
SENATE BILL No. 547

DIGEST OF INTRODUCED BILL

Citations Affected: IC 14-9-6-1; IC 14-25; IC 14-25.5-1; IC 14-26; IC 14-28-1; IC 14-29; IC 14-33; IC 14-40; IC 36-9-27.

Synopsis: Water management authority. Eliminates an advisory council to the natural resources commission. Establishes: (1) legislative policy for the management of Indiana's water supply; (2) the water management authority (authority); and (3) the authority as an agency for purposes of judicial review. Grants certain enforcement powers to the authority. Provides for the appointment of an administrator (administrator) of the authority by the governor. Grants the administrator certain rulemaking authority to implement certain provisions concerning the authority and the drainage and flood control law. Provides that the administrator appoints other employees of the authority. Provides, upon adoption of a statewide water management plan, for the administrator to assume powers and duties related to: (1) water rights and emergency regulation of surface and ground water; (2) potable water rights; (3) water resources management; (4) the Great Lakes compact; (5) reservoirs; (6) preservation and legal action concerning lakes; (7) flood control; (8) construction of channels; and (9) conservancy districts. Allows the administrator to conduct investigations, require the production of documents, and take sworn testimony. Requires certain governmental entities to provide legal services and information as requested by the administrator. Establishes regional water management councils (council). Provides an appeal process for contesting decisions of a council. Provides for the development, adoption, and implementation of a statewide water management plan. Provides for the review of the plan at least every five years. Establishes a process allowing the administrator to issue a water management permit. Requires a governing body or agency of the state
(Continued next page)

Effective: July 1, 2013.

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January 14, 2013, read first time and referred to Committee on Agriculture and Natural Resources.



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Digest Continued

to consult with the administrator to ensure that an action related to the construction or modification of a ditch does not have certain negative effects. Defines "wetlands" as an area that is inundated or saturated by surface or ground water at a frequency and duration sufficient to support vegetation typically adapted for life in saturated soil conditions. Provides that the administrator must approve a classification of a project as a drainage project of water management importance. Provides that a landowner may petition the administrator to review a project's classification as a drainage project of water management importance that affects the landowner's land. Establishes a process allowing a person to file a petition to prevent the drainage of wetlands on land owned by the person. Provides that a drainage board, in determining certain benefits or damages to land: (1) shall take into account the presence of wetlands on the affected land; (2) shall reduce the benefit percentage assigned to the parcel containing an existing wetland that provides natural drainage or retention services to other benefited land to reflect the existing natural benefit; and (3) may revise a determination to reflect changes if a wetland is removed or modified after the board has determined benefits or damages to the land.

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Introduced

First Regular Session 118th General Assembly (2013)

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 2012 Regular Session of the General Assembly.

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SENATE BILL No. 547

A BILL FOR AN ACT to amend the Indiana Code concerning natural and cultural resources.

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

- 1 SECTION 1. IC 14-9-6-1, AS AMENDED BY P.L.95-2006,
- 2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 3 JULY 1, 2013]: Sec. 1. An advisory council is established to serve ~~both~~
- 4 ~~of the following: the bureau of lands and cultural resources.~~
- 5 (1) ~~The bureau of water and resource regulation.~~
- 6 (2) ~~The bureau of lands and cultural resources.~~
- 7 SECTION 2. IC 14-25-1-12 IS ADDED TO THE INDIANA CODE
- 8 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
- 9 1, 2013]: **Sec. 12. Upon the adoption of the statewide water**
- 10 **management plan under IC 14-40-8:**
- 11 (1) **all powers, duties, agreements, and liabilities of the**
- 12 **commission under this chapter are transferred to the water**
- 13 **management authority established by IC 14-40-3-1; and**
- 14 (2) **a reference in this chapter to a rule or other document**
- 15 **adopted by the commission is considered a reference to the**



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water management authority.
SECTION 3. IC 14-25-3-19 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: **Sec. 19. Upon the adoption of the statewide water management plan under IC 14-40-8:**

- (1) all powers, duties, agreements, and liabilities of the department under this chapter are transferred to the water management authority established by IC 14-40-3-1; and**
- (2) a reference in this chapter to a rule or other document adopted by the commission is considered a reference to the water management authority.**

SECTION 4. IC 14-25-4-22 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: **Sec. 22. Upon the adoption of the statewide water management plan under IC 14-40-8:**

- (1) all powers, duties, agreements, and liabilities of the commission and the director under this chapter are transferred to the water management authority established by IC 14-40-3-1; and**
- (2) a reference in this chapter to a rule or other document adopted by the commission is considered a reference to the water management authority.**

SECTION 5. IC 14-25-5-16 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: **Sec. 16. Upon the adoption of the statewide water management plan under IC 14-40-8:**

- (1) all powers, duties, agreements, and liabilities of the commission and the director under this chapter are transferred to the water management authority established by IC 14-40-3-1; and**
- (2) a reference in this chapter to a rule or other document adopted by the commission or the director is considered a reference to the water management authority.**

SECTION 6. IC 14-25-6-7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: **Sec. 7. Upon the adoption of the statewide water management plan under IC 14-40-8:**

- (1) all powers, duties, agreements, and liabilities of the department under this chapter are transferred to the water management authority established by IC 14-40-3-1; and**
- (2) a reference in this chapter to a rule or other document adopted by the department is considered a reference to the**

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water management authority.

SECTION 7. IC 14-25-7-10, AS AMENDED BY P.L.95-2006, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 10. (a) The commission shall administer this chapter.

(b) The deputy director for water and resource regulation shall serve as technical secretary to the commission. The deputy director shall perform the duties that are required by this chapter or that the commission directs.

(c) The advisory council established by IC 14-9-6-1 shall serve in an advisory capacity to the commission with respect to the implementation of the commission's powers and duties, including the drafting of rules and development of inventories, assessments, and plans.

(d) For the time that the advisory council is involved in the drafting of rules, the membership of the council shall be augmented as follows:

(1) Two (2) members of the senate, not more than one (1) of whom may be of the same political party, shall be appointed for a term of two (2) years by the president pro tempore of the senate.

(2) Two (2) members of the house of representatives, not more than one (1) of whom may be of the same political party, shall be appointed for a term of two (2) years by the speaker of the house of representatives.

