

First Regular Session of the 121st General Assembly (2019)

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 2018 Regular and Special Session of the General Assembly.

HOUSE ENROLLED ACT No. 1279

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

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

SECTION 1. IC 14-8-2-228.2 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: **Sec. 228.2. "Qualified entity or authority", for purposes of IC 14-28-1-24.5, has the meaning set forth in IC 14-28-1-24.5(a).**

SECTION 2. IC 14-28-1-24.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: **Sec. 24.5. (a) As used in this section, "qualified entity or authority" means any of the following:**

- (1) IC 14-33-1 (conservancy districts).**
- (2) IC 14-33-19 (levee districts and associations).**
- (3) IC 14-27-4 (levee associations).**
- (4) IC 14-27-6 (levee authority in Vanderburgh County).**
- (5) IC 14-28-1-29 (flood control projects).**
- (6) IC 14-30 (river basin commissions).**
- (7) A court.**
- (8) Any prior law that allowed for the construction or maintenance of a levee or earthen berm.**

(b) A person may not begin the reconstruction of an earthen berm or levee that is located in a floodway unless:

- (1) the person obtains a permit under this section; or**
- (2) all of the following requirements are satisfied:**

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- (A) The earthen berm or levee is located in a rural area.
- (B) The earthen berm or levee was constructed:
 - (i) before January 1, 1973, with or without a permit issued under section 22 of this chapter; or
 - (ii) after December 31, 1972, with a permit issued under section 22 of this chapter.
- (C) The person submits plans and specifications for the reconstruction of the earthen berm or levee that demonstrate to the satisfaction of the department that the reconstruction of the earthen berm or levee will meet the requirements set forth in subsection (c).

(c) An earthen berm or levee described in subsection (b)(2) must be reconstructed:

- (1) to not more than its existing or predamaged height, or to its design height if the earthen berm or levee was previously permitted under section 22 of this chapter;
- (2) to not more than its existing or predamaged top width and side slopes, or to its design top width and side slopes if the earthen berm or levee was previously permitted under section 22 of this chapter;
- (3) along the same alignment and footprint of the existing or predamaged earthen berm or levee, or along the design alignment and footprint if the earthen berm or levee was previously permitted under section 22 of this chapter; and
- (4) with materials similar to the materials used to construct the existing or predamaged earthen berm or levee, or with the design materials and specifications used to construct the earthen berm or levee if the earthen berm or levee was previously permitted under section 22 of this chapter.

Within six (6) months after the reconstruction of the earthen berm or levee is completed under subsection (b)(2) and this subsection, the person who reconstructed the earthen berm or levee must provide to the department documentation from a land surveyor or professional engineer licensed in Indiana that the earthen berm or levee has been reconstructed in accordance with the plans submitted to the department under this subsection and subsection (b)(2).

(d) If the reconstruction of an earthen berm or levee will not meet the requirements set forth in subsection (c), the earthen berm or levee may not be reconstructed under this section unless the person who desires to reconstruct the earthen berm or levee obtains a permit under this section. To obtain a permit, the person



must file with the director a verified written application for a permit accompanied by a nonrefundable minimum fee of two hundred dollars (\$200). An application submitted under this subsection must:

- (1) set forth the material facts concerning the proposed reconstruction; and
- (2) include the plans and specifications for the reconstruction.

(e) The director may not issue a permit in response to an application filed under subsection (d) unless, in the opinion of the director, the applicant has clearly proven that the reconstruction of the earthen berm or levee will not do any of the following:

- (1) Adversely affect the efficiency or unduly restrict the capacity of the floodway.
- (2) Constitute an unreasonable hazard to the safety of life or property.
- (3) Result in unreasonably detrimental effects upon fish, wildlife, or botanical resources.

(f) In deciding whether to issue a permit under this section, the director shall consider the cumulative effects of the proposed reconstruction of an earthen berm or levee.

(g) The director may incorporate in and make a part of a permit or an order of authorization under this section the conditions and restrictions that the director considers necessary for the purposes of this chapter.

