

PROPOSED AMENDMENT

HB 1103 # 1

DIGEST

Flood control. Provides instances when a construction permit for a floodway is not required to remove a logjam or mass of wood debris that has accumulated in a river or stream. Provides that, beginning January 1, 2022, the director of the department of natural resources (department) shall not exercise authority to remove or eliminate an abode or residence from a floodway if the abode or residence was constructed before January 1, 2022. (Current law provides that the director of the department shall not exercise the authority if the residence or abode was constructed before January 1, 2020.) Provides that before July 1, 2023, the department shall adopt a license for the removal of trees; channel maintenance; and bank reconstruction, repair, and stabilization in a floodway. Provides that a local floodplain administrator shall utilize the best floodplain mapping data available as provided by the department and located on the Indiana Floodplain Information Portal when reviewing a permit application for a structure or a construction activity in, or near, a floodplain.

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- 1 Page 12, between lines 9 and 10, begin a new paragraph and insert:
2 "SECTION. 46. IC 14-28-1-22, AS AMENDED BY P.L.21-2021,
3 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
4 JULY 1, 2022]: Sec. 22. (a) As used in subsection (b)(1) with respect
5 to a stream, "total length" means the length of the stream, expressed in
6 miles, from the confluence of the stream with the receiving stream to
7 the upstream or headward extremity of the stream, as indicated by the
8 solid or dashed, blue or purple line depicting the stream on the most
9 current edition of the seven and one-half (7 1/2) minute topographic
10 quadrangle map published by the United States Geological Survey,
11 measured along the meanders of the stream as depicted on the map.
12 (b) This section does not apply to the following:
13 (1) A reconstruction or maintenance project (as defined in
14 IC 36-9-27) on a stream or an open regulated drain if the total
15 length of the stream or open drain is not more than ten (10) miles.
16 (2) A construction or reconstruction project on a state or county
17 highway bridge in a rural area that crosses a stream having an
18 upstream drainage area of not more than fifty (50) square miles
19 and the relocation of utility lines associated with the construction
20 or reconstruction project if confined to an area not more than one
21 hundred (100) feet from the limits of the highway construction

- 1 right-of-way.
- 2 (3) The performance of an activity described in subsection (c)(1)
- 3 or (c)(2) by a surface coal mining operation that is operated under
- 4 a permit issued under IC 14-34.
- 5 (4) Any other activity that is determined by the commission,
- 6 according to rules adopted under IC 4-22-2, to pose not more than
- 7 a minimal threat to floodway areas.
- 8 (5) An activity in a boundary river floodway to which section 26.5
- 9 of this chapter applies.
- 10 (6) The removal of a logjam or mass of wood debris that has
- 11 accumulated in a river or stream, subject to the following
- 12 conditions:
- 13 (A) Work must not be within a salmonid stream designated
- 14 under 327 IAC 2-1.5-5 without the prior written approval of
- 15 the department's division of fish and wildlife.
- 16 (B) Work must not be within a natural, scenic, or recreational
- 17 river or stream designated under 312 IAC 7-2.
- 18 (C) Except as otherwise provided in Indiana law, free logs or
- 19 affixed logs that are crossways in the channel must be cut,
- 20 relocated, and removed from the floodplain. Logs may be
- 21 maintained in the floodplain if properly anchored or otherwise
- 22 secured so as to resist flotation or dislodging by the flow of
- 23 water and placement in an area that is not a wetland. Logs
- 24 must be removed and secured with a minimum of damage to
- 25 vegetation.
- 26 (D) Isolated or single logs that are embedded, lodged, or
- 27 rooted in the channel, and that do not span the channel or
- 28 cause flow problems, must not be removed unless the logs are
- 29 either of the following:
- 30 (i) Associated with or in close proximity to larger
- 31 obstructions.
- 32 (ii) Posing a hazard to **agriculture, business, navigation, or**
- 33 **property.**
- 34 (E) A leaning or severely damaged tree that is in immediate
- 35 danger of falling into the waterway may be cut and removed.
- 36 ~~if the tree is associated with or in close proximity to an~~
- 37 ~~obstruction.~~ The root system and stump of the tree must be left
- 38 in place.
- 39 (F) To the extent practicable, the construction of access roads
- 40 must be minimized, and should not result in the elevation of

1 the floodplain.

2 (G) To the extent practicable, work should be performed
3 exclusively from one (1) side of a waterway. Crossing the bed
4 of a waterway is prohibited.

5 (H) To prevent the flow of sediment laden water back into the
6 waterway, appropriate sediment control measures must be
7 installed.

8 (I) Within fifteen (15) days, all bare and disturbed areas must
9 be revegetated with a mixture of grasses and legumes. Tall
10 fescue must not be used under this subdivision, except that low
11 endophyte tall fescue may be used in the bottom of the
12 waterway and on side slopes.

13 (c) A person who desires to:

14 (1) erect, make, use, or maintain a structure, an obstruction, a
15 deposit, or an excavation; or

16 (2) suffer or permit a structure, an obstruction, a deposit, or an
17 excavation to be erected, made, used, or maintained;

18 in or on a floodway must file with the director a verified written
19 application for a permit accompanied by a nonrefundable minimum fee
20 of two hundred dollars (\$200).

21 (d) The application for a permit must set forth the material facts
22 together with plans and specifications for the structure, obstruction,
23 deposit, or excavation.

24 (e) An applicant must receive a permit from the director for the
25 work before beginning construction. The director shall issue a permit
26 only if in the opinion of the director the applicant has clearly proven
27 that the structure, obstruction, deposit, or excavation will not do any of
28 the following:

29 (1) Adversely affect the efficiency of or unduly restrict the
30 capacity of the floodway.