These members are entitled to travel expenses and a per diem allowance as determined by the budget agency for members of boards and commissions generally.

(e) (c) The department shall provide professional, technical, and clerical personnel, equipment, supplies, and support services reasonably required to assist the commission in the exercise of the commission's powers and duties under this chapter. The department shall include money for this purpose in the regular operating budget requests of the department.

SECTION 8. IC 14-25-7-18 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: **Sec. 18. (a) Upon the adoption of the statewide water management plan under IC 14-40-8:**

(1) all powers, duties, agreements, and liabilities of the commission under this chapter are transferred to the water management authority established by IC 14-40-3-1; and

(2) a reference in this chapter to a rule or other document adopted by the commission is considered a reference to the water management authority.

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1 **(b) The advisory council established by IC 14-9-6-1 shall serve**
2 **in an advisory capacity to the administrator in a manner consistent**
3 **with section 10 of this chapter.**

4 SECTION 9. IC 14-25-15-14 IS ADDED TO THE INDIANA
5 CODE AS A NEW SECTION TO READ AS FOLLOWS
6 [EFFECTIVE JULY 1, 2013]: **Sec. 14. Upon the adoption of the**
7 **statewide water management plan under IC 14-40-8:**

8 **(1) all powers, duties, agreements, and liabilities of the natural**
9 **resources commission under this chapter are transferred to**
10 **the water management authority established by IC 14-40-3-1;**
11 **and**

12 **(2) a reference in this chapter to a rule or other document**
13 **adopted by the natural resources commission is considered a**
14 **reference to the water management authority.**

15 SECTION 10. IC 14-25.5-1-1 IS AMENDED TO READ AS
16 FOLLOWS [EFFECTIVE JULY 1, 2013]: **Sec. 1.** This article applies
17 to actions to enforce the following articles:

18 (1) IC 14-26.

19 (2) IC 14-27.

20 (3) IC 14-28.

21 (4) IC 14-29.

22 **(5) IC 14-40.**

23 SECTION 11. IC 14-25.5-1-2 IS AMENDED TO READ AS
24 FOLLOWS [EFFECTIVE JULY 1, 2013]: **Sec. 2. (a) Subject to**
25 **subsection (b), As as used in this article, "division" refers to the**
26 **division of water of the department.**

27 **(b) If the enforcement action is taken under IC 14-40, "division"**
28 **refers to the water management authority.**

29 SECTION 12. IC 14-26-1-13 IS ADDED TO THE INDIANA
30 CODE AS A NEW SECTION TO READ AS FOLLOWS
31 [EFFECTIVE JULY 1, 2013]: **Sec. 13. Upon the adoption of the**
32 **statewide water management plan under IC 14-40-8:**

33 **(1) all powers, duties, agreements, and liabilities of the**
34 **commission and the department under this chapter are**
35 **transferred to the water management authority established by**
36 **IC 14-40-3-1; and**

37 **(2) a reference in this chapter to a rule or other document**
38 **adopted by the commission or the department is considered**
39 **a reference to the water management authority.**

40 SECTION 13. IC 14-26-2-26 IS ADDED TO THE INDIANA
41 CODE AS A NEW SECTION TO READ AS FOLLOWS
42 [EFFECTIVE JULY 1, 2013]: **Sec. 26. Upon the adoption of the**

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1 **statewide water management plan under IC 14-40-8:**

2 (1) all powers, duties, agreements, and liabilities of the
3 commission and the department under this chapter are
4 transferred to the water management authority established by
5 IC 14-40-3-1; and

6 (2) a reference in this chapter to a rule or other document
7 adopted by the commission or the department is considered
8 a reference to the water management authority.

9 SECTION 14. IC 14-26-3-7 IS ADDED TO THE INDIANA CODE
10 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
11 1, 2013]: **Sec. 7. Upon the adoption of the statewide water
12 management plan under IC 14-40-8:**

13 (1) all powers, duties, agreements, and liabilities of the
14 department under this chapter are transferred to the water
15 management authority established by IC 14-40-3-1; and

16 (2) a reference in this chapter to a rule or other document
17 adopted by the department is considered a reference to the
18 water management authority.

19 SECTION 15. IC 14-28-1-22, AS AMENDED BY P.L.76-2010,
20 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
21 JULY 1, 2013]: **Sec. 22. (a)** As used in subsection (b)(1) with respect
22 to a stream, "total length" means the length of the stream, expressed in
23 miles, from the confluence of the stream with the receiving stream to
24 the upstream or headward extremity of the stream, as indicated by the
25 solid or dashed, blue or purple line depicting the stream on the most
26 current edition of the seven and one-half (7 1/2) minute topographic
27 quadrangle map published by the United States Geological Survey,
28 measured along the meanders of the stream as depicted on the map.

29 (b) This section does not apply to the following:

30 (1) A reconstruction or maintenance project (as defined in
31 IC 36-9-27) on a stream or an open regulated drain if the total
32 length of the stream or open drain is not more than ~~ten (10) miles.~~
33 **one (1) mile.**

34 (2) A construction or reconstruction project on a state or county
35 highway bridge in a rural area that crosses a stream having an
36 upstream drainage area of not more than fifty (50) square miles
37 and the relocation of utility lines associated with the construction
38 or reconstruction project if confined to an area not more than one
39 hundred (100) feet from the limits of the highway construction
40 right-of-way.

