

HOUSE BILL No. 1415

DIGEST OF INTRODUCED BILL

Citations Affected: IC 36-9-27.

Synopsis: Regulated drains and environmental concerns. Authorizes a county surveyor to classify a regulated drain as a drain in need of reconstruction if: (1) the functionality of the drain is compromised; and (2) the drain could, at a reasonable cost, be reconstructed to perform the function for which it was designed while better serving the interests of public health, significantly reducing undesirable environmental effects, or providing flood reduction benefits. Authorizes a county surveyor to classify a regulated drain as a drain in need of periodic maintenance if the drain can be made to: (1) perform the function for which it was designed and constructed; (2) properly drain affected land; and (3) better serve the interest of public health, produce fewer undesirable environmental effects, or provide flood reduction benefits; through periodically cleaning, spraying, removing obstructions from, and making minor repairs, additions, or alterations to the regulated drain. Provides that the maintenance fund established for a regulated drain or combination of regulated drains may be used to: (1) better serve the interests of public health; (2) reduce undesirable environmental effects; (3) provide flood reduction benefits; (4) improve drainage control; or (5) provide drainage water storage infrastructure or technology associated with water that flows in or into a particular regulated drain or combination of regulated drains. Authorizes a county surveyor, when determining the best method of reconstructing a regulated drain or the best method of drainage for the area to which a petition to establish a new regulated drain relates, to consider cost effective drainage designs that limit undesirable environmental effects, improve public health, or provide flood reduction benefits.

Effective: July 1, 2020.

Hamilton

January 15, 2020, read first time and referred to Committee on Local Government.



Second Regular Session of the 121st General Assembly (2020)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2019 Regular Session of the General Assembly.

HOUSE BILL No. 1415

A BILL FOR AN ACT to amend the Indiana Code concerning local government.

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

1 SECTION 1. IC 36-9-27-2 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 2. ~~As used in (a) The~~
3 **definitions set forth in this section apply throughout** this chapter.
4 (b) "Affected land" means land within a watershed that is affected
5 by the construction, reconstruction, or maintenance of a regulated
6 drain.
7 (c) "Board" refers to the drainage board of a county.
8 (d) "Crossing" means a drainage structure that passes over, under,
9 or through a location used for the passage of people, livestock, or
10 vehicles.
11 (e) "Dam" means a dam or other structure and its appurtenances that
12 impounds a small lake at the lake's outlet.
13 (f) **"Flood reduction benefits" means the changing of a drainage**
14 **system so as to reduce the amount and severity of floods affecting**
15 **the drainage system.**
16 (g) "Maintenance" means work on a drain as described in section
17 ~~34(c)~~ **34(d)** of this chapter for any of the purposes stated in that section.



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



- 1 (1) carries surplus water; and
 2 (2) was established under or made subject to any drainage statute.
- 3 **(r) "Undesirable environmental effects" include the following:**
 4 **(1) Transport of nutrients, agricultural chemicals, pesticides,**
 5 **or herbicides.**
 6 **(2) Soil erosion.**
 7 **(3) Failure to store water when storage might be useful.**
 8 **(4) The facilitation of flood conditions downstream when not**
 9 **necessary to achieve drainage objectives.**
- 10 **(s) "Urban land" means affected land that:**
 11 (1) will appreciably benefit from drainage that will provide the
 12 maximum practicable protection against flooding or the
 13 impounding of water in a small lake; and
 14 (2) is used or will in the reasonably foreseeable future be used
 15 generally for commercial, industrial, large estate, higher density
 16 residential, or similar purposes.
- 17 **(t) "Watershed" means an area of land from which all runoff water**
 18 **drains to a given point or that is affected by a small lake.**
- 19 SECTION 2. IC 36-9-27-34 IS AMENDED TO READ AS
 20 FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 34. (a) The county
 21 surveyor shall classify all regulated drains in the county as:
 22 (1) drains in need of reconstruction;
 23 (2) drains in need of periodic maintenance; or
 24 (3) drains that should be vacated.
- 25 The surveyor shall also consider the designation of urban drains under
 26 section 67 of this chapter.
- 27 (b) A regulated drain is in need of reconstruction when:
 28 (1) it will not perform the function for which it was designed and
 29 constructed;
 30 (2) it no longer conforms to the maps, profiles, and plans prepared
 31 at the time when the legal drain was established; or
 32 (3) topographical or other changes have made the drain
 33 inadequate to properly drain the lands affected without extensive
 34 repairs or changes, including:
 35 (A) converting all or part of an open drain to a tiled drain or a
 36 tiled drain to an open drain;
 37 (B) adding an open drain to a tiled drain or a tiled drain to an
 38 open drain;
 39 (C) increasing the size of the tile;
 40 (D) deepening or widening an open drain;
 41 (E) extending the length of a drain;
 42 (F) changing the course of a drain;



