**IC 36-9-27**

**Chapter 27. Drainage Law**

**IC 36-9-27-1**

**Application of chapter**

Sec. 1. This chapter applies to all counties. However, sections 6,

7, 9, 10, 30, 31, and 32 of this chapter do not apply to a county

having a consolidated city.

*As added by Acts 1981, P.L.309, SEC.101.*

**IC 36-9-27-2**

**Definitions**

Sec. 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 a regulated 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 (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.

"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.

*As added by Acts 1981, P.L.309, SEC.101. Amended by*

*P.L.166-1983, SEC.2; P.L.205-1984, SEC.1.*

**IC 36-9-27-2.5**

**"Dam" defined; certain sections not applicable; designation as**

**regulated drain; jurisdiction**

Sec. 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.

*As added by P.L.166-1983, SEC.3.*

**IC 36-9-27-3**

**Authority to exercise rights and powers of political subdivisions**

**and state**

Sec. 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.

*As added by Acts 1981, P.L.309, SEC.101.*

**IC 36-9-27-4**

**Establishment**

Sec. 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).

*As added by Acts 1981, P.L.309, SEC.101.*

**IC 36-9-27-5**

**Composition**

Sec. 5. (a) Except in a county having a consolidated city or as

provided in subsection (d), the drainage board consists of either:

(1) the county executive; or

(2) three (3) or five (5) persons, at least one (1) 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.

(d) The following apply in a county that is subject to IC 36-2-2.5:

(1) The drainage board consists of:

(A) the single county executive; and

(B) two (2) or four (4) persons (as determined by the single

county executive) who are appointed by the single county

executive.

(2) Appointees under subdivision (1)(B) must be resident

freeholders of the county who are knowledgeable in drainage

matters.

(3) The freeholders appointed to the drainage board serve for

terms of three (3) years, with the freeholders' initial

appointments made so as to provide for staggering of terms on

an annual basis.

(4) The county surveyor serves on the drainage board as an ex

officio, nonvoting member.

(5) The terms of members serving on the drainage board at the

time the first single county executive is elected under

IC 36-2-2.5 expire on January 1, 2019, and the single county

executive shall make the appointments to the board as provided

in this subsection.

*As added by Acts 1981, P.L.309, SEC.101. Amended by P.L.77-2014,*

*SEC.23.*

**IC 36-9-27-6**

**Special members; appointment; powers and duties; compensation**

Sec. 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.

*As added by Acts 1981, P.L.309, SEC.101. Amended by P.L.45-1990,*

*SEC.9.*

**IC 36-9-27-7**

**Officers; meetings; quorum; approval of actions**

Sec. 7. (a) The board shall organize at a meeting each January, by

electing one (1) of its members as chairman and one (1) of its

members as vice chairman. 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 chairman,

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 his 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.

*As added by Acts 1981, P.L.309, SEC.101.*

**IC 36-9-27-8**

**Power to sue**

Sec. 8. The board may bring civil actions in its own name to

enforce any of the provisions of this chapter.

*As added by Acts 1981, P.L.309, SEC.101.*

**IC 36-9-27-9**

**Employment of attorney**

Sec. 9. The board may employ and fix the compensation of an

attorney to represent and advise the board.

*As added by Acts 1981, P.L.309, SEC.101. Amended by*

*P.L.137-1989, SEC.17.*

**IC 36-9-27-10**

**Compensation of members and employees**

Sec. 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 his 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.

*As added by Acts 1981, P.L.309, SEC.101. Amended by P.L.45-1990,*

*SEC.10.*

**IC 36-9-27-11**

**Payment of expenses**

Sec. 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 a recorded motion of the board; and

(3) allowed as provided by statute.

*As added by Acts 1981, P.L.309, SEC.101.*

**IC 36-9-27-12**

**Conflicts of interest**

Sec. 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 his ownership

of real property affected by the drain, that member shall immediately

disqualify himself 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.

*As added by Acts 1981, P.L.309, SEC.101. Amended by*

*P.L.350-1985, SEC.1.*

**IC 36-9-27-13**

**Certain counties; county drainage advisory committees established;**

**powers and duties**

Sec. 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 his 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 powers, 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 chairman and may meet at his call or at the call of any

three (3) of its members.

*As added by Acts 1981, P.L.309, SEC.101. Amended by P.L.12-1992,*

*SEC.186.*

**IC 36-9-27-14**

**Proceedings affecting more than one county; joint boards**

Sec. 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, he shall immediately forward notification of that fact

to the chairman 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 chairman of

the board of each county shall appoint two (2) of the members

of his 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

chairman of the board of each county shall appoint one (1) of

the members of his 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 he 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 his 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 his 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 his county;

he 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 his 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 chairman of the board of each lesser

affected county. If the surveyor does not receive a negative response

to his request from the board of a lesser affected county within thirty

(30) days, the surveyor may request his board to resolve itself as the

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.