41 (3) The performance of an activity described in subsection (c)(1)
42 or (c)(2) by a surface coal mining operation that is operated under

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- a permit issued under IC 14-34.
- (4) Any other activity that is determined by the commission, according to rules adopted under IC 4-22-2, to pose not more than a minimal threat to floodway areas.
- (5) An activity in a boundary river floodway to which section 26.5 of this chapter applies.
- (6) The removal of a logjam or mass of wood debris that has accumulated in a river or stream, subject to the following conditions:
 - (A) Work must not be within a salmonid stream designated under 327 IAC 2-1.5-5 without the prior written approval of the department's division of fish and wildlife.
 - (B) Work must not be within a natural, scenic, or recreational river or stream designated under 312 IAC 7-2.
 - (C) Except as otherwise provided in Indiana law, free logs or affixed logs that are crossways in the channel must be cut, relocated, and removed from the floodplain. Logs may be maintained in the floodplain if properly anchored or otherwise secured so as to resist flotation or dislodging by the flow of water and placement in an area that is not a wetland. Logs must be removed and secured with a minimum of damage to vegetation.
 - (D) Isolated or single logs that are embedded, lodged, or rooted in the channel, and that do not span the channel or cause flow problems, must not be removed unless the logs are either of the following:
 - (i) Associated with or in close proximity to larger obstructions.
 - (ii) Posing a hazard to navigation.
 - (E) A leaning or severely damaged tree that is in immediate danger of falling into the waterway may be cut and removed if the tree is associated with or in close proximity to an obstruction. The root system and stump of the tree must be left in place.
 - (F) To the extent practicable, the construction of access roads must be minimized, and should not result in the elevation of the floodplain.
 - (G) To the extent practicable, work should be performed exclusively from one (1) side of a waterway. Crossing the bed of a waterway is prohibited.
 - (H) To prevent the flow of sediment laden water back into the waterway, appropriate sediment control measures must be

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- 1 installed.
- 2 (I) Within fifteen (15) days, all bare and disturbed areas must
- 3 be revegetated with a mixture of grasses and legumes. Tall
- 4 fescue must not be used under this subdivision, except that low
- 5 endophyte tall fescue may be used in the bottom of the
- 6 waterway and on side slopes.
- 7 (c) A person who desires to:
- 8 (1) erect, make, use, or maintain a structure, an obstruction, a
- 9 deposit, or an excavation; or
- 10 (2) suffer or permit a structure, an obstruction, a deposit, or an
- 11 excavation to be erected, made, used, or maintained;
- 12 in or on a floodway must file with the director a verified written
- 13 application for a permit accompanied by a nonrefundable fee of two
- 14 hundred dollars (\$200).
- 15 (d) The application for a permit must set forth the material facts
- 16 together with plans and specifications for the structure, obstruction,
- 17 deposit, or excavation.
- 18 (e) An applicant must receive a permit from the director for the
- 19 work before beginning construction. The director shall issue a permit
- 20 only if in the opinion of the director the applicant has clearly proven
- 21 that the structure, obstruction, deposit, or excavation will not do any of
- 22 the following:
- 23 (1) Adversely affect the efficiency of or unduly restrict the
- 24 capacity of the floodway.
- 25 (2) Constitute an unreasonable hazard to the safety of life or
- 26 property.
- 27 (3) Result in ~~unreasonably detrimental~~ **any of the effects upon**
- 28 **fish, wildlife, or botanical resources: listed under IC 14-40-6-7.**
- 29 (f) In deciding whether to issue a permit under this section, the
- 30 director shall consider the cumulative effects of the structure,
- 31 obstruction, deposit, or excavation. The director may incorporate in and
- 32 make a part of an order of authorization conditions and restrictions that
- 33 the director considers necessary for the purposes of this chapter.
- 34 (g) A permit issued under this section:
- 35 (1) is void if construction is not commenced within two (2) years
- 36 after the issuance of the permit; and
- 37 (2) to:
- 38 (A) the Indiana department of transportation or a county
- 39 highway department if there is any federal funding for the
- 40 project; or
- 41 (B) an electric utility for the construction of a power
- 42 generating facility;

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- 1 is valid for five (5) years from the date of issuance and remains
 2 valid indefinitely if construction is commenced within five (5)
 3 years after the permit is issued.
- 4 (h) The director shall send a copy of each permit issued under this
 5 section to each river basin commission organized under:
 6 (1) IC 14-29-7 or IC 13-2-27 (before its repeal); or
 7 (2) IC 14-30-1 or IC 36-7-6 (before its repeal);
 8 that is affected.
- 9 (i) The permit holder shall post and maintain a permit issued under
 10 this section at the authorized site.
- 11 (j) For the purposes of this chapter, the lowest floor of a building,
 12 including a residence or abode, that is to be constructed or
 13 reconstructed in the one hundred (100) year floodplain of an area
 14 protected by a levee that is:
 15 (1) inspected; and
 16 (2) found to be in good or excellent condition;
 17 by the United States Army Corps of Engineers shall not be lower than
 18 the one hundred (100) year frequency flood elevation plus one (1) foot.
- 19 SECTION 16. IC 14-28-1-37 IS ADDED TO THE INDIANA
 20 CODE AS A NEW SECTION TO READ AS FOLLOWS
 21 [EFFECTIVE JULY 1, 2013]: **Sec. 37. Upon the adoption of the**
 22 **statewide water management plan under IC 14-40-8:**
 23 **(1) all powers, duties, agreements, and liabilities of the**
 24 **director and the commission under this chapter are**
 25 **transferred to the water management authority established by**
 26 **IC 14-40-3-1; and**
 27 **(2) a reference in this chapter to a rule or other document**
 28 **adopted by the director or the commission is considered a**
 29 **reference to the water management authority.**
- 30 SECTION 17. IC 14-29-4-10 IS ADDED TO THE INDIANA
 31 CODE AS A NEW SECTION TO READ AS FOLLOWS
 32 [EFFECTIVE JULY 1, 2013]: **Sec. 10. Upon the adoption of the**
 33 **statewide water management plan under IC 14-40-8:**
 34 **(1) all powers, duties, agreements, and liabilities of the**
 35 **commission under this chapter are transferred to the water**
 36 **management authority established by IC 14-40-3-1; and**
 37 **(2) a reference in a statute, rule, or other document to the**
 38 **commission is considered a reference to the water**
 39 **management authority.**
- 40 SECTION 18. IC 14-29-5-1 IS AMENDED TO READ AS
 41 FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 1. (a) The governing
 42 bodies or agencies of the state charged with the duties of the

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1 construction, maintenance, and repair of public highways may, to the
 2 extent money is available and subject to ~~subsection~~ **subsections (b)**
 3 **and (c)**, do the following:

4 (1) Change the course of a stream, watercourse, or drainage ditch.

5 (2) Restore to the original or former channel a stream,
 6 watercourse, or drainage ditch if the stream, watercourse, or
 7 drainage ditch has meandered from the original or former course.

