certification to comply with Section 401 of the federal Clean Water Act (33 U.S.C. 1341), if it is possible to ensure compliance with Section 401 by placing conditions on the certification; or
    - (C) both departments referred to in this subdivision would place on a permit or certification.
- (e) The department of natural resources may not require or recommend the following as conditions for a permit for a project for the reconstruction or maintenance of a regulated drain:
- (1) Deed restrictions in connection with the proposed work.
  - (2) Conservation easements in connection with the proposed work.
  - (3) Tree planting or tree retention within the easement of the regulated drain, if:
    - (A) the project involves construction on only one [1] side of the drain;
    - (B) vegetation on the opposite overbank will not be disturbed; and
    - (C) the board agrees to establish a suitably sized vegetated filter strip consisting of grasses and legumes along the side of the drain on which the construction will occur.
- (f) For the purposes of subsection (e) (3), a project involves construction on only one [1] side of a regulated drain if the work is limited to the entire area:
- (1) below the top of the banks; and
  - (2) within the drainage easement on one [1] side;
- of the stream or open drain.
- (g) A county surveyor or board that is aggrieved by the permit conditions disclosed under subsection (d) (3) has the right to enter into further negotiations with the department of natural resources and the department of environmental management in order to obtain a mutually agreeable set of permit conditions.

- (h) If the permit conditions disclosed under subsection (d) (3) concerning a project for the reconstruction or maintenance of a regulated drain are acceptable to the county surveyor and board, the conditions:
- (1) are binding upon the department of natural resources; and
  - (2) may not be changed by the department of natural resources.

However, subdivisions (1) and (2) cease to apply to the permit conditions disclosed under subsection (d) (3) concerning a project if an application for a permit for the project is not submitted within two [2] years after the review.

**36-9-27-54**

- (a) When one [1] or more persons want to establish a new regulated drain and that drain cannot be established in the best and cheapest manner without affecting land owned by other persons, the person or persons seeking to establish the drain must file a petition with the board. If the proposed drain will affect land in two [2] or more counties, the petition shall be filed in each of the affected counties. The petition shall be entitled "In the Matter of the \_\_\_\_\_ Drain Petition."
- (b) The petition may be filed by:
- (1) the owners of:
    - (A) ten percent [10%] or more in acreage; or
    - (B) twenty-five percent [25%] or more of the assessed valuation;of the land that is outside the corporate boundaries of a municipality and is alleged by the petition to be affected by the proposed drain:
  - (2) a county executive who wants to provide for the drainage of a public highway;
  - (3) a township executive or the governing body of a school corporation that wants to drain the grounds of a public school; or
  - (4) a municipal legislative body that wants to provide for the drainage of the land of the municipality.
- (c) The petition must include the following items:
- (1) A statement showing that each petitioner is qualified to file the petition.
  - (2) The legal description of each tract of land that a petitioner believes will be affected by the proposed drain and the name and address of each owner, as shown by the tax duplicate or record of transfers of the county. However, a public way owned by a county or by the state shall be described by its name or number and the right-of-way of a railroad may be described as the right-of-way of the owner through section, township and range. The petition must describe an area of land equal to three-fourths [3/4] or more in area of all the affected land.
  - (3) The general route of the proposed drain.

- (4) A statement that in the opinion of the petitioner the costs, damages and expenses of the proposed drain will be less than the benefits accruing to the owners of land likely to be benefited by the drain.
- (5) A statement that in the opinion of the petitioner the proposed drain will:
  - (A) improve the public health;
  - (B) benefit a public highway in a county or a public street in a municipality;
  - (C) drain the grounds of a public school; or
  - (D) be of public utility.
- (6) The name of the attorney representing the petitioner in the drainage petition.
- (7) A statement that the petitioner shall pay the cost of notice and all legal costs, if the petition is dismissed.

The petitioner shall post a bond sufficient to pay the cost of notice and all legal costs if the petition is dismissed.

- (d) The petition must be signed by each petitioner and filed in duplicate with the county surveyor, who shall receive it on behalf of the board. The county surveyor shall examine the petition and if it is in proper form the county surveyor shall mark it filed, showing the date of filing and give it a distinguishing name by insertion in its caption. If the petition is not in proper form, the surveyor shall return it to the attorney for the petitioner, pointing out in what respects the petition fails to comply with this chapter. The attorney may then amend the petition and refile it with the county surveyor.

### **36-9-27-55**

When the county surveyor has accepted a petition and marked it Filed under Section 54 of this chapter, the county surveyor shall make a personal inspection of the land described in the petition and file with the board a written preliminary report stating:

- (1) whether the proposed drain is practicable;
- (2) whether the proposed drain will improve the public health, benefit a public highway in a county or a public street in a municipality, drain the grounds of a public school or be of public utility; and
- (3) whether the costs, damages and expenses of the proposed drain will probably be less than the benefits accruing to the owners of land likely to be benefited.

In determining whether the proposed drain is practicable, the county surveyor may consider changing the route of the proposed drain from that set forth in the petition to conform with sound engineering principles.

### **36-9-27-56**

- (a) If the county surveyor's report concerning any of the three [3] subdivisions of section 55 of this chapter is wholly in the negative, the board shall have a copy of the county surveyor's preliminary report served upon the attorney for the petitioner.

- (b) Within twenty [20] days after service is made under subsection (a), the petitioner may file with the board written objections to the report, along with written evidence in support of the objections.
- (c) The board shall consider any objections and written evidence filed by the petitioner and may then adopt the county surveyor's preliminary report as filed or amend it as justice may require. However, if the board finds that the report concerning any of the three [3] subdivisions of Section 55 of this chapter should be wholly in the negative, it shall dismiss the petition, whether or not the petitioner has filed objections and evidence.
- (d) The board shall serve a copy of its findings and the notice of dismissal, if any, on the attorney for the petitioner. The petitioner may file an appeal from the order of the board under Section 106 of this chapter within twenty [20] days after service of the order on the petitioner's attorney.

**36-9-27-57**

- (a) If the county surveyor, in the county surveyor's preliminary report, or the board, after a hearing under section 56 of this chapter, finds that the report concerning each of the three [3] subdivisions of section 55 of this chapter should be in the affirmative, the county surveyor shall determine if any land other than that described in the petition will be affected by the proposed drain. If the county surveyor finds that additional land will be affected, the county surveyor shall make a written report to the board, setting forth the boundary of the additional area of affected land.
- (b) After receiving the county surveyor's report under subsection (a), the board shall determine if the petition describes an area of land equal to three-fourths [3/4] or more of all the affected land.
- (c) If the board's determination under subsection (b) is in the negative, the board shall enter an order dismissing the petition, unless within a time specified by the board a supplementary petition describing a sufficient area contiguous to the area described in the original petition, with the signatures required to qualify the supplementing petition, is filed with the board. The board shall serve a copy of the report of the county surveyor and order of dismissal upon the attorney for petitioner. The dismissal does not prohibit the subsequent filing of a proper petition.
- (d) If the county surveyor determines that additional land will be affected by the proposed drain and that the petition described a sufficient area of land, the county surveyor shall prepare a written report describing the boundary of the additional area and have a copy of the report served on the attorney for the petitioner. The petitioner, within thirty [30] days after service of the report upon the petitioner's attorney, shall file with the county surveyor an amendment to the petition, including:
  - (1) the names and addresses of the owners of all land within the additional area described in the county surveyor's report; and
  - (2) a legal description of each owner's land.

The names, addresses and legal descriptions shall be described in the manner prescribed by Section 54 (c)(2) of this chapter. If the petitioner fails to file the amendment to the petition within the thirty-day period, or within any additional time granted to the petitioner by the county surveyor or the board, the county surveyor shall report that fact to the board at its next meeting. The board shall then enter an order dismissing the petition and serve a copy of the order on the attorney for the petitioner.



- (e) If the county surveyor determines that the petition described all of the land that may be affected by the proposed drain or if the county surveyor determines otherwise and a proper amendment to the petition is filed under subsection (d), the county surveyor shall immediately fix a date, hour and place for a hearing before the board on the petition and shall have written notice of the hearing served on the attorney for the petitioner. The date of the hearing may not be less than thirty [30] nor more than forty [40] days after the date of service of notice upon the petitioner's attorney. The surveyor shall call a special meeting of the board for the date, time and place fixed in the notice unless a meeting of the board is already scheduled for the date, time and place.

**36-9-27-58**

- (a) Within seven [7] days after the attorney for the petitioner is served with notice of a hearing under Section 57(e) of this chapter, the attorney for the petitioner shall prepare a written notice setting forth:
  - (1) the fact of the filing and pendency of the petition;
  - (2) the name and identifying number by which the petition is known;
  - (3) the general route of the proposed drain; and
  - (4) the date, hour and place of the hearing before the board.
- (b) The attorney for the petitioner shall, within the seven-day period, mail a copy of the notice in a five-day return envelope to each owner named in the petition.
- (c) The attorney for the petitioner shall have a copy of the notice published in accordance with IC 5-3-1. The published notice shall be directed to whom it may concern and to the addressee on each letter that was mailed under subsection (b) and was returned undelivered.
- (d) On or before the date of the hearing, the attorney for the petitioner shall file with the board affidavits showing the mailing of the notices under subsection (b) and the publication of notice under subsection (c). The mailing and publication of the notice under this section constitute public notice to all owners of the pendency of the petition, whether or not they were individually named and notified and are sufficient to give the board jurisdiction over those owners.

**36-9-27-59**

- (a) At least five [5] days before the board's hearing on a petition to establish a new regulated drain, one or more persons who own two-thirds [2/3] in the area of the acreage and fifty-one percent [51%] of the assessed valuation of the land named in the petition or that may be affected by an assessment of benefits or damages, may file with the board a written remonstrance, signed by each remonstrator, against the construction of the proposed drain.
- (b) At least five [5] days before the board's hearing on a petition to establish a new regulated drain, any person named in the petition as the owner of land likely to be affected by the proposed drain may object to any member of the board acting in the proceedings to establish the drain, if that member has an interest in any of the land described in the petition. The objection must be in writing, filed with the board and verified by the signer.

**36-9-27-60**

- (a) At its hearing on a petition to establish a new regulated drain, the board shall consider:
  - (1) any remonstrance filed under Section 59(a) of this chapter; and
  - (2) any objection filed under Section 56(b) of this chapter.
- (b) If the board finds that a proper remonstrance has been filed, it may dismiss the petition. If the board does not dismiss the petition, it shall forward the petition to the county surveyor for a final report.
- (c) If the board finds that a proper objection has been filed, the person against whom the objection is made shall disqualify himself or herself from any further action in the proceedings to establish the drain.

**36-9-27-61**

When the board refers a petition to the county surveyor for a final report under Section 60(b) of this chapter, the county surveyor shall do the following:

- (1) Make the necessary survey for the proposed drain.
- (2) Prepare plans for structures other than bridges or culverts crossing a railroad right-of-way or a highway owned by the state. In preparing the plans, the county surveyor shall include all appurtenances needed to complete the proposed drain.
- (3) Prepare maps showing the location of the land proposed to be assessed.
- (4) Prepare profiles showing the cuts and gradient of the proposed work.
- (5) Determine the best and cheapest method of drainage, which may be by:
  - (A) removing obstructions from a natural or artificial watercourse;
  - (B) diverting a natural or artificial watercourse from its channel;
  - (C) deepening, widening or changing the channel of a natural or artificial watercourse;
  - (D) constructing an artificial channel, with or without arms or branches;
  - (E) tiling all or part of an open drain;
  - (F) converting all or part of a tiled drain to an open drain;
  - (G) constructing a new drain as a part or the whole of the work; or
  - (H) any combination of these methods.
- (6) Determine and describe the termini, route, location and character of the proposed work, including grades, benchmarks and all necessary arms. The county surveyor may vary the line of the work from the line described in the petition and the county surveyor may fix the beginning and outlet so as to secure the best results.

- (7) Divide the proposed drain into sections of not more than one hundred feet [100'] in length and compute and set out the number of cubic yards of excavation in each section.
- (8) Estimate the cost of the proposed drain, including construction, seeding or sodding of disturbed areas and the banks of open drains, notices, advertising and the attorney's fee for the petitioner's attorney. The amount of the attorney's fee is computed as follows:
  - (A) If the estimated cost of constructing the drain is less than one thousand five hundred dollars [\$1,500], the fee is fifteen percent [15%] of that cost.
  - (B) If the estimated construction cost is one thousand five hundred dollars [\$1,500] or more, but less than twenty-five thousand dollars [\$25,000], the fee is two hundred twenty-five dollars [\$225], plus five percent [5%] of the amount by which that cost exceeds one thousand five hundred dollars [\$1,500].
  - (C) If the estimated construction cost is twenty-five thousand dollars [\$25,000] or more, the fee is one thousand four hundred dollars [\$1,400], plus one percent [1%] of the amount by which that cost exceeds twenty-five thousand dollars [\$25,000].

