

SENATE BILL No. 419

DIGEST OF INTRODUCED BILL

Citations Affected: IC 32-22-3; IC 36-9-27.

Synopsis: Septic systems, wells, and regulated drains. Provides that a fee simple interest in: (1) a dwelling connected to a residential onsite sewage system; (2) a nondwelling structure connected to a commercial onsite sewage system; or (3) a tract of land containing a water well in addition to a residential or commercial onsite sewage system; cannot be transferred unless the onsite sewage system is inspected by a qualified inspector and water from the water well is tested by a qualified tester, the test results are provided to the local health department, the county recorder, and the person to whom the fee simple interest is being transferred, and any cause of failure of the onsite sewage system is eliminated. Provides exceptions. Requires the state department of health to adopt rules establishing requirements and standards for inspections and testing, qualifications for inspectors and testers, and requirements and standards for the training and certification of inspectors and testers. Authorizes a county surveyor to classify a regulated drain as a drain in need of reconstruction or a drain in need of periodic maintenance based upon the interests of public health, the reduction of undesirable environmental effects, or flood reduction benefits. Provides that the maintenance fund established for a regulated drain or combination of regulated drains may be used to: (1) better serve the interests of public health; (2) reduce undesirable environmental effects; (3) provide flood reduction benefits; (4) improve drainage control; or (5) provide drainage water storage infrastructure or technology associated with water that flows in or into a particular regulated drain or combination of regulated drains.
(Continued next page)

Effective: July 1, 2021.

Yoder

January 14, 2021, read first time and referred to Committee on Environmental Affairs.



Digest Continued

Authorizes a county surveyor, when determining the best method of reconstructing a regulated drain or the best method of drainage for the area to which a petition to establish a new regulated drain relates, to consider cost effective drainage designs that limit undesirable environmental effects, improve public health, or provide flood reduction benefits.



First Regular Session of the 122nd General Assembly (2021)

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

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

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2020 Regular Session of the General Assembly.

SENATE BILL No. 419

A BILL FOR AN ACT to amend the Indiana Code concerning environmental law.

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

- 1 SECTION 1. IC 32-22-3 IS ADDED TO THE INDIANA CODE AS
- 2 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
- 3 1, 2021]:
- 4 **Chapter 3. Septic System Inspection and Water Well Testing**
- 5 **Sec. 1. As used in this chapter, "closing" means the event in**
- 6 **which a fee simple interest in a dwelling or a nondwelling structure**
- 7 **is transferred from one (1) person to another person.**
- 8 **Sec. 2. As used in this chapter, "commercial onsite sewage**
- 9 **system" has the meaning set forth in 410 IAC 6-10.1-8 as in effect**
- 10 **on January 1, 2021.**
- 11 **Sec. 3. (a) As used in this chapter, "dwelling" means any house**
- 12 **or structure used or intended to be used as a place of seasonal or**
- 13 **permanent human habitation or for sleeping for one (1) or two (2)**
- 14 **families.**
- 15 **(b) The term includes any associated outbuildings that are for**
- 16 **the private use of the owner of the house or structure.**
- 17 **Sec. 4. As used in this chapter, "local health department" has**



1 the meaning set forth in IC 16-18-2-211(a).

2 **Sec. 5. (a) As used in this chapter, "nondwelling structure"**
 3 **means any structure that is not a one (1) or two (2) family dwelling.**

4 **(b) The term includes the following:**

5 **(1) Apartment buildings.**

6 **(2) Campgrounds.**

7 **(3) Churches.**

8 **(4) Commercial establishments.**

9 **(5) Condominiums.**

10 **(6) Medical facilities.**

11 **(7) Mobile home parks.**

12 **(8) Motels.**

13 **(9) Office buildings.**

14 **(10) Restaurants.**

15 **(11) Schools.**

16 **Sec. 6. As used in this chapter, "person" means an individual,**
 17 **partnership, limited liability company, corporation, trust,**
 18 **guardianship, unincorporated association, cooperative, fiduciary,**
 19 **estate, executor or administrator, trustee, receiver, representative**
 20 **appointed by a court, governmental entity, or other legal entity.**

21 **Sec. 7. As used in this chapter, "residential onsite sewage**
 22 **system" has the meaning set forth in 410 IAC 6-8.3-32 as in effect**
 23 **on January 1, 2021.**

24 **Sec. 8. (a) This section applies after June 30, 2022.**

25 **(b) Except as provided in sections 11(a) and 12 of this chapter,**
 26 **if a dwelling is connected to a residential onsite sewage system, the**
 27 **following conditions apply to the transfer of a fee simple interest in**
 28 **the dwelling:**

29 **(1) The residential onsite sewage system must be inspected by**
 30 **a qualified inspector to determine whether the system exhibits**
 31 **one (1) or more of the conditions constituting residential**
 32 **onsite sewage system failure under 410 IAC 6-8.3-33 as in**
 33 **effect on January 1, 2021.**