- 1 (G) constructing drainage detention basins and drainage
 2 control dams;
 3 (H) providing for erosion control and for grade stabilization
 4 structures; or
 5 (I) making any major change to a drainage system that would
 6 be of public utility.
- 7 **(c) The county surveyor may classify a regulated drain as a**
 8 **drain in need of reconstruction if:**
 9 **(1) the functionality of the drain is compromised; and**
 10 **(2) the drain could, at a reasonable cost, be reconstructed to**
 11 **perform the function for which it was designed while:**
 12 **(A) better serving the interests of public health;**
 13 **(B) significantly reducing undesirable environmental**
 14 **effects; or**
 15 **(C) providing flood reduction benefits.**
- 16 ~~(c)~~ **(d)** A regulated drain is in need of periodic maintenance when,
 17 with or without the use of mechanical equipment, it can be made to
 18 perform the function for which it was designed and constructed, and to
 19 properly drain all affected land under current conditions, by
 20 periodically:
 21 (1) cleaning it;
 22 (2) spraying it;
 23 (3) removing obstructions from it; and
 24 (4) making minor repairs to it.
- 25 **(e) The county surveyor may classify a regulated drain as a**
 26 **drain in need of periodic maintenance if the drain can be made to**
 27 **perform the function for which it was designed and constructed,**
 28 **properly drain affected land, and better serve the interest of public**
 29 **health, produce fewer undesirable environmental effects, or**
 30 **provide flood reduction benefits, through periodically:**
 31 **(1) cleaning;**
 32 **(2) spraying;**
 33 **(3) removing obstructions from; and**
 34 **(4) making minor repairs, additions, or alterations to;**
 35 **the regulated drain.**
- 36 ~~(d)~~ **(f)** A regulated drain should be vacated when:
 37 (1) the drain does not perform the function for which it was
 38 designed and constructed, or it has become inadequate to properly
 39 drain all affected land under current conditions;
 40 (2) the expense of reconstruction outweighs the benefits of
 41 reconstruction; and
 42 (3) the vacation will not be detrimental to the public welfare.



1 SECTION 3. IC 36-9-27-37 IS AMENDED TO READ AS
 2 FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 37. (a) When instituting
 3 proceedings to vacate a regulated drain, the board shall:

- 4 (1) serve a notice of intention to vacate on all owners of affected
 5 land;
 6 (2) fix a date for a hearing;
 7 (3) receive all objections filed;
 8 (4) hold the hearing; and
 9 (5) issue an order vacating or reclassifying the drain.

10 (b) A board acting under this section shall:

- 11 (1) comply with the applicable provisions of sections 49 through
 12 52 of this chapter; and
 13 (2) consider section ~~34(d)~~ **34(f)** of this chapter in determining
 14 whether a drain should be vacated.