*As added by Acts 1981, P.L.309, SEC.101. Amended by*

*P.L.225-1986, SEC.9; P.L.276-2001, SEC.11.*

**IC 36-9-27-15**

**Jurisdiction over regulated drains**

Sec. 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.

*As added by Acts 1981, P.L.309, SEC.101.*

**IC 36-9-27-16**

**Private and mutual drains exempt from chapter**

Sec. 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.

*As added by Acts 1981, P.L.309, SEC.101. Amended by*

*P.L.166-1983, SEC.4.*

**IC 36-9-27-17**

**Private and mutual drains; connection with regulated drains;**

**procedure**

Sec. 17. (a) Whenever:

(1) an owner wants to construct or extend a private or mutual

drain, and outlet that drain 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 his drain with the

regulated drain.

(b) The owner shall file with his 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 he alleges this in his 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, he 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, he 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.

*As added by Acts 1981, P.L.309, SEC.101.*

**IC 36-9-27-18**

**Private and mutual drains; conversion to regulated drain;**

**procedure upon request by all owners**

Sec. 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 surveyor determines that the private or mutual drain

meets the standards of design and construction, he 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 surveyor determines that the private or mutual drain does

not meet the standards of design and construction, he shall make a

written report of that fact to the board, which shall deny the request.

*As added by Acts 1981, P.L.309, SEC.101. Amended by*

*P.L.276-2001, SEC.12.*

**IC 36-9-27-19**

**Mutual drains; conversion to regulated drain; procedure upon**

**request by single owner**

Sec. 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.

*As added by Acts 1981, P.L.309, SEC.101.*

**IC 36-9-27-20**

**Drains located in municipalities or sanitary districts;**

**relinquishment of jurisdiction by board**

Sec. 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.

*As added by Acts 1981, P.L.309, SEC.101.*

**IC 36-9-27-20.5**

**Drain maintenance fund; transfer of jurisdiction over drain to**

**municipality or sanitary district**

Sec. 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 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 of this chapter.

(2) Except as provided in subsection (e), 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 (e), the proportion

determined under subdivision (1) of any 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 (e), 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 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 the

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.

*As added by P.L.111-2003, SEC.1.*

**IC 36-9-27-20.6**

**Right of entry and right-of-way powers**

Sec. 20.6. If jurisdiction over a drain is transferred by the board to

a municipality or sanitary district under section 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 of this chapter.

*As added by P.L.111-2003, SEC.2.*

**IC 36-9-27-21**

**Certain municipal drains exempt from chapter; assessment of**

**lands benefited by regulated drains**

Sec. 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 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.

*As added by Acts 1981, P.L.309, SEC.101. Amended by*

*P.L.200-1988, SEC.1; P.L.3-1990, SEC.137.*

**IC 36-9-27-22**

**Construction, reconstruction, or maintenance of municipal drains**

**flowing into regulated drains; procedure**

Sec. 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.

*As added by Acts 1981, P.L.309, SEC.101. Amended by P.L.42-2011,*

*SEC.86.*

**IC 36-9-27-23**

**Requests to connect private drains with regulated drains; water**

**pollution control; procedure**

Sec. 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 his 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 department of

environmental management approval do not apply to the discharge of

sewage from a single or two (2) family residence.

*As added by Acts 1981, P.L.309, SEC.101. Amended by*

*P.L.143-1985, SEC.202.*

**IC 36-9-27-24**

**Drains located in conservancy districts; jurisdiction**

Sec. 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.

*As added by Acts 1981, P.L.309, SEC.101.*

**IC 36-9-27-25**

**Drains included in flood control projects; exemption from chapter**

Sec. 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.

*As added by Acts 1981, P.L.309, SEC.101.*

**IC 36-9-27-26**

**Drains under jurisdiction of certain drainage maintenance and**

**repair districts and associations; exemption from chapter**

Sec. 26. A drain that is under the jurisdiction of:

(1) a drainage maintenance and repair district established under

IC 13-2-21 (before its repeal) or under IC 14-27-8; or

(2) 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.

*As added by Acts 1981, P.L.309, SEC.101. Amended by P.L.1-1995,*

*SEC.88.*

**IC 36-9-27-26.5**

**Change of drain and drainage maintenance jurisdiction; transfer**

**of funds and administration**

Sec. 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 section 44 of this chapter 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.

*As added by P.L.154-1993, SEC.5. Amended by P.L.1-1995, SEC.89;*

*P.L.97-2004, SEC.132.*

**IC 36-9-27-27**

**Dissolution of certain drainage maintenance and repair districts;**

**procedure**

Sec. 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.