34 **(2) A document that:**

35 **(A) certifies that an inspection required by subdivision (1)**
 36 **has been conducted;**

37 **(B) sets forth the results of the inspection; and**

38 **(C) is signed by the inspector;**

39 **must be provided to the local health department, the county**
 40 **recorder, and the person to whom the fee simple interest in**
 41 **the dwelling is being transferred.**

42 **(3) If the document indicates under subdivision (2)(B) that the**



1 residential onsite sewage system, upon inspection, exhibited
 2 one (1) or more of the conditions constituting residential
 3 onsite sewage system failure under 410 IAC 6-8.3-33 as in
 4 effect on January 1, 2021, the person to whom the fee simple
 5 interest in the dwelling is being transferred must present to
 6 the local health department and the county recorder an
 7 affidavit in which the person states one (1) of the following:

8 (A) The cause of the residential onsite sewage system
 9 failure has been eliminated.

10 (B) The cause of the residential onsite sewage system
 11 failure will be eliminated before the person occupies the
 12 dwelling.

13 (C) It is not currently possible for the person to eliminate
 14 the cause of the residential onsite sewage system failure,
 15 but the cause will be eliminated when it becomes possible
 16 for the person to eliminate it. An affidavit containing this
 17 statement must also state:

- 18 (i) why it is not then possible for the person to eliminate
 19 the cause of the residential onsite sewage system failure;
 20 (ii) how the person intends to eliminate the cause; and
 21 (iii) when the person anticipates eliminating the cause.

22 (c) Except as provided in subsection (d), the recorder may not
 23 record or accept for recording a deed or other instrument that
 24 would transfer a fee simple interest in the dwelling unless:

25 (1) the recorder is presented the document described in
 26 subsection (b)(2); and

27 (2) if subsection (b)(3) applies, the recorder is also presented
 28 an affidavit satisfying the requirements of subsection (b)(3).

29 (d) The recorder may accept and record a deed or other
 30 instrument transferring a fee simple interest in the dwelling if:

31 (1) either:

32 (A) the person transferring the fee simple interest in the
 33 property; or

34 (B) the person to whom the fee simple interest in the
 35 property is being transferred;

36 makes a good faith effort, after the persons agree to the
 37 transfer of the fee simple interest, to arrange for an inspection
 38 of the residential onsite sewage system by a qualified
 39 inspector as required by subsection (b)(1);

40 (2) despite the good faith effort referred to in subdivision (1),
 41 it is not possible to have the residential onsite sewage system
 42 inspected by a qualified inspector before the closing that will



1 transfer the fee simple interest between the persons;
 2 (3) the person to whom the fee simple interest is being
 3 transferred executes an affidavit:

4 (A) acknowledging that the residential onsite sewage
 5 system has not been inspected by a qualified inspector; and
 6 (B) making a binding commitment:

7 (i) to have the residential onsite sewage system inspected
 8 by a qualified inspector as required by subsection (b)(1)
 9 as soon as reasonably possible after the transfer of the
 10 fee simple interest; and

11 (ii) to then satisfy the conditions set forth in subsection
 12 (b)(2) and, if applicable, subsection (b)(3); and

13 (4) the affidavit executed under subdivision (3) is recorded in
 14 the office of the recorder of the county in which the dwelling
 15 is located along with the deed or other instrument
 16 transferring the fee simple interest.

17 **Sec. 9. (a) This section applies after June 30, 2022.**

18 (b) Except as provided in sections 11(b) and 12 of this chapter,
 19 if a nondwelling structure is connected to a commercial onsite
 20 sewage system, the following conditions apply to the transfer of a
 21 fee simple interest in the nondwelling structure:

22 (1) The commercial onsite sewage system must be inspected
 23 by a qualified inspector to determine whether it exhibits one
 24 (1) or more of the conditions constituting commercial onsite
 25 sewage system failure under 410 IAC 6-10.1-9 as in effect on
 26 January 1, 2021.

27 (2) A document that:

28 (A) certifies that an inspection required by subdivision (1)
 29 has been conducted;

30 (B) sets forth the results of the inspection; and

31 (C) is signed by the inspector;

32 must be provided to the local health department, the county
 33 recorder, and the person to whom the fee simple interest in
 34 the nondwelling structure is being transferred.