31 (2) Constitute an unreasonable hazard to the safety of life or
32 property.

33 (3) Result in unreasonably detrimental effects upon fish, wildlife,
34 or botanical resources.

35 (f) In deciding whether to issue a permit under this section, the
36 director shall consider the cumulative effects of the structure,
37 obstruction, deposit, or excavation. The director may incorporate in and
38 make a part of an order of authorization conditions and restrictions that
39 the director considers necessary for the purposes of this chapter.

40 (g) A permit issued under this section:

- 1 (1) is valid for two (2) years after the issuance of the permit;
 2 (2) to:
- 3 (A) the Indiana department of transportation or a county
 - 4 highway department if there is any federal funding for the
 - 5 project; or
 - 6 (B) an electric utility for the construction of a power
 - 7 generating facility;
- 8 is valid for five (5) years from the date of issuance; and
- 9 (3) is valid for the duration of a permitted project subject to
- 10 periodic compliance evaluations for a quarrying or aggregate
- 11 company for the excavation of industrial materials, including:
- 12 (A) clay and shale;
 - 13 (B) crushed limestone and dolostone;
 - 14 (C) dimension limestone;
 - 15 (D) dimension sandstone;
 - 16 (E) gypsum;
 - 17 (F) peat;
 - 18 (G) construction sand and gravel; and
 - 19 (H) industrial sand.
- 20 However, a permit issued under this section expires if construction is
- 21 not commenced within two (2) years after the permit is issued. Except
- 22 as provided under section 22.1 of this chapter, a permit that is active
- 23 and was issued under subdivision (1) before July 1, 2014, is valid for
- 24 two (2) years beginning July 2014, and a permit that is active and was
- 25 issued under subdivision (2) before July 1, 2014, is valid for five (5)
- 26 years beginning July 2014.
- 27 (h) The holder of a permit issued under subsection (g)(3) shall
- 28 notify the commission within six (6) months of completing the
- 29 permitted project.
- 30 (i) A permit issued under:
 - 31 (1) subsection (g)(1) may be renewed one (1) time for a period not
 - 32 to exceed two (2) additional years; and
 - 33 (2) subsection (g)(2) may be renewed one (1) time for a period not
 - 34 to exceed five (5) additional years.
 - 35 (j) The director shall send a copy of each permit issued under this
 - 36 section to each river basin commission organized under:
 - 37 (1) IC 14-29-7 or IC 13-2-27 (before its repeal); or
 - 38 (2) IC 14-13-9, IC 14-30-1 (before its repeal), or IC 36-7-6
 - 39 (before its repeal);
 - 40 that is affected.

1 (k) The permit holder shall post and maintain a permit issued under
2 this section at the authorized site.

3 (l) For the purposes of this chapter, the lowest floor of a building,
4 including a residence or abode, that is to be constructed or
5 reconstructed in the one hundred (100) year floodplain of an area
6 protected by a levee that is:

7 (1) inspected; and

8 (2) found to be in good or excellent condition;

9 by the United States Army Corps of Engineers shall not be lower than
10 the one hundred (100) year frequency flood elevation plus one (1) foot.

11 SECTION 47. IC 14-28-1-23, AS AMENDED BY P.L.90-2020,
12 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
13 JULY 1, 2022]: Sec. 23. (a) The director may remove or eliminate a
14 structure, an obstruction, a deposit, or an excavation in a floodway that:

15 (1) adversely affects the efficiency of or unduly restricts the
16 capacity of the floodway;

17 (2) constitutes an unreasonable hazard to the safety of life or
18 property; or

19 (3) is unreasonably detrimental to fish, wildlife, or botanical
20 resources;

21 by an action in condemnation.

22 (b) In assessing the damages in the proceedings, the appraisers and
23 the court shall take into consideration whether the structure,
24 obstruction, deposit, or excavation is legally in or on the floodway.

25 (c) Beginning ~~January 1, 2020~~, **January 1, 2022**, the director shall
26 not exercise the authority under subsection (a) to remove or eliminate
27 an abode or residence from a floodway if:

28 (1) the abode or residence was constructed before ~~January 1,~~
29 **January 1, 2022**;

30 (2) the owner of the abode or residence has taken necessary
31 measures to elevate the lowest floor of the abode or residence, as
32 reconstructed, including the basement, to at least two (2) feet
33 above the one hundred (100) year flood elevation within two (2)
34 years after receiving notification from the department concerning
35 the abode or residence; and

36 (3) the owner of the abode or residence has taken necessary
37 measures to comply with all applicable local, state, and federal
38 floodway regulations.

39 SECTION 48. IC 14-28-1-39 IS ADDED TO THE INDIANA
40 CODE AS A **NEW** SECTION TO READ AS FOLLOWS

1 [EFFECTIVE JULY 1, 2022]: **Sec. 39. (a) Before July 1, 2023, the**
2 **department shall adopt a license for the following activities in a**
3 **floodway:**

- 4 (1) **Removal of trees.**
- 5 (2) **Channel maintenance.**
- 6 (3) **Bank reconstruction, repair, and stabilization.**
- 7 **(b) This section expires July 1, 2024.**

8 SECTION 49. IC 14-28-1-40 IS ADDED TO THE INDIANA
9 CODE AS A NEW SECTION TO READ AS FOLLOWS
10 [EFFECTIVE JULY 1, 2022]: **Sec. 40. A local floodplain**
11 **administrator shall utilize the best floodplain mapping data**
12 **available as provided by the department and located on the**
13 **Indiana Floodplain Information Portal when reviewing a permit**
14 **application for a structure or a construction activity in, or near, a**
15 **floodplain."**

16 Renumber all SECTIONS consecutively.
(Reference is to HB 1103 as introduced.)