



January 28, 2020

HOUSE BILL No. 1031

DIGEST OF HB 1031 (Updated January 27, 2020 3:42 pm - DI 123)

Citations Affected: IC 14-8; IC 14-10; IC 14-26; IC 34-30; IC 36-1.

Synopsis: The Lake Michigan shore. Provides that: (1) the natural resources commission (commission) has exclusive authority to establish standards for approval of; and (2) the department of natural resources has exclusive authority to determine whether to approve; the placement of a seawall or other permanent structure on or within the natural ordinary high water mark of Lake Michigan. Provides that a county, city, or town has no authority to regulate the construction or maintenance of seawalls and other permanent structures in or near Lake Michigan. Authorizes an owner of a private property located adjacent to Lake Michigan to remove sand that has accumulated on or near the private property and to remove unwanted vegetation from the beach on or near the private property according to rules or guidelines of the commission. Provides that the owner of a private property that is adjacent to Lake Michigan does not incur liability for an injury to an individual or damage to property: (1) that occurs when an individual is crossing the private property to enter, or upon leaving, the span of the beach in which the public has a vested right to engage in recreational activities; and (2) that is caused by an act or omission of the owner, except for an act of the owner constituting intentional misconduct. Allows the department of natural resources to establish an administrative ordinary high watermark on the land adjoining the waters of Lake Michigan in certain instances.

Effective: July 1, 2020.

Miller D

January 6, 2020, read first time and referred to Committee on Judiciary.
January 28, 2020, amended, reported — Do Pass.

HB 1031—LS 6328/DI 55



January 28, 2020

Second Regular Session of the 121st General Assembly (2020)

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 2019 Regular Session of the General Assembly.

HOUSE BILL No. 1031

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 14-8-2-21.1 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2020]: **Sec. 21.1. "Beach maintenance", for purposes of**
4 **IC 14-26-9, has the meaning set forth in IC 14-26-9-1.**
5 SECTION 2. IC 14-8-2-173.5 IS ADDED TO THE INDIANA
6 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
7 [EFFECTIVE JULY 1, 2020]: **Sec. 173.5. "Natural ordinary high**
8 **water mark", for purposes of IC 14-10-4 and IC 14-26-10, means**
9 **the natural line on the bank of Lake Michigan:**
10 **(1) that is established by the fluctuations of water and**
11 **indicated by certain physical characteristics, including:**
12 **(A) a clear and natural line impressed on the bank or**
13 **shore;**
14 **(B) shelving;**
15 **(C) changes in the soil's character; and**

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1 **(D) the absence or presence of terrestrial vegetation; and**
 2 **(2) that moves from time to time as a result of natural forces,**
 3 **including the deposition of sediment on the shore, the erosion**
 4 **of sand from the shore, and changes in the water level of Lake**
 5 **Michigan.**

6 SECTION 3. IC 14-8-2-195 IS AMENDED TO READ AS
 7 FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 195. "Owner" has the
 8 following meaning:

9 (1) For purposes of IC 14-11-4, the meaning set forth in
 10 IC 14-11-4-2.

11 (2) For purposes of IC 14-15, a person who has the legal title to
 12 a watercraft.

13 (3) For purposes of IC 14-16-1, the meaning set forth in
 14 IC 14-16-1-6.

15 (4) For purposes of IC 14-25-4, the meaning set forth in
 16 IC 14-25-4-4.

17 **(5) For purposes of IC 14-26-9, the meaning set forth in**
 18 **IC 14-26-9-2.**

19 ~~(5)~~ **(6)** For purposes of IC 14-27-7, the meaning set forth in
 20 IC 14-27-7-1.

21 ~~(6)~~ **(7)** For purposes of IC 14-27-7.5, the meaning set forth in
 22 IC 14-27-7.5-4.

23 ~~(7)~~ **(8)** For purposes of IC 14-36, the term includes the following:

24 (A) Owners in fee.

25 (B) Life tenants.

26 (C) Tenants for years.

27 (D) Holders of remainder of reversionary interests.

28 (E) Holders of leaseholds or easements.

29 (F) Holders of mineral rights.

30 ~~(8)~~ **(9)** For purposes of IC 14-37, a person who has the right to
 31 drill into and produce from a pool and to appropriate the oil and
 32 gas produced from the pool for:

33 (A) the person or others; or

34 (B) the person and others.

35 ~~(9)~~ **(10)** For the purposes of IC 14-22-10-2, the meaning set forth
 36 in IC 14-22-10-2(c).