8 (3) The construction work that is necessary to protect the banks
 9 or slopes of a stream, watercourse, or ditch to prevent wash,
 10 caving, slides, or erosion if the water of the stream, watercourse,
 11 or ditch is causing or threatening injury to, damage to, or
 12 destruction of a public highway or bridge by erosion, wash, slides,
 13 change of course, or overflow.

14 (4) Construct walls or levees for the purposes of subdivision (3)
 15 if it is determined by an engineering survey that this method
 16 would be more practicable or less expensive.

17 (5) Exercise the authority granted in this section to protect public
 18 highways against injury, damage, or destruction caused or
 19 threatened by landslides.

20 (b) If a navigable stream is under the jurisdiction of a federal
 21 authority or an agency and the proposed work of the highway officials
 22 under this section conflicts or interferes with the jurisdiction of the
 23 federal agency, the consent or waiver of the federal agency must be
 24 procured by the highway officials before the beginning of the proposed
 25 work.

26 **(c) Before taking an action under subsection (a), a governing**
 27 **body or agency of the state shall consult with the administrator of**
 28 **the water management authority (established by IC 14-40) to**
 29 **ensure that the action does not:**

30 **(1) result in increase of sedimentation, erosion, or nutrient**
 31 **transfer that can be practicably avoided;**

32 **(2) cause harm to fish, wildlife, or botanical resources that can**
 33 **practicably be avoided; or**

34 **(3) result in substantial adverse effects to a drainage system**
 35 **beneficial to agricultural land.**

36 SECTION 19. IC 14-33-2-31 IS ADDED TO THE INDIANA
 37 CODE AS A NEW SECTION TO READ AS FOLLOWS
 38 [EFFECTIVE JULY 1, 2013]: **Sec. 31. Upon the adoption of the**
 39 **statewide water management plan under IC 14-40-8:**

40 **(1) all powers, duties, agreements, and liabilities of the**
 41 **commission under this chapter are transferred to the water**
 42 **management authority established by IC 14-40-3-1; and**

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1 (2) a reference in this chapter to a rule or other document
2 adopted by the commission is considered a reference to the
3 water management authority.

4 SECTION 20. IC 14-33-6-15 IS ADDED TO THE INDIANA
5 CODE AS A NEW SECTION TO READ AS FOLLOWS
6 [EFFECTIVE JULY 1, 2013]: **Sec. 15. Upon the adoption of the**
7 **statewide water management plan under IC 14-40-8:**

8 (1) all powers, duties, agreements, and liabilities of the
9 commission under this chapter are transferred to the water
10 management authority established by IC 14-40-3-1; and

11 (2) a reference in this chapter to a rule or other document
12 adopted by the commission is considered a reference to the
13 water management authority.

14 SECTION 21. IC 14-40 IS ADDED TO THE INDIANA CODE AS
15 A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1,
16 2013]:

17 **ARTICLE 40. WATER MANAGEMENT AUTHORITY**

18 **Chapter 1. Legislative Policy**

19 **Sec. 1. (a) The following are declared as a matter of legislative**
20 **determination:**

21 (1) That the water resources of Indiana are essential to the
22 continued development and prosperity of the people of
23 Indiana.

24 (2) That securing the adequate water supply for the people of
25 Indiana and for industrial and commercial use is of
26 paramount importance.

27 (3) That it is essential to initiate appropriate planning and to
28 take action before the water supply of Indiana becomes
29 critically threatened.

30 (4) That the lack of coordination between authorities or
31 bodies of government that manage elements of the water
32 policy of Indiana exacerbates the effects of downstream
33 flooding and nutrient transport, places unnecessary stress on
34 water dependent wildlife, and prevents the state from
35 securing the benefits of policies adopted to optimize the
36 management of water.

37 (b) In light of the determination set forth in subsection (a), it is
38 the purpose of the general assembly to provide for:

39 (1) the proper coordination; and

40 (2) the consolidation of the management;
41 of the water supply and excess water of Indiana.

42 **Chapter 2. Definitions**

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- 1 **Sec. 1.** Except as otherwise provided, the definitions in this
- 2 chapter apply throughout this article.
- 3 **Sec. 2.** "Administrator" means the executive and chief
- 4 administrative officer of the water management authority
- 5 established by IC 14-40-3.
- 6 **Sec. 3.** "Drainage project of water management importance"
- 7 refers to a drainage project for which the administrator has issued
- 8 a water management permit under IC 14-40-9.
- 9 **Sec. 4.** "Flood control" has the meaning set forth in
- 10 IC 14-28-1-2.
- 11 **Sec. 5.** "Hydrological region" means an area bounded by county
- 12 lines that:
- 13 (1) consists of at least three (3) and not more than five (5)
- 14 contiguous hydrological units, as defined by the eight (8) digit
- 15 hydrological unit code of the United States Geological Survey;
- 16 and
- 17 (2) has similar characteristics for purposes of water
- 18 management.
- 19 **Sec. 6.** "Mitigate" means to undertake a remedial activity
- 20 designated by the administrator to offset unavoidable adverse
- 21 effects of a water management program.
- 22 **Sec. 7.** "Regional water management council" refers to the
- 23 council of each hydrological region established by IC 14-40-7.
- 24 **Sec. 8.** "Statewide water management plan" refers to the plan
- 25 to manage the water supply of Indiana under IC 14-40-8.
- 26 **Sec. 9.** "Water management authority" refers to the state
- 27 agency established by IC 14-40-3.
- 28 **Chapter 3. Establishment of the Water Management Authority**
- 29 **Sec. 1.** The water management authority is established.
- 30 **Sec. 2.** For purposes of judicial review, the water management
- 31 authority is an agency under IC 4-21.5.
- 32 **Chapter 4. Administrator of the Water Management Authority**
- 33 **Sec. 1. (a)** The governor shall appoint an individual with
- 34 appropriate training and experience as administrator of the water
- 35 management authority. The administrator:
- 36 (1) is the executive and chief administrative officer of the
- 37 water management authority; and
- 38 (2) may delegate the administrator's authority to appropriate
- 39 water management authority staff or a regional water
- 40 management council.
- 41 **(b)** The administrator:
- 42 (1) serves at the governor's pleasure; and