(h) Subject to subsection (i), if an earthen berm or levee was originally constructed under a qualified entity or authority, the department shall not require or recommend, as a condition of the issuance of a permit for the reconstruction of the earthen berm or levee, mitigation resulting from the removal of any trees or woody vegetation:

- (1) from the top or side slopes of the earthen berm or levee, or within ten (10) feet of the toe of the existing earthen berm or levee, if the earthen berm or levee was constructed before January 1, 1973; or
- (2) from the top, side slopes, or toe of the design footprint of the earthen berm or levee, if the earthen berm or levee was previously permitted under section 22 of this chapter.

(i) If conditions at the site of an earthen berm or levee described in subsection (h) have deteriorated to the point that the existing earthen berm or levee should be abandoned and reconstructed in another location within the floodway, the footprint of the abandoned earthen berm or levee, including areas within ten (10)



feet of the toe, shall be credited to any mitigation required for the construction of the new earthen berm or levee alignment within the floodway.

(j) A permit issued under this section:

- (1) is valid for two (2) years after the date of issuance of the permit; and
- (2) may be renewed for one (1) additional two (2) year period before the expiration of the period referred to in subdivision (1).

(k) The person to whom a permit is issued under this section shall post and maintain the permit at the site of the reconstruction authorized by the permit.

(l) A person who knowingly:

- (1) begins the reconstruction of an earthen berm or levee in violation of subsection (b), (c), or (d);
- (2) violates a condition or restriction of a permit issued under this section; or
- (3) fails to post and maintain a permit at a reconstruction site in violation of subsection (k);

commits a Class B infraction. Each day that the person is in violation of subsection (b), (c), (d), or (k) constitutes a separate infraction.

SECTION 3. IC 14-33-2-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2020]: Sec. 2. A petition filed under section 1 of this chapter must be signed by freeholders owning land in the proposed district. **The signatures of freeholders on the petition must be sufficient to satisfy both of the following requirements:**

(1) ~~in~~ **The freeholders signing the petition must constitute at least the following** minimum number or proportion of all the freeholders in the proposed district: ~~as follows:~~

(1) ~~(A)~~ **(A)** Districts of not more than ~~one thousand (1,000)~~ **five thousand (5,000)** freeholds, thirty percent (30%) of the freeholders.

(2) ~~Districts of at least one thousand one (1,001) and not more than five thousand (5,000) freeholds, fifteen percent (15%) of the freeholders but not less than three hundred (300) signatures.~~

(3) ~~(B)~~ **(B)** Districts of at least five thousand one (5,001) and not more than twenty-five thousand (25,000) freeholds, ~~ten percent (10%)~~ **fifteen percent (15%)** of the freeholders but not less than ~~seven hundred fifty (750)~~ **one thousand (1,000)**



signatures.

~~(4)~~ (C) Districts of at least twenty-five thousand one (25,001) freeholds, ~~five percent (5%)~~ **ten percent (10%)** of the freeholders but not less than ~~two thousand five hundred (2,500)~~ **three thousand (3,000)** signatures.

(2) The freeholders signing the petition must own at least fifty-one percent (51%) of the assessed valuation of the real property located within the boundaries of the proposed conservancy district, as determined by the most recent assessment of the real property in the proposed conservancy district for property tax purposes, excluding the assessed valuation of any real property located within the boundaries of the proposed conservancy district that would be exempt under this article from a special benefit tax levied by the proposed conservancy district or that is exempt from property taxes imposed under IC 6-1.1.

SECTION 4. [EFFECTIVE JULY 1, 2019] (a) IC 14-33-2-2, as amended by this act, does not apply to the establishment of a conservancy district under IC 14-33-2 pursuant to a petition filed with a clerk of the circuit court under IC 14-33-2-1 before January 1, 2020.

(b) This SECTION expires July 1, 2020.



Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Governor of the State of Indiana

Date: _____ Time: _____

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