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 also better serving the interests of public health or significantly reducing undesirable environmental effects, or while also 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: (1) to perform the function for which it was designed and constructed; (2) to properly drain affected land; and (3) to 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, 2019.

Hamilton

January 22, 2019, read first time and referred to Committee on Local Government.
HOUSE BILL No. 1592

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:

SECTION 1. IC 36-9-27-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 2. As used in The definitions set forth in this section apply throughout this chapter:

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

(b) "Board" refers to the drainage board of a county.

(c) "Crossing" means a drainage structure that passes over, under, or through a location used for the passage of people, livestock, or vehicles.

(d) "Dam" means a dam or other structure and its appurtenances that impounds a small lake at the lake's outlet.

(e) To provide "flood reduction benefits" means to change a drainage system so as to reduce the amount and severity of floods affecting the drainage system.

(f) "Maintenance" means work on a drain as described in section 34(e) 34(d) of this chapter for any of the purposes stated in that section.
(g) "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.

(h) "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.

(i) "Owner" refers to the owner of any interest in land.

(j) "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.

(k) "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.

(l) "Regulated drain" means an open drain, a tiled drain, or a
combination of the two.

(m) "Rural drain" means a regulated drain that provides adequate
drainage or impounds water for rural land.

(n) "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.

(o) "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 (1) 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.

(p) "Tiled drain" means a tiled channel that:
(1) carries surplus water; and
(2) was established under or made subject to any drainage statute.

(q) "Undesirable environmental effects" include the following:
(1) Transport of nutrients, agricultural chemicals, pesticides, or herbicides.
(2) Soil erosion.
(3) Failure to store water when storage might be useful.
(4) The facilitation of flood conditions downstream when not necessary to achieve drainage objectives.

(r) "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.

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

SECTION 2. IC 36-9-27-34 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 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) The county surveyor may 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:
(A) also:
   (i) better serving the interests of public health; or
   (ii) significantly reducing undesirable environmental effects; or
(B) also providing flood reduction benefits.

do) 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.

e) The county surveyor may classify a regulated drain as a drain in need of periodic maintenance if the drain can be made to perform the function for which it was designed and constructed, to properly drain affected land, and to better serve the interest of public health, produce fewer undesirable environmental effects, or provide flood reduction benefits, through periodically:
   (1) cleaning;
   (2) spraying;
   (3) removing obstructions from; and
   (4) making minor repairs, additions, or alterations to;
the regulated drain.

f) A regulated drain should be vacated when:
(1) the drain does not perform the function 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.

SECTION 3. IC 36-9-27-37 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 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.

SECTION 4. IC 36-9-27-45 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 45. (a) A maintenance fund established under section 44 of this chapter is subject to the use of the board:

(1) for the necessary or proper repair, maintenance, study, or evaluation of the particular drain or combination of drains; which may be done or
(2) to:

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

(b) The fund may be used as provided in subsection (a) 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.

SECTION 5. IC 36-9-27-49, AS AMENDED BY P.L.127-2017,
SECTION 340, IS AMENDED TO READ AS FOLLOWS
[EFFECTIVE JULY 1, 2019]: Sec. 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. In determining what method
of reconstructing the drain is best, the county surveyor may
consider cost effective drainage designs that:
(1) limit undesirable environmental effects;
(2) improve public health; or
(3) provide flood reduction benefits.
(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.

SECTION 6. IC 36-9-27-61, AS AMENDED BY P.L.127-2017,
SECTION 349, IS AMENDED TO READ AS FOLLOWS
When the board refers a petition to establish a new regulated drain 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, bench marks, 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 (100) feet 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).

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

1. limit undesirable environmental effects;
2. improve public health; or
3. provide flood reduction benefits.

SECTION 7. IC 36-9-27-65, AS AMENDED BY P.L.127-2017, SECTION 353, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 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 (1) 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) drain 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), and (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.

SECTION 8. IC 36-9-27-77 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 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(c) 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.

SECTION 9. IC 36-9-27-80.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 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(c) of this chapter.