35 (3) If the document indicates under subdivision (2)(B) that the
 36 commercial onsite sewage system, upon inspection, exhibited
 37 one (1) or more of the conditions constituting commercial
 38 onsite sewage system failure under 410 IAC 6-10.1-9 as in
 39 effect on January 1, 2021, the person to whom the fee simple
 40 interest in the nondwelling structure is being transferred must
 41 present to the county recorder an affidavit in which the
 42 person states one (1) of the following:



- 1 **(A) The cause of the commercial onsite sewage system**
 2 **failure has been eliminated.**
- 3 **(B) The cause of the commercial onsite sewage system**
 4 **failure will be eliminated before the person uses the**
 5 **nondwelling structure for the purpose for which the person**
 6 **is acquiring the nondwelling structure.**
- 7 **(c) Except as provided in subsection (d), the recorder may not**
 8 **record or accept for recording a deed or other instrument that**
 9 **would transfer a fee simple interest in the nondwelling structure**
 10 **unless:**
- 11 **(1) the recorder is presented the document described in**
 12 **subsection (b)(2); and**
- 13 **(2) if subsection (b)(3) applies, the recorder is also presented**
 14 **an affidavit satisfying the requirements of subsection (b)(3).**
- 15 **(d) The recorder may accept and record a deed or other**
 16 **instrument transferring a fee simple interest in the nondwelling**
 17 **structure if:**
- 18 **(1) either:**
- 19 **(A) the person transferring the fee simple interest in the**
 20 **property; or**
- 21 **(B) the person to whom the fee simple interest in the**
 22 **property is being transferred;**
- 23 **makes a good faith effort, after the persons agree to the**
 24 **transfer of the fee simple interest, to arrange for an inspection**
 25 **of the commercial onsite sewage system by a qualified**
 26 **inspector as required by subsection (b)(1);**
- 27 **(2) despite the good faith effort referred to in subdivision (1),**
 28 **it is not possible to have the commercial onsite sewage system**
 29 **inspected by a qualified inspector before the closing that will**
 30 **transfer the fee simple interest between the persons;**
- 31 **(3) the person to whom the fee simple interest is being**
 32 **transferred executes an affidavit:**
- 33 **(A) acknowledging that the commercial onsite sewage**
 34 **system has not been inspected by a qualified inspector; and**
- 35 **(B) making a binding commitment:**
- 36 **(i) to have the commercial onsite sewage system**
 37 **inspected by a qualified inspector as required by**
 38 **subsection (b)(1) as soon as reasonably possible after the**
 39 **transfer of the fee simple interest; and**
- 40 **(ii) to then satisfy the conditions set forth in subsection**
 41 **(b)(2) and, if applicable, subsection (b)(3); and**
- 42 **(4) the affidavit executed under subdivision (3) is recorded in**



1 the office of the recorder of the county in which the
 2 nondwelling structure is located along with the deed or other
 3 instrument transferring the fee simple interest.

4 **Sec. 10. (a) This section applies after June 30, 2022.**

5 **(b) Except as provided in sections 11(c) and 12 of this chapter,**
 6 **if a water well is located on the same lot or tract of land as a**
 7 **dwelling connected to a residential onsite sewage system or a**
 8 **nondwelling structure connected to a commercial onsite sewage**
 9 **system, the following conditions apply to the transfer of a fee**
 10 **simple interest in the lot or tract of land:**

11 **(1) Water from the water well must be tested by a qualified**
 12 **tester to determine whether it contains any of the following:**

13 **(A) Arsenic, nitrate, or lead in a concentration that exceeds**
 14 **the maximum permissible level for drinking water class**
 15 **ground water established by 327 IAC 2-11-6 in compliance**
 16 **with IC 13-18-17-5.**

17 **(B) Any detectable presence of coliform bacteria or E. coli.**

18 **(2) A document that:**

19 **(A) certifies that the testing required by subdivision (1) has**
 20 **been conducted;**

21 **(B) sets forth the results of the testing; and**

22 **(C) is signed by the tester;**

23 **must be provided to the local health department, the county**
 24 **recorder, and the person to whom the fee simple interest in**
 25 **the lot or tract of land is being transferred.**

26 **(c) Except as provided in subsection (d), the recorder may not**
 27 **record or accept for recording a deed or other instrument that**
 28 **would transfer a fee simple interest in the lot or tract of land unless**
 29 **the recorder is presented the document described in subsection**
 30 **(b)(2).**

31 **(d) The recorder may accept and record a deed or other**
 32 **instrument transferring a fee simple interest in the lot or tract of**
 33 **land if:**

34 **(1) either:**

35 **(A) the person transferring the fee simple interest in the**
 36 **property; or**

37 **(B) the person to whom the fee simple interest in the**
 38 **property is being transferred;**

39 **makes a good faith effort, after the persons agree to the**
 40 **transfer of the fee simple interest, to arrange for the testing of**
 41 **the well water by a qualified tester as required by subsection**
 42 **(b)(1);**



1 (2) despite the good faith effort referred to in subdivision (1),
 2 it is not possible to have the well water tested by a qualified
 3 tester before the closing that will transfer the fee simple
 4 interest between the persons;

5 (3) the person to whom the fee simple interest is being
 6 transferred executes an affidavit:

7 (A) acknowledging that the well water has not been tested
 8 by a qualified tester; and

9 (B) making a binding commitment:

10 (i) to have the well water tested by a qualified tester as
 11 required by subsection (b)(1) as soon as reasonably
 12 possible after the transfer of the fee simple interest; and

13 (ii) to provide a document described in subsection (b)(2)
 14 to the local health department and the county recorder;
 15 and

16 (4) the affidavit executed under subdivision (3) is recorded in
 17 the office of the recorder of the county in which the lot or
 18 tract of land is located along with the deed or other
 19 instrument transferring the fee simple interest.

