

# HOUSE BILL No. 1402

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 14-26-2; IC 14-28.

**Synopsis:** Local government permits for shoreline structures. Amends the law concerning public freshwater lakes to provide that a person who intends to construct a boathouse or any other permanent structure that has both walls and a roof over, along, or lakeward of the shoreline or water line of a public freshwater lake must obtain a construction permit from the local building department of the county or municipality in which the construction would take place and need not obtain a permit from the department of natural resources (department). Amends the law concerning construction in floodways to provide that a person who intends to construct a boathouse or any other permanent structure that has both walls and a roof at the edge of a body of water in a floodway must obtain a construction permit from the local building department of the county or municipality in which the construction would take place and need not obtain a permit from the department.

**Effective:** July 1, 2024.

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## Smaltz

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January 11, 2024, read first time and referred to Committee on Natural Resources.

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Second Regular Session of the 123rd General Assembly (2024)

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 2023 Regular Session of the General Assembly.

# HOUSE BILL No. 1402

A BILL FOR AN ACT to amend the Indiana Code concerning natural resources.

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

1 SECTION 1. IC 14-26-2-23, AS AMENDED BY P.L.191-2023,  
2 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2024]: Sec. 23. (a) Unless a person obtains a permit from the  
4 department under this section and conducts the activities according to  
5 the terms of the permit, a person may not conduct the following  
6 activities:

- 7 (1) Over, along, or lakeward of the shoreline or water line of a  
8 public freshwater lake:
  - 9 (A) excavate;
  - 10 (B) place fill; or
  - 11 (C) place, modify, or repair a temporary or, **subject to section**  
12 **23.1 of this chapter**, a permanent structure.
- 13 (2) Construct a wall whose lowest point would be:
  - 14 (A) below the elevation of the shoreline or water line; and
  - 15 (B) within ten (10) feet landward of the shoreline or water line,  
16 as measured perpendicularly from the shoreline or water line;  
17 of a public freshwater lake.



- 1 (3) Change the water level, area, or depth of a public freshwater  
2 lake or the location of the shoreline or water line.
- 3 (b) An application for a permit for an activity described in  
4 subsection (a) must be accompanied by the following:
- 5 (1) A nonrefundable minimum fee of one hundred dollars (\$100).  
6 (2) A project plan that provides the department with sufficient  
7 information concerning the proposed excavation, fill, temporary  
8 structure, or permanent structure.  
9 (3) A written acknowledgment from the landowner that any  
10 additional water area created under the project plan is part of the  
11 public freshwater lake and is dedicated to the general public use  
12 with the public rights described in section 5 of this chapter.
- 13 (c) The department may issue a permit after investigating the merits  
14 of the application. In determining the merits of the application, the  
15 department may consider any factor, including cumulative effects of  
16 the proposed activity upon the following:
- 17 (1) The shoreline, water line, or bed of the public freshwater lake.  
18 (2) The fish, wildlife, or botanical resources.  
19 (3) The public rights described in section 5 of this chapter.  
20 (4) The management of watercraft operations under IC 14-15.  
21 (5) The interests of a landowner having property rights abutting  
22 the public freshwater lake or rights to access the public freshwater  
23 lake.
- 24 (d) A contractor or agent of the landowner who engages in an  
25 activity described in subsection (a)(1), (a)(2), or (a)(3) must comply  
26 with the terms of a permit issued under this section.
- 27 (e) The commission shall adopt rules under IC 4-22-2 to do the  
28 following:
- 29 (1) Assist in the administration of this chapter.  
30 (2) Provide objective standards for issuing permits under this  
31 section, including standards for the configuration of piers, boat  
32 stations, platforms, and similar structures. The standards:  
33 (A) may provide for a common use if the standard is needed to  
34 accommodate the interests of landowners having:  
35 (i) property rights abutting the public freshwater lake; or  
36 (ii) rights to access the public freshwater lake; and  
37 (B) shall exempt any class of activities, including the  
38 construction or placement of temporary structures, from  
39 licensing if the commission finds that the class is unlikely to  
40 pose more than a minimal potential for harm to the public  
41 rights described in section 5 of this chapter.  
42 (3) Subject to IC 14-10-2-1, set the permit application fee at or



1 above the minimum fee established in subsection (b).

2 SECTION 2. IC 14-26-2-23.1 IS ADDED TO THE INDIANA  
3 CODE AS A NEW SECTION TO READ AS FOLLOWS  
4 [EFFECTIVE JULY 1, 2024]: **Sec. 23.1. (a) As used in this section,**  
5 **"boathouse" means a permanent structure that is:**

- 6 (1) located at the edge of a public freshwater lake; and  
7 (2) used for housing one (1) or more boats.