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

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

20 SECTION 4. IC 36-9-27-45 IS AMENDED TO READ AS
 21 FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 45. **(a)** A maintenance
 22 fund established under section 44 of this chapter is subject to the use
 23 of the board:

- 24 **(1)** for the necessary or proper repair, maintenance, study, or
 25 evaluation of the particular drain or combination of drains; ~~which~~
 26 ~~may be done or~~

27 **(2) to:**

- 28 **(A) better serve the interests of public health;**
 29 **(B) reduce undesirable environmental effects;**
 30 **(C) provide flood reduction benefits;**
 31 **(D) improve drainage control; or**
 32 **(E) provide drainage water storage infrastructure or**
 33 **technology associated with water that flows in or into a**
 34 **particular regulated drain or combination of drains.**

35 **(b) The fund may be used as provided in subsection (a)** whenever
 36 the board, upon the recommendation of the county surveyor, finds that
 37 it is necessary. The payment for all such maintenance work shall be
 38 made out of the appropriate maintenance fund. However, if:

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



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

5 SECTION 5. IC 36-9-27-49, AS AMENDED BY P.L.127-2017,
 6 SECTION 340, IS AMENDED TO READ AS FOLLOWS
 7 [EFFECTIVE JULY 1, 2020]: Sec. 49. (a) When the board refers a
 8 regulated drain to the county surveyor for a reconstruction report, the
 9 county surveyor shall determine and set forth in the county surveyor's
 10 report the best and cheapest method of reconstructing the drain so that
 11 it will adequately drain all affected land. **In determining what method**
 12 **of reconstructing the drain is best, the county surveyor may**
 13 **consider cost effective drainage designs that:**

14 (1) **limit undesirable environmental effects;**

15 (2) **improve public health; or**

16 (3) **provide flood reduction benefits.**

17 (b) The county surveyor shall make the necessary surveys, maps,
 18 profiles, plans, and specifications, and the county surveyor may include
 19 in them:

20 (1) all of the repairs or changes specifically set forth in section
 21 34(b) of this chapter; and

22 (2) any other repairs or changes that good engineering practice
 23 requires, including arms where none existed before.

24 (c) The county surveyor shall estimate the costs of the proposed
 25 reconstruction, including costs of notices and advertising, and the
 26 county surveyor shall also estimate the annual cost of periodically
 27 maintaining the proposed reconstruction.

28 (d) The county surveyor shall include in the county surveyor's report
 29 the name and address of each owner of land that will be affected by the
 30 proposed reconstruction, and the legal description of the land of each
 31 owner as shown by the tax duplicate or record of transfers of the county
 32 in which the land is located. However, a public way owned by a county
 33 or by the state shall be described by its name or number, and the
 34 right-of-way of a railroad may be described as the right-of-way of the
 35 owner through section, township, and range. If the name of an owner
 36 is not known, and cannot be discovered through diligent inquiry, the
 37 report may describe the land as belonging to the person who appears to
 38 be the owner according to the last tax duplicate or record of transfers
 39 of the county where the land is located.

40 SECTION 6. IC 36-9-27-61, AS AMENDED BY P.L.127-2017,
 41 SECTION 349, IS AMENDED TO READ AS FOLLOWS
 42 [EFFECTIVE JULY 1, 2020]: Sec. 61. (a) When the board refers a



1 petition **to establish a new regulated drain** to the county surveyor for
2 a final report under section 60(b) of this chapter, the county surveyor
3 shall do the following:

