

SENATE BILL No. 140

DIGEST OF INTRODUCED BILL

Citations Affected: IC 14-28-1-22.

Synopsis: Logjam removal. Provides that logs removed from a river or stream under the statutory exemption from permit requirements: (1) need not be cut if, in the opinion of the individual removing the logs, the cutting would create an unreasonable risk of bodily harm to the individual; and (2) need not be removed from the floodplain if the logs are dried and burned so completely as to eliminate the risk that the resulting ash and remnants, if the logs reenter the river or stream, will cause a new logjam.

Effective: July 1, 2024.

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January 8, 2024, read first time and referred to Committee on Natural Resources.



Second Regular Session of the 123rd General Assembly (2024)

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 2023 Regular Session of the General Assembly.

SENATE BILL No. 140

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

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

1 SECTION 1. IC 14-28-1-22, AS AMENDED BY P.L.191-2023,
2 SECTION 8, AND AS AMENDED BY P.L.247-2023, SECTION 6,
3 AND AS AMENDED BY THE TECHNICAL CORRECTIONS BILL
4 OF THE 2024 GENERAL ASSEMBLY, IS CORRECTED AND
5 AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2024]:
6 Sec. 22. (a) As used in subsection (b)(1) with respect to a stream, "total
7 length" means the length of the stream, expressed in miles, from the
8 confluence of the stream with the receiving stream to the upstream or
9 headward extremity of the stream, as indicated by the solid or dashed,
10 blue or purple line depicting the stream on the most current edition of
11 the seven and one-half (7 1/2) minute topographic quadrangle map
12 published by the United States Geological Survey, measured along the
13 meanders of the stream as depicted on the map.
14 (b) This section does not apply to the following:
15 (1) A reconstruction or maintenance project (as defined in
16 IC 36-9-27) on a stream or an open regulated drain if the total
17 length of the stream or open drain is not more than ten (10) miles.



- 1 (2) A construction or reconstruction project on a state or county
 2 highway bridge in a rural area that crosses a stream having an
 3 upstream drainage area of not more than fifty (50) square miles
 4 and the relocation of utility lines associated with the construction
 5 or reconstruction project if confined to an area not more than one
 6 hundred (100) feet from the limits of the highway construction
 7 right-of-way.
- 8 (3) The performance of an activity described in subsection (c)(1)
 9 or (c)(2) by a surface coal mining operation that is operated under
 10 a permit issued under IC 14-34.
- 11 (4) Any other activity that is determined by the commission,
 12 according to rules adopted under IC 4-22-2, to pose not more than
 13 a minimal threat to floodway areas.
- 14 (5) An activity in a boundary river floodway to which section 26.5
 15 of this chapter applies.
- 16 (6) *The activities of a forestry operation that are:*
- 17 (A) *conducted in compliance with the Indiana Logging and*
 18 *Forestry Best Management Practices Field Guide published*
 19 *by the department of natural resources; and*
- 20 (B) *confined to a waterway that has a watershed not greater*
 21 *than ten (10) square miles.*
- 22 ~~(7)~~ (7) The removal of a logjam or mass of wood debris that has
 23 accumulated in a river or stream, subject to the following
 24 conditions:
- 25 (A) Work must not be within a salmonid stream designated
 26 under 327 IAC 2-1.5-5 without the prior written approval of
 27 the department's division of fish and wildlife.
- 28 (B) Work must not be within a natural, scenic, or recreational
 29 river or stream designated under 312 IAC 7-2.
- 30 (C) Except as otherwise provided in Indiana law, free logs or
 31 affixed logs that are crossways in the channel must be cut,
 32 relocated, and removed from the floodplain. **However:**
- 33 **(i) the cutting of logs under this clause is not required if,**
 34 **in the opinion of the individual removing the logs, the**
 35 **cutting would create an unreasonable risk of bodily**
 36 **harm to the individual; and**
- 37 **(ii) logs removed from a river or stream under this**
 38 **clause need not be removed from the floodplain if the**
 39 **logs are dried and burned so completely as to eliminate**
 40 **the risk that the resulting ash and remnants, if the logs**
 41 **reenter the river or stream, will cause another logjam.**
 42 Logs may be maintained in the floodplain if properly anchored



- 1 or otherwise secured so as to resist flotation or dislodging by
 2 the flow of water and placement in an area that is not a
 3 wetland. Logs must be removed and secured with a minimum
 4 of damage to vegetation.
- 5 (D) Isolated or single logs that are embedded, lodged, or
 6 rooted in the channel, and that do not span the channel or
 7 cause flow problems, must not be removed unless the logs are
 8 either of the following:
- 9 (i) Associated with or in close proximity to larger
 10 obstructions.
- 11 (ii) Posing a hazard to agriculture, business, navigation, or
 12 property.
- 13 (E) A leaning or severely damaged tree that is in immediate
 14 danger of falling into the waterway may be cut and removed.
 15 The root system and stump of the tree must be left in place.
- 16 (F) To the extent practicable, the construction of access roads
 17 must be minimized, and should not result in the elevation of
 18 the floodplain.
- 19 (G) To the extent practicable, work should be performed
 20 exclusively from one (1) side of a waterway. Crossing the bed
 21 of a waterway is prohibited.
- 22 (H) To prevent the flow of sediment laden water back into the
 23 waterway, appropriate sediment control measures must be
 24 installed.
- 25 (I) Within fifteen (15) days, all bare and disturbed areas must
 26 be revegetated with a mixture of grasses and legumes. Tall
 27 fescue must not be used under this subdivision, except that low
 28 endophyte tall fescue may be used in the bottom of the
 29 waterway and on side slopes.
- 30 (c) A person who desires to:
- 31 (1) erect, make, use, or maintain a structure, an obstruction, a
 32 deposit, or an excavation; or
- 33 (2) suffer or permit a structure, an obstruction, a deposit, or an
 34 excavation to be erected, made, used, or maintained;
- 35 in or on a floodway must file with the director a verified written
 36 application for a permit. *The permit application must be accompanied*
 37 *by a nonrefundable minimum fee of two hundred dollars (\$200).*
- 38 (d) ~~The~~ *A permit application for a permit filed under this section:*
- 39 (1) must set forth the material facts ~~together with~~ *concerning the*
 40 *structure, obstruction, deposit, or excavation; and*
- 41 (2) *must be accompanied by* plans and specifications for the
 42 structure, obstruction, deposit, or excavation.