20 Sec. 11. (a) If:

21 (1) a dwelling is connected to a residential onsite sewage
 22 system;

23 (2) an inspection of the residential onsite sewage system has
 24 been conducted under section 8(b)(1) of this chapter; and

25 (3) the inspector did not find any of the conditions constituting
 26 residential onsite sewage system failure under 410
 27 IAC 6-8.3-33 as in effect on January 1, 2021;

28 a fee simple interest in the dwelling may be transferred without
 29 another inspection under section 8(b)(1) of this chapter if the
 30 transfer occurs not more than two (2) years after the date of the
 31 inspection referred to in subdivision (2).

32 (b) If:

33 (1) a nondwelling structure is connected to a commercial
 34 onsite sewage system;

35 (2) an inspection of the commercial onsite sewage system has
 36 been conducted under section 9(b)(1) of this chapter; and

37 (3) the inspector did not find any of the conditions constituting
 38 commercial onsite sewage system failure under 410
 39 IAC 6-10.1-9 as in effect on January 1, 2021;

40 a fee simple interest in the nondwelling structure may be
 41 transferred without another inspection under section 9(b)(1) of this
 42 chapter if the transfer occurs not more than two (2) years after the



1 date of the inspection referred to in subdivision (2).

2 (c) If:

3 (1) a water well is located on the same lot or tract of land as
4 a dwelling connected to a residential onsite sewage system or
5 a nondwelling structure connected to a commercial onsite
6 sewage system;

7 (2) water drawn from the water well has been tested for
8 contamination under section 10(b)(1) of this chapter; and

9 (3) the water was found to be within the parameters set forth
10 in section 10(b)(1) of this chapter;

11 a fee simple interest in the dwelling or nondwelling structure may
12 be transferred without another testing of water from the water
13 well under section 10(b) of this chapter if the transfer occurs not
14 more than one (1) year after the date of the testing referred to in
15 subdivision (2).

16 Sec. 12. Sections 8, 9, and 10 of this chapter do not apply to the
17 following property interest transfers:

18 (1) A transfer by probate under IC 29.

19 (2) A transfer to a trust or by a trustee under IC 30.

20 (3) A transfer resulting from the execution of a judgment.

21 (4) A foreclosure of a real estate mortgage under IC 32-29-7.

22 (5) A forfeiture under a real estate installment contract.

23 (6) A transfer by a trustee in bankruptcy.

24 (7) A transfer by eminent domain.

25 (8) A transfer resulting from a decree for specific
26 performance.

27 (9) A transfer:

28 (A) to a mortgagee by a mortgagor or successor in interest
29 who is in default;

30 (B) by a mortgagee who has acquired real property as a
31 result of a deed in lieu of foreclosure; or

32 (C) to a mortgagor exercising a right of first refusal.

33 (10) A transfer by a fiduciary in the course of the
34 administration of a decedent's estate, guardianship,
35 conservatorship, or trust.

36 (11) A transfer between joint tenants or tenants in common.

37 (12) A transfer made to a spouse or to a person in the lineal
38 line of consanguinity of a person making the transfer.

39 (13) A transfer between spouses resulting from a decree of
40 dissolution of marriage, a legal separation, an annulment of
41 marriage, or a property settlement agreement incidental to
42 the decree.



