

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 ENROLLED ACT No. 1099

AN ACT to amend the Indiana Code concerning natural and cultural resources.

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

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

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

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

Chapter 7.3. Low Head Dams

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

Sec. 2. As used in this chapter, "low head dam" means a 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 causes the watercourse to have a vertical drop of twenty-five (25) feet or less. The term does not

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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.

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

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

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

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

Sec. 5. The department shall do the following:

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

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

- (1) Except as provided in section 7 of this chapter, comply with the warning standards established by the department under section 5(1) of this chapter.
- (2) Inform the department of any change of ownership of the low head dam not more than thirty (30) days after the change.
- (3) Except for a low head dam owned by the state, maintain general liability insurance, with a general aggregate limit of



not less than one million dollars (\$1,000,000), to cover claims from injuries and death that the low head dam may cause, and before July 1 of each year provide the department with proof of insurance.

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.

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

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

- (1) Cooperate with the department and the department's agents, engineers, geologists, and other employees in the conduct of the assessment.
- (2) Facilitate access to the low head dam.

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

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

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

- (1) an assessment, inspection, or maintenance on or removal of a low head dam with the written permission of the owner; or
- (2) duties of the department;

is exempt from this section.

Sec. 10. The department may use funds appropriated to the department to perform title searches to determine the owners of existing low head dams.

Sec. 11. (a) 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.



(b) Nothing in this chapter limits an owner's liability for any damage, loss, or injury that is caused by a low head dam.

Sec. 12. The department may adopt rules under IC 4-22-2 to implement this chapter.

Sec. 13. A person who violates this chapter commits a Class C infraction.

Sec. 14. (a) A person may appeal an administrative decision or penalty assessed under this chapter to the commission.

(b) IC 4-21.5 applies to proceedings by the commission under this section.

Sec. 15. (a) Not later than October 1, 2020, the department shall:

(1) 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; and

(2) submit the report required in this section in an electronic format under IC 5-14-6 to the executive director of the legislative services agency for distribution to the members of the general assembly.

(b) This section expires July 1, 2021.

SECTION 4. IC 34-30-2-56.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: **Sec. 56.7. IC 14-27-7.3-11 (Concerning state liability for low head dams not owned by the state).**



Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Governor of the State of Indiana

Date: _____ Time: _____

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