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1 (2) is entitled to receive compensation in an amount set by the
 2 governor.
 3 (c) The administrator may adopt, repeal, or amend rules under
 4 IC 4-22-2 to implement:
 5 (1) this article; and
 6 (2) IC 36-9-27 and IC 14-28 in a manner consistent with this
 7 article and the statewide water management plan.
 8 **Chapter 5. Employees of the Water Management Authority**
 9 **Sec. 1. The administrator shall:**
 10 (1) appoint individuals to other positions of the water
 11 management authority;
 12 (2) consider only technical and professional qualifications that
 13 support the ability of an individual to perform the duties
 14 required by the nature of the position;
 15 (3) select an individual for the professional or practical fitness
 16 to perform irrespective of political belief or affiliation, as the
 17 nature of the position may require; and
 18 (4) develop the necessary procedures to ensure that the
 19 required knowledge, ability, education, and experience
 20 qualifications are met by the employees of the water
 21 management authority.
 22 **Chapter 6. General Powers and Duties**
 23 **Sec. 1. (a) As used in this section, "office" means the collective**
 24 **members of each designated group listed in subsection (b)(1).**
 25 **(b) Upon the adoption of the statewide water management plan**
 26 **under IC 14-40-8:**
 27 **(1) all powers, duties, agreements, and liabilities of:**
 28 **(A) the commission under IC 14-25-1;**
 29 **(B) the department under IC 14-25-3;**
 30 **(C) the commission and the director under IC 14-25-4;**
 31 **(D) the commission and the director under IC 14-25-5;**
 32 **(E) the department under IC 14-25-6;**
 33 **(F) the commission under IC 14-25-7;**
 34 **(G) the natural resources commission under IC 14-25-15;**
 35 **(H) the commission and the department under IC 14-26-1;**
 36 **(I) the commission and the department under IC 14-26-2;**
 37 **(J) the department under IC 14-26-3;**
 38 **(K) the director and the commission under IC 14-28;**
 39 **(L) the commission under IC 14-29-4; and**
 40 **(M) the commission under IC 14-33-2;**
 41 **are transferred to the administrator of the water management**
 42 **authority; and**

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(2) a reference in the relevant chapter to a rule or other document adopted by the office is considered a reference to the water management authority.

Sec. 2. (a) This section does not apply to federal water management statutes or programs the administration or enforcement of which is currently delegated under federal law to a state entity.

(b) Upon adoption of the statewide water management plan, the director and officials of a state entity that administers a program related to water management shall transfer or delegate the administration of the program to the water management authority if the administrator decides that the transfer or delegation promotes:

- (1) the consolidation and optimization of the water management effort; and
- (2) the efficient use of administrative resources.

Sec. 3. (a) The administrator may do the following:

- (1) Investigate whether the implementation of a water management project complies with the terms of the project's permit or approval, rules adopted under this article, and any applicable provision of law.
- (2) Require the production of information the administrator considers relevant to the investigation.
- (3) Take sworn testimony.
- (4) Conduct reasonable onsite investigations of water management projects.

The authority of the administrator under this subsection is enforceable by court order.

(b) If the administrator conducts an investigation under subsection (a), the administrator shall:

- (1) provide notice to the owner of the land subject to the investigation not less than ten (10) days before entering the land; and
- (2) exercise care to avoid damage to crops, structures, and other property.

An authorized representative of the administrator acting under this section does not commit criminal trespass under IC 35-43-2-2, and is liable only for actual damage to property.

Sec. 4. At the request of the administrator, it is the duty of:

- (1) the Indiana attorney general to provide legal services; and
- (2) a county engineer, county surveyor, drainage board, or state agency to provide information;

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that the water management authority requires.

Sec. 5. At the request of the administrator, the supervising officer of a state agency shall do the following:

(1) Assign or transfer to the water management authority any personnel of the agency, taking into account available appropriations and the needs of the entity to which the request is directed.

(2) Arrange for the production of special reports, surveys, and studies.

Sec. 6. For all water management authority actions affecting the control of:

- (1) soil erosion;**
- (2) reduction of sedimentation; or**
- (3) nutrient transfer;**

the administrator shall consult with the soil conservation board and the division of soil conservation of the department of agriculture to ensure that a proposed action promotes the policies of IC 14-32-1-1 and IC 14-32-1-2.

Sec. 7. The administrator shall not take an action if the action:

- (1) is inconsistent with the policies of the statewide water management plan;**
- (2) results in increased sedimentation, erosion, or nutrient transfer that can practicably be avoided;**
- (3) causes harm to fish, wildlife, or botanical resources that can practicably be avoided; or**
- (4) results in substantial adverse effects on a drainage system that is beneficial to agricultural land.**

A result is practicable if it is possible to achieve without irredeemably compromising the economic viability of the related project. In determining if a result is practicable, the administrator shall consider the particular circumstances and resources of the person proposing the project. A person proposing a project has the burden to establish that the project is impractical.

Sec. 8. IC 14-25.5 governs enforcement actions of the water management authority.

Chapter 7. Regional Water Management Councils

Sec. 1. (a) A regional water management council is established for each hydrological region.

(b) A regional water management council consists of the chairperson of each:

- (1) drainage board; and**
- (2) soil and water conservation board;**

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1 of a county located in a hydrological region.

2 (c) Subject to the adoption of a statewide water management
3 plan, a provisional regional water management council shall be
4 established in the following provisional hydrological regions:

5 (1) Region One:

- 6 (A) Lake County;
- 7 (B) Porter County;
- 8 (C) LaPorte County;
- 9 (D) St. Joseph County;
- 10 (E) Newton County;
- 11 (F) Jasper County;
- 12 (G) Starke County; and
- 13 (H) Marshall County.

14 (2) Region Two:

- 15 (A) Elkhart County;
- 16 (B) LaGrange County;
- 17 (C) Steuben County;
- 18 (D) Noble County;
- 19 (E) DeKalb County;
- 20 (F) Allen County; and
- 21 (G) Adams County.

22 (3) Region Three:

- 23 (A) Kosciusko County;
- 24 (B) Pulaski County;
- 25 (C) Fulton County;
- 26 (D) White County;
- 27 (E) Cass County;
- 28 (F) Carroll County;
- 29 (G) Howard County;
- 30 (H) Clinton County; and
- 31 (I) Tipton County.