**36-9-27-62**

- (a) When the county surveyor has completed the maps, profiles and plans required by Section 61 of this chapter, the county surveyor shall meet with the board and the board shall take the following actions:
  - (1) Prepare a schedule of assessments containing a description of each tract of land determined to be benefited by the proposed drain and the name and address of the owner of the land. The name, address and description shall be taken from the petition. The board shall enter in the assessment schedule the percentage of the total cost of the drain to be assessed against each tract of land. The percentage allocated to all lands benefited must be at least one hundred percent [100%] and as near to one hundred percent [100%] as is practicable.
  - (2) Determine the amount of damages sustained by all owners as a result of the proposed drain and prepare a schedule of damages containing:
    - (A) the name and address of each owner determined to be damaged and a description of the owner's land, as shown by the petition;
    - (B) the amount of each owner's damages; and
    - (C) an explanation of the injury upon which the determination was based.

The county surveyor shall add the damages to all lands as determined by the board to the estimated costs and expenses contained in the county surveyor's report and the result constitutes the total estimated cost of the proposed drain.

- (3) Set forth the amount of each owner's assessment based on the total estimated cost of the proposed drain.
- (4) Set forth the amount of each owner's annual assessment based on the estimated periodic maintenance cost of the proposed drain. The percentage used in computing the annual assessment may, but need not, be the same for each tract of land as the percentage used in computing the general assessment.

The board may consider the factors listed in section 112 of this chapter in preparing the schedules.

- (b) If land that was not included in the petition is determined to be benefited or damaged, the names of the owners and a description of the land shall be taken from the tax duplicates or record of transfers of the county.

**36-9-27-63**

- (a) When the schedules of assessments and damages prepared under Section 62 of this chapter are completed and marked filed the board shall fix the date, time and place for a hearing on the county surveyor's report and on the schedules of assessments and damages. The board shall serve notice of the hearing, along with a copy of the schedules, upon the attorney for the petitioner. The date fixed by the board for the hearing may not be less than thirty [30] nor more than forty [40] days after service of notice upon the petitioner's attorney.
- (b) Within five [5] days after service upon the attorney for the petitioner of the notice of hearing, the attorney for the petitioner shall mail a notice in a five-day return envelope addressed to each owner named in the schedule of benefits and damages. The notice must state:
  - (1) the name and identifying number by which the proposed drain is known;
  - (2) that the report of the county surveyor and the schedules of damages and benefits as determined by the board have been filed and are available for inspection in the office of the county surveyor;
  - (3) that the land of the owner is shown by the schedule of damages to be damaged in the sum of \_\_\_\_\_ dollars;
  - (4) that the land of the owner is shown by the schedule of assessments to be assessed \_\_\_\_\_ percent of the total cost of the drain and that \_\_\_\_\_ percent of the estimated total cost of the drain is in the sum of \_\_\_\_\_ dollars;
  - (5) that the land of the owner is shown by the schedule of assessments to be annually assessed in the sum of \_\_\_\_\_ dollars for the estimated periodic maintenance of the drain; and
  - (6) the date, hour and place of hearing on the county surveyor's report and on the schedules of damages and assessments.
- (c) The attorney for the petitioner shall publish a notice in accordance with IC 5-3-1. The notice:
  - (1) shall be entitled, "In the matter of the \_\_\_\_\_ drain petition";
  - (2) shall be addressed to whom it may concern and to the addressee on each letter that was mailed under subsection (b) and was returned undelivered; and
  - (3) must state that:
    - (A) the report of the county surveyor and the schedules of damages and assessments made by the board have been filed and are available for public inspection in the office of the county surveyor; and
    - (B) a hearing will be held before the board on the report and schedules, specifying the time and place for the hearing.

- (4) When the plans and specifications of the county surveyor disclose that part or all of the proposed drain will involve the construction of an open drain, the attorney for the petitioner shall mail a notice to the Indiana Department of Natural Resources. The notice must give the time, date and place of the hearing and state that the proposed drain will involve the construction of an open drain.

**36-9-27-64**

(a) Whenever:

- (1) a new open drain is to be constructed under this chapter; and
- (2) the drain will cross a tract of land in such a manner that the owner of the tract will be deprived of ingress and egress to part of the tract unless a private crossing is constructed across the drain;

the board shall award damages to the owner in an amount equal to the cost of constructing a proper crossing. In determining the type and quality of the crossing, the board shall consider the use of the inaccessible land, the frequency of the crossing's use, the purpose of the crossing's use, and any other appropriate factors.

- (b) When an owner is entitled to damages under subsection (a), the owner may, in lieu of accepting damages awarded by the board, file with the board the owner's written consent to the construction of the crossing as part of the construction of the drain. The county surveyor shall then include the construction of the crossing in the county surveyor's plans and specifications for the drain, but the future maintenance of the crossing will then be the responsibility of the owner.

**36-9-27-65**

- (a) Not less than five [5] days before the board's hearing on a petition for a new regulated drain, any owner of land affected by the report of the county surveyor or by the schedules of damages and assessments may file with the board written objections to the report, schedules or both. The objections may be for one or more of the following causes:

- (1) The proposed drain, as reported by the county surveyor, is not practicable and will not adequately drain the affected land. An objection on this ground must point out the impracticable aspects of the proposed drain and describe the specific lands that will not be adequately drained.
- (2) The costs, damages and expenses of the drain will exceed the benefits that will result to the owners of all land benefited.
- (3) The proposed drain will not:
  - (A) improve the public health;
  - (B) benefit a public highway in a county or a public street in a municipality;
  - (C) rain the grounds of a public school; or
  - (D) be of public utility.

- (4) The objector is the owner of land damaged by the drain, and:

(A) the board failed to find that the objector's land is damaged; or

(B) the damages assessed to the objector's land are inadequate.

(5) The objector is the owner of lands assessed as benefited and the benefits assessed against the objector's lands are excessive.

Each objector may file written evidence in support of the objector's objections. The failure of an owner to file objections constitutes a waiver of the owner's right to subsequently object, on the grounds stated in this subsection, to any final action of the board.

- (b) On or before the day of the hearing, the county surveyor shall and any owner of affected land may cause written evidence to be filed in support of or in rebuttal to any objection filed under subsection (a).
- (c) The board shall consider the objections and evidence filed, may adjourn the hearing from day to day or to a day certain and may issue an order permitting additional written evidence to be filed in support of or in rebuttal to the objections and evidence previously filed.
- (d) After considering all of the objections and evidence, the board may amend the schedules of damages and assessments and the county surveyor may modify the county surveyor's report, as justice may require.
- (e) Before final adjournment of the hearing, the board shall determine in writing:
  - (1) whether the proposed drain, as reported by the county surveyor, is practicable and will adequately drain the affected land;
  - (2) whether the costs, damages and expenses of the proposed drain will be less than the benefits accruing to the owners of land benefited by the drain; and
  - (3) whether the proposed drain will improve the public health, benefit a public highway in a county or a public street in a municipality, drain the grounds of a public school or be of public utility.

If the board finds the issues set forth in subdivision (1), (2) or (3) in the negative, it shall dismiss the petition. If the board finds the issues set forth in subdivisions (1), (2) or (3) in the affirmative, it shall adopt the schedules of damages and assessments, including annual assessments for periodic maintenance, as originally filed or as amended, into its findings and issue an order declaring the proposed drain established. The board shall mark the findings and order filed and publicly announce them at the hearing. Immediately after that, the board shall publish a notice in accordance with IC 5-3-1. The notice must identify the proceedings and state that the findings and order of the board have been filed and are available for inspection in the office of the county surveyor.

- (f) If judicial review of the findings and order of the board is not requested under section 106 of this chapter within twenty [20] days after the date of publication of the notice, the findings and order become conclusive.
- (g) When the proposed drain is finally and conclusively established, the board shall allow the attorney for the petitioner the fee computed under section 61(a)(8) of this chapter.

**36-9-27-66**

(a) Whenever:

- (1) land has been assessed as benefited by the construction, reconstruction or maintenance of a regulated drain;
- (2) there is no open or tiled drain connecting the land with the regulated drain; and
- (3) the waters from the land flow over or through land owned by others to reach the regulated drain;

the owner of the land assessed may petition the board to construct through the land of the other owners a new drain that will connect the petitioner's lands with the regulated drain. The petition must describe the land through which the new regulated drain will run, state the name and address of each owner of that land, describe the general route of the proposed new regulated drain and state the proposed method of construction.

(b) The board shall refer the petition to the county surveyor for a report.

(c) If the county surveyor determines that the proposed drain is not practicable, the county surveyor shall report that fact to the board and the board shall deny the petition.

(d) If the county surveyor determines that the proposed drain is practicable, the county surveyor shall, in the manner prescribed by Sections 49 through 52 of this chapter, prepare plans and specifications and all things necessary for the construction of the drain. The board shall, in the manner prescribed by Sections 49 through 52 of this chapter, prepare a schedule of benefits and damages, serve the schedule upon the owners of land benefited or damaged and hold a hearing on the schedule. Objections to the proceedings may be filed only on the grounds that:

- (1) the objector is the owner of land damaged by the proposed drain and the board failed to so find or, if it did so, find, the damages awarded were insufficient; and
- (2) the objector is the owner of land found by the board to be benefited and the benefits assessed are excessive.

After the hearing, the board shall enter its order and findings in the manner prescribed by section 52 of this chapter,

(e) Any owner aggrieved by the final award of damages under subsection (d) may obtain judicial review under section 106 of this chapter. When the order of the board becomes conclusive, the board shall proceed to construct the drain in the manner prescribed by this chapter.

**36-9-27-67**

(a) In the county surveyor's written report setting forth the county surveyor's order of priority for regulated drains under Section 35 of this chapter, the county surveyor may designate any drain that is classified as in need of reconstruction as an urban drain. In adopting the classification and in making public the long-range plan, the board shall consider each designation of an urban drain and shall indicate the order of priority of action on urban drains.

(b) A drain shall be designated as an urban drain when:

- (1) the drain will not, without construction or reconstruction, provide proper drainage for urban land or will not properly impound water in a small lake;

- (2) it appears that after a practicable construction or reconstruction proper drainage for urban land can be provided; and
- (3) either or both of the following factors is present:
  - (A) A reasonable part of the land within the watershed has been or is being converted from rural land to urban land.
  - (B) It appears to the board that one or more tracts within the watershed is or will be changing from rural land to urban land and that change requires the drainage provided by an urban drain.
- (c) A petition for a new regulated drain under section 54 of this chapter may state or may be amended to state, that in the opinion of the petitioners the new regulated drain should be designated as an urban drain. The board shall consider that statement in referring the petition to the county surveyor for a final report.

### **36-9-27-68**

The county surveyor shall perform the following duties with respect to all urban drains within the county surveyor's jurisdiction:

- (1) Prepare and make available to the public design standards of rainfall intensity and frequency for urban land, design standards of storm water runoff for urban land or both. In preparing these standards, the county surveyor shall consider official weather bureau information, design criteria of the Indiana Department of Natural Resources, the published recommendations of the United States Bureau of Public Roads and all available local, topographical, geological and statistical information that may affect the design standard of runoff from urban land. The county surveyor may give special consideration to those weather events in which rainfall occurs under conditions when soil tends to be impervious due to frost or other natural causes.
- (2) Prepare hydraulic calculations for the channel design of the urban drain, taking into consideration hydraulic gradients, friction factors, dimensions and other engineering variables.
- (3) Design the channel or dam required for the urban drain, including any necessary rerouting and taking into consideration the structures and structural characteristics of the soil.
- (4) Furnish design information for all new drainage structures (including local flood control dikes) that may be needed to properly drain urban land or impound water in a small lake in the most efficient and economical manner.
- (5) Keep available maps, listings or other information showing current land use and projections of future land use in the area affected by the urban drain. In preparing this information, the county surveyor shall consider recommendations of state and local planning agencies, plan commissions, zoning boards and similar bodies.
- (6) Include in the county surveyor's report to the board on the construction or reconstruction of an urban drain the county surveyor's recommended designation of each parcel of affected land in the watershed of the urban drain as either urban land or rural land.



**36-9-27-69**

- (a) After the county surveyor has filed the county surveyor's report on the construction or reconstruction of an urban drain, the county surveyor shall consult with the board and the board may adopt or modify the designations recommended by the surveyor. The board shall then prepare a schedule of benefits, assessments and damages.
  - (b) The board shall determine and compute benefits, assessments, damages, total estimated cost and percentage allocations in the manner provided by section 50 or 62 of this chapter. However, in determining benefits and assessments for an urban drain, the board shall consider the following factors:
    - (1) The watershed or entire land area drained or affected by the urban drain, shall be considered to be benefited and shall be assessed.
    - (2) If specific parts of urban land are to be served by new drainage arms, routings, special structures or other similar new features that are part of the total cost of the urban drain, those specific parts of urban land may be considered to have extra benefits greater than the benefits to the other affected urban land.
    - (3) Except for urban land that has extra benefits, all urban land within the watershed shall be considered to be equally benefited and the benefits shall be computed in proportion to the number of acres in each tract.
    - (4) If a tract of urban land has been platted or subdivided into lots and the subdivision contains streets, parkways, parks or similar common use areas, the board may determine the per lot benefits by:
      - (A) ascertaining the total approximate benefits in proportion to the area of the tract before the subdividing; and
      - (B) apportioning the total benefits in substantially equal amounts to each lot.
- Additional assessments may not be imposed on a right-of-way apportioned to the lots under this subdivision.
- (5) Rights-of-way of a public highway, railroad company, pipeline company or public utility that lie within or adjoin urban land shall be considered to be benefited and shall be assessed in the same manner as urban land.
  - (6) Rural land affected by an urban drain is benefited only as rural land and shall be assessed on that basis. Whenever the board finds that a drain would have drained rural land without reconstruction, the board may reduce the assessment apportioned to rural land, subject to Section 84 of this chapter.
- (c) The notice to landowners in the case of an urban drain must:
  - (1) state that the drain has been designated as an urban drain;
  - (2) describe the land of the owner to whom the notice is addressed; and
  - (3) state that the land described is shown by the schedule of assessments to be assessed as either rural land or urban land.