*As added by Acts 1981, P.L.309, SEC.101. Amended by P.L.1-1995,*

*SEC.90.*

**IC 36-9-27-28**

**Drains maintained by certain associations; assumption of**

**jurisdiction by board; procedure**

Sec. 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.

*As added by Acts 1981, P.L.309, SEC.101. Amended by Acts 1981,*

*P.L.45, SEC.74.*

**IC 36-9-27-29**

**County surveyors; powers and duties**

Sec. 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 he 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, the

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 his jurisdiction.

In preparing plans under subdivision (1), the 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).

*As added by Acts 1981, P.L.309, SEC.101. Amended by*

*P.L.166-1983, SEC.5.*

**IC 36-9-27-30**

**Qualified deputies; appointment; duties; compensation**

Sec. 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 a professional engineer or

professional 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 county 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 county surveyor's office, which the county

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 professional

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 professional 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.

*As added by Acts 1981, P.L.309, SEC.101. Amended by*

*P.L.206-1984, SEC.1; P.L.76-1989, SEC.5; P.L.2-1997, SEC.84;*

*P.L.2-1998, SEC.88; P.L.241-1999, SEC.4; P.L.57-2013, SEC.101.*

**IC 36-9-27-31**

**Counties without elected surveyors; employment of engineers or**

**surveyors by board**

Sec. 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.

*As added by Acts 1981, P.L.309, SEC.101. Amended by P.L.2-1997,*

*SEC.85.*

**IC 36-9-27-32**

**Contract deputies; appointment; powers and duties; compensation**

Sec. 32. (a) Whenever the board finds that it is necessary to

advance the work of construction or of 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 professional

surveyor as a contract deputy to perform the necessary work,

including:

(1) the preparation of the county 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 professional 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 the

contract deputy 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 county surveyor in the manner in

which similar documents prepared by the county 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.

*As added by Acts 1981, P.L.309, SEC.101. Amended by*

*P.L.206-1984, SEC.2; P.L.57-2013, SEC.102.*

**IC 36-9-27-33**

**Right of entry over private land; extension of spoil banks beyond**

**right-of-way**

Sec. 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

(75) feet of any regulated drain. The seventy-five (75) foot 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 (75) foot 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 a 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 (75) foot

right-of-way requirement of subsections (a) and (b) to any distance

of not less than:

(1) twenty-five (25) feet from the top of each bank of an open

ditch; and

(2) fifteen (15) feet 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 (7) feet 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.

*As added by Acts 1981, P.L.309, SEC.101. Amended by*

*P.L.206-1984, SEC.3; P.L.76-1989, SEC.6; P.L.145-2013, SEC.1.*

**IC 36-9-27-34**

**Classification of drains by county surveyor**

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) 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 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.

*As added by Acts 1981, P.L.309, SEC.101. Amended by*

*P.L.166-1983, SEC.6.*

**IC 36-9-27-35**

**Submission of classifications and order of work priority of drains**

**to board; notice and hearing on classification and reclassification**

**requests**

Sec. 35. (a) The county surveyor shall submit to the board a

written report setting forth his classification of regulated drains in

order of priority for action by the board. This report may be made

from time to time during the 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.

*As added by Acts 1981, P.L.309, SEC.101. Amended by Acts 1981,*

*P.L.45, SEC.75.*

**IC 36-9-27-36**

**Long range plan for reconstruction, maintenance, and vacation of**

**drains; requests for advancement**

Sec. 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 work

load 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 a

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.

*As added by Acts 1981, P.L.309, SEC.101.*

**IC 36-9-27-37**

**Vacation of drains; procedure; appeals**

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.

*As added by Acts 1981, P.L.309, SEC.101. Amended by*

*P.L.206-1984, SEC.4.*

**IC 36-9-27-38**

**Periodic maintenance of drains; surveyor's report**

Sec. 38. When the board refers a regulated drain classified in need

of periodic maintenance to the county surveyor, he 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.

*As added by Acts 1981, P.L.309, SEC.101.*

**IC 36-9-27-39**

**Periodic maintenance of drains; schedule of assessments**

Sec. 39. When the board receives a maintenance report under

section 38 of this chapter, it shall prepare a schedule of assessments

that includes 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.

*As added by Acts 1981, P.L.309, SEC.101.*

**IC 36-9-27-40**

**Periodic maintenance of drains; notice and hearing on surveyor's**

**report and schedule of assessments; objections; publication of**

**notice of final order**

Sec. 40. (a) The board shall fix a date, time, and place for a

hearing on the maintenance report of the 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 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 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 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 he is the owner of land assessed as

benefited and the benefits assessed against his land are excessive.

Each objector may file written evidence in support of his objection.

The failure of an owner to file an objection constitutes a waiver of his

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.