- 1 (14) A transfer to a transferee who intends to demolish or
 2 raze the dwelling or nondwelling structure.
 3 (15) A transfer of:
 4 (A) a dwelling connected to a residential onsite sewage
 5 system that was installed not more than two (2) years
 6 before the transfer; or
 7 (B) a nondwelling structure connected to a commercial
 8 onsite sewage system that was installed not more than two
 9 (2) years before the transfer.
 10 (16) The issuance of a deed arising from an action under
 11 IC 32-30-3-14 to partition real estate.
 12 (17) The issuance of a tax deed under IC 6-1.1-25.
 13 (18) A transfer for which the consideration is not more than
 14 five hundred dollars (\$500).
 15 (19) A transfer from a corporation, partnership, limited
 16 partnership, limited liability partnership, or limited liability
 17 company to any of its stockholders, partners, or members for
 18 the purpose of transferring real property:
 19 (A) in an incorporation or a corporate dissolution; or
 20 (B) in the organization or dissolution of a partnership,
 21 limited partnership, limited liability partnership, or
 22 limited liability company;
 23 if the deed is given for no actual consideration other than for
 24 shares or for debt securities of the corporation, partnership,
 25 limited partnership, limited liability partnership, or limited
 26 liability company.
 27 (20) Any transfer made under a court order.
 28 Sec. 13. (a) The state department of health shall adopt rules
 29 under IC 4-22-2 for the administration of this chapter. The rules
 30 must establish:
 31 (1) requirements and standards for:
 32 (A) the inspection of residential onsite sewage systems
 33 under section 8 of this chapter;
 34 (B) the inspection of commercial onsite sewage systems
 35 under section 9 of this chapter; and
 36 (C) the testing of water drawn from water wells under
 37 section 10 of this chapter;
 38 (2) the qualifications that a person must meet to act as:
 39 (A) an inspector of residential onsite sewage systems;
 40 (B) an inspector of commercial onsite sewage systems; or
 41 (C) a tester of water drawn from water wells;
 42 under this chapter; and



- 1 **(3) requirements and standards for the training and**
- 2 **certification of persons to be:**
- 3 **(A) inspectors of residential onsite sewage systems;**
- 4 **(B) inspectors of commercial onsite sewage systems; or**
- 5 **(C) testers of water drawn from water wells;**
- 6 **under this chapter.**
- 7 **(b) The rules adopted by the state department of health under**
- 8 **subsection (a) must provide that an individual who inspects a**
- 9 **residential onsite sewage system under section 8 of this chapter,**
- 10 **inspects a commercial onsite sewage system under section 9 of this**
- 11 **chapter, or tests well water under section 10 of this chapter may**
- 12 **not be:**
- 13 **(1) the same individual; or**
- 14 **(2) an employee or owner of the same firm;**
- 15 **that performs the work necessary to remedy the failure of the**
- 16 **residential onsite sewage system or commercial onsite sewage**
- 17 **system or to bring water from the water well within the**
- 18 **parameters set forth in section 10(b)(1) of this chapter.**
- 19 SECTION 2. IC 36-9-27-2 IS AMENDED TO READ AS
- 20 FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 2. **(a) As used in The**
- 21 **definitions set forth in this section apply throughout** this chapter.
- 22 **(b) "Affected land" means land within a watershed that is affected**
- 23 **by the construction, reconstruction, or maintenance of a regulated**
- 24 **drain.**
- 25 **(c) "Board" refers to the drainage board of a county.**
- 26 **(d) "Crossing" means a drainage structure that passes over, under,**
- 27 **or through a location used for the passage of people, livestock, or**
- 28 **vehicles.**
- 29 **(e) "Dam" means a dam or other structure and its appurtenances that**
- 30 **impounds a small lake at the lake's outlet.**
- 31 **(f) "Flood reduction benefits" means the changing of a drainage**
- 32 **system so as to reduce the number and severity of floods affecting**
- 33 **the drainage system.**
- 34 **(g) "Maintenance" means work on a drain as described in section**
- 35 **34(e) 34(d) of this chapter for any of the purposes stated in that section.**
- 36 **(h) "Mutual drain" means a drain that:**
- 37 **(1) is located on two (2) or more tracts of land that are under**
- 38 **different ownership;**
- 39 **(2) was established by the mutual consent of all the owners; and**
- 40 **(3) was not established under or made subject to any drainage**
- 41 **statute.**
- 42 **(i) "Open drain" means a natural or artificial open channel that:**



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



- 1 **(4) The facilitation of flood conditions downstream when not**
 2 **necessary to achieve drainage objectives.**
 3 **(s) "Urban land" means affected land that:**
 4 (1) will appreciably benefit from drainage that will provide the
 5 maximum practicable protection against flooding or the
 6 impounding of water in a small lake; and
 7 (2) is used or will in the reasonably foreseeable future be used
 8 generally for commercial, industrial, large estate, higher density
 9 residential, or similar purposes.
 10 **(t) "Watershed" means an area of land from which all runoff water**
 11 drains to a given point or that is affected by a small lake.
 12 SECTION 3. IC 36-9-27-34 IS AMENDED TO READ AS
 13 FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 34. (a) The county
 14 surveyor shall classify all regulated drains in the county as:
 15 (1) drains in need of reconstruction;
 16 (2) drains in need of periodic maintenance; or
 17 (3) drains that should be vacated.
 18 The surveyor shall also consider the designation of urban drains under
 19 section 67 of this chapter.
 20 **(b) A regulated drain is in need of reconstruction when:**
 21 (1) it will not perform the function for which it was designed and
 22 constructed;
 23 (2) it no longer conforms to the maps, profiles, and plans prepared
 24 at the time when the legal drain was established; or
 25 (3) topographical or other changes have made the drain
 26 inadequate to properly drain the lands affected without extensive
 27 repairs or changes, including:
 28 (A) converting all or part of an open drain to a tiled drain or a
 29 tiled drain to an open drain;
 30 (B) adding an open drain to a tiled drain or a tiled drain to an
 31 open drain;
 32 (C) increasing the size of the tile;
 33 (D) deepening or widening an open drain;
 34 (E) extending the length of a drain;
 35 (F) changing the course of a drain;
 36 (G) constructing drainage detention basins and drainage
 37 control dams;
 38 (H) providing for erosion control and for grade stabilization
 39 structures; or
 40 (I) making any major change to a drainage system that would
 41 be of public utility.
 42 **(c) The county surveyor may classify a regulated drain as a**