37 SECTION 4. IC 14-8-2-198.5 IS ADDED TO THE INDIANA
 38 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
 39 [EFFECTIVE JULY 1, 2020]: **Sec. 198.5. "Permanent structure",**
 40 **for purposes of IC 14-10-4, has the meaning set forth in**
 41 **IC 14-10-4-2.**

42 SECTION 5. IC 14-8-2-214.8 IS ADDED TO THE INDIANA



1 CODE AS A NEW SECTION TO READ AS FOLLOWS
 2 [EFFECTIVE JULY 1, 2020]: **Sec. 214.8. (a) "Private property", for**
 3 **purposes of IC 14-26-9, has the meaning set forth in IC 14-26-9-3.**

4 **(b) "Private property", for purposes of IC 14-26-10, has the**
 5 **meaning set forth in IC 14-26-10-2.**

6 SECTION 6. IC 14-8-2-233.2 IS ADDED TO THE INDIANA
 7 CODE AS A NEW SECTION TO READ AS FOLLOWS
 8 [EFFECTIVE JULY 1, 2020]: **Sec. 233.2. "Recreational activities",**
 9 **for purposes of IC 14-26-10, has the meaning set forth in**
 10 **IC 14-26-10-3.**

11 SECTION 7. IC 14-8-2-245.8 IS ADDED TO THE INDIANA
 12 CODE AS A NEW SECTION TO READ AS FOLLOWS
 13 [EFFECTIVE JULY 1, 2020]: **Sec. 245.8. "Sand", for purposes of**
 14 **section 173.5 of this chapter, IC 14-26-9, and IC 14-26-10, means**
 15 **a loose granular material that:**

16 **(1) results from the disintegration of rocks; and**

17 **(2) consists of particles smaller than gravel but coarser than**
 18 **silt.**

19 SECTION 8. IC 14-10-4 IS ADDED TO THE INDIANA CODE AS
 20 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
 21 1, 2020]:

22 **Chapter 4. Commission and Department Authority over Lake**
 23 **Michigan Structures**

24 **Sec. 1. As used in this chapter, "natural ordinary high water**
 25 **mark" has the meaning set forth in IC 14-8-2-173.5.**

26 **Sec. 2. As used in this chapter, "permanent structure" has the**
 27 **meaning set forth in 312 IAC 6-8-1(c) (as in effect January 1, 2020).**

28 **Sec. 3. The natural resources commission has exclusive**
 29 **authority, through the adoption of rules under IC 4-22-2, to**
 30 **establish standards for determining whether approval should be**
 31 **granted for the placement of a seawall or other permanent**
 32 **structure on or within the natural ordinary high water mark of**
 33 **Lake Michigan.**

34 **Sec. 4. The department has exclusive authority, subject to the**
 35 **rules adopted under section 3 of this chapter, to determine whether**
 36 **to:**

37 **(1) approve;**

38 **(2) approve with conditions; or**

39 **(3) deny;**

40 **an application for permission to place a seawall or other**
 41 **permanent structure on or within the natural ordinary high water**
 42 **mark of Lake Michigan.**



1 SECTION 9. IC 14-26-9 IS ADDED TO THE INDIANA CODE AS
 2 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
 3 1, 2020]:

4 **Chapter 9. Lake Michigan Beach Maintenance**

5 **Sec. 1. As used in this chapter, "beach maintenance" means**
 6 **either of the following:**

7 (1) To remove sand that has, by natural forces, accumulated
 8 on or near a private property, impeding access from the
 9 private property to the beach of Lake Michigan, and return
 10 the sand to the beach.

11 (2) To remove unwanted vegetation from the beach on or near
 12 a private property.

13 **Sec. 2. As used in this chapter, "owner" means a person that:**

14 (1) has a fee interest in;

15 (2) is a tenant, lessee, or occupant of; or

16 (3) is otherwise legally in control of;

17 a private property that is adjacent to Lake Michigan.

18 **Sec. 3. As used in this chapter, "private property" means a**
 19 **property whose owner is a person other than the state of Indiana.**

20 **Sec. 4. An owner of a private property that is adjacent to Lake**
 21 **Michigan may perform beach maintenance according to rules or**
 22 **guidelines adopted by the commission.**

23 **Sec. 5. The natural resources commission may adopt rules under**
 24 **IC 4-22-2 or guidelines concerning the performance of beach**
 25 **maintenance under this chapter.**

26 SECTION 10. IC 14-29-1-9 IS ADDED TO THE INDIANA CODE
 27 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 28 1, 2020]: **Sec. 9. The department may adopt rules under IC 4-22-2**
 29 **to establish an administrative ordinary high water mark on the**
 30 **land adjoining the waters of Lake Michigan for purposes of**
 31 **administering this chapter.**

32 SECTION 11. IC 34-30-19.5 IS ADDED TO THE INDIANA
 33 CODE AS A NEW CHAPTER TO READ AS FOLLOWS
 34 [EFFECTIVE JULY 1, 2020]:

35 **Chapter 19.5. Immunity of Owner of Property Adjacent to Lake**
 36 **Michigan**

37 **Sec. 1. As used in this chapter, "owner" means a person that:**

38 (1) has a fee interest in;

39 (2) is a tenant, lessee, or occupant of; or

40 (3) is otherwise legally in control of;

41 a private property that is adjacent to Lake Michigan.