*As added by Acts 1981, P.L.309, SEC.101. Amended by Acts 1981,*

*P.L.45, SEC.76; P.L.370-1983, SEC.1; P.L.239-1996, SEC.1.*

**IC 36-9-27-41**

**Periodic maintenance of drains; combination of drains for**

**assessment purposes; procedure**

Sec. 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.

*As added by Acts 1981, P.L.309, SEC.101. Amended by Acts 1981,*

*P.L.45, SEC.77.*

**IC 36-9-27-42**

**Increases and decreases in assessments for periodic maintenance of**

**drains; procedure**

Sec. 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 benefit 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 benefit 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

his 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).

*As added by Acts 1981, P.L.309, SEC.101. Amended by Acts 1981,*

*P.L.317, SEC.25; P.L.370-1983, SEC.2.*

**IC 36-9-27-43**

**Omission of annual assessment**

Sec. 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.

*As added by Acts 1981, P.L.309, SEC.101. Amended by*

*P.L.276-2001, SEC.13.*

**IC 36-9-27-44**

**Establishment of maintenance funds for drains**

Sec. 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 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) 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.

*As added by Acts 1981, P.L.309, SEC.101. Amended by*

*P.L.351-1985, SEC.1; P.L.19-1987, SEC.55.*

**IC 36-9-27-45**

**Maintenance funds for drains; use of funds**

Sec. 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.

*As added by Acts 1981, P.L.309, SEC.101. Amended by*

*P.L.276-2001, SEC.14.*

**IC 36-9-27-45.5**

**Excess drainage maintenance fund balance; transfer of funds**

Sec. 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.

*As added by P.L.154-1993, SEC.6.*

**IC 36-9-27-46**

**Obstruction of drains; repair procedure**

Sec. 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.

*As added by Acts 1981, P.L.309, SEC.101.*

**IC 36-9-27-47**

**Persons entering land under contract, easement, or statute; damage**

**to drains; repair procedure**

Sec. 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 him 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.

*As added by Acts 1981, P.L.309, SEC.101.*

**IC 36-9-27-48**

**Construction or reconstruction of drains; relocation of public**

**utility equipment; procedure**

Sec. 48. (a) Whenever, in the construction or reconstruction of a

regulated drain, the county surveyor determines that:

(1) the 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;

he shall include in his 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

surveyor and hear objections to the requirements. After the hearing,

the 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.

*As added by Acts 1981, P.L.309, SEC.101.*

**IC 36-9-27-49**

**Reconstruction of drains; surveyor's report**

Sec. 49. (a) When the board refers a regulated drain to the county

surveyor for a reconstruction report, the surveyor shall determine and

set forth in his 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 he 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 he

shall also estimate the annual cost of periodically maintaining the

proposed reconstruction.

(d) The county surveyor shall include in his 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.

*As added by Acts 1981, P.L.309, SEC.101.*

**IC 36-9-27-50**

**Reconstruction of drains; preparation of schedule of assessments**

**and damages**

Sec. 50. When the county surveyor files a reconstruction report,

he 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

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

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 surveyor shall add the damages to all lands as determined by the

board to the estimated costs and expenses contained in his 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.

*As added by Acts 1981, P.L.309, SEC.101.*

**IC 36-9-27-51**

**Reconstruction of drains necessitated by changes in land use;**

**assessments**

Sec. 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 (1) 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.

*As added by Acts 1981, P.L.309, SEC.101.*

**IC 36-9-27-52**

**Reconstruction of drains; notice and hearing on surveyor's report**

**and schedules; objections; final order**

Sec. 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 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 (5) 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 his land are excessive.

(3) The objector is the owner of land damaged by the

reconstruction, and:

(A) the board failed to find that his land is damaged; or

(B) the damages assessed to his land are inadequate.

Each objector may file written evidence in support of his objections.

The failure of an owner to file objections constitutes a waiver of his

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 his 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 land 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.

*As added by Acts 1981, P.L.309, SEC.101. Amended by Acts 1981,*

*P.L.45, SEC.78; P.L.180-1995, SEC.6.*

**IC 36-9-27-52.5**

**Authorization for reconstruction of regulated drain**

Sec. 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.

*As added by P.L.273-1995, SEC.3.*

**IC 36-9-27-53**

**Reconstruction proceedings; combination of drains; procedure**

Sec. 53. (a) Whenever:

(1) the board has initiated, or is considering initiating, a

proceeding to reconstruct a regulated drain under this chapter;

(2) one (1) 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.

*As added by Acts 1981, P.L.309, SEC.101.*

**IC 36-9-27-53.5**

**Review of proposed reconstruction or maintenance project;**

**potential onsite field review**

Sec. 53.5. (a) A county surveyor or board planning to perform a

project for the reconstruction or maintenance of a regulated drain

under this chapter 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 the request 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 onsite field review.

(c) If an onsite 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.