1 **drain in need of reconstruction if:**

- 2 (1) **the functionality of the drain is compromised; and**
 3 (2) **the drain could, at a reasonable cost, be reconstructed to**
 4 **perform the function for which it was designed while:**
 5 (A) **better serving the interests of public health;**
 6 (B) **significantly reducing undesirable environmental**
 7 **effects; or**
 8 (C) **providing flood reduction benefits.**

9 (c) (d) **A regulated drain is in need of periodic maintenance when,**
 10 **with or without the use of mechanical equipment, it can be made to**
 11 **perform the function for which it was designed and constructed, and to**
 12 **properly drain all affected land under current conditions, by**
 13 **periodically:**

- 14 (1) **cleaning it;**
 15 (2) **spraying it;**
 16 (3) **removing obstructions from it; and**
 17 (4) **making minor repairs to it.**

18 (e) **The county surveyor may classify a regulated drain as a**
 19 **drain in need of periodic maintenance if:**

- 20 (1) **the capability of the regulated drain to perform the**
 21 **function for which it was designed and constructed can be**
 22 **restored; or**
 23 (2) **the drain can be made to:**
 24 (A) **properly drain affected land;**
 25 (B) **better serve the interest of public health;**
 26 (C) **produce fewer undesirable environmental effects; or**
 27 (D) **provide flood reduction benefits;**

28 **through the periodic cleaning and spraying of the regulated drain,**
 29 **the removal of obstructions from the regulated drain, and the**
 30 **making of minor repairs, additions, or alterations to the regulated**
 31 **drain.**

32 (d) (f) **A regulated drain should be vacated when:**

- 33 (1) **the drain does not perform the function for which it was**
 34 **designed and constructed, or it has become inadequate to properly**
 35 **drain all affected land under current conditions;**
 36 (2) **the expense of reconstruction outweighs the benefits of**
 37 **reconstruction; and**
 38 (3) **the vacation will not be detrimental to the public welfare.**

39 **SECTION 4. IC 36-9-27-37 IS AMENDED TO READ AS**
 40 **FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 37. (a) When instituting**
 41 **proceedings to vacate a regulated drain, the board shall:**

- 42 (1) **serve a notice of intention to vacate on all owners of affected**



- 1 land;
- 2 (2) fix a date for a hearing;
- 3 (3) receive all objections filed;
- 4 (4) hold the hearing; and
- 5 (5) issue an order vacating or reclassifying the drain.
- 6 (b) A board acting under this section shall:
 - 7 (1) comply with the applicable provisions of sections 49 through
 - 8 52 of this chapter; and
 - 9 (2) consider section ~~34(d)~~ **34(f)** of this chapter in determining
 - 10 whether a drain should be vacated.
- 11 (c) An owner aggrieved by the final order of the board may obtain
- 12 judicial review of the order under section 106 of this chapter.
- 13 (d) When a drain is vacated, the county treasurer shall transfer all
- 14 money in that drain's maintenance fund to the general drain
- 15 improvement fund.
- 16 SECTION 5. IC 36-9-27-45 IS AMENDED TO READ AS
- 17 FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 45. **(a)** A maintenance
- 18 fund established under section 44 of this chapter is subject to the use
- 19 of the board:
 - 20 **(1)** for the necessary or proper repair, maintenance, study, or
 - 21 evaluation of the particular drain or combination of drains; ~~which~~
 - 22 ~~may be done or~~
 - 23 **(2) to:**
 - 24 **(A) better serve the interests of public health;**
 - 25 **(B) reduce undesirable environmental effects;**
 - 26 **(C) provide flood reduction benefits;**
 - 27 **(D) improve drainage control; or**
 - 28 **(E) provide drainage water storage infrastructure or**
 - 29 **technology associated with water that flows in or into a**
 - 30 **particular regulated drain or combination of drains.**
 - 31 **(b) The fund may be used as provided in subsection (a)** whenever
 - 32 the board, upon the recommendation of the county surveyor, finds that
 - 33 it is necessary. The payment for all such maintenance work shall be
 - 34 made out of the appropriate maintenance fund. However, if:
 - 35 (1) a maintenance fund has not been established for the drain or
 - 36 combination of drains; or
 - 37 (2) a maintenance fund has been established but it is not sufficient
 - 38 to pay for the work;
 - 39 the general drain improvement fund shall be used to pay the cost of the
 - 40 work or to pay for the deficiency, and the general drain improvement
 - 41 fund shall be reimbursed from the appropriate maintenance fund when
 - 42 it is established or becomes sufficient.