- (d) Before final adjournment of the hearing, the board shall find in writing that the drain is an urban drain or that it is a rural drain and is not an urban drain. If the board finds that the drain is not an urban drain, the board shall then request the county surveyor to deny all future connections to the drain, as provided in Section 17 of this chapter and the board shall make this request and finding public.

**36-9-27-69.5**

- (a) As used in this section, “development” does not include utility infrastructure owned, controlled, installed, or constructed by a public or municipally owned utility.
- (b) Unless otherwise required by an ordinance of the county, a person who lays out a:
  - (1) subdivision of lots or lands; or
  - (2) commercial, industrial, or other land development; outside the corporate boundaries of any municipality must submit plans and specifications for the drainage of the subdivision or other development in accordance with this section. The county drainage board must approve the drainage plan before the person may proceed with the subdivision or other development.
- (c) A drainage plan and specifications submitted under subsection (b) to the county drainage board must comply with this chapter. Except as provided in subsection (d), the plan must comply with the following standards:
  - (1) The plan must maintain the amount of drainage through the tract that existed when the tract was created. If any tiles are cut, broken down, or rendered useless during the construction activity on the tract, the landowner is responsible for the repair, replacement, or relocation of the tile.
  - (2) The plan may not change the locations where surface water enters the tract and exits the tract from the locations that existed when the tract was created.
  - (3) Water that sheds off of a new structure, especially when the new structure is elevated or near a property line, or both, must exit the tract in the same location where it did when the tract was created.
- (d) The county drainage board may approve an alternate plan that does not comply with the standard set forth in subsection (c)(2).

**36-9-27-70**

- (a) This section applies whenever the plans and specifications for the construction or reconstruction of any regulated drain disclose that the centerline of the drain at any point will come within three hundred feet [300'] of any levee that is subject to or was constructed under any statute.
- (b) The county surveyor in charge of the work on the drain shall mail the plans and specifications for the drain by certified mail with return receipt requested to the Indiana Department of Natural Resources. The department shall approve or disapprove the plans and specifications within forty-five [45] days after receiving them. If the department fails to act within the time limit, the plans and specifications are considered approved. If the department disapproves the plans and specifications, it shall issue an order stating the reasons for the disapproval, shall recommend specific changes in the plans and specifications that would make them acceptable to the department and shall serve a copy of the order on the surveyor.

- (c) Work on the drain may not be commenced until the plans and specifications have been approved by the department or until the board is satisfied that the county surveyor has changed the plans and specifications to conform with the department's recommendations.

**36-9-27-71**

- (a) When, in the construction or reconstruction of a regulated drain, the county surveyor determines that the proposed drain will cross a public highway or the right-of-way of a railroad company at a point where:
  - (1) there is no crossing; or
  - (2) the crossing will not adequately handle or will be endangered by the flow of water from the drain when completed;

the county surveyor shall include in the plans the grade and cross section requirements for a new crossing, or the requirements for altering, enlarging, repairing, or replacing the crossing. The surveyor shall mail a copy of the requirements addressed to the owner of the highway or right-of-way.

- (b) When requested by the owner of the highway or right-of-way, the county surveyor shall meet with the owner at a time and place to be fixed by the surveyor. The surveyor shall hear objections to the requirements and may then change the requirements as justice may require.
- (c) When the board finds that in the construction, reconstruction or maintenance of a regulated drain it is necessary to:
  - (1) alter, enlarge, repair, or replace a crossing; or
  - (2) construct a new crossing where none existed before;

the cost of the work on the crossing shall be paid by the owner of the public highway. This cost may not be considered by the county surveyor or by the board in determining the cost of the work on the drain or in assessing benefits and damages. However, if it is necessary for the owner of a public highway to construct a new crossing because of a cut-off for the purpose of shortening or straightening a regulated drain, the owner of the public highway shall pay one-half [1/2] of the cost of new crossing and the remainder shall be included in the cost of the work on the drain.

- (d) A railroad company with a right-of-way that is:
  - (1) crossed by the construction of a regulated drain; or
  - (2) affected by the altering or enlarging of a crossing;

shall pay one-half [1/2] of the cost of the work on the crossing and the remainder shall be included in the cost of the work on the drain.

- (e) If the county surveyor is registered under IC 25-31, the county surveyor must review and approve or disapprove the plans and hydraulic data for an existing crossing that is to be altered, enlarged, repaired, or replaced, or the construction of a new crossing for a public highway or the right-of-way of a railroad company. The county surveyor shall disapprove the plans and hydraulic data if they do not show that the structure will meet hydraulic requirements that will permit the drain to function properly.

- (f) If the county surveyor is registered under IC 25-21.5, the county surveyor must review and approve or disapprove the plans and hydraulic data for an existing crossing that is to be altered, enlarged, repaired, or replaced, or the construction of a new crossing for a public highway or the right-of-way of a railroad company. The county surveyor shall disapprove the plans and hydraulic data if they do not show that the structure will meet hydraulic requirements that will permit the drain to function properly.
- (g) Approval of the plans and hydraulic data by a person who is registered under IC 25-21.5 or IC 25-31 is required before the work can take place. However, if the county surveyor is not registered under IC 25-21.5 or IC 25-31, a registered person who is selected under section 30 of this chapter shall:
  - (1) review and approve or disapprove the plans and specifications described in this subsection;
  - (2) inform the county surveyor in writing of the approval or disapproval; and
  - (3) submit all plans, specifications, and hydraulic data along with the approval or disapproval.

### **36-9-27-72**

- (a) When, in the reconstruction or periodic maintenance of a regulated drain, the county surveyor determines that a private crossing will not adequately handle the flow of water from the drain or will be endangered by such flow, the county surveyor shall in the county surveyor's plans call for the removal of the crossing.
- (b) The replacement of a private crossing, when necessary, may be accomplished as part of the work of the reconstruction or maintenance. The estimate by the county surveyor of the cost for the replacement shall be assessed against the land that would otherwise be deprived of ingress and egress. However, when a private crossing has been lawfully established and maintained, the board may assess any part of the cost of its replacement against all affected lands.
- (c) A private crossing, control dam or other permanent structure may not be placed over or through an open drain unless the plans and specifications for the structure are first approved by the county surveyor. The county surveyor shall disapprove the plans and specifications if they do not show that the structure will meet hydraulic requirements that will permit the drain to function properly.
- (d) All maintenance of private crossing or of a private structure within the drain, whether privately constructed or constructed as a part of work on a drain under this chapter, is the responsibility of the owners of land served by the private crossing or structure. The owners are directly responsible for any obstruction or damage to the drain that results from the existence of the private crossing or structure, notwithstanding any other provisions of this chapter.

### **36-9-27-73**

- (a) There is established in each county a general drain improvement fund, which shall be used to pay the cost of:
  - (1) constructing or reconstructing a regulated drain under this chapter; and
  - (2) removing obstructions from drains under IC 36-9-27.4.

In addition, if a maintenance fund has not been established for a drain or if a maintenance fund has been established and it is insufficient, the general drain improvement fund shall be used to pay the deficiency.

(b) The general drain improvement fund consists of:

- (1) all money in any ditch or drainage fund that was not otherwise allocated by January 1, 1966, which money the county treasurer shall transfer to the general drain improvement fund by January 1, 1985;
  - (2) proceeds from the sale of bonds issued to pay the costs of constructing or reconstructing a drain;
  - (3) costs collected from petitioners in a drainage proceeding;
  - (4) appropriations made from the general fund of the county or taxes levied by the county fiscal body for drainage purposes;
  - (5) money received from assessments upon land benefited for construction or reconstruction of a regulated drain;
  - (6) interest and penalties received on collection of delinquent drain assessments and interest received for deferred payment of drain assessments;
  - (7) money repaid to the general drain improvement fund out of a maintenance fund; and
- (c) The county fiscal body, at the request of the board and on estimates prepared by the board, shall from time to time appropriate enough money for transfer to the general drain improvement fund to maintain the fund at a level sufficient to meet the costs and expenditures to be charged against it, after allowing credit to the fund for assessments paid into it.
- (d) There is no limit to the amount that the county fiscal body may appropriate and levy for the use of the general drain improvement fund in any one (1) year. However, the aggregate amount appropriated and levied for the use of the fund may not exceed the equivalent of fifty cents [\$.50] on each one hundred dollars [\$100] of net taxable valuation on the real and personal property in the county.

(e) Whenever:

- (1) the board finds that the amount of money in the general drain improvement fund exceeds the amount necessary to meet the expenses likely to be paid from the fund; and
- (2) the money was raised by taxation under this section;

the board shall issue an order specifying the excess amount and directing that it shall be transferred to the general fund of the county. The board shall serve the order on the county auditor, who shall transfer the excess amount to the general fund of the county.

### **36-9-27-74**

- (a) This section applies to a county having a population of more than four hundred thousand (400,000) but less than seven hundred thousand (700,000).

- (b) Each year, the county shall levy the tax authorized by Section 73 of this chapter at a rate on each one hundred dollars [\$100] of assessed valuation that will yield three hundred thousand dollars [\$300,000] per year.
- (c) The county auditor shall determine a particular watershed's part of the receipts from the tax authorized by this section by multiplying the total tax receipts by a fraction determined by the county surveyor. The numerator of the fraction is the number of acres in the particular watershed and the denominator is the total number of acres in all of the watersheds in the county. The auditor shall annually distribute these amounts to the watersheds in the county.
- (d) The county legislative body shall annually appropriate, for use in the county in each of these watersheds, at least eighty percent [80%] of the watershed's part of the tax receipts.

**36-9-27-75**

The board may accept gifts or grants from any source for the purpose of paying all or part of the costs of constructing, reconstructing or maintaining a drain under this chapter. The gifts or grants shall be used to reduce the costs assessed to affected owners.

**36-9-27-76**

The board may cooperate in joint effort with any state or federal agency in a proceeding to construct, reconstruct or maintain a drain under this chapter. If the board is cooperating with a federal agency and the rules or procedures of the agency are in conflict with this chapter in respect to issuing bids, awarding contracts and administering contracts, the board may adopt the federal rules or procedures in those areas where conflict exists and may proceed in accordance with the requirements of the federal rules or procedures.

**36-9-27-77**

- (a) Whenever:
  - (1) the board orders the construction or reconstruction of a drain and the order is not stayed under Section 108 of this chapter; or
  - (2) the board determines that maintenance work shall be let by contract; the board may contract for the work to be done as a whole or in sections.
- (b) Except as provided in subsection (c), the board may not let a contract for the construction or reconstruction of a drain if the amount of the contract is more than ten percent [10%] above:
  - (1) the construction costs estimated by the county surveyor under Section 61(a)(8) of this chapter; or
  - (2) the reconstruction costs estimated by the surveyor under Section 49 of this chapter.
- (c) If the board does not receive a bid that complies with subsection (b), it shall readvertise for bids. If on readvertisement the board does not receive a bid that complies with subsection (b), the board shall dismiss the proceedings unless it receives a bid that does not exceed the benefits assessed against the affected land.
- (d) Whenever the benefits and construction costs estimated by the county surveyor have been filed for more than five [5] years and the board is unable to award a contract within the limitations of subsections (b) and (c), the board shall refer the surveyor's report back to the surveyor for a supplemental report.

- (e) Subject to IC 36-1-12-5, the board may perform maintenance, construction or reconstruction by its own work force without awarding a contract.

**36-9-27-78**

- (a) Whenever the board is ready to let contracts, it shall publish notice in accordance with IC 5-3-1. The notice must:
  - (1) state a date, time and place the board will receive bids on the work;
  - (2) generally and concisely describe the nature of the work to be done and materials to be furnished;
  - (3) invite sealed bids; and
  - (4) state that prospective bidders may obtain plans, specifications and forms from the county surveyor in charge of the work.

A defect in the form of the notice does not invalidate proceedings under the notice.