32 (4) Region Four:

- 33 (A) Whitley County;
- 34 (B) Miami County;
- 35 (C) Wabash County;
- 36 (D) Huntington County;
- 37 (E) Wells County;
- 38 (F) Grant County;
- 39 (G) Blackford County;
- 40 (H) Jay County; and
- 41 (I) Randolph County.

42 (5) Region Five:

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- 1 (A) Benton County;
- 2 (B) Warren County;
- 3 (C) Tippecanoe County;
- 4 (D) Fountain County;
- 5 (E) Montgomery County;
- 6 (F) Boone County;
- 7 (G) Vermillion County;
- 8 (H) Parke County;
- 9 (I) Putnam County;
- 10 (J) Hendricks County; and
- 11 (K) Clay County.
- 12 (6) Region Six:
- 13 (A) Hamilton County;
- 14 (B) Madison County;
- 15 (C) Delaware County;
- 16 (D) Marion County;
- 17 (E) Hancock County;
- 18 (F) Henry County;
- 19 (G) Wayne County;
- 20 (H) Morgan County;
- 21 (I) Johnson County;
- 22 (J) Shelby County;
- 23 (K) Rush County;
- 24 (L) Fayette County;
- 25 (M) Union County; and
- 26 (N) Franklin County.
- 27 (7) Region Seven:
- 28 (A) Vigo County;
- 29 (B) Sullivan County;
- 30 (C) Knox County;
- 31 (D) Gibson County;
- 32 (E) Posey County; and
- 33 (F) Vanderburgh County.
- 34 (8) Region Eight:
- 35 (A) Owen County;
- 36 (B) Monroe County;
- 37 (C) Brown County;
- 38 (D) Greene County;
- 39 (E) Lawrence County;
- 40 (F) Daviess County;
- 41 (G) Martin County;
- 42 (H) Orange County;

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- 1 (I) Washington County;
- 2 (J) Pike County;
- 3 (K) Dubois County;
- 4 (L) Crawford County;
- 5 (M) Harrison County;
- 6 (N) Floyd County;
- 7 (O) Warrick County;
- 8 (P) Spencer County; and
- 9 (Q) Perry County.

- 10 (9) Region Nine:
- 11 (A) Bartholomew County;
- 12 (B) Decatur County;
- 13 (C) Jackson County;
- 14 (D) Jennings County;
- 15 (E) Ripley County;
- 16 (F) Dearborn County;
- 17 (G) Scott County;
- 18 (H) Jefferson County;
- 19 (I) Switzerland County;
- 20 (J) Clark County; and
- 21 (K) Ohio County.

22 A provisional regional water management council shall comply
 23 with subsection (d).

24 (d) A regional water management council shall:

- 25 (1) participate in the development of the statewide water
- 26 management plan;
- 27 (2) assist in the implementation of the statewide water
- 28 management plan for the hydrological region for which the
- 29 council is responsible;
- 30 (3) hold annual public hearings related to water management;
- 31 (4) submit a written report to the administrator of the issues
- 32 discussed during the public hearing, including findings and
- 33 recommendations; and
- 34 (5) assist the administrator with revisions to the statewide
- 35 water management plan.

36 Sec. 2. (a) A decision of a regional water management council
 37 may be appealed to the administrator.

38 (b) An appeal to a decision of the administrator is governed by
 39 IC 4-21.5.

40 Chapter 8. Statewide Water Management Plan

41 Sec. 1. (a) Water management includes any action taken:

- 42 (1) to oversee, supply, store, or alter the natural flow of

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- 1 surface or ground water; or
- 2 (2) for the withdrawal from, or recharge of, aquifers.
- 3 (b) The administrator shall develop, adopt, and implement a
- 4 statewide water management plan not later than July 1, 2015.
- 5 (c) The statewide water management plan must include the
- 6 following:
- 7 (1) Analysis of current water management practices,
- 8 including drainage, flood control, and water supply
- 9 management.
- 10 (2) Recommendations for future water management practices
- 11 that integrate and optimize drainage, flood control, and water
- 12 supply management efforts.
- 13 (3) A baseline estimate of current water demand in the
- 14 categories of:
- 15 (A) domestic;
- 16 (B) agricultural;
- 17 (C) municipal;
- 18 (D) industrial;
- 19 (E) power;
- 20 (F) transportation;
- 21 (G) recreation;
- 22 (H) ecosystem and habitat; and
- 23 (I) other beneficial uses.
- 24 (4) A forecast of future water demand in each category under
- 25 subdivision (3) and recommendations for managing shortfalls.
- 26 (5) Confirmation or revision of counties grouped as
- 27 provisional hydrological regions under IC 14-40-7-1, and
- 28 identification of unique water management characteristics of
- 29 each region.
- 30 (d) In conducting the analysis under subsection (c)(1), the
- 31 administrator shall:
- 32 (1) identify any provisions of IC 36-9-27 and IC 14-28 that are
- 33 in conflict with this article;
- 34 (2) consider whether it is beneficial to include any person that
- 35 withdraws groundwater, regardless of the quantity of water
- 36 withdrawn, in an area designated as a restricted use area
- 37 under IC 14-25-3; and
- 38 (3) submit a report with findings and recommendations to a
- 39 general assembly legislative committee that has been assigned
- 40 to the subject area.
- 41 (e) The administrator shall complete a review and update of the
- 42 statewide water management plan at least once every five (5) years

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1 after the date that the plan is adopted.

2 **Sec. 2. In developing the statewide water management plan, the**
 3 **administrator shall do the following:**

4 **(1) Use any state or local government agency to obtain**
 5 **information on water management projects and activities in**
 6 **Indiana, including:**

7 **(A) the department;**

8 **(B) the commission;**

9 **(C) county drainage boards;**

10 **(D) regional water management councils;**

11 **(E) the department of environmental management;**

12 **(F) the soil conservation board;**

13 **(G) the department of agriculture;**

14 **(H) the Indiana utility regulatory commission;**

15 **(I) local water utilities;**

16 **(J) watershed groups that receive funding under 33 U.S.C.**
 17 **1329(h); and**

18 **(K) any other entity the participation of which would serve**
 19 **the purposes of this article.**

20 **(2) Consider:**

21 **(A) the long-term stability of the clean water supply;**

22 **(B) the water availability for each category listed under**
 23 **section 1(c)(3) of this chapter;**