1 SECTION 6. IC 36-9-27-49, AS AMENDED BY P.L.127-2017,
 2 SECTION 340, IS AMENDED TO READ AS FOLLOWS
 3 [EFFECTIVE JULY 1, 2021]: Sec. 49. (a) When the board refers a
 4 regulated drain to the county surveyor for a reconstruction report, the
 5 county surveyor shall determine and set forth in the county surveyor's
 6 report the best and cheapest method of reconstructing the drain so that
 7 it will adequately drain all affected land. **In determining what method
 8 of reconstructing the drain is best, the county surveyor may
 9 consider cost effective drainage designs that:**

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

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

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

13 (b) The county surveyor shall make the necessary surveys, maps,
 14 profiles, plans, and specifications, and the county surveyor may include
 15 in them:

16 (1) all of the repairs or changes specifically set forth in section
 17 34(b) of this chapter; and

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

20 (c) The county surveyor shall estimate the costs of the proposed
 21 reconstruction, including costs of notices and advertising, and the
 22 county surveyor shall also estimate the annual cost of periodically
 23 maintaining the proposed reconstruction.

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

36 SECTION 7. IC 36-9-27-61, AS AMENDED BY P.L.127-2017,
 37 SECTION 349, IS AMENDED TO READ AS FOLLOWS
 38 [EFFECTIVE JULY 1, 2021]: Sec. 61. (a) When the board refers a
 39 petition **to establish a new regulated drain** to the county surveyor for
 40 a final report under section 60(b) of this chapter, the county surveyor
 41 shall do the following:

42 (1) Make the necessary survey for the proposed drain.



- 1 (2) Prepare plans for structures other than bridges or culverts
 2 crossing a railroad right-of-way or a highway owned by the state.
 3 In preparing the plans, the county surveyor shall include all
 4 appurtenances needed to complete the proposed drain.
 5 (3) Prepare maps showing the location of the land proposed to be
 6 assessed.
 7 (4) Prepare profiles showing the cuts and gradient of the proposed
 8 work.
 9 (5) Determine the best and cheapest method of drainage, which
 10 may be by:
 11 (A) removing obstructions from a natural or artificial
 12 watercourse;
 13 (B) diverting a natural or artificial watercourse from its
 14 channel;
 15 (C) deepening, widening, or changing the channel of a natural
 16 or artificial watercourse;
 17 (D) constructing an artificial channel, with or without arms or
 18 branches;
 19 (E) tiling all or part of an open drain;
 20 (F) converting all or part of a tiled drain to an open drain;
 21 (G) constructing a new drain as a part or the whole of the
 22 work; or
 23 (H) any combination of these methods.
 24 (6) Determine and describe the termini, route, location, and
 25 character of the proposed work, including grades, bench marks,
 26 and all necessary arms. The county surveyor may vary the line of
 27 the work from the line described in the petition, and the county
 28 surveyor may fix the beginning and outlet so as to secure the best
 29 results.
 30 (7) Divide the proposed drain into sections of not more than one
 31 hundred (100) feet in length, and compute and set out the number
 32 of cubic yards of excavation in each section.
 33 (8) Estimate the cost of the proposed drain, including
 34 construction, seeding or sodding of disturbed areas and the banks
 35 of open drains, notices, advertising, and the attorney's fee for the
 36 petitioner's attorney. The amount of the attorney's fee is computed
 37 as follows:
 38 (A) If the estimated cost of constructing the drain is less than
 39 one thousand five hundred dollars (\$1,500), the fee is fifteen
 40 percent (15%) of that cost.
 41 (B) If the estimated construction cost is one thousand five
 42 hundred dollars (\$1,500) or more, but less than twenty-five



1 thousand dollars (\$25,000), the fee is two hundred twenty-five
 2 dollars (\$225) plus five percent (5%) of the amount by which
 3 that cost exceeds one thousand five hundred dollars (\$1,500).
 4 (C) If the estimated construction cost is twenty-five thousand
 5 dollars (\$25,000) or more, the fee is one thousand four
 6 hundred dollars (\$1,400) plus one percent (1%) of the amount
 7 by which that cost exceeds twenty-five thousand dollars
 8 (\$25,000).