- (b) Each bidder shall deposit with the bidder's bid, at the bidder's option, either a certified check made payable to the board in the sum of five percent [5%] of the bid or a bid bond in the sum of five percent [5%] of the bid. If a bidder elects to deposit a bid bond, the bond must be payable to the board with sufficient sureties and the bond must be conditioned upon the bidder's execution of a contract in accordance with the bidder's bid if accepted by the board and must provide for the forfeiture of five percent [5%] of the amount of the bid upon the bidder's failure to do so. The board shall return all checks and bonds submitted by unsuccessful bidders and shall return a successful bidder's check or bond when the successful bidder enters into a contract with the board.
- (c) At the hour specified in the notice for receiving the bids, the board shall open and examine all bids. The board shall then promptly award the contract or contracts to the lowest bidder or bidders it finds to be qualified. In determining whether a bidder is qualified, the board shall consider the complexity and magnitude of the work to be performed, and the skill and experience of the bidder. Within five [5] days after the acceptance of a bid, the successful bidder shall enter into a contract with the board that complies with subsection (d). If a successful bidder fails to enter into such a contract, the successful bidder forfeits to the board, as liquidated damages, the check or bond deposited under subsection (b).
- (d) The contract between the board and a successful bidder must provide:
  - (1) that the contractor will perform the work under the supervision of the county surveyor and in accordance with the plans, specifications and profiles adopted by the board.
  - (2) that a claim for payment under the contract will not be approved by the board until the work for which the claim is presented has been approved by the county surveyor;
  - (3) the time within which the work must be completed;
  - (4) that fifteen percent [15%] of the contract price shall be withheld by the board for a period of sixty [60] days after the completion of the work, for the purpose of securing payment of suppliers, laborers and subcontractors; and
  - (5) for other terms that the board considers appropriate.

- (e) Upon execution of the contract, the successful bidder shall give to the board a bond payable to the board, in an amount fixed by the board but not less than the amount of the bid and with a corporate surety licensed to do business in Indiana. The bond must be conditioned on the faithful performance of the contract and the payment of all expenses and damages incurred under the contract, including payment of all suppliers, laborers and subcontractors. However, in lieu of a corporate surety bond, the board may accept:

- (1) a cash bond;
- (2) a property bond; or
- (3) a bond from a sufficiently financed private bonding company.

**36-9-27-79 [Repealed.]**

**36-9-27-79.1**

Notwithstanding sections 77 and 78 of this chapter, the following provisions apply whenever the board estimates that the amount of the contracts to be let is not more than one hundred fifty thousand dollars [\$150,000]:

- (1) The board need not advertise in the manner provided by Section 78 of this chapter. If the board does not advertise, it shall mail or send by electronic means written invitations for bids to at least three [3] persons believed to be interested in bidding on the work. The invitations shall be mailed or sent by electronic means at least seven [7] days before the date the board will receive bids, and must state the nature of the contracts to be let and the date, time, and place bids will be received.
- (2) The board may authorize the county surveyor to contract for the work in the name of the board.
- (3) The contracts may be for a stated sum or may be for a variable sum based on per unit prices or on the hiring of labor and the purchase of material.
- (4) The contracts shall be let in accordance with the statutes governing public purchase, including IC 5-22.
- (5) The board may for good cause waive any requirement for the furnishing by the bidder of a bid bond or surety and the furnishing by a successful bidder of a performance bond.

**36-9-27-80**

A person who enters into a contract with the board under sections 78 or 79 of this chapter may not subcontract any part of the contract without the written consent of the board. The board may withhold its consent only for good cause.

**36-9-27-80.5**

- (a) If a change in the original specifications of a contract for the construction or reconstruction of a drain becomes necessary during the construction or reconstruction, the county surveyor may issue a change order to add, delete, or change an item in the contract. A change order issued under this subsection becomes an addendum to the contract.



- (b) The county surveyor may issue a change order under subsection (a) without obtaining prior approval from the board. The county surveyor shall report a change order issued under subsection (a) to the board at the next meeting of the board following the issuance of the change order.
- (c) A change order issued under subsection (a) must be directly related to the drain project that is the subject of the original contract.
- (d) The amount of a contract plus the amount of all change orders to the contract issued under this section may not exceed the following by more than twenty percent (20%):
  - (1) The construction costs estimated by the county surveyor under section 61(a)(8) of this chapter.
  - (2) The reconstruction costs estimated by the county surveyor under section 49(e) of this chapter.

**36-9-27-81**

The county surveyor may, without first obtaining the approval of the board, authorize partial or progress payments to a contractor for work performed in amounts not in excess of eighty-five percent [85%] of the contract price of the work then completed. The county surveyor shall report such an approval to the board at its next meeting. The county surveyor may not give an approval under this section unless the county surveyor has first inspected the work done.

**36-9-27-82**

- (a) Whenever a contract under this chapter calls for a payment to be made to the contractor for the completion of work, the county surveyor shall inspect the work done and file with the board a written report approving or disapproving the work. The board may not allow a claim for the payment until the surveyor's report shows the work to be approved.
- (b) After the acceptance of the work by the county surveyor, the contractor shall file with the board a verified statement that all expenses incurred for labor and material, except for any expenditures specified in the statement, have been paid in full.

**36-9-27-83**

- (a) A subcontractor, laborer or other person may file a claim with the board if:
  - (1) at the request of a contractor, the subcontractor, laborer, or other person has performed any work or other service or has furnished any material used under the contract; and
  - (2) the subcontractor, laborer, or other person has not been paid.

The claim must be filed within sixty [60] days after the performance of the work or service or the furnishing of the material and must state the amount due and describe the work done or materials furnished. The board shall withhold the amount of the claim from the final payment due the contractor unless the claimant files a written withdrawal of the claim with the board.

- (b) If, sixty [60] days after acceptance of the work by the surveyor, the contractor files with the board a written acknowledgment of the correctness of all claims and if the amount withheld by the board is sufficient to pay all claims, the board shall have the claims paid out of the amount withheld from the contractor and shall pay the balance remaining to the contractor.

- (c) If the contractor does not file an acknowledgment under subsection (b) or if there is not a sufficient amount withheld to pay all claims, the board shall interplead all claimants and the contractor in the circuit or superior court of the county in which the board is located and have the amount of the claims or the amount withheld by the board, whichever is smaller, paid into court. The board is then discharged from liability.
- (d) This section does not relieve the surety on the contractor's bond from liability under its obligation as set forth in the bond.

**36-9-27-84**

- (a) After letting a contract for the construction, reconstruction or maintenance of a drain, the board shall determine the full cost of the construction, reconstruction or maintenance, including the contract price, incidental expenses, damages, interest on any bonds issued under Section 94 of this chapter and attorney's fees, if any. The board shall then apportion this cost to the tracts of land assessed in proportion to the benefit percentage previously assigned to each tract. If the contract is for work on an urban drain, the board shall also designate each tract that is assessed as rural land or urban land.
- (b) When determining and apportioning the full cost of construction or reconstruction under this section, the board may include for contingencies a reasonable sum not in excess of ten percent [10%] of the full cost.
- (c) An improved or unimproved lot or tract of land that is benefited by the construction, reconstruction or maintenance of a regulated drain shall be assessed each year for that construction, reconstruction or maintenance in an amount fixed by the board.

**36-9-27-85**

- (a) The board shall certify the list of assessments apportioned under Section 84 of this chapter to the auditor of each county in which there are lands to be assessed.
- (b) Whenever the order of the board establishing an annual assessment for periodic maintenance becomes final, the board shall certify that annual assessment to the auditor of each county in which there are lands to be assessed. The annual assessment shall be collected each year until changed or terminated by the board.
- (c) The county auditor shall extend assessments for construction and reconstruction upon a book to be known as the ditch duplicate, for the full period of payment allowed for all assessments for construction and reconstruction, with interest at ten percent [10%] per year upon all payments deferred beyond one [1] year from the date that the certification is made. However, the county auditor may not charge interest on assessments for construction or reconstruction financed through:
  - (1) a bond issued under Section 94 of this chapter; or
  - (2) a construction loan obtained under section 97.5 of this chapter
- (d) Whenever any sum is certified under this section and is not expended within two [2] years after payment of the most recently allowed claim for work on a drain, the county auditor, with the approval of the board, shall promptly transfer the unexpended sum to the periodic maintenance fund for that drain. If there is no periodic maintenance fund for the drain, the unexpended sum may be transferred to the general drain improvement fund or funds of the county or counties affected by the drain, in proportion to the original apportionment and certification of costs for the drain.

(a) Not later than thirty [30] days after the county auditor receives the certification of final costs for the construction or reconstruction of a drain, the auditor shall deliver a copy of the ditch duplicate to the county treasurer. The treasurer shall either:

(1) not later than fifteen (15) days after receipt of the copy of the ditch duplicate, mail to each person owning lands assessed for the construction or reconstruction a statement showing:

(A) the total amount of the assessment; and

(B) the installment currently due; or

(2) add a statement showing:

(A) the total amount of the assessment; and

(B) the installment currently due;

to the first property tax statement mailed by the county treasurer after receipt of the copy of the ditch duplicate to each person owning lands assessed for the construction or reconstruction.

The county treasurer shall designate a statement described in subdivision (2) in a manner distinct from general taxes. A statement described in subdivision (1) or (2) must state that the owner may pay the assessment in full within one (1) year or may pay only the installment due within the current year, with deferred payments in annual installments with interest at ten percent (10%) per year (except as otherwise provided in section 85(c) of this chapter).

(b) Each year, the county treasurer shall add to the tax statements of a person owning the land affected by an assessment, designating it in a manner distinct from general taxes, the full annual assessment for periodic maintenance and all construction and reconstruction assessments due in the year the statement is sent.

(c) For purposes of the collection of any assessment, the assessments are considered taxes within the meaning of IC 6-1.1, and they shall be collected in accordance with the property tax collection provisions of IC 6-1.1, except for the following:

(1) An assessment is not the personal obligation of the owner of the land affected by the assessment and only the land actually affected by an assessment shall be sold for delinquency.

(2) An annual assessment for periodic maintenance that is not more than twenty-five dollars (\$25.00) shall be paid at the first time after the assessment when general property taxes are payable.

(3) An assessment of less than five dollars (\$5) is increased to five dollars (\$5). The difference between the actual assessment and the five dollar (\$5) amount that appears on the statement is a low assessment processing charge. The low assessment processing charge is considered a part of the assessment.

- (4) The exemptions under IC 6-1.1-10-2, IC 6-1.1-10-4, and IC 6-1.1-10-5 do not apply to assessments imposed under this chapter.
- (d) Not later than June 1 of each year, the county treasurer shall, in the manner specified by the state land office, send to the state land office a list of all properties:
  - (1) for which one (1) or more assessment payments under this section are delinquent; and
  - (2) that are owned by:
    - (A) the state; or
    - (B) a state agency.

**36-9-27-87**

If one [1] person or association owns two [2] or more separate pieces of property subject to assessment under this chapter, the board may issue one [1] itemized bill. The assessment must clearly show the pieces of property being assessed, the assessment for each piece of property and the total assessment.

**36-9-27-88**

All final assessments, other than annual assessments for periodic maintenance, are due and may be paid upon the date of certification of the final assessment to the county auditor, except that:

- (1) the owners liable for the payment of the assessments may elect to pay them in equal installments of at least fifty dollars [\$50.00] per year, plus interest to the deferred payments, over a period of not more than five [5] years, with the yearly payments to be made semiannually at the time general taxes are payable; and
- (2) when the board designates land as urban land in its certification of the list of assessments, the owners liable for the payment of assessments on the urban land may elect to pay them in equal installments of at least one hundred dollars [\$100] per year, plus interest on the deferred payments, over a period of not more than twenty [20] years, with the yearly payments to be made semiannually at the time general taxes are payable.

**36-9-27-89**

- (a) The lien of a ditch assessment attaches to the land assessed on the date of certification of the final assessment to the county auditor and is inferior only to tax liens.
- (b) The lien of a ditch assessment terminates on the date it is paid in full or on the last day of the fifth year after the last payment became due.

**36-9-27-90**

When any ditch assessment against land owned by a municipal corporation becomes delinquent, the county auditor shall:

- (1) certify the amount of the delinquency to the State Board of Accounts and to the person who receives a semiannual distribution of taxes on behalf of the Municipal Corporation; and
- (2) withhold the amount from the municipal corporation at the next semiannual distribution of taxes collected.

The amount withheld by the auditor shall be credited to the appropriate drainage fund.

**36-9-27-91**

(a) This section applies whenever:

(1) a court or jury acting under section 107 of this chapter:

(A) increases an award of damages; or

(B) decreases an assessment of benefits;

that was made by the board for the construction or reconstruction of a drain; and

(2) as a result of the increase or decrease; the assessments collected are not sufficient to fully repay the general drain improvement fund for money advanced to pay for the construction or reconstruction.

(b) The deficiency shall be transferred to the general drain improvement fund from the maintenance fund established for the drain by the board. However, the board may not order the transfer in amounts or at times that will result in the annual maintenance fund's being insufficient to pay the costs of periodically maintaining the drain.

**36-9-27-92**

(a) Whenever the owner of a tract of land assessed under this chapter subdivides or otherwise transfers part of the tract to another owner, the owner of the tract may file with the board a written request for reassessment in recognition of the transfer. The request must include the name and address of each owner of a part of the tract, together with the description of that part.