24 **(C) the unique characteristics of each hydrological region;**
 25 **and**

26 **(D) the potential effects of climate change on the water**
 27 **supply, precipitation regimes, and resources of Indiana.**

28 **(3) Conduct investigations and update surveys of the water**
 29 **resources of Indiana, and consider the need for and**
 30 **appropriate sources of suitable water supplies for each**
 31 **category listed under section 1(c)(3) of this chapter.**

32 **(4) Incorporate findings and recommendations for further**
 33 **development, protection, and preservation of these resources.**

34 **(5) Incorporate the findings of the Indiana utility regulatory**
 35 **commission report on water utility usage.**

36 **Sec. 3. Consistent with the statewide water management plan,**
 37 **the administrator shall administer and implement a water shortage**
 38 **plan for Indiana.**

39 **Sec. 4. (a) The administrator shall maintain a technical and**
 40 **administrative handbook for drainage projects.**

41 **(b) The handbook must contain at least the following:**

42 **(1) Technical descriptions of drainage project construction**

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- techniques.
- (2) Best management practices for drainage projects that are protective of the environment and take into account onsite and offsite effects, cumulative effects, and downstream impacts, including sedimentation, erosion, and nutrient transfer.
- (3) Explanations of water management authority permitting processes and procedures to be followed by permittees to ensure compliance with all applicable statutes, rules, and regulations.
- (4) Descriptions of compensatory measures and required mitigation for environmental damage that cannot be practicably avoided.
- (5) Descriptions of projects that are exempt from state or federal regulation.
- (6) A description of the process by which permit applicants may contact program administrators.

Sec. 5. Upon adoption of the statewide water management plan, the administrator shall:

- (1) consult with governing bodies or agencies of the state that take action under IC 14-29-5-1;
- (2) consider water withdrawal permits related to the Great Lakes—St. Lawrence River Basin Water Resources Compact in accordance with IC 14-25-15 and adopt relevant rules;
- (3) adopt rules to establish minimum technical standards for all drainage and flood control projects, including the removal of obstructions under IC 36-9-27.4;
- (4) administer the water supply policies of the statewide water management plan; and
- (5) maintain a registry of significant water withdrawal facilities and a water well record data base.

Sec. 6. The administrator shall issue a written notice requiring a person to mitigate damage through remedial programs approved by the administrator if an action taken by the person causes or is likely to cause:

- (1) a substantial adverse effect on fish, wildlife, or botanical resources;
- (2) an adverse effect in any species listed by the department as endangered, threatened, rare, significant, or of concern; or
- (3) substantial erosion, sedimentation, or nutrient transfer.

The written notice must include a description of any mitigation requirements.

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Chapter 9. Water Management Permits

Sec. 1. (a) Upon the adoption of the state water management plan under IC 14-40-8, the administrator may issue water management permits that allow a permittee to do the following:

- (1) Engage in activities governed by IC 14-28-1.**
- (2) Undertake a drainage project of water management importance. A drainage project of water management importance is any construction, reconstruction, or maintenance that the county surveyor classifies under IC 36-9-27-35 as:**

- (A) a substantial alteration to the course of a stream or open regulated drain;**
- (B) a significant increase of sedimentation in the waterway during the execution of the project;**
- (C) an increase in sedimentation or nutrient transfer in the waters of the state;**
- (D) a substantial deviation from the best management practices as described in the drainage technical and administrative handbook maintained under IC 14-40-8-4; or**
- (E) any other characteristic that, according to the county surveyor, establishes the drainage project as one of water management importance.**

A drainage project of water management importance does not require a permit under IC 14-28-1-22.

- (3) Engage in water withdrawals governed by IC 14-25-15-7 or IC 14-25-3.**
- (4) Engage in the introduction of potable water into underground formations, as governed by IC 14-25-6.**
- (5) Construct a channel under IC 14-29-4.**
- (6) Engage in activities affecting public freshwater lakes under IC 14-26-2.**

(b) In issuing a permit, the administrator shall consider the following:

- (1) The best management practices as described in the drainage technical and administrative handbook maintained under IC 14-40-8-4.**
- (2) The policies established in IC 14-32-1-1 and IC 14-32-1-2, including the reduction of sedimentation and erosion.**
- (3) The agricultural interests, if any, of landowners affected by the proposed action.**
- (4) The provisions of IC 14-28-1-1 and IC 14-28-3-1.**

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1 **Sec. 2. The administrator shall issue a written notice granting**
 2 **or denying a permit, including:**

3 **(1) the grounds for the decision; and**

4 **(2) the dispositive factors.**

5 SECTION 22. IC 36-9-27-2 IS AMENDED TO READ AS
 6 FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 2. As used in this
 7 chapter:

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

10 "Board" refers to the drainage board of a county.

11 "Crossing" means a drainage structure that passes over, under, or
 12 through a location used for the passage of people, livestock, or
 13 vehicles.

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

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

18 "Mutual drain" means a drain that:

19 (1) is located on two (2) or more tracts of land that are under
 20 different ownership;

21 (2) was established by the mutual consent of all the owners; and

22 (3) was not established under or made subject to any drainage
 23 statute.

24 "Open drain" means a natural or artificial open channel that:

25 (1) carries surplus water; and

26 (2) was established under or made subject to any drainage statute.

27 "Owner" refers to the owner of any interest in land.

28 "Private drain" means a drain that:

29 (1) is located on land owned by one (1) person or by two (2) or
 30 more persons jointly; and

31 (2) was not established under or made subject to any drainage
 32 statute.

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

37 "Regulated drain" means an open drain, a tiled drain, or a
 38 combination of the two.

39 "Rural drain" means a regulated drain that provides adequate
 40 drainage or impounds water for rural land.