1 (e) *A person who files a permit application under this section must*
2 *provide:*

3 (1) *documentation of the person's ownership of the site where the*
4 *proposed work will be performed; or*

5 (2) *an affidavit from the owner of the site where the proposed*
6 *work will be performed expressly authorizing the performance of*
7 *the proposed work on that site.*

8 (f) *A person who applies for a permit under this section may file an*
9 *amendment to the person's permit application. The director may*
10 *approve a permit application amendment filed under this subsection*
11 *only if the permit, as amended by the amendment, would meet the*
12 *requirements of this section.*

13 (g) *Two (2) or more persons may jointly apply for a permit under*
14 *this section.*

15 ~~(e)~~ (h) *An applicant A person described in subsection (c) must*
16 *receive a permit from the director for the work before beginning*
17 *construction. The director shall issue a permit only if, in the opinion of*
18 *the director, the applicant has clearly proven that the structure,*
19 *obstruction, deposit, or excavation will not do any of the following:*

20 (1) *Adversely affect the efficiency of or unduly restrict the*
21 *capacity of the floodway.*

22 (2) *Constitute an unreasonable hazard to the safety of life or*
23 *property.*

24 (3) *Result in unreasonably detrimental effects upon fish, wildlife,*
25 *or botanical resources.*

26 ~~(f)~~ (i) *In deciding whether to issue a permit under this section, the*
27 *director shall consider the cumulative effects of the structure,*
28 *obstruction, deposit, or excavation. The director may incorporate in and*
29 *make a part of an order of authorization conditions and restrictions that*
30 *the director considers necessary for the purposes of this chapter.*

31 ~~(g)~~ (j) *The following apply to a permit issued under this section:*

32 (1) *Except as provided in subdivisions (2) and (3), a permit is*
33 *valid for two (2) years after the date of issuance of the permit.*

34 (2) *A permit issued to:*

35 (A) *the Indiana department of transportation or a county*
36 *highway department in connection with a construction project,*
37 *if there is any federal funding for the project; or*

38 (B) *an electric utility for the construction of a power*
39 *generating facility;*

40 *is valid for five (5) years from the date of issuance and of the*
41 *permit.*

42 (3) *is valid for the duration of a permitted project subject to*



1 *periodic compliance evaluations for A permit issued to a*
 2 *quarrying or aggregate company for the excavation of industrial*
 3 *materials, including:*

- 4 (A) clay and shale;
 5 (B) crushed limestone and dolostone;
 6 (C) dimension limestone;
 7 (D) dimension sandstone;
 8 (E) gypsum;
 9 (F) peat;
 10 (G) construction sand and gravel; and
 11 (H) industrial sand;

12 *is valid for the duration of the permitted project, subject to*
 13 *periodic compliance evaluations.*

14 However, a permit issued under this section expires if construction is
 15 not commenced within two (2) years after the permit is issued. *Except*
 16 *as provided under section 22.1 of this chapter, a permit that is active*
 17 *and was issued under subdivision (1) before July 1, 2014, is valid for*
 18 *two (2) years beginning July 2014, and a permit that is active and was*
 19 *issued under subdivision (2) before July 1, 2014, is valid for five (5)*
 20 *years beginning July 2014.*

21 ~~(h)~~ (k) The holder of a permit issued under subsection ~~(g)(3)~~ (j)(3)
 22 shall notify the commission *of the completion of the permitted project*
 23 within six (6) months ~~of~~ *after* completing the permitted project.

24 ~~(i)~~ (l) *The following apply to the renewal of a permit issued under*
 25 *this section:*

26 (1) *A permit to which subsection ~~(g)(1)~~ (j)(1) applies may be*
 27 renewed one (1) time for a period not to exceed two (2) additional
 28 years. ~~and~~

29 (2) *A permit to which subsection ~~(g)(2)~~ (j)(2) applies may be*
 30 renewed one (1) time for a period not to exceed five (5) additional
 31 years.

32 ~~(j)~~ (m) The director shall send a copy of each permit issued under
 33 this section to each river basin commission organized under:

- 34 (1) IC 14-29-7 or IC 13-2-27 (before its repeal); or
 35 (2) IC 14-13-9, IC 14-30-1 (before its repeal), or IC 36-7-6
 36 (before its repeal);

37 that is affected.

38 ~~(k)~~ (n) The permit holder shall post and maintain a permit issued
 39 under this section at the authorized site.

40 ~~(l)~~ (o) For the purposes of this chapter, the lowest floor of a
 41 building, including a residence or abode, that is to be constructed or
 42 reconstructed in the one hundred (100) year floodplain of an area



1 protected by a levee that is:
2 (1) inspected; and
3 (2) found to be in good or excellent condition;
4 by the United States Army Corps of Engineers shall not be lower than
5 the one hundred (100) year frequency flood elevation plus one (1) foot.