*As added by P.L.180-1995, SEC.7. Amended by P.L.2-1996,*

*SEC.295; P.L.6-2014, SEC.4.*

**IC 36-9-27-54**

**Construction of drains; petitions**

Sec. 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 that 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 surveyor shall examine the petition and if it is in

proper form he 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 surveyor.

*As added by Acts 1981, P.L.309, SEC.101.*

**IC 36-9-27-55**

**Construction of drains; inspection and preliminary report by**

**county surveyor**

Sec. 55. When the county surveyor has accepted a petition and

marked it filed under section 54 of this chapter, he 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

surveyor may consider changing the route of the proposed drain from

that set forth in the petition to conform with sound engineering

principles.

*As added by Acts 1981, P.L.309, SEC.101.*

**IC 36-9-27-56**

**Construction of drains; negative findings by surveyor; procedure**

Sec. 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 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 petitioner, and may then adopt the 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 his

attorney.

*As added by Acts 1981, P.L.309, SEC.101.*

**IC 36-9-27-57**

**Construction of drains; affirmative findings by surveyor;**

**procedure**

Sec. 57. (a) If the county surveyor, in his 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 surveyor shall determine

if any land other than that described in the petition will be affected by

the proposed drain. If the surveyor finds that additional land will be

affected, he 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, he 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 his attorney, shall file with the

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 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 (30) day

period, or within any additional time granted to the petitioner by the

surveyor or the board, the 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 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

surveyor determines otherwise and a proper amendment to the

petition is filed under subsection (d), the 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.

*As added by Acts 1981, P.L.309, SEC.101.*

**IC 36-9-27-58**

**Construction of drains; notice of hearing on petition**

Sec. 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, he 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 (7) day

period, mail a copy of the notice in a five (5) 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 day 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.

*As added by Acts 1981, P.L.309, SEC.101. Amended by Acts 1981,*

*P.L.45, SEC.79.*

**IC 36-9-27-59**

**Construction of drains; remonstrances and objections to petition**

Sec. 59. (a) At least five (5) days before the board's hearing on a

petition to establish a new regulated drain, one (1) 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.

*As added by Acts 1981, P.L.309, SEC.101.*

**IC 36-9-27-60**

**Construction of drains; hearing on petition; consideration of**

**remonstrances and objections**

Sec. 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 59(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

from any further action in the proceedings to establish the drain.

*As added by Acts 1981, P.L.309, SEC.101. Amended by Acts 1981,*

*P.L.317, SEC.26.*

**IC 36-9-27-61**

**Construction of drains; final report by county surveyor**

Sec. 61. When the board refers a petition to the county surveyor

for a final report under section 60(b) of this chapter, the 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 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 surveyor may vary the line of the

work from the line described in the petition, and he 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).

*As added by Acts 1981, P.L.309, SEC.101.*

**IC 36-9-27-62**

**Construction of drains; preparation of schedule of assessments;**

**determination of damages**

Sec. 62. (a) When the county surveyor has completed the maps,

profiles, and plans required by section 61 of this chapter, he 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 surveyor shall add the damages to all lands as determined

by the board to the estimated costs and expenses contained in

his 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.

*As added by Acts 1981, P.L.309, SEC.101.*

**IC 36-9-27-63**

**Construction of drains; notice and hearing on surveyor's report**

**and schedules of assessments and damages**

Sec. 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 him of the notice of

hearing, the attorney for the petitioner shall mail a notice in a five (5)

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 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 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

surveyor; and

(B) a hearing will be held before the board on the report and

schedules, specifying the time and place of the hearing.

(d) 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.

*As added by Acts 1981, P.L.309, SEC.101. Amended by Acts 1981,*

*P.L.45, SEC.80.*

**IC 36-9-27-64**

**Construction of drains depriving property owners of ingress and**

**egress; damage awards**

Sec. 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), he

may, in lieu of accepting damages awarded by the board, file with the

board his 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 his plans and specifications

for the drain, but the future maintenance of the crossing will then be

the responsibility of the owner.

*As added by Acts 1981, P.L.309, SEC.101.*

**IC 36-9-27-65**

**Construction of drains; written objections to surveyor's report and**

**schedules; findings and final order by board**

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 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 his land is damaged; or

(B) the damages assessed to his land are inadequate.

(5) The objector is the owner of lands assessed as benefited, and

the benefits assessed against his lands are excessive.

Each objector may file written evidence in support of his objections.

The failure of an owner to file objections constitutes a waiver of his

right to subsequently object, on the gounds 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 his 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 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(8) of this chapter.

*As added by Acts 1981, P.L.309, SEC.101. Amended by Acts 1981,*

*P.L.45, SEC.81.*

**IC 36-9-27-66**

**Construction of connecting drain through lands owned by others;**

**procedure**

Sec. 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, he 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, he shall, in the manner presecribed 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.