41 "Rural land" means affected land that:

42 (1) will not appreciably benefit from more drainage than is

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- 1 necessary to expediently remove water after frequent or periodic
 2 flooding; and
 3 (2) is generally used for crop production, pasture, forest, or
 4 similar purposes.
 5 "Small lake" means a lake, pond, or similar body of water that:
 6 (1) covers less than twenty (20) acres;
 7 (2) is surrounded by two (2) or more tracts of affected land that
 8 are under different ownership or a tract of land that is owned by
 9 a not-for-profit corporation having more than one (1) member;
 10 (3) is not constructed, reconstructed, or maintained under this
 11 chapter as part of an open drain;
 12 (4) is not a private crossing, control dam, or other permanent
 13 structure referred to under section 72 of this chapter;
 14 (5) is not owned by a state or any of its political subdivisions; and
 15 (6) is not designed and constructed primarily for reduction or
 16 control of pollutants or cooling before discharge of a liquid.
 17 "Tiled drain" means a tiled channel that:
 18 (1) carries surplus water; and
 19 (2) was established under or made subject to any drainage statute.
 20 "Urban land" means affected land that:
 21 (1) will appreciably benefit from drainage that will provide the
 22 maximum practicable protection against flooding or the
 23 impounding of water in a small lake; and
 24 (2) is used or will in the reasonably foreseeable future be used
 25 generally for commercial, industrial, large estate, higher density
 26 residential, or similar purposes.
 27 "Watershed" means an area of land from which all runoff water
 28 drains to a given point or that is affected by a small lake.
 29 **"Wetlands" means an area that is inundated or saturated by**
 30 **surface or ground water at a frequency and duration sufficient to**
 31 **support vegetation typically adapted for life in saturated soil**
 32 **conditions. The term includes swamps, marshes, bogs, and similar**
 33 **areas.**
 34 SECTION 23. IC 36-9-27-35 IS AMENDED TO READ AS
 35 FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 35. (a) The county
 36 surveyor shall submit to the board a written report setting forth ~~his~~ **the**
 37 **surveyor's** classification of regulated drains in order of priority for
 38 action by the board. This report may be made from time to time during
 39 the surveyor's process of classification.
 40 (b) The board may adopt the classifications and order of work
 41 priority as made by the county surveyor, or may modify them.
 42 (c) If ten percent (10%) of the owners request the board to classify

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1 or reclassify a drain affecting their land, the board shall, after giving
 2 notice to all affected owners, conduct a hearing on the request and
 3 adopt a proper classification. The notice shall be given by publication
 4 in accordance with IC 5-3-1. Notice shall be given to an attorney of
 5 record in the manner provided in section 110 of this chapter.

6 **(d) Before the county surveyor submits a report under**
 7 **subsection (a), the administrator (as defined in IC 14-40-2-2) must**
 8 **approve a recommendation for a drainage project of water**
 9 **management importance (described in IC 14-40-9-1(a)(2)).**

10 **(e) A landowner may petition the administrator (as defined in**
 11 **IC 14-40-2-2) to review a classification of a project as a drainage**
 12 **project of water management importance made by a county**
 13 **surveyor that affects the landowner's land.**

14 SECTION 24. IC 36-9-27-60.5 IS ADDED TO THE INDIANA
 15 CODE AS A NEW SECTION TO READ AS FOLLOWS
 16 [EFFECTIVE JULY 1, 2013]: **Sec. 60.5. (a) For purposes of this**
 17 **section, "administrator" has the meaning set forth in IC 14-40-2-2.**

18 **(b) A landowner may file a petition with the administrator to**
 19 **prevent the drainage of wetlands on land owned by the landowner.**
 20 **The petition must establish the following:**

21 **(1) The wetland is wholly located within the boundaries of**
 22 **land owned by the landowner.**

23 **(2) The proposed construction, reconstruction, maintenance,**
 24 **or other drainage project may result in the modification or**
 25 **removal of the wetland.**

26 **(3) If left unmodified, the wetland does not adversely affect**
 27 **the productivity or value of surrounding lands at water levels**
 28 **produced by a one hundred (100) year frequency flood.**

29 **(c) Upon receipt of a landowner petition, the administrator**
 30 **shall:**

31 **(1) provide the county drainage board responsible for the**
 32 **proposed drainage project with written notice that the**
 33 **petition has been filed under subsection (b); and**

34 **(2) provide an opportunity for the drainage board to respond**
 35 **to the petition.**

36 **(d) If the administrator determines that the petition establishes**
 37 **the requirements of subsection (b), the administrator shall direct**
 38 **the county surveyor and county drainage board to make any**
 39 **changes necessary to allow the wetland to remain unmodified.**

40 SECTION 25. IC 36-9-27-112 IS AMENDED TO READ AS
 41 FOLLOWS [EFFECTIVE JULY 1, 2013]: **Sec. 112. (a) In determining**
 42 **benefits to land under sections 39, 50, and 62 of this chapter, the board**

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- 1 may consider:
- 2 (1) the watershed affected by the drain to be constructed,
3 reconstructed, or maintained;
- 4 (2) the number of acres in each tract;
- 5 (3) the total volume of water draining into or through the drain to
6 be constructed, reconstructed, or maintained, and the amount of
7 water contributed by each land owner;
- 8 (4) the land use;
- 9 (5) the increased value accruing to each tract of land from the
10 construction, reconstruction, or maintenance;
- 11 (6) whether the various tracts are adjacent, upland, upstream, or
12 downstream in relation to the main trunk of the drain;
- 13 (7) elimination or reduction of damage from floods;
- 14 (8) the soil type; and
- 15 (9) any other factors affecting the construction, reconstruction, or
16 maintenance.
- 17 (b) In determining benefits or damages to land under sections 39,
18 50, and 62 of this chapter, the board may examine aerial photographs
19 and topographical or other maps, and may adjourn the hearing to the
20 site of the construction, reconstruction, or maintenance in order to
21 personally view the affected land.
- 22 (c) In determining percentages of benefit under sections 39, 50, and
23 62 of this chapter, the board may consider the percentage of the total
24 cost that was assessed to each tract in the initial construction or in any
25 reconstruction of the drain. However, that percentage is not binding on
26 the board in its current determination, and the board may vary from it
27 as justice requires.
- 28 **(d) In determining benefits or damages to land under sections**
29 **39, 50, and 62 of this chapter, the board:**
- 30 **(1) shall take into account the presence of wetlands on the**
31 **affected land;**
- 32 **(2) shall reduce the benefit percentage assigned to the parcel**
33 **containing an existing wetland that provides natural drainage**
34 **or retention services to other benefited land to reflect the**
35 **existing natural benefit; and**
- 36 **(3) may revise a determination to reflect changes if a wetland**
37 **is removed or modified after the board has determined**
38 **benefits or damages to the land.**

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