(b) The board shall promptly determine and file a proposed reassessment or amendment to the schedule of assessments to recognize the transfer, set a date for hearing the request and mail notice to each affected owner in a five-day return envelope. The service of further notice to the addressee of any letter that is returned undelivered is the responsibility of the owner making the request. The notice, which must describe the land to be reassessed, must state:

(1) the date, hour and place of a hearing before the board on the proposed reassessment;

(2) that the land of the owner is shown by the proposed reassessment to be assessed in the sum of \_\_\_\_\_ dollars; and

(3) that failure to file objections or evidence at or before the hearing constitutes a waiver of the right of the owner to object, on the grounds stated in subsection € to any final action of the board.

The notice shall be mailed at least twenty [20] days before the hearing. However, written consent of all the affected owners or the presence of all those owners at the hearing, constitutes a waiver of any defect in notice.

(c) In determining any reassessment, the board may consider only whether the reassessment is made in the manner required for justice to all affected land, taking into consideration Section 84(c) of this chapter.

(d) At the hearing, the board shall consider all evidence and objections and may modify the proposed reassessment as justice to all affected land requires. Before final adjournment of the hearing, the board

shall adopt the reassessment or amendment to the schedule of assessments into its findings and shall order the schedule amended. The board shall then announce its findings and order by certified mail to each affected owner or shall have one [1] notice of its findings and order published in a newspaper of general circulation throughout the county. The notice must identify the proceedings and state that the findings and order of the board have been filed and are available for inspection in the office of the county surveyor.

- (e) If judicial review of the findings and order of the board is not requested under section 106 of this chapter within twenty [20] days after the date of receipt of the announcement or after the date of publication of the notice, the findings and order become conclusive.
- (f) When the findings and order become conclusive, the board shall certify the schedule of reassessments to the auditor of each county and the county treasurer shall promptly proceed upon any reassessment in the manner prescribed for proceeding upon an originally certified assessment.

### **36-9-27-93**

(a) Whenever:

- (1) the board adopts a schedule of annual assessments for the periodic maintenance of a drain or a combination of drains established under Section 41 of this chapter; and
- (2) a transfer of a part of any tract that is assessed by the schedule is subsequently recorded with the county recorder;

the board shall reassess that part of the tract. The reassessment may be made at one or more times each year and shall be made at not less than biennial intervals. However, the reassessment is not required in any year in which the annual assessment is omitted under section 43 of this chapter.

(b) The county auditor shall provide a listing of all tracts subject to reassessment and shall, from time to time or when requested by the board, file the listing with the board. The board shall determine and file a schedule of reassessments, set a date for hearing on the schedule and prepare a written notice. The notice, which must describe the land to be assessed, must state:

- (1) the date, hour and place for a hearing before the board on the schedule of reassessments;
- (2) that the schedule of reassessments made by the board has been filed and is available for public inspection in the office of the county surveyor;
- (3) that the land of the owner is shown by the schedule of reassessments to be annually assessed in the sum of \_\_\_\_\_ dollars for periodically maintaining the drain from which the land derives benefits; and
- (4) That failure to file objections or evidence at or before the hearing constitutes a waiver of the right of the owner to object, on the grounds stated in subsection (d), to any final action of the board.

Not less than thirty [30] nor more than forty [40] days before the date of the hearing and board shall mail a copy of the notice in a five-day return envelope to each owner named in the schedule of reassessments.

(c) The board shall have notice published in accordance with IC 5-3-1. The notice must:

- (1) identify the drainage proceedings;

- (2) be addressed to whom it may concern and to the addressee on each letter that was mailed under subsection (b) and was returned undelivered;
  - (3) state that the schedule of reassessments made by the board has been filed and is available for public inspection in the office of the county surveyor; and
  - (4) state that a hearing will be held before the board on the schedule of reassessments, giving the date, hour and place of hearing.
- (d) In determining any reassessment, the board may consider only whether the reassessment is made in the manner required for justice to all affected land, taking into consideration section 84(c) of this chapter.
  - (e) At the hearing, the board shall consider all evidence and objections and may modify the proposed reassessment as justice to all affected land requires. Before final adjournment of the hearing, the board shall issue an order adopting the schedule of reassessments as originally filed or as modified, mark the order filed and make public announcement of the order at the hearing. The board shall then have notice published in accordance with IC 5-3-1. The notice must identify the drainage proceedings and state that the findings and order of the board have been filed and are available for inspection in the office of the county surveyor.
  - (f) If judicial review of the findings and order of the board is not requested under section 106 of this chapter within twenty [20] days after the date of publication of the notice, the order becomes conclusive.
  - (g) When the findings and order become conclusive, the board shall certify the schedule of reassessments to the auditor to each county in which there is land assessed by the reassessment and the auditor and the county treasurer shall promptly proceed upon any reassessment in the manner prescribed for proceeding upon an originally certified assessment.

### **36-9-27-94**

- (a) Whenever the board determines by resolution spread upon its minutes that the cost of constructing or reconstructing a particular drain is in excess of that amount that the owners of land to be assessed may conveniently pay in installments over a five-year period, it shall authorize the sale of bonds to finance the construction or reconstruction.
- (b) Whenever the board resolves to sell bonds, it shall determine:
  - (1) the amount of money that must be raised;
  - (2) the period over which the money shall be repaid; and
  - (3) the date the first series of bonds will mature as to principal and the date the first payment of interest will be made, which shall be fixed so that money will be available to meet the interest payments and to retire the first series of bonds as they become due.
- (c) The bonds may be issued in denominations of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) and shall be numbered in consecutive order beginning with those first maturing. Interest on the bonds is payable semiannually.
- (d) The bonds shall be sold at public offering in the manner provided by statute. However, if the total issue of bonds does not exceed ten thousand dollars [\$10,000], the board may sell the bonds at private sale to any individual, corporation, financial institution or bank in Indiana at the best rate of interest for which the board may bargain. If the bonds are sold to one [1] purchaser, the

form of the bonds may be in a single installment note. Acceleration of the balance of such a note in the event of partial default is not permitted, but all remedies of a bond creditor remain as to the partial default.

- (e) All bonds or installment notes must provide that they may be called by the board for refunding or for prepayment without penalty. If the bonds are called for repayment, interest ceases to run on them upon the date stated for presentment in the call as to those persons actually receiving notice of the call by registered mail as shown by the return receipt, whether their bonds are presented for payment or not. If the bonds are called for refunding, interest continues to run from the date started for presentment in the call whether actually presented or not, at the rate provided for with respect to the refunding issue.

**36-9-27-94.1 [Repealed.]**

**36-9-27-95**

Neither a member of the board, the county surveyor, nor any other officer may receive any fees for the sale of bonds to finance the construction or reconstruction of a drain. However, the attorney for the board is not required to perform services under a general retainer in preparation for the sale of the bonds and may contract separately for those services with the board.

**36-9-27-96**

- (a) Bonds issued to finance the construction or reconstruction of a drain are not the general obligation of the county, the board or any person. The bonds are a lien only upon the land assessed for benefits for the construction or reconstruction in the ratio of the assessment.
- (b) If bonds issued under this chapter become in default, the officers responsible for the collection of delinquent taxes shall take the steps provided by law to collect all delinquencies and for that purpose the offices shall cooperate with any bondholder or committee of bond holders and shall pursue any remedies available for the collection of the delinquent assessments.

**36-9-27-97**

- (a) A bond redemption fund is established for each construction or reconstruction project for which the board authorizes the sale of bonds. The fund consists of all assessments paid by the owners assessed as benefits by the construction or reconstruction and may be used only to redeem:
  - (1) the bonds issued to finance the construction or reconstruction; or
  - (2) any installment note given in lieu of bonds.
- (b) The county auditor shall maintain a separate ledger sheet for all assessments to be received into each bond redemption fund.

**36-9-27-97.5**

- (a) Whenever the board determines by resolution spread upon its minutes that the cost of constructing or reconstructing a particular drain is an amount that the owners of land to be assessed may conveniently pay in installments over a five (5) year period, it may ask the county fiscal body to:
  - (1) obtain a loan from a bank, trust company, savings association or savings bank authorized to engage in business in the county; or



(2) obtain funds in the manner prescribed by IC 36-2-6-18, IC 36-2-6-19, and IC 36-2-6-20;  
to finance that construction or reconstruction.

(b) A loan obtained under this section:

- (1) must have a fixed or variable interest rate;
- (2) must mature within six (6) years after the day it is obtained;
- (3) shall be repaid from installments collected from assessments of landowners over a five (5) year period; and
- (4) is not subject to the provisions of section 94 of this chapter that concern interest.
- (5) is not subject to the penalty provisions under IC 6-1.1-37-10 if the installments are timely paid.

(c) A construction loan fund is established for each construction or reconstruction project loan that the board and the county fiscal body authorize under this section. A construction loan fund consists of all payments received from the owners assessed for the construction or reconstruction project and may be used only to repay the associated loan. If money remains in the construction loan fund after the associated loan is paid in full, the remaining money in the fund may be transferred to the general drain improvement fund.

(d) A county auditor shall maintain a separate ledger for each construction loan fund established under subsection (c) and record on the separate ledger sheet all payment of principal and interest received from the owners assessed for the associated construction or reconstruction project

(e) A county auditor shall deposit all payments of principal and interest received from the owners assessed for a construction or reconstruction project in the associated construction loan fund

(f) The board shall determine whether interest on the loan is to be part of the final assessment under section 84(a) of this chapter.

(g) Notwithstanding section 85(c) of this chapter, interest on the loan may be charged back to the benefited landowner at a rate that is set in accordance with subsection (b).

### **36-9-27-98**

(a) Whenever a regulated drain is:

- (1) located wholly or partly within a municipality; and
- (2) constructed, reconstructed, or maintained under this chapter;

the municipal fiscal body may, on behalf of the owners assessed or to be assessed within the municipality, pay the total assessment for the construction, reconstruction or maintenance within the municipality. The payment may be made from any appropriation provided by law, including a cumulative drainage fund established under section 99 of this chapter.

(b) Whenever a regulated drain is:

- (1) located outside the corporate boundaries of any municipality within a county; and

- (2) constructed, reconstructed, or maintained under this chapter;

the county fiscal body may, on behalf of the owners assessed or to be assessed outside any municipality and within the county, pay all or part of the assessment for the construction, reconstruction or maintenance outside any municipality and within the county. The payment of all or part of the assessment by the county fiscal body may be made only from a cumulative drainage fund established under section 99 of this chapter.

### **36-9-27-99**

A municipal or county fiscal body may, by resolution, establish a cumulative drainage fund under IC 6-1.1-41 for the construction, reconstruction, or maintenance of drains under this chapter. In the case of a county, however, the fund may be established only upon the recommendation of the county executive.

### **36-9-27-100**

To provide money for a cumulative drainage fund established under Section 99 (IC 36-9-27-99) of this chapter, the fiscal body may levy a tax in compliance with IC 6-1.1-41 not to exceed five cents [\$.05] on each one hundred dollars [\$100] of assessed valuation of all taxable personal and real property:

- (1) within the corporate boundaries, in the case of a municipality; or
- (2) within the county but outside the corporate boundaries of all municipalities, in the case of a county.

### **36-9-27-101 [Repealed.]**

### **36-9-27-102**

The taxes collected under Section 100 of this chapter shall be held in a special fund to be known as the “(city, town or county) cumulative drainage fund.”

### **36-9-27-103**

Notwithstanding any other provision of this chapter, after the establishment of a cumulative drainage fund, a hearing shall be held before the board undertakes any project to construct or reconstruct a regulated drain or to maintain a regulated drain when the total cost of the maintenance project is more than twenty-five thousand dollars (\$25,000). The board shall:

- (1) publish a notice of the hearing in accordance with IC 5-3-1; and
- (2) mail a notice of the hearing, at least fifteen [15] days before the hearing, to the owner of each piece of property adjoining the proposed or established regulated drain.

### **36-9-27-104**

(a) Whenever:

- (1) a petition to construct a new drain is filed under Sections 54 through 65 of this chapter, a board initiates proceedings to reconstruct a drain under Sections 49 through 52 of this chapter or proceedings are initiated in Illinois, Kentucky, Michigan or Ohio to construct or reconstruct a drain; and
- (2) the proposed construction or reconstruction will affect land in both Indiana and the other state;

the board may join with the proper officials of the other state in a joint effort to construct or reconstruct the drain.

- (b) Whenever proceedings are instituted in Indiana under subsection (a), the board shall fix a date, time and place for a joint meeting with the proper officials of the other state for the purpose of forming an interstate board and shall have a notice of the meeting served on the officials.
- (c) Upon receipt by the board of an acceptance of the offer to meet or when the offer to meet has come from the other state, upon acceptance by the board, the board and the officials of the other state shall proceed at the specified date, time and place to form an interstate board by electing one [1] of their number chair and one [1] of their number clerk. The chair and the clerk may not be residents of the same state.
- (d) Without regard to the number of members of the interstate board who are present, the members from Indiana are entitled to cast one half [1/2] of all votes on all questions and that vote shall be represented equally by the different members from Indiana who are present.