*As added by Acts 1981, P.L.309, SEC.101.*

**IC 36-9-27-67**

**Urban drains; designation**

Sec. 67. (a) In his written report setting forth his 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 (1) 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.

*As added by Acts 1981, P.L.309, SEC.101. Amended by*

*P.L.166-1983, SEC.7.*

**IC 36-9-27-68**

**Urban drains; duties of county surveyor**

Sec. 68. The county surveyor shall perform the following duties

with respect to all urban drains within his 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 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 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

surveyor shall consider recommendations of state and local

planning agencies, plan commissions, zoning boards, and

similar bodies.

(6) Include in his report to the board on the construction or

reconstruction of an urban drain his recommended designation

of each parcel of affected land in the watershed of the urban

drain as either urban land or rural land.

*As added by Acts 1981, P.L.309, SEC.101. Amended by*

*P.L.166-1983, SEC.8.*

**IC 36-9-27-69**

**Urban drains; preparation of schedule of assessments and**

**determination of damages; notice and hearing**

Sec. 69. (a) After the county surveyor has filed his report on the

construction or reconstruction of an urban drain, he 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 section 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(c) 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.

*As added by Acts 1981, P.L.309, SEC.101.*

**IC 36-9-27-69.5**

**Drainage plans and specifications**

Sec. 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).

*As added by P.L.97-2001, SEC.1. Amended by P.L.125-2011, SEC.2.*

**IC 36-9-27-70**

**Drains within 300 feet of levees; approval of plans by department**

**of natural resources**

Sec. 70. (a) This section applies whenever the plans and

specifications for the construction or reconstruction of any regulated

drain disclose that the center line of the drain at any point will come

within three hundred (300) feet 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.

*As added by Acts 1981, P.L.309, SEC.101.*

**IC 36-9-27-71**

**Drains crossing public highways and railroad rights-of-way**

Sec. 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 the 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.

*As added by Acts 1981, P.L.309, SEC.101. Amended by*

*P.L.206-1984, SEC.5; P.L.76-1989, SEC.7; P.L.154-1993, SEC.7;*

*P.L.2-1997, SEC.86; P.L.2-1998, SEC.89; P.L.241-1999, SEC.5;*

*P.L.276-2001, SEC.15.*

**IC 36-9-27-72**

**Private crossings, control dams, or other permanent structures;**

**removal, replacement, and maintenance**

Sec. 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, he shall in his plans call for the

removal of the crossing.

(b) The replacement of a private crossing, when necessary, may be

accomplished as a 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 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 a 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.

*As added by Acts 1981, P.L.309, SEC.101. Amended by*

*P.L.276-2001, SEC.16.*

**IC 36-9-27-73**

**General drain improvement fund; establishment; composition;**

**appropriations; disposition of surplus money**

Sec. 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

(8) money received from loans under section 97.5 of this

chapter.

(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.

*As added by Acts 1981, P.L.309, SEC.101. Amended by*

*P.L.371-1983, SEC.1; P.L.206-1984, SEC.6; P.L.239-1996, SEC.2;*

*P.L.240-1996, SEC.1; P.L.2-1997, SEC.87.*

**IC 36-9-27-74**

**Certain counties; tax levy; appropriations**

Sec. 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.

*As added by Acts 1981, P.L.309, SEC.101. Amended by P.L.12-1992,*

*SEC.187.*

**IC 36-9-27-75**

**Acceptance of grants or gifts**

Sec. 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.

*As added by Acts 1981, P.L.309, SEC.101.*

**IC 36-9-27-76**

**Cooperation with state or federal agencies**

Sec. 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.

*As added by Acts 1981, P.L.309, SEC.101.*

**IC 36-9-27-77**

**Contracts; restrictions**

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(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.

*As added by Acts 1981, P.L.309, SEC.101. Amended by*

*P.L.206-1984, SEC.7.*

**IC 36-9-27-78**

**Contracts; bidding; required provisions; surety bonds**

Sec. 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 that at 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 his bid, at his 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 his bid if accepted by the board and must provide for the

forfeiture of five percent (5%) of the amount of the bid upon his

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 he 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, he 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 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.

*As added by Acts 1981, P.L.309, SEC.101. Amended by Acts 1981,*

*P.L.45, SEC.82; Acts 1981, P.L.317, SEC.27; P.L.350-1983, SEC.3.*

**IC 36-9-27-79**

**Repealed**

*(Repealed by Acts 1981, P.L.57, SEC.45.)*

**IC 36-9-27-79.1**

**Contracts estimated to be not more than $75,000; procedure**

Sec. 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 seventy-five

thousand dollars ($75,000):

(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 written invitations for bids to at least three (3) persons

believed to be interested in bidding on the work. The invitations

shall be mailed 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.