8 (b) As used in this section, "local building department" means,  
9 in any county or municipality, the department, section, office, or  
10 other entity through which the county or municipality carries out  
11 its duty under IC 36-7-2-9(1) to require compliance with the code  
12 of building laws and fire safety laws adopted in the rules of the fire  
13 prevention and building safety commission under IC 22-13.

14 (c) As used in this section, "permanent structure" means a  
15 structure that cannot be installed or removed from the waters of  
16 a public freshwater lake without the use of a crane, bulldozer,  
17 backhoe, or similar heavy or large machinery.

18 (d) This section applies to the construction of:

- 19 (1) a boathouse; or  
20 (2) any other permanent structure that has both walls and a  
21 roof;

22 over, along, or lakeward of the shoreline or water line of a public  
23 freshwater lake. However, this section does not apply to the  
24 construction of a structure that would constitute a taking of the  
25 lake bed of a public freshwater lake and thus violate the vested  
26 right of the public set forth in section 5(c)(2) of this chapter.

27 (e) Before constructing a structure to which this section applies,  
28 a person must obtain a construction permit from the local building  
29 department of the county or municipality in which the construction  
30 would take place.

31 (f) If the local building department of the county or municipality  
32 in which the construction would take place issues a permit for the  
33 construction, a permit from the department under section 23 of  
34 this chapter is not needed. If the county or municipality in which  
35 the construction would take place does not have a local building  
36 department, a permit for the construction must be obtained from  
37 the department under section 23 of this chapter.

38 SECTION 3. IC 14-28-1-21.9 IS ADDED TO THE INDIANA  
39 CODE AS A NEW SECTION TO READ AS FOLLOWS  
40 [EFFECTIVE JULY 1, 2024]: **Sec. 21.9. (a) As used in this section,**  
41 **"boathouse" means a permanent structure that is:**

- 42 (1) located at the edge of a body of water in a floodway; and



- 1           **(2) used for housing one (1) or more boats.**
- 2           **(b) As used in this section, "local building department" means,**  
3 **in any county or municipality, the department, section, office, or**  
4 **other entity through which the county or municipality carries out**  
5 **its duty under IC 36-7-2-9(1) to require compliance with the code**  
6 **of building laws and fire safety laws adopted in the rules of the fire**  
7 **prevention and building safety commission under IC 22-13.**
- 8           **(c) As used in this section, "permanent structure" means a**  
9 **structure that cannot be installed or removed from a body of water**  
10 **in a floodway without the use of a crane, bulldozer, backhoe, or**  
11 **similar heavy or large machinery.**
- 12           **(d) This section applies to the construction of:**
- 13               **(1) a boathouse; or**
- 14               **(2) any other permanent structure that has both walls and a**  
15 **roof;**
- 16 **at the edge of a body of water in a floodway.**
- 17           **(e) Before constructing a structure to which this section applies,**  
18 **a person must obtain a construction permit from the local building**  
19 **department of the county or municipality in which the construction**  
20 **would take place.**
- 21           **(f) If the local building department of the county or municipality**  
22 **in which the construction would take place issues a permit for the**  
23 **construction, a permit from the department under section 22 of**  
24 **this chapter is not needed. If the county or municipality in which**  
25 **the construction would take place does not have a local building**  
26 **department, a permit for the construction must be obtained from**  
27 **the department under section 22 of this chapter.**
- 28           SECTION 4. IC 14-28-1-22, AS AMENDED BY P.L.191-2023,  
29 SECTION 8, AND AS AMENDED BY P.L.247-2023, SECTION 6,  
30 AND AS AMENDED BY THE TECHNICAL CORRECTIONS BILL  
31 OF THE 2024 GENERAL ASSEMBLY, IS CORRECTED AND  
32 AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2024]:  
33 Sec. 22. (a) As used in subsection (b)(1) with respect to a stream, "total  
34 length" means the length of the stream, expressed in miles, from the  
35 confluence of the stream with the receiving stream to the upstream or  
36 headward extremity of the stream, as indicated by the solid or dashed,  
37 blue or purple line depicting the stream on the most current edition of  
38 the seven and one-half (7 1/2) minute topographic quadrangle map  
39 published by the United States Geological Survey, measured along the  
40 meanders of the stream as depicted on the map.
- 41           **(b) This section does not apply to the following:**
- 42               **(