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

- 12 **(1) limit undesirable environmental effects;**
 13 **(2) improve public health; or**
 14 **(3) provide flood reduction benefits.**

15 SECTION 8. IC 36-9-27-65, AS AMENDED BY P.L.127-2017,
 16 SECTION 353, IS AMENDED TO READ AS FOLLOWS
 17 [EFFECTIVE JULY 1, 2021]: Sec. 65. (a) Not less than five (5) days
 18 before the board's hearing on a petition for a new regulated drain, any
 19 owner of land affected by the report of the county surveyor or by the
 20 schedules of damages and assessments may file with the board written
 21 objections to the report, schedules, or both. The objections may be for
 22 one (1) or more of the following causes:

- 23 (1) The proposed drain, as reported by the county surveyor, is not
 24 practicable and will not adequately drain the affected land. An
 25 objection on this ground must point out the impracticable aspects
 26 of the proposed drain and describe the specific lands that will not
 27 be adequately drained.
 28 (2) The costs, damages, and expenses of the drain will exceed the
 29 benefits that will result to the owners of all land benefited.
 30 (3) The proposed drain will not:
 31 (A) improve the public health;
 32 (B) benefit a public highway in a county or a public street in
 33 a municipality;
 34 (C) drain the grounds of a public school; or
 35 (D) be of public utility.
 36 (4) The objector is the owner of land damaged by the drain, and:
 37 (A) the board failed to find that the objector's land is damaged;
 38 or
 39 (B) the damages assessed to the objector's land are inadequate.
 40 (5) The objector is the owner of lands assessed as benefited, and
 41 the benefits assessed against the objector's lands are excessive.

42 Each objector may file written evidence in support of the objector's



1 objections. The failure of an owner to file objections constitutes a
 2 waiver of the owner's right to subsequently object, on the grounds
 3 stated in this subsection, to any final action of the board.

4 (b) On or before the day of the hearing, the county surveyor shall,
 5 and any owner of affected land may, cause written evidence to be filed
 6 in support of or in rebuttal to any objection filed under subsection (a).

7 (c) The board shall consider the objections and evidence filed, may
 8 adjourn the hearing from day to day or to a day certain, and may issue
 9 an order permitting additional written evidence to be filed in support
 10 of or in rebuttal to the objections and evidence previously filed.

11 (d) After considering all of the objections and evidence, the board
 12 may amend the schedules of damages and assessments, and the county
 13 surveyor may modify the county surveyor's report, as justice may
 14 require.

15 (e) Before final adjournment of the hearing, the board shall
 16 determine in writing:

17 (1) whether the proposed drain, as reported by the county
 18 surveyor, is practicable and will adequately drain the affected
 19 land;

20 (2) whether the costs, damages, and expenses of the proposed
 21 drain will be less than the benefits accruing to the owners of land
 22 benefited by the drain; and

23 (3) whether the proposed drain will improve the public health,
 24 benefit a public highway in a county or a public street in a
 25 municipality, drain the grounds of a public school, or be of public
 26 utility.

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

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



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

4 SECTION 9. IC 36-9-27-77 IS AMENDED TO READ AS
 5 FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 77. (a) Whenever:

6 (1) the board orders the construction or reconstruction of a drain,
 7 and the order is not stayed under section 108 of this chapter; or

8 (2) the board determines that maintenance work shall be let by
 9 contract;

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

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

15 (1) the construction costs estimated by the county surveyor under
 16 section ~~61(8)~~ **61(a)(8)** of this chapter; or

17 (2) the reconstruction costs estimated by the surveyor under
 18 section 49(c) of this chapter.

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

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

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

32 SECTION 10. IC 36-9-27-80.5 IS AMENDED TO READ AS
 33 FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 80.5. (a) If a change in
 34 the original specifications of a contract for the construction or
 35 reconstruction of a drain becomes necessary during the construction or
 36 reconstruction, the county surveyor may issue a change order to add,
 37 delete, or change an item in the contract. A change order issued under
 38 this subsection becomes an addendum to the contract.

39 (b) The county surveyor may issue a change order under subsection
 40 (a) without obtaining prior approval from the board. The county
 41 surveyor shall report a change order issued under subsection (a) to the
 42 board at the next meeting of the board following the issuance of the



- 1 change order.
- 2 (c) A change order issued under subsection (a) must be directly
- 3 related to the drain project that is the subject of the original contract.
- 4 (d) The amount of a contract plus the amount of all change orders
- 5 to the contract issued under this section may not exceed the following
- 6 by more than twenty percent (20%):
- 7 (1) The construction costs estimated by the county surveyor under
- 8 section ~~61(8)~~ **61(a)(8)** of this chapter.
- 9 (2) The reconstruction costs estimated by the county surveyor
- 10 under section 49(c) of this chapter.

