



February 18, 2020

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# ENGROSSED HOUSE BILL No. 1099

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DIGEST OF HB 1099 (Updated February 17, 2020 10:59 am - DI 138)

**Citations Affected:** IC 14-8; IC 14-27; IC 34-30.

**Synopsis:** Low head dams. Requires the natural resources commission to establish a roster of low head dams in the state that are capable of creating hazardous currents that pose safety issues. Establishes requirements concerning low head dams for the department of natural resources (department) and owners of low head dams. Provides that an owner of at least two low head dams is exempt from certain requirements if that owner has previously installed warning signs, in coordination with the department, and maintains and repairs the existing signs. Except for purposes of an inspection, maintenance, or removal, prohibits a person from accessing a low head dam. Prohibits wading, boating, swimming, or accessing the waters within 50 feet of a low head dam when warning signs are present. Provides that the state is not liable for any death or injury that occurs on or resulting from a low head dam that is not owned by the state. Provides for a penalty for violations. Requires the department to prepare a report that includes recommendations concerning the creation of a low head dam removal program and any recommendations concerning low head dam safety legislation.

**Effective:** July 1, 2020.

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## Manning, Eberhart, Abbott, Boy

(SENATE SPONSORS — BUSCH, GLICK, LANANE)

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January 7, 2020, read first time and referred to Committee on Natural Resources.  
January 23, 2020, amended, reported — Do Pass.  
January 27, 2020, read second time, ordered engrossed. Engrossed.  
January 28, 2020, read third time, passed. Yeas 97, nays 1.

SENATE ACTION

February 5, 2020, read first time and referred to Committee on Natural Resources.  
February 17, 2020, amended, reported favorably — Do Pass.

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February 18, 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.

## ENGROSSED HOUSE BILL No. 1099

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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 14-8-2-156.9 IS ADDED TO THE INDIANA  
2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
3 [EFFECTIVE JULY 1, 2020]: **Sec. 156.9. "Low head dam", for**  
4 **purposes of IC 14-27-7.3, has the meaning set forth in**  
5 **IC 14-27-7.3-2.**

6 SECTION 2. IC 14-8-2-245.1 IS ADDED TO THE INDIANA  
7 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
8 [EFFECTIVE JULY 1, 2020]: **Sec. 245.1. "Roster", for purposes of**  
9 **IC 14-27-7.3, has the meaning set forth in IC 14-27-7.3-3.**

10 SECTION 3. IC 14-27-7.3 IS ADDED TO THE INDIANA CODE  
11 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
12 JULY 1, 2020]:

13 **Chapter 7.3. Low Head Dams**

14 **Sec. 1. This chapter does not apply to a dam that is regulated by**  
15 **the Federal Energy Regulatory Commission or owned by the Army**  
16 **Corps of Engineers.**

17 **Sec. 2. As used in this chapter, "low head dam" means a**

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1 manmade in-channel structure in a watercourse that is capable of  
 2 generating hazardous recirculating currents that pose a risk to  
 3 public health and safety and causes the watercourse to have a  
 4 vertical drop of twenty-five (25) feet or less. The term does not  
 5 include:

- 6 (1) a dam with a downstream structure in place to dissipate  
 7 the hydraulic energy of the water past the crest of the dam; or
- 8 (2) ramped impoundments which drop at slopes of five  
 9 percent (5%) or flatter.

10 Sec. 3. As used in this chapter, "roster" refers to the roster of  
 11 low head dams adopted under section 4 of this chapter.

12 Sec. 4. (a) Not later than July 1, 2021, the commission shall  
 13 adopt a roster of low head dams located in the state that are  
 14 capable of creating hazardous currents that pose safety issues to  
 15 swimmers, waders, or boaters. The roster must be updated  
 16 periodically.

17 (b) The roster of low head dams must include the following  
 18 information:

- 19 (1) The location of the low head dam.
- 20 (2) To the extent feasible, the name of each low head dam  
 21 owner. If an owner cannot be identified, the roster must list  
 22 the owner as unknown.

23 Sec. 5. The department shall do the following:

- 24 (1) Establish warning standards for low head dams that are  
 25 on the roster.
- 26 (2) Provide information on low head dam safety.
- 27 (3) Provide contact information for the department so that a  
 28 low head dam owner can discuss options for low head dam  
 29 removal or modification.
- 30 (4) Not more than ninety (90) days after the commission  
 31 adopts a roster, notify each identified owner of a low head  
 32 dam on the roster by certified mail of the requirements for a  
 33 low head dam under this chapter.
- 34 (5) Not more than ninety (90) days after the department  
 35 receives information of a new owner of a low head dam on the  
 36 roster, notify the new owner by certified mail of the  
 37 requirements for a low head dam under this chapter.

38 Sec. 6. A person who owns a low head dam that is on the roster  
 39 shall do the following:

- 40 (1) Except as provided in section 7 of this chapter, comply  
 41 with the warning standards established by the department  
 42 under section 5(1) of this chapter.



1 (2) Inform the department of any change of ownership of the  
2 low head dam not more than thirty (30) days after the change.

3 (3) Except for a low head dam owned by the state, maintain  
4 general liability insurance, with a general aggregate limit of  
5 not less than one million dollars (\$1,000,000), to cover claims  
6 from injuries and death that the low head dam may cause,  
7 and before July 1 of each year provide the department with  
8 proof of insurance.