### **36-9-27-105**

- (a) The county surveyor representing a board from Indiana that is part of an interstate board shall work with the surveyor or engineer representing the officials of the other state in the performance of the duties required of the county surveyor by this chapter. The interstate board may employ an engineer to work with and assist the surveyor or surveyors, but an engineer may not be permanently employed unless the interstate board has determined that the proposed construction or reconstruction is necessary for the public health, welfare or convenience and that the cost of the construction or reconstruction will probably be less than the benefits to the affected land.
- (b) The surveyors and engineer, if one is employed, shall:
  - (1) prepare all surveys, plans and specifications and other things required by this chapter for construction or reconstruction solely within Indiana;
  - (2) estimate the total cost of the construction or reconstruction for the part of the drain located in each state, together with an estimate of the total cost of location; and
  - (3) in their report, make a fair and just apportionment between the two [2] states of the cost of location and construction or reconstruction.

The report shall be filed with the interstate board and when that board adopts the report by proper resolution, a certified copy of the report shall be filed with the board in Indiana.

- (c) Upon receiving the report, the board in Indiana shall assess the benefits and damages to each tract of land affected in Indiana, in accordance with this chapter as applied to a drain located solely within Indiana.
- (d) All provisions of this chapter, including the giving of notices, the right to object and remonstrate and the right to judicial review, apply to the board, the surveyor and all affected persons.
- (e) When the construction or reconstruction is finally and conclusively established in both states and when money is available in both states to pay for the proposed work, the interstate board shall meet and let the work contracts. Payment from the funds in Indiana shall be made by voucher approved by the interstate board, countersigned by the chair of the board in Indiana and filed

with the county auditor. The payments shall be limited to the amount apportioned to Indiana under subsection (b).

**36-9-27-106**

(a) Any owner of land affected by a final order or determination of a board is entitled to judicial review of that order or determination in the circuit or superior court of the county in which the board is located. The owner must file in the court a petition:

- (1) setting out the order or determination complained of; and
- (2) alleging specifically that the order or determination is arbitrary, capricious, unlawful or not supported by substantial evidence;

and pay the fee required under IC 33-37-4-4. If the order or determination to be appealed was made by a joint board, the petition must be filed in the circuit or superior court of the county that elected the surveyor who serves as an ex officio member of the joint board.

(b) A petition for judicial review under subsection (a) must be filed within twenty [20] days after:

- (1) the date of publication of notice by the board that the order or determination has been made; or
- (2) the order or determination was served on the person seeking the judicial review, if the order was served on that person.

(c) A copy of the petition shall be served on the board within five [5] days after the petition is filed. If the order or determination arose in a proceeding initiated by petition for the construction of a new drain under Section 54 of this chapter, a copy shall also be served on the attorney for the petitioner, unless the petitioner is the person seeking the judicial review. Service under this subsection:

- (1) is sufficient to bring the board and any petitioner for a new drain into court;
- (2) may be made on the board by serving a copy of the petition on the county surveyor personally or by leaving it at the surveyor's official office; and
- (3) may be made on the attorney for the petitioner by serving a copy of the petition on the attorney personally or by leaving a copy of it at the attorney's address as set forth in the petition.

(d) Within twenty (20) days after receipt of notice that any person has filed a petition for review, the board shall prepare a certified copy of the transcript of the proceedings before the board and file it with the clerk of the court. The petitioner shall pay the cost of preparing this transcript. An extension of time in which to file the transcript shall be granted by the court upon a showing of good cause.

(e) On the filing of a petition for review, the clerk of the court shall docket the cause in the name of the petitioner and against the board. The issues shall be considered closed by denial of all matters at issue without the necessity of filing any further pleadings.

(f) When the owners of less than ten percent (10%) of the affected lands petition for judicial review, issues not triable de novo do not operate to stay work unless an appeal bond is posted.

**36-9-27-107**

- (a) Whenever a petition for judicial review is filed on the ground that:
- (1) the board found that the petitioner's land would be benefited by the construction, reconstruction or maintenance of a drain and the benefits assessed were excessive; or
  - (2) the petitioner's lands would be damaged by the construction, reconstruction or maintenance of a drain, and:

(A) the board failed to so find; or

(B) the amount of damages awarded was inadequate;

the court shall proceed to hear the issue of benefits of damages de novo. A change of venue may be taken from the judge and from the county and a jury trial may be obtained, in accordance with the rules governing the trial of civil actions. An appeal may be taken in accordance with the rules governing appellate procedure.

- (b) Whenever a petition for judicial review is filed on any ground other than those set forth in subsection (a), the review shall be heard by the court without the intervention of a jury. The court may not try to determine the cause de novo, but shall consider and determine the cause exclusively upon the record made before the board and filed with the court. A change of venue may be taken from the judge under the rules governing a change of venue in civil actions, but a change of venue may not be taken from the county. The proceedings shall be advanced upon the docket of the court. If the court finds from the record before it that:

(1) the person filing the petition for review has complied with all procedures required under this chapter to properly present the matters set forth in the petition for review and has exhausted the person's administrative remedies; and

(2) the decision or determination of the board is arbitrary, capricious, unlawful or not supported by substantial evidence;

the court shall order decision or determination of the board set aside and shall remand the matter to the board for further proceedings consistent with the findings and order of the court. If the court finds otherwise, the decision of the board shall be affirmed.

- (c) In affirming or setting aside a decision or determination of the board, the court shall enter its findings and order or judgment on the record.
- (d) When a petition for judicial review presents issues that shall be heard de novo and issues that may not be heard de novo, the court shall separate the issues and shall proceed to determine the issues that may not be heard de novo. When the court's judgment on the issues that may not be heard de novo becomes final or when the appeal is decided if an appeal is taken, the board shall proceed in accordance with the final judgment or appellate decision despite the fact that the issues to be heard de novo may be undecided and pending before the court or on appeal.

**36-9-27-108**

- (a) Whenever:

(1) a petition for judicial review of a board's final order for construction, reconstruction or maintenance of a drain is filed in the circuit or superior court; and

(2) the petition presents an issue or issues that may not be heard de novo by the court;

all work under the order shall be stayed pending final disposition of the issue or issues by the court or, if an appeal is taken, then until the issue or issues are finally decided by the supreme court or the court of appeals.

- (b) Whenever issues that shall be heard de novo are pending in the circuit or superior court or on appeal, work under the order may not be stayed by the court. However, the board may, by resolution, stay all or any part of the work until the issues presented by the judicial review are finally decided or until the board revokes its resolution.

**36-9-27-109**

- (a) All petitions, evidence, requests, and other documents required to be filed with the board under this chapter, including all material and documents of every kind prepared by the county surveyor or on the surveyor's behalf, shall be filed in the office of the surveyor, who shall receive them for the board. The surveyor shall:

(1) mark each document filed showing the date it was received; and

(2) record the fact of filing, designating the nature of the document and by whom it was filed in a journal maintained for that purpose.

- (b) The county surveyor shall maintain the documents described in subsection (a) in permanent files under the name of each regulated drain in the county. These copies shall be made available to the trial court, the supreme court, or the court of appeals in any proceedings pending under sections 106, 107, and 108 of this chapter.

- (c) The county surveyor shall maintain a copy of each document described in subsection (a) for the use of the board.

- (d) Whenever this chapter permits the filing of written evidence with the board, that evidence shall be subscribed to under oath by the person or persons having knowledge of the facts contained in the evidence.

**36-9-27-110**

- (a) Whenever this chapter provides for the mailing of a notice to owners of affected land, the notice shall be addressed to the owner at his home address as last entered by the county auditor for property tax purposes. If the owner is a railroad company or utility and is not assessed for taxes locally, the notice shall be addressed to the state board of tax commissioners for forwarding to the railroad company or utility. If the owner is a unit or a school corporation, the notice shall be addressed to the persons authorized by law to accept service of process in civil actions on behalf of that owner. If the owner is the state, copies of the notice shall be addressed to the department or agency, if any, charged by law with the maintenance, supervision or control over the state owned land that is affected.

- (b) Whenever sections 54 through 65 of this chapter provide for the service of any document upon the attorney for a petitioner, the service shall be made by personally handing the document to the attorney, by leaving the document at the attorney's address or by mailing the document to the address of the attorney as set forth in the petition.

### **36-9-27-111**

Whenever the last day for filing any document under this chapter falls on a legal holiday, the time for the filing shall be extended to the next day that is not a legal holiday.

### **36-9-27-112**

- (a) In determining benefits to land under Sections 39, 50 and 62 of this chapter, the board may consider:
  - (1) the watershed affected by the drain to be constructed, reconstructed or maintained;
  - (2) the number of acres in each tract;
  - (3) the total volume of water draining into or through the drain to be constructed, reconstructed or maintained and the amount of water contributed by each land owner;
  - (4) the land use;
  - (5) the increased value accruing to each tract of land from the construction, reconstruction or maintenance;
  - (6) whether the various tracts are adjacent, upland, upstream or downstream in relation to the main trunk of the drain;
  - (7) elimination or reduction of damage from floods;
  - (8) the soil type; and
  - (9) any other factors affecting the construction, reconstruction or maintenance.
- (b) In determining benefits or damages to land under Section 39, 50 and 62 of this chapter, the board may examine aerial photographs and topographical or other maps and may adjourn the hearing to the site of the construction, reconstruction or maintenance in order to personally view the affected land.
- (c) In determining percentages of benefit under Sections 39, 50 and 62 of this chapter, the board may consider the percentage of the total cost that was assessed to each tract in the initial construction or in any reconstruction of the drain. However, that percentage is not binding on the board in its current determination and the board may vary from it as justice requires.

### **36-9-27-113**

- (a) For the purpose of investment, the county treasurer may consolidate part or all of the money in any fund established under this chapter with the money in any other fund established under this chapter or other money held by the county treasurer.
- (b) Unless the invested money is from a maintenance fund established under section 44 of this chapter, the county treasurer shall credit interest from an investment of a fund created under this chapter to that fund.
- (c) The county treasurer may credit interest earned from an investment of a maintenance fund established under Section 44 of this chapter into the general drainage improvement fund established under Section 73 of this chapter.

- (d) Within an account, the county treasurer may credit interest to particular drainage accounts in any fair and rational manner.

**36-9-27-114**

- (a) This section applies to a county that:
  - (1) receives notification from the department of environmental management that the county will be subject to regulation under 327 IAC 15-13; and;
  - (2) has not adopted an ordinance to adopt the provisions of IC 8-1.5- 5.
- (b) As used in this section, “storm water improvements” means storm sewers, drains, storm water retention or detention structures, dams, or any other improvements used for the collection, treatment, and disposal of storm water.
- (c) The drainage board of a county may establish fees for services provided by the board to address issues of storm water quality and quantity, including the costs of constructing, maintaining, operating, and equipping storm water improvements.
- (d) Fees established under this chapter after a public hearing with notice given under IC 5-3-1 are presumed to be just and equitable.
- (e) The fees are payable by the owner of each lot, parcel of real property, or building that uses or is served by storm water improvements that address storm water quality and quantity. Unless the board finds otherwise, the storm water improvements are considered to benefit every lot, parcel of real property, or building that uses or is served by the storm water improvements, and the fees shall be billed and collected accordingly.
- (f) The board shall use one (1) or more of the following factors to establish the fees:
  - (1) A flat charge for each lot, parcel of property, or building.
  - (2) The amount of impervious surface on the property.
  - (3) The number and size of storm water outlets on the property.
  - (4) The amount, strength, or character of storm water discharged.
  - (5) The existence of improvements on the property that address storm water quality and quantity issues.
  - (6) The degree to which storm water discharged from the property affects water quality in the district.
  - (7) Any other factors the board considers necessary.
- (g) The board may exercise reasonable discretion in adopting different schedules of fees, or making classifications in schedules of fees, based on:
  - (1) variations in the costs, including capital expenditures, of addressing storm water quality and quantity for various classes of users or for various locations
  - (2) variations in the number of users in various locations; and



- (3) whether the property is used primarily for residential, commercial, or agricultural purposes.

#### **36-9-27.4**

Removal of Obstructions in Mutual Drains and Natural Surface Watercourses

##### **36-9-27.4-1**

As used in this chapter, “drain” refers to a mutual drain (as defined in IC 36-9-27-2).

##### **36-9-27.4-2**

As used in this chapter, “drainage board” means the following:

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

##### **36-9-27.4-3**

As used in this chapter, “natural surface watercourse” means an area of the surface of the ground over which water from falling rain or melting snow occasionally and temporarily flows in a definable direction and channel.

##### **36-9-27.4-4**

- (a) As used in this chapter, “obstruction” means a condition that:
    - (1) exists within or near a drain; and
    - (2) prevents or significantly impedes the flow of water through the drain.
  - (b) The term includes the following:
    - (1) The presence of:
      - (A) one (1) or more objects inside or near a drain;
      - (B) a quantity of materials inside or near a drain; or
      - (C) damage to a drain;
- that prevents or significantly impedes the flow of water through the drain.