42 **Sec. 2. As used in this chapter, "private property" means a**



1 **property whose owner is a person other than the state of Indiana**
 2 **or a political subdivision thereof.**

3 **Sec. 3. (a) The owner of a private property that is adjacent to**
 4 **Lake Michigan does not assume responsibility or incur liability for**
 5 **an injury to an individual or damage to property that:**

6 **(1) occurs after June 30, 2020, when an individual is crossing**
 7 **the private property:**

8 **(A) to enter; or**

9 **(B) upon leaving;**

10 **the area of the beach of Lake Michigan in which the public**
 11 **has a vested right to engage in recreational activities under**
 12 **IC 14-26-10-5; and**

13 **(2) is caused by:**

14 **(A) an act or omission of a person other than the owner;**

15 **(B) an act or omission of the owner, except for an act of the**
 16 **owner constituting intentional misconduct; or**

17 **(C) the condition of the property.**

18 **(b) This section does not affect the following:**

19 **(1) Existing Indiana case law on the liability of property**
 20 **owners with respect to:**

21 **(A) business invitees in commercial establishments; or**

22 **(B) invited guests.**

23 **(2) The attractive nuisance doctrine.**

24 **SECTION 12. IC 36-1-3-8, AS AMENDED BY P.L.19-2019,**
 25 **SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE**
 26 **JULY 1, 2020]: Sec. 8. (a) Subject to subsection (b), a unit does not**
 27 **have the following:**

28 **(1) The power to condition or limit its civil liability, except as**
 29 **expressly granted by statute.**

30 **(2) The power to prescribe the law governing civil actions**
 31 **between private persons.**

32 **(3) The power to impose duties on another political subdivision,**
 33 **except as expressly granted by statute.**

34 **(4) The power to impose a tax, except as expressly granted by**
 35 **statute.**

36 **(5) The power to impose a license fee greater than that reasonably**
 37 **related to the administrative cost of exercising a regulatory power.**

38 **(6) The power to impose a service charge or user fee greater than**
 39 **that reasonably related to reasonable and just rates and charges**
 40 **for services.**

41 **(7) The power to regulate conduct that is regulated by a state**
 42 **agency, except as expressly granted by statute.**



- 1 (8) The power to prescribe a penalty for conduct constituting a
 2 crime or infraction under statute.
- 3 (9) The power to prescribe a penalty of imprisonment for an
 4 ordinance violation.
- 5 (10) The power to prescribe a penalty of a fine as follows:
 6 (A) More than ten thousand dollars (\$10,000) for the violation
 7 of an ordinance or a regulation concerning air emissions
 8 adopted by a county that has received approval to establish an
 9 air permit program under IC 13-17-12-6.
 10 (B) For a violation of any other ordinance:
 11 (i) more than two thousand five hundred dollars (\$2,500) for
 12 a first violation of the ordinance; and
 13 (ii) except as provided in subsection (c), more than seven
 14 thousand five hundred dollars (\$7,500) for a second or
 15 subsequent violation of the ordinance.
- 16 (11) The power to invest money, except as expressly granted by
 17 statute.
- 18 (12) The power to order or conduct an election, except as
 19 expressly granted by statute.
- 20 (13) The power to adopt or enforce an ordinance described in
 21 section 8.5 of this chapter.
- 22 (14) The power to take any action prohibited by section 8.6 of this
 23 chapter.
- 24 (15) The power to dissolve a political subdivision, except:
 25 (A) as expressly granted by statute; or
 26 (B) if IC 36-1-8-17.7 applies to the political subdivision, in
 27 accordance with the procedure set forth in IC 36-1-8-17.7.
- 28 (16) After June 30, 2019, the power to enact an ordinance
 29 requiring a solid waste hauler or a person who operates a vehicle
 30 in which recyclable material is transported for recycling to collect
 31 fees authorized by IC 13-21 and remit the fees to:
 32 (A) a unit; or
 33 (B) the board of a solid waste management district established
 34 under IC 13-21.
- 35 **(17) The power to regulate the construction or maintenance**
 36 **of seawalls and other permanent structures (as defined in**
 37 **IC 14-10-4-2) in or near Lake Michigan.**
- 38 (b) A township does not have the following, except as expressly
 39 granted by statute:
 40 (1) The power to require a license or impose a license fee.
 41 (2) The power to impose a service charge or user fee.
 42 (3) The power to prescribe a penalty.



1 (c) Subsection (a)(10)(B)(ii) does not apply to the violation of an
2 ordinance that regulates traffic or parking.



COMMITTEE REPORT

Mr. Speaker: Your Committee on Judiciary, to which was referred House Bill 1031, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 4, delete lines 26 through 42.

Page 5, delete lines 1 through 40.

Page 5, between lines 40 and 41, begin a new paragraph and insert:

"SECTION 10. IC 14-29-1-9 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: **Sec. 9. The department may adopt rules under IC 4-22-2 to establish an administrative ordinary high water mark on the land adjoining the waters of Lake Michigan for purposes of administering this chapter.**"

Page 6, line 10, delete "Indiana." and insert "**Indiana or a political subdivision thereof.**"

Re-number all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1031 as introduced.)

TORR

Committee Vote: yeas 12, nays 0.