*As added by Acts 1981, P.L.57, SEC.42. Amended by P.L.355-1987,*

*SEC.1; P.L.49-1997, SEC.84; P.L.241-1999, SEC.6.*

**IC 36-9-27-80**

**Subcontracts**

Sec. 80. A person who enters into a contract with the board under

section 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.

*As added by Acts 1981, P.L.309, SEC.101.*

**IC 36-9-27-80.5**

**Construction contract changes in specification; change orders**

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(8) of this chapter.

(2) The reconstruction costs estimated by the county surveyor

under section 49(c) of this chapter.

*As added by P.L.154-1993, SEC.8.*

**IC 36-9-27-81**

**Partial or progress payments to contractors**

Sec. 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

surveyor shall report such an approval to the board at its next

meeting. The surveyor may not give an approval under this section

unless he has first inspected the work done.

*As added by Acts 1981, P.L.309, SEC.101.*

**IC 36-9-27-82**

**Final payment upon completion of contract; approval of work by**

**county surveyor**

Sec. 82. (a) Whenever a contract under this chapter calls for a

payment to be made to the contractor on 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.

*As added by Acts 1981, P.L.309, SEC.101.*

**IC 36-9-27-83**

**Subcontractors, laborers, or other persons; claims**

Sec. 83. (a) A subcontractor, laborer, or other person may file a

claim with the board if:

(1) at the request of a contractor, he has performed any work or

other service or has furnished any material used under the

contract; and

(2) he 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

acknowledgement 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 acknowledgement 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.

*As added by Acts 1981, P.L.309, SEC.101.*

**IC 36-9-27-84**

**Contracts; apportionment of costs to lands benefited**

Sec. 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.

*As added by Acts 1981, P.L.309, SEC.101. Amended by Acts 1981,*

*P.L.317, SEC.29; P.L.206-1984, SEC.8.*

**IC 36-9-27-85**

**Certification of assessments to county auditor; disposition of**

**unexpended funds**

Sec. 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 a bond issue under section 94 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.

*As added by Acts 1981, P.L.309, SEC.101. Amended by Acts 1981,*

*P.L.317, SEC.30.*

**IC 36-9-27-86**

**Collection of assessments; public entities not exempt from**

**assessments; county treasurer notice to state**

Sec. 86. (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) 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.

*As added by Acts 1981, P.L.309, SEC.101. Amended by Acts 1981,*

*P.L.317, SEC.31; P.L.352-1985, SEC.1; P.L.230-1991, SEC.1;*

*P.L.37-1992, SEC.9; P.L.52-2006, SEC.2 and P.L.175-2006, SEC.26.*

**IC 36-9-27-87**

**Persons or associations owning multiple properties; single**

**assessment bill**

Sec. 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.

*As added by Acts 1981, P.L.309, SEC.101.*

**IC 36-9-27-88**

**Assessments; due date; installment payments**

Sec. 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) per year, plus interest on 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.

*As added by Acts 1981, P.L.309, SEC.101.*

**IC 36-9-27-89**

**Ditch assessment liens; attachment; termination**

Sec. 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.

*As added by Acts 1981, P.L.309, SEC.101.*

**IC 36-9-27-90**

**Delinquent assessments on lands owned by municipal corporations**

Sec. 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 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.

*As added by Acts 1981, P.L.309, SEC.101.*

**IC 36-9-27-91**

**Assessments; deficiencies resulting from increases in damages or**

**decreases in assessments**

Sec. 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.

*As added by Acts 1981, P.L.309, SEC.101.*

**IC 36-9-27-92**

**Transfers of property; requests for reassessment; notice and**

**hearing; findings and final order**

Sec. 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, he 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 (c), 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 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.

*As added by Acts 1981, P.L.309, SEC.101.*

**IC 36-9-27-93**

**Periodic maintenance assessments; property transfers;**

**reassessments; procedure**

Sec. 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 (1) 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 reassessed, must state:

(1) the date, hour, and place of 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, the 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

the 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 of 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.

*As added by Acts 1981, P.L.309, SEC.101. Amended by Acts 1981,*

*P.L.45, SEC.83.*

**IC 36-9-27-94**

**Bonds; authorization; procedure; terms**

Sec. 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 (5) 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 prepayment, 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 stated for presentment in the call whether actually

presented or not, at the rate provided for with respect to the refunding

issue.

*As added by Acts 1981, P.L.309, SEC.101.*

**IC 36-9-27-94.1**

**Repealed**

*(Repealed by Acts 1981, P.L.317, SEC.39.)*

**IC 36-9-27-95**

**Fees for the sale of bonds**

Sec. 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.

*As added by Acts 1981, P.L.309, SEC.101.*

**IC 36-9-27-96**

**Bonds; limited obligation; collection of delinquencies**

Sec. 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 officers shall cooperate with any bond holder or

committee of bond holders and shall pursue any remedies available

for the collection of the delinquent assessments.