(2) Obstructions that:

(A) are created intentionally; and

(B) occur naturally or are created unintentionally.

**36-9-27.4-5**

As used in this chapter, “owner” means a person who holds a possessory legal interest in land.

**36-9-27.4-6**

As used in this chapter, “person” means an individual, a corporation, a limited liability company, a partnership, or any other legal entity.

**36-9-27.4-7**

As used in this chapter, “respondent” means an owner of the tract of land that is the subject of a petition seeking the removal of an obstruction under this chapter.

**36-9-27.4-8**

As used in this chapter, “tract” means an area of land that is:

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

**36-9-27.4-9**

If:

- (1) a person who owns a tract of land seeks the removal of an obstruction from a drain or natural surface watercourse located outside the person’s tract in order to promote better drainage of the person’s tract; and
- (2) the owner of the land on which the obstruction is located, upon request, does not remove the obstruction;

the person seeking the removal of the obstruction may file a petition under this chapter asking the drainage board in the county in which the obstruction is located to remove, or authorize or order the removal of the obstruction under this chapter.

**36-9-27.4-10**

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

- (1) A general description of the tract of land owned by the petitioner.
- (2) A general explanation of the need for the removal of the obstruction.
- (3) A general description of the site of the obstruction.

### **36-9-27.4-11**

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

### **36-9-27.4-12**

(a) If a petition filed under this chapter alleges the obstruction of:

- (1) a drain; or
- (2) a natural surface watercourse;

the county surveyor of the county in which the obstruction is alleged to exist shall promptly investigate whether the obstruction exists.

(b) If the county surveyor, upon investigation, finds an existing obstruction in a drain or natural surface watercourse in the location alleged in the petition, the county surveyor shall report the existence of the obstruction to the drainage board.

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

- (1) set a date for a hearing on the petition; and
- (2) serve notice of the hearing on each owner of the land on which the obstruction exists who can be identified in the records of the county recorder.

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

(e) Notice of a hearing must be mailed to each respondent with return receipt requested.

### **36-9-27.4-13**

Before or on the date of a hearing held under this chapter, the drainage board may postpone and reschedule the hearing if:

- (1) it appears that a respondent has not been served with notice; or
- (2) the interests of fairness otherwise compel a postponement.

### **36-9-27.4-14**

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

- (1) the obstruction of a drain or a natural surface watercourse that is alleged in the petition exists; and
- (2) the removal of the obstruction will:
  - (A) promote better drainage of the petitioner's land; and

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

the drainage board shall find for the petitioner.

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

**36-9-27.4-15**

If the drainage board finds for the petitioner under section 14(a) of this chapter, the board shall determine, based upon a preponderance of the evidence, whether the obstruction of the drain or natural surface watercourse was created intentionally by any of the respondents.

**36-9-27.4-16**

(a) If the drainage board finds:

- (1) for the petitioner under section 14(a) of this chapter; and
- (2) under section 15 of this chapter that the obstruction of the drain or natural surface watercourse was created intentionally by at least one (1) of the respondents;

the drainage board shall enter an order directing the respondents to remove the obstruction at their own expense, or directing the county surveyor to remove the obstruction at the expense of the respondents.

- (b) A respondent against whom an order is entered under subsection (a) is subject to an action under section 22 of this chapter if the respondent fails to pay the amount for which the respondent is responsible under the order.

**36-9-27.4-17**

If the drainage board:

- (1) finds for the petitioner under section 14(a) of this chapter; and
- (2) does not find under section 15 of this chapter that the obstruction of the drain or a natural surface watercourse was created intentionally by any of the respondents;

the drainage board shall enter an order under section 18 or 19 of this chapter concerning the removal of the obstruction.

**36-9-27.4-18**

(a) If:

- (1) a petition filed under this chapter concerns a natural surface watercourse; and
- (2) the drainage board:

(A) finds for the petitioner under section 14(a) of this chapter; and

(B) does not find under section 15 of this chapter that the obstruction of the natural surface watercourse was created intentionally by any of the respondents;

the drainage board shall enter an order under subsection (b).

(b) Upon a determination made under subsection (a), the drainage board shall enter an order:

(3) authorizing the petitioner to remove the obstruction; or

(4) directing the county surveyor to remove the obstruction at the expense of the petitioner.

(c) The drainage board shall consult with the:

(1) petitioner;

(2) respondents; and

(3) county surveyor;

before deciding whether to enter an order under subsection (b)(1) or (b)(2).

(d) If the drainage board enters an order under subsection (b), the order may require the petitioner to bear the expenses of removing the obstruction, including the monetary value of the harm and inconvenience that the respondents will incur as a result of the removal of the obstruction.

### **36-9-27.4-19**

(a) If:

(1) a petition filed under this chapter concerns a drain; and

(2) the drainage board:

(A) finds for the petitioner under section 14(a) of this chapter; but

(B) does not find under section 15 of this chapter that the obstruction of the drain was created intentionally by any of the respondents;

the drainage board shall enter an order under subsection (b).

(b) Upon a determination made under subsection (a), the drainage board shall enter an order:

(1) authorizing the petitioner to remove the obstruction;

(2) authorizing the respondents to remove the obstruction;

(3) directing the county surveyor to remove the obstruction; or

(4) directing that the obstruction be removed through the joint efforts of at least two (2) of the persons referred to in this subsection.

(c) If an order is issued under subsection (b), the costs of removing the obstruction must be borne by the owners of all the tracts of land that are benefited by the drain. The order of the board must do the following:

(1) Identify all tracts of land that are benefited by the drain.

(2) Identify the owners of the tracts of land referred to in subdivision (1):

(A) who are known to the drainage board; or

(B) whose identity can be determined through the records of the county auditor.

(3) Apportion the costs of removing the obstruction among the tracts of land that are benefited by the drain, assigning to each tract a certain percentage of the total costs.

(4) Order the owners of each tract of land referred to in subdivision (1) to pay an amount equal to the product of the total costs of removing the obstruction multiplied by the percentage assigned to the tract under subdivision (3).

(d) The percentage of the total costs assigned to a tract under subsection (3) must correspond to the ratio of the total length of the drain to the length of the particular segment of the drain that benefits the tract.

#### **36-9-27.4-20**

(a) All the owners of a tract that is the subject of an order issued under section 19 of this chapter are jointly and severally responsible for the payment of the amount determined under section 19(c)(4) of this chapter.

(b) An owner of a tract who pays all of or a portion of the amount may bring an action to obtain contribution from an owner of the tract who did not pay an equal or a greater portion of the amount.

(c) An owner of a tract that is the subject of an order issued under section 19 of this chapter is subject to an action under section 22 of this chapter if the owner fails to pay the amount for which the owner is responsible under the order.

#### **36-9-27.4-21**

In entering an order concerning the removal of an obstruction under this chapter, a drainage board may:

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

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

#### **36-9-27.4-22**

(a) If a person who is required by an order of a drainage board under this chapter to pay an amount or bear an expense does not comply with the requirement, the amount for which the person is responsible may be recovered by:

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

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

(b) An amount may be recovered from a person under subsection (a) through an action in a court having jurisdiction in the same manner that a creditor may recover an amount owed under a

contract. In an action brought under this subsection, the plaintiff may also be awarded costs and reasonable attorney's fees.

**36-9-27.4-23**

- (a) If the drainage board finds for a petitioner after a hearing held under this chapter, a respondent may file an action in the circuit or superior court of the county in which the alleged obstruction exists seeking to have the order entered by the drainage board vacated.
- (b) An action filed under subsection (a) must be based on at least one (1) of the following assertions by the respondent:
  - (1) The drainage board lacked authority to act under this chapter.
  - (2) The drainage board erred in making the findings described in section 14(a) of this chapter.
  - (3) The respondent should have been awarded compensation for harm and inconvenience, or the amount awarded to the respondent for harm and inconvenience is insufficient.
  - (4) The drainage board did not follow the procedure required by this chapter.

**36-9-27.4-24**

- (a) In an action filed under section 23 of this chapter, the court:
  - (1) shall enter an order vacating the order of the drainage board directing the county surveyor to remove the obstruction; and
  - (2) may issue an injunction against the removal of the obstruction;if the court makes a finding under subsection (b).
- (b) The court is required or authorized to act under subsection (a) if the court finds that the drainage board:
  - (1) was clearly in error in making its findings under section 14(a) of this chapter with respect to the alleged obstruction; or
  - (2) exceeded its authority or discretion under the law in authorizing the removal of the obstruction.

**36-9-27.4-25**

- (a) For the purposes of this chapter:
  - (1) a county surveyor;
  - (2) a member of a drainage board; or
  - (3) an authorized representative of a county surveyor or drainage board;has a right of entry over and upon a tract of land containing a drain or natural surface watercourse that is the subject of a petition filed under this chapter.

- (b) The right of entry granted by this section is limited to the land lying within seventy-five (75) feet of the drain or natural surface watercourse. The seventy-five (75) feet must be measured at right angles to:
- (1) the center line of any tiled drain;
  - (2) the top edge of each bank of an open drain; and
  - (3) the edge of any natural surface watercourse;
- as determined by the county surveyor.
- (c) A person exercising a right of entry under this section shall, to the extent possible, use due care to avoid damage to:
- (1) crops, fences, buildings, and other structures located outside the right-of-way; and
  - (2) crops and approved structures located inside the right-of-way.
- (d) Before exercising a right of entry under this section, an individual must give oral or written notice of the entry on the land to the property owner of record. The notice must state the purpose for the entry.
- (e) A right of entry under this section is not criminal trespass under IC 35-43-2-2, and an individual exercising a right of entry under this section may not be arrested or prosecuted for criminal trespass under IC 35-43-2-2.

### **36-9-28.7**

#### Storm Water Nuisances

### **36-9-28.7-1**

#### “Artificial conveyance”

- (a) As used in this chapter, “artificial conveyance” means a manmade structure in or into which storm water runoff or floodwaters flow, either continuously or intermittently.
- (b) The term includes piping, ditches, swales, curbs, gutters, catch basins, channels, storm drains, downspouts, roadways, and any other structure using a similar method.

### **36-9-28.7-2**

As used in this chapter, “channel” means a part of a natural watercourse or artificial conveyance that:

- (1) periodically or continuously contains moving water; and
- (2) has a defined bed and banks that serve to confine the water.

### **36-9-28.7-3**

As used in this chapter, “runoff” means the part of precipitation that flows from a drainage area on the land surface, in open channels, or in storm water conveyance systems.



#### **36-9-28.7-4**

As used in this chapter, “storm water conveyance system” means all methods, natural or manmade, used for conducting storm water to, through, or from a drainage area to any of the following:

- (1) Conduits and appurtenant features.
- (2) Canals.
- (3) Channels.
- (4) Ditches.
- (5) Storage facilities.
- (6) Swales.
- (7) Streams.
- (8) Culverts.
- (9) Roadways.

#### **36-9-28.7-5**

As used in this chapter, “storm water nuisance” means a condition:

- (1) that arises out of or is related to storm water that is transferred through runoff or an artificial conveyance that:
  - (A) is directed to the property of another person;
  - (B) discharges storm water at or near the property line of another person; or
  - (C) accelerates or increases the flow of storm water onto another person’s property; and
- (2) to which one (1) or both of the following apply:
  - (A) The condition is injurious to health.
  - (B) The condition substantially obstructs the free use of property.

#### **36-9-28.7-6**

As used in this chapter, “swale” means an elongated depression in the land surface that:

- (1) is at least seasonally wet;
- (2) is usually vegetated;
- (3) is a conduit for storm water flow; and
- (4) conducts storm water into primary drainage channels.

#### **36-9-28.7-7**

As used in this chapter, “unit of government” means:

- (1) the town council or its designee if the storm water nuisance is located within the boundaries of a town;
- (2) the city board of works or its designee if the storm water nuisance is located within the boundaries of a city; or
- (3) the county surveyor or its designee if the storm water nuisance is located within the boundaries of an unincorporated part of a county.

### **36-9-28.7-8**

#### Request to investigate storm water nuisance

(a) If:

- (1) a person who owns a tract of land seeks the removal of a storm water nuisance; and
- (2) the owner of the land on which the storm water nuisance is located does not remove the storm water nuisance upon request; the person seeking the removal may file a request under this chapter asking the unit of government to investigate the storm water nuisance.

(b) The request must be filed on a form published by the unit of government that includes:

- (1) a general description of the tract of land owned by the person making the request;
- (2) a general description of the site of the nuisance; and
- (3) a general explanation of the need for the removal of the nuisance.

### **36-9-28.7-9**

#### Investigation fee; assessment of nuisance; investigation report; limitations

(a) An ordinance may be adopted to allow for the payment of a fee to the unit of government as a condition of filing a request under this chapter. The fee may not be an amount greater than is reasonably necessary to defray the expenses incurred in processing the request, conducting the investigation, and completing the assessment under this section.