9 Sec. 7. A person who owns at least two (2) low head dams is  
10 exempted from the requirements under section 6(1) of this chapter  
11 if:

12 (1) that person has previously installed warning signs in  
13 coordination with the department; and

14 (2) that person maintains and repairs the signs that exist.

15 Sec. 8. (a) The owner of a low head dam that is on the roster and  
16 that has been damaged or breached shall notify the department  
17 within four (4) business days of becoming aware of the damage or  
18 breach.

19 (b) The department and the department's agents, engineers,  
20 geologists, and other employees may, for purposes of conducting an  
21 assessment of the low head dam that has been reported as damaged  
22 or breached, enter upon any land or water in Indiana without  
23 liability for trespass. The owner of the low head dam shall do the  
24 following:

25 (1) Cooperate with the department and the department's  
26 agents, engineers, geologists, and other employees in the  
27 conduct of the assessment.

28 (2) Facilitate access to the low head dam.

29 (c) After the low head dam has been assessed under subsection  
30 (b), the department shall provide a written report to each owner of  
31 the low head dam.

32 Sec. 9. (a) A person may not access a low head dam or wade,  
33 boat, swim, or access the waters within fifty (50) feet of the low  
34 head dam when warning signs are present.

35 (b) Notwithstanding subsection (a), a person who is performing:

36 (1) an assessment, inspection, or maintenance on or removal  
37 of a low head dam with the written permission of the owner;  
38 or

39 (2) duties of the department;

40 is exempt from this section.

41 Sec. 10. The department may use funds appropriated to the  
42 department to perform title searches to determine the owners of



1 existing low head dams.  
 2       **Sec. 11. (a) The state is not liable for any death or injury that**  
 3 **occurs on or resulting from a low head dam that is not owned by**  
 4 **the state.**  
 5       **(b) Nothing in this chapter limits an owner's liability for any**  
 6 **damage, loss, or injury that is caused by a low head dam.**  
 7       **Sec. 12. The department may adopt rules under IC 4-22-2 to**  
 8 **implement this chapter.**  
 9       **Sec. 13. A person who violates this chapter commits a Class C**  
 10 **infraction.**  
 11       **Sec. 14. (a) A person may appeal an administrative decision or**  
 12 **penalty assessed under this chapter to the commission.**  
 13       **(b) IC 4-21.5 applies to proceedings by the commission under**  
 14 **this section.**  
 15       **Sec. 15. (a) Not later than October 1, 2020, the department**  
 16 **shall:**  
 17       **(1) prepare a report that includes recommendations**  
 18 **concerning the creation of a low head dam removal program**  
 19 **and any recommendations concerning low head dam safety**  
 20 **legislation; and**  
 21       **(2) submit the report required in this section in an electronic**  
 22 **format under IC 5-14-6 to the executive director of the**  
 23 **legislative services agency for distribution to the members of**  
 24 **the general assembly.**  
 25       **(b) This section expires July 1, 2021.**  
 26       **SECTION 4. IC 34-30-2-56.7 IS ADDED TO THE INDIANA**  
 27 **CODE AS A NEW SECTION TO READ AS FOLLOWS**  
 28 **[EFFECTIVE JULY 1, 2020]: Sec. 56.7. IC 14-27-7.3-11 (Concerning**  
 29 **state liability for low head dams not owned by the state).**



## COMMITTEE REPORT

Mr. Speaker: Your Committee on Natural Resources, to which was referred House Bill 1099, 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 1, line 15, after "or" insert "**owned by**".

Page 2, delete line 1.

Page 2, line 2, delete "watercourse that" and insert "**manmade in-channel structure in a watercourse that is capable of generating hazardous recirculating currents that pose a risk to public health and safety and**".

Page 3, line 20, delete "one hundred (100)" and insert "**fifty (50)**".  
and when so amended that said bill do pass.

(Reference is to HB 1099 as introduced.)

EBERHART

Committee Vote: yeas 11, nays 0.

## COMMITTEE REPORT

Madam President: The Senate Committee on Natural Resources, to which was referred House Bill No. 1099, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 2, line 4, after "less." insert "**The term does not include:**

- (1) **a dam with a downstream structure in place to dissipate the hydraulic energy of the water past the crest of the dam; or**
- (2) **ramped impoundments which drop at slopes of five percent (5%) or flatter.**"

Page 2, line 35, delete "Comply" and insert "**Except as provided in section 7 of this chapter, comply**".

Page 3, between lines 2 and 3, begin a new paragraph and insert:

**"Sec. 7. A person who owns at least two (2) low head dams is exempted from the requirements under section 6(1) of this chapter if:**

- (1) **that person has previously installed warning signs in coordination with the department; and**
- (2) **that person maintains and repairs the signs that exist.**"

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Page 3, line 3, delete "7." and insert "8."  
Page 3, line 20, delete "8." and insert "9."  
Page 3, line 29, delete "9." and insert "10."  
Page 3, line 32, delete "10." and insert "11."  
Page 3, line 37, delete "11." and insert "12."  
Page 3, line 39, delete "12." and insert "13."  
Page 3, line 41, delete "13." and insert "14."  
Page 4, line 3, delete "14." and insert "15."  
Page 4, line 16, delete "IC 14-27-7.3-10" and insert  
**"IC 14-27-7.3-11"**.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1099 as printed January 24, 2020.)

GLICK, Chairperson

Committee Vote: Yeas 7, Nays 0.