*As added by Acts 1981, P.L.309, SEC.101.*

**IC 36-9-27-97**

**Bond redemption fund; establishment; composition**

Sec. 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 benefited 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.

*As added by Acts 1981, P.L.309, SEC.101.*

**IC 36-9-27-97.5**

**Construction loans; terms; deposit of proceeds; interest on loan**

Sec. 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.

(c) The proceeds of loans obtained under this section shall be

deposited in the general drain improvement fund.

(d) The board shall determine whether interest on the loan is to be

a part of the final assessment under section 84(a) of this chapter.

(e) 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).

*As added by P.L.371-1983, SEC.2. Amended by P.L.76-1989, SEC.8;*

*P.L.79-1998, SEC.110.*

**IC 36-9-27-98**

**Payment of assessments by municipality or county**

Sec. 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.

*As added by Acts 1981, P.L.309, SEC.101. Amended by*

*P.L.206-1984, SEC.9.*

**IC 36-9-27-99**

**Cumulative drainage fund; establishment**

Sec. 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.

*As added by Acts 1981, P.L.309, SEC.101. Amended by Acts 1981,*

*P.L.317, SEC.32; P.L.17-1995, SEC.39.*

**IC 36-9-27-100**

**Cumulative drainage fund; tax levy**

Sec. 100. To provide money for a cumulative drainage fund

established under section 99 of this chapter, the fiscal body may levy

a tax in compliance with IC 6-1.1-41 not to exceed five cents ($0.05)

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.

*As added by Acts 1981, P.L.309, SEC.101. Amended by*

*P.L.206-1984, SEC.10; P.L.17-1995, SEC.40; P.L.6-1997, SEC.225.*

**IC 36-9-27-101**

**Repealed**

*(Repealed by P.L.17-1995, SEC.45.)*

**IC 36-9-27-102**

**Name of fund**

Sec. 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".

*As added by Acts 1981, P.L.309, SEC.101. Amended by P.L.17-1995,*

*SEC.41.*

**IC 36-9-27-103**

**Construction, reconstruction, or maintenance projects for**

**regulated drains; hearings required**

Sec. 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.

*As added by Acts 1981, P.L.309, SEC.101. Amended by Acts 1981,*

*P.L.45, SEC.84; P.L.206-1984, SEC.11; P.L.154-1993, SEC.9.*

**IC 36-9-27-104**

**Interstate drains; authorization; joint meetings of state officials**

Sec. 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 those 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 chairman and one

(1) of their number clerk. The chairman 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.

*As added by Acts 1981, P.L.309, SEC.101.*

**IC 36-9-27-105**

**Interstate drains; cooperation of surveyors and engineers**

Sec. 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 him 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, 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 funds in Indiana shall

be made by voucher approved by the interstate board, countersigned

by the chairman 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).

*As added by Acts 1981, P.L.309, SEC.101.*

**IC 36-9-27-106**

**Judicial review; petition**

Sec. 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 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.

*As added by Acts 1981, P.L.309, SEC.101. Amended by*

*P.L.351-1985, SEC.2; P.L.192-1986, SEC.40; P.L.305-1987,*

*SEC.37; P.L.98-2004, SEC.163.*

**IC 36-9-27-107**

**Judicial review; procedure**

Sec. 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 or 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

or 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 his 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 the 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.

*As added by Acts 1981, P.L.309, SEC.101.*

**IC 36-9-27-108**

**Judicial review; stay of proceedings ordered by board**

Sec. 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.

*As added by Acts 1981, P.L.309, SEC.101. Amended by P.L.3-1989,*

*SEC.232.*

**IC 36-9-27-109**

**Judicial review; evidence; filing requirements**

Sec. 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.

*As added by Acts 1981, P.L.309, SEC.101. Amended by*

*P.L.206-1984, SEC.12; P.L.3-1989, SEC.233.*

**IC 36-9-27-110**

**Notice and service; requirements**

Sec. 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 the owner's 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 department of local government finance 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.

*As added by Acts 1981, P.L.309, SEC.101. Amended by*

*P.L.180-1995, SEC.8; P.L.90-2002, SEC.514.*

**IC 36-9-27-111**

**Time for filing documents; extensions**

Sec. 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.

*As added by Acts 1981, P.L.309, SEC.101.*

**IC 36-9-27-112**

**Determination of benefits and damages by board; factors**

**considered**

Sec. 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 sections 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.

*As added by Acts 1981, P.L.309, SEC.101.*

**IC 36-9-27-113**

**Investment of funds; consolidation; credit of interest earned**

Sec. 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.

*As added by P.L.206-1984, SEC.13.*

**IC 36-9-27-114**

**Drainage board fees in certain counties for certain storm water**

**activities**

Sec. 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.

*As added by P.L.282-2003, SEC.40.*