(b) A unit of government shall investigate and make a visual assessment limited to the following:

- (1) Determine whether the storm water nuisance exists.
- (2) Assess whether the removal of the storm water nuisance will:
  - (A) remove the negative effect of the storm water nuisance from the land of a person making the request; and
  - (B) cause unreasonable damage to the land on which the storm water nuisance is located.
- (3) Make any other observations that may be useful in solving an alleged storm water nuisance problem.

(c) A unit of government, upon making the assessment under subsection (b), shall provide the following to a person that filed the request under section 8 of this chapter:

- (1) An oral or written report that may include:

- (A) a general description of the investigation and its findings;
- (B) whether the storm water nuisance exists;
- (C) the need for the removal of the storm water nuisance;
- (D) whether the removal of the storm water nuisance will:
  - (i) remove the negative effect of the storm water nuisance from the land of a person that filed the request under section 8 of this chapter; and
  - (ii) cause unreasonable damage to the land on which the storm water nuisance is located; and
- (E) any other considerations that may be useful in solving the storm water nuisance.

(2) Information concerning alternative dispute resolution options.

- (d) A unit of government is not required to use funds to meet the requirements under this chapter.
- (e) Except under subpoena, a unit of government may not be compelled to testify in a legal proceeding related to its functions under this chapter.
- (f) For purposes of this chapter, the unit of government has a right of entry as provided by IC 36-9-27.4-25.
- (g) An artificial conveyance or runoff that was constructed and that operates in compliance with a permit issued by a political subdivision is not subject to this chapter.

**36-9-27.8**

Subdivision Drain Repair Pilot Program

**36-9-27.8-1**

As used in this chapter, “executive” means:

- (1) the board of county commissioners, in the case of Johnson County; or
- (2) the mayor, in the case of a consolidated city.

**36-9-27.8-2**

As used in this chapter, “fiscal officer” means:

- (1) the county auditor, in the case of Johnson County; or
- (2) the controlled, in the case of a consolidated city.

**36-9-27.8-3**

As used in this chapter, “governing documents” has the meaning set forth in IC 32-25.5-2-3.

**36-9-27.8-4**

As used in this chapter, “homeowners association” has the meaning set forth in IC 32-25.5-2-4.

**36-9-27.8-5**

As used in this chapter, “subdivision” has the meaning set forth in IC 32-25.5-2-5.

### **36-9-27.8-6**

As used this chapter, “subdivision drain” means a system that:

- (1) consists of:
  - (A) underground pipes; and
  - (B) one (1) or more inlets;
- (2) may also include one (1) or more streams, swales, ditches, natural drains, catch basins, and other components;
- (3) is designed to drain excess water from impervious surfaces like paved streets and parking areas;
- (4) is located in a subdivision; and,
- (5) has not been dedicated to public use and accepted by the county or any other political subdivision in which the system is located.

### **36-9-27.8-7**

As used in this chapter, “unit” means:

- (1) Johnson County; or
- (2) the consolidated city in Marion County.

### **36-9-27.8-8**

This chapter applies to the following:

- (1) A subdivision located in an unincorporated area of Johnson County.
- (2) A subdivision located within a consolidated city. This chapter does not apply to a subdivision located within the boundaries of an excluded city (as defined in IC 36-3-1-7).

### **36-9-27.8-9**

This chapter applies to a subdivision regardless of whether IC 32-25.5 applies to the subdivision in its entirety under IC 32-25.5-1-1(a).

### **36-9-27.8-10**

- (a) The executive may enter into a contract under this chapter with the homeowners association of a subdivision if the following requirements are satisfied:
  - (1) The contract must be executed not later than June 30, 2021.
  - (2) Each member of the homeowners association must be provided with a copy of the proposed contract through one (1) of the following:

- (A) Physical delivery of a printed copy
- (B) Delivery by electronic mail of an electronic copy.
- (C) Notification by electronic mail or other means than an electronic copy can be viewed on or downloaded from the Internet web site of the homeowners association.

(3) The proposed contract:

- (A) must be approved by a majority of the members of the homeowners association in attendance at a meeting called and conducted in accordance with the requirements of the homeowners association's governing documents; or
- (B) must be approved by a majority of the members of the homeowners association through alternative means, such as voting by electronic mail, that are allowed under the homeowners association's governing documents.

(b) For the purposes of subsection (a)(3)(A), a member of a homeowners association is considered to be in attendance at a meeting if the member attends:

- (1) in person;
- (2) by proxy; or
- (3) by another other means allowed under:

(A) state law; or

(B) the governing documents of the homeowners association.

(c) IC 32-25.5-3-4 does not apply to the approval of a contract under this section.

**36-9-27.8-11**

A contract between the executive and the homeowners association of a subdivision under this chapter must include provisions that do the following:

- (1) Authorize the unit to repair subdivision drains located in the subdivision either:
  - (A) through the work of employees of the unit or;
  - (B) by contracting for the repair work to be performed by a third party.
- (2) Authorize the unit to impose assessments on owners of property in the subdivision to:
  - (A) recover the cost of repairing subdivision drains in the subdivision; and
  - (B) accumulate funds to defray the cost of future projects to repair subdivision drains in the subdivision.
- (3) Authorize:
  - (A) employees of:
    - (i) the unit; or

(ii) a contractor of the unit; and

(B) the county surveyor or the county surveyor's employees:

to enter upon property that is located in the subdivision and is owned by a member of the homeowners association of the subdivision for the purpose of repairing the subdivision drains located on the property.

(4) Authorize the unit to determine the order in which the subdivision drains will be repaired by the unit.

**36-9-27.8-12**

- (a) A person authorized under section 11(3) of this chapter that is engaged in subdivision drain repair in performance of a contract under this chapter may enter upon, or under land, water, or property within a subdivision to perform the subdivision drain repair work.
- (b) Except as provided in subsection (c), before a person authorized under section 11(3) of this chapter may enter property within the subdivision, the record owner of the property shall be notified in writing by registered or certified mail not later than twenty (20) days before the date of entry. The person shall present written identification or authorization to the occupant of the property before entering the property.
- (c) If the owner of the property consents in writing to the entry, notice is not required under subsection (b)

**36-9-27.8-13**

While performing work under a contract entered into under this chapter, persons authorized under section 11(3) of this chapter are not considered trespassers and are liable only for the actual damage they cause to property.

**36-9-27.8-14**

Not later than ten (10) business days after the date a contract is executed under this chapter, the executive shall record the contract with the county recorder.

**36-9-27.8-15**

- (a) The fiscal officer shall:
  - (1) establish a subdivision drain repair fund; and
  - (2) create a separate account within the fund for each subdivision with which the executive enters into a contract under this chapter.
- (b) The fund established under subsection (a) shall be administered by the fiscal officer. Money in the fund not currently need to meet the obligations of the fund may be invested in the same manner as other public funds may be invested. Interest that accrues from these investments shall be deposited in the fund. Money in the fund at the end of a fiscal year does not revert to the unit's general fund.

- (c) The fiscal officer shall deposit assessments imposed on owners of property in a subdivision into the account created under subsection (a)(2) for that subdivision unless the assessments are immediately needed to pay the cost of repairing the subdivisions drains in the subdivision.
- (d) The fiscal officer may withdraw money from the account of a subdivision as needed to pay the cost of repairing subdivision drains in that subdivision.

**36-9-27.8-16**

Assessments imposed on the owners of property in a subdivision under section 11(2) of this chapter:

- (1) shall be set by the executive or the executive's designee at an amount not greater than is necessary to meet the cost of repairs needed at the time the contract is entered into with respect to subdivision rains located on property in the subdivision; and
- (2) may be collected by the fiscal officer through a charge appearing on the semiannual property tax statement of the affected property owner.

**36-9-27.8-17**

If the balance in the account created for a subdivision under section 15(a)(2) of this chapter is insufficient to pay the cost of repairing a subdivision drain in the subdivision, the unit may:

- (1) pay the expenses of the repair initially from:
  - (A) the county general fund, in the case of Johnson County; or
  - (B) the storm water fund, in the case of a consolidated city; and
- (2) later deposit in the fund from which the expenses were paid under subdivision (1), from funds obtained through assessments imposed under this chapter on owners of property in the subdivision in which the subdivision drain is located, an amount equal to the amount paid under subdivision (1).

**36-9-27.8-18**

- (a) All assessments that are imposed on an owner of property in a subdivision under this chapter but are unpaid constitute a subdivision drain repair lien on the property as provided in section 19 of this chapter
- (b) The priority of a subdivision drain repair lien is established on the date on which the notice of the lien is recorded under section 19 of this chapter.

**36-9-27.8-19**

- (a) A subdivision drain repair lien under this chapter attaches to real estate upon the recording of a notice of lien by the fiscal officer in the office of the recorder of the county in which the real estate is located.
- (b) A notice of lien may not be recorded under this section unless the notice of lien:
  - (1) contains:
    - (A) the address and legal description of the property that is subject to the lien;
    - (B) the name of the property owner who is subject to the lien; and

(C) the amount of the lien; and

(2) is:

(A) signed by the fiscal officer and

(B) acknowledged as in the case of deeds.

(c) A subdivision drain repair lien attached on the date of the recording of the notice of the lien under this section and does not relate back to the date of the subdivision drain repairs for which the assessments were imposed on the property owner.

**36-9-27.8-20**

- (a) In the case of a voluntary conveyance of property in a subdivision, the grantee of the property is jointly and severally liable with the grantor for all unpaid subdivision drain repair assessments that were imposed on the grantor under this chapter before the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts of the subdivision drain repair assessments paid by the grantee.
- (b) If the mortgagee of a first mortgage of record or another purchaser obtains title to a property in a subdivision as a result of foreclosure of the first mortgage, the acquirer of title or the acquirer's successors and assigns are not liable for the share of the subdivision drain repair assessments that are chargeable to the property and that became due before the acquirer acquired title to the property, and any subdivision drain repair lien on the property relating to the share of the subdivision drain repair assessment that become due before the mortgagee or other purchaser acquired title to the property shall be released.

**36-9-27.8-21**

Subdivision drain repair assessments imposed under this chapter may be enforced and collected as special assessments under IC 6-1.1-22 and IC 6-1.1-24 and under IC 6-1.1.-25.

**36-9-27.8-22**

The executive may not enter into a contract under this chapter with a homeowners association of a subdivision after June 30, 2021. The rights and obligations of a contract executed under this chapter before July 1, 2021, are not affected after June 30, 2021, and do not impair a unit's ability to enforce liens and collect subdivision drain repair assessments authorized under this chapter for work performed under a contract.



The following are additional laws that pertain to drainage. These are printed only by section titles with references to the Indiana Code. An attempt has been made to include reference to laws that are important in legal drain projects and procedures, however, the list is not meant to be all inclusive.

#### WATER RIGHTS AND RESOURCES

- 14-25-1 Water rights-Surface water
- 14-25-2 Minimum stream flow and water sale contracts
- 14-25-3 Water rights-Ground water
- 14-25-4 Emergency regulation of ground water rights
- 14-25-5 Emergency regulation of surface water rights
- 14-25-6 Water rights-Potable water
- 14-25-7 Water resource management
- 14-25-8 Water and geological resources research
- 14-25-9 Water resources-Investigation and measurement
- 14-25-10 Land and water resources fund
- 14-25-11 Repealed
- 14-25-12 Sand nourishment fund
- 14-25-13 Great Lakes basin compact
- 14-25-14 Repealed

#### LAKES AND RESERVOIRS

- 14-26-1 Reservoirs-Land acquisition and creation
- 14-26-2 Lake preservation
- 14-26-3 Lakes, rivers, and streams preservation suits-Parties
- 14-26-4 Lakes-Average normal water level
- 14-26-5 Lowering of ten acre lakes
- 14-26-6 Lowering of twenty acre lakes
- 14-26-7 Lakes-Restrictions on ditches and drains
- 14-26-8 Lakes-Changes in levels

#### LEVEES, DAMS, AND DRAINAGE

- 14-27-1 Duties of department
- 14-27-2 Levees-Miscellaneous provisions
- 14-27-3 Control of levees
- 14-27-4 Levee associations-Merged
- 14-27-5 Levee associations-Federal loans
- 14-27-6 Levee authority in Vanderburgh County
- 14-27-7 Dams, dikes, and levees-Regulation
- 14-27-7.5 Regulation of Dams
- 14-27-7.7 Lease of Williams Dam
- 14-27-8 Drainage districts
- 14-27-9 Powers of certain drainage corporations

## FLOOD CONTROL

- 14-28-1 Flood control
- 14-28-2 Repealed
- 14-28-3 Flood plain management
- 14-28-4 Flood plain commissions
- 14-28-5 Flood control revolving fund
- 14-28-6 Flood control-Approval of plans
- 36-9-28.5 Management of Stormwater Runoff From Developed Real Property

## RIVERS, STREAMS, AND WATERWAYS

- 14-29-1 Navigable waterways
- 14-29-2 Navigable streams-Kankakee River
- 14-29-3 Sand and gravel permits
- 14-29-4 Construction of channels
- 14-29-5 Change in watercourses-Highway construction
- 14-29-6 Natural, scenic, and recreational river system
- 14-29-7 River commissions
- 14-29-8 Recreational streams