

PROPOSED AMENDMENT

SB 140 # 1

DIGEST

Logjam removal. Removes the language from the bill and inserts language from HB 1401.

- 1 Delete everything after the enacting clause and insert the following:
2 SECTION 1. IC 14-28-1-22, AS AMENDED BY P.L.191-2023,
3 SECTION 8, AND AS AMENDED BY P.L.247-2023, SECTION 6,
4 AND AS AMENDED BY THE TECHNICAL CORRECTIONS BILL
5 OF THE 2024 GENERAL ASSEMBLY, IS CORRECTED AND
6 AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2024]:
7 Sec. 22. (a) As used in subsection (b)(1) with respect to a stream, "total
8 length" means the length of the stream, expressed in miles, from the
9 confluence of the stream with the receiving stream to the upstream or
10 headward extremity of the stream, as indicated by the solid or dashed,
11 blue or purple line depicting the stream on the most current edition of
12 the seven and one-half (7 1/2) minute topographic quadrangle map
13 published by the United States Geological Survey, measured along the
14 meanders of the stream as depicted on the map.
- 15 (b) ~~This section does not apply to the following:~~ **A person is not**
16 **required to obtain a permit from the department for the following**
17 **activities:**
- 18 (1) A reconstruction or maintenance project (as defined in
19 IC 36-9-27) on a stream or an open regulated drain if the total
20 length of the stream or open drain is not more than ten (10) miles.
21 (2) A construction or reconstruction project on a state or county
22 highway bridge in a rural area that crosses a stream having an
23 upstream drainage area of not more than fifty (50) square miles
24 and the relocation of utility lines associated with the construction
25 or reconstruction project if confined to an area not more than one
26 hundred (100) feet from the limits of the highway construction
27 right-of-way.
28 (3) The performance of an activity described in subsection (c)(1)

1 or (c)(2) by a surface coal mining operation that is operated under
2 a permit issued under IC 14-34.

3 (4) Any other activity that is determined by the commission,
4 according to rules adopted under IC 4-22-2, to pose not more than
5 a minimal threat to floodway areas.

6 (5) An activity in a boundary river floodway to which section 26.5
7 of this chapter applies.

8 (6) *The activities of a forestry operation that are:*

9 (A) *conducted in compliance with the Indiana Logging and*
10 *Forestry Best Management Practices Field Guide published*
11 *by the department of natural resources; and*

12 (B) *confined to a waterway that has a watershed not greater*
13 *than ten (10) square miles.*

14 ~~(6)~~ (7) The removal of a logjam or mass of wood debris that has
15 accumulated in a river or stream, subject to the following
16 conditions:

17 (A) Work must not be within a salmonid stream designated
18 under 327 IAC 2-1.5-5 without the prior written approval of
19 the department's division of fish and wildlife.

20 (B) Work must not be within a natural, scenic, or recreational
21 river or stream designated under 312 IAC 7-2.

22 (C) Except as otherwise provided in Indiana law, **the**
23 **following apply to logs that are crossways in the channel:**

24 (i) Free logs **must be relocated and removed from the**
25 **flood plain. ~~or A free log includes a log that is still~~**
26 **attached to a root system that is no longer in the ground.**

27 (ii) Affixed logs ~~that are crossways in the channel~~ must be
28 cut, relocated, and removed from the floodplain. **An affixed**
29 **log includes a log that is still attached to a root system**
30 **that is still in the ground. If the root system is still in the**
31 **ground, the log must be cut so as to allow the root system**
32 **to remain in the ground.**

33 Logs may be maintained in the floodplain if properly anchored
34 or otherwise secured so as to resist flotation or dislodging by
35 the flow of water and placement in an area that is not a
36 wetland. Logs must be removed and secured with a minimum
37 of damage to vegetation.

38 (D) Isolated or single logs that are embedded, lodged, or
39 rooted in the channel, and that do not span the channel or
40 cause flow problems, must not be removed unless the logs are

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

1 *provide:*

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

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

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

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

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

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

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

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

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

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

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

33 *(2) A permit issued to:*

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

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

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

1 (3) *is valid for the duration of a permitted project subject to*
 2 *periodic compliance evaluations for A permit issued to a*
 3 *quarrying or aggregate company for the excavation of industrial*
 4 *materials, including:*

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

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

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

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

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

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

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

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

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

38 that is affected.

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

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

5 (1) inspected; and

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

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

(Reference is to SB 140 as reprinted January 31, 2024.)