- 4 (1) Make the necessary survey for the proposed drain.
5 (2) Prepare plans for structures other than bridges or culverts
6 crossing a railroad right-of-way or a highway owned by the state.
7 In preparing the plans, the county surveyor shall include all
8 appurtenances needed to complete the proposed drain.
9 (3) Prepare maps showing the location of the land proposed to be
10 assessed.
11 (4) Prepare profiles showing the cuts and gradient of the proposed
12 work.
13 (5) Determine the best and cheapest method of drainage, which
14 may be by:
15 (A) removing obstructions from a natural or artificial
16 watercourse;
17 (B) diverting a natural or artificial watercourse from its
18 channel;
19 (C) deepening, widening, or changing the channel of a natural
20 or artificial watercourse;
21 (D) constructing an artificial channel, with or without arms or
22 branches;
23 (E) tiling all or part of an open drain;
24 (F) converting all or part of a tiled drain to an open drain;
25 (G) constructing a new drain as a part or the whole of the
26 work; or
27 (H) any combination of these methods.
28 (6) Determine and describe the termini, route, location, and
29 character of the proposed work, including grades, bench marks,
30 and all necessary arms. The county surveyor may vary the line of
31 the work from the line described in the petition, and the county
32 surveyor may fix the beginning and outlet so as to secure the best
33 results.
34 (7) Divide the proposed drain into sections of not more than one
35 hundred (100) feet in length, and compute and set out the number
36 of cubic yards of excavation in each section.
37 (8) Estimate the cost of the proposed drain, including
38 construction, seeding or sodding of disturbed areas and the banks
39 of open drains, notices, advertising, and the attorney's fee for the
40 petitioner's attorney. The amount of the attorney's fee is computed
41 as follows:
42 (A) If the estimated cost of constructing the drain is less than



1 one thousand five hundred dollars (\$1,500), the fee is fifteen
2 percent (15%) of that cost.

3 (B) If the estimated construction cost is one thousand five
4 hundred dollars (\$1,500) or more, but less than twenty-five
5 thousand dollars (\$25,000), the fee is two hundred twenty-five
6 dollars (\$225) plus five percent (5%) of the amount by which
7 that cost exceeds one thousand five hundred dollars (\$1,500).

8 (C) If the estimated construction cost is twenty-five thousand
9 dollars (\$25,000) or more, the fee is one thousand four
10 hundred dollars (\$1,400) plus one percent (1%) of the amount
11 by which that cost exceeds twenty-five thousand dollars
12 (\$25,000).

13 **(b) In determining under subsection (a)(5) the best method of**
14 **drainage for the area to which the petition relates, the county**
15 **surveyor may consider cost effective drainage designs that:**

16 **(1) limit undesirable environmental effects;**

17 **(2) improve public health; or**

18 **(3) provide flood reduction benefits.**

19 SECTION 7. IC 36-9-27-65, AS AMENDED BY P.L.127-2017,
20 SECTION 353, IS AMENDED TO READ AS FOLLOWS
21 [EFFECTIVE JULY 1, 2020]: Sec. 65. (a) Not less than five (5) days
22 before the board's hearing on a petition for a new regulated drain, any
23 owner of land affected by the report of the county surveyor or by the
24 schedules of damages and assessments may file with the board written
25 objections to the report, schedules, or both. The objections may be for
26 one (1) or more of the following causes:

27 (1) The proposed drain, as reported by the county surveyor, is not
28 practicable and will not adequately drain the affected land. An
29 objection on this ground must point out the impracticable aspects
30 of the proposed drain and describe the specific lands that will not
31 be adequately drained.

32 (2) The costs, damages, and expenses of the drain will exceed the
33 benefits that will result to the owners of all land benefited.

34 (3) The proposed drain will not:

35 (A) improve the public health;

36 (B) benefit a public highway in a county or a public street in
37 a municipality;

38 (C) drain the grounds of a public school; or

39 (D) be of public utility.

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

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

42 or



1 (B) the damages assessed to the objector's land are inadequate.
 2 (5) The objector is the owner of lands assessed as benefited, and
 3 the benefits assessed against the objector's lands are excessive.
 4 Each objector may file written evidence in support of the objector's
 5 objections. The failure of an owner to file objections constitutes a
 6 waiver of the owner's right to subsequently object, on the grounds
 7 stated in this subsection, to any final action of the board.
 8 (b) On or before the day of the hearing, the county surveyor shall,
 9 and any owner of affected land may, cause written evidence to be filed
 10 in support of or in rebuttal to any objection filed under subsection (a).
 11 (c) The board shall consider the objections and evidence filed, may
 12 adjourn the hearing from day to day or to a day certain, and may issue
 13 an order permitting additional written evidence to be filed in support
 14 of or in rebuttal to the objections and evidence previously filed.
 15 (d) After considering all of the objections and evidence, the board
 16 may amend the schedules of damages and assessments, and the county
 17 surveyor may modify the county surveyor's report, as justice may
 18 require.
 19 (e) Before final adjournment of the hearing, the board shall
 20 determine in writing:
 21 (1) whether the proposed drain, as reported by the county
 22 surveyor, is practicable and will adequately drain the affected
 23 land;
 24 (2) whether the costs, damages, and expenses of the proposed
 25 drain will be less than the benefits accruing to the owners of land
 26 benefited by the drain; and
 27 (3) whether the proposed drain will improve the public health,
 28 benefit a public highway in a county or a public street in a
 29 municipality, drain the grounds of a public school, or be of public
 30 utility.
 31 If the board finds the issues set forth in subdivision (1), (2), or (3) in
 32 the negative, it shall dismiss the petition. If the board finds the issues
 33 set forth in subdivisions (1), (2), and (3) in the affirmative, it shall
 34 adopt the schedules of damages and assessments, including annual
 35 assessments for periodic maintenance, as originally filed or as
 36 amended, into its findings, and issue an order declaring the proposed
 37 drain established. The board shall mark the findings and order filed and
 38 publicly announce them at the hearing. Immediately after that, the
 39 board shall publish a notice in accordance with IC 5-3-1. The notice
 40 must identify the proceedings and state that the findings and order of
 41 the board have been filed and are available for inspection in the office
 42 of the county surveyor.



1 (f) If judicial review of the findings and order of the board is not
 2 requested under section 106 of this chapter within twenty (20) days
 3 after the date of publication of the notice, the findings and order
 4 become conclusive.

5 (g) When the proposed drain is finally and conclusively established,
 6 the board shall allow the attorney for the petitioner the fee computed
 7 under section ~~61(8)~~ **61(a)(8)** of this chapter.

8 SECTION 8. IC 36-9-27-77 IS AMENDED TO READ AS
 9 FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 77. (a) Whenever:

- 10 (1) the board orders the construction or reconstruction of a drain,
 11 and the order is not stayed under section 108 of this chapter; or
 12 (2) the board determines that maintenance work shall be let by
 13 contract;

14 the board may contract for the work to be done as a whole or in
 15 sections.

16 (b) Except as provided in subsection (c), the board may not let a
 17 contract for the construction or reconstruction of a drain if the amount
 18 of the contract is more than ten percent (10%) above:

- 19 (1) the construction costs estimated by the county surveyor under
 20 section ~~61(8)~~ **61(a)(8)** of this chapter; or
 21 (2) the reconstruction costs estimated by the surveyor under
 22 section 49(c) of this chapter.

23 (c) If the board does not receive a bid that complies with subsection
 24 (b), it shall readvertise for bids. If on readvertisement the board does
 25 not receive a bid that complies with subsection (b), the board shall
 26 dismiss the proceedings unless it receives a bid that does not exceed
 27 the benefits assessed against the affected land.

28 (d) Whenever the benefits and construction costs estimated by the
 29 county surveyor have been filed for more than five (5) years, and the
 30 board is unable to award a contract within the limitations of
 31 subsections (b) and (c), the board shall refer the surveyor's report back
 32 to the surveyor for a supplemental report.

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

36 SECTION 9. IC 36-9-27-80.5 IS AMENDED TO READ AS
 37 FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 80.5. (a) If a change in
 38 the original specifications of a contract for the construction or
 39 reconstruction of a drain becomes necessary during the construction or
 40 reconstruction, the county surveyor may issue a change order to add,
 41 delete, or change an item in the contract. A change order issued under
 42 this subsection becomes an addendum to the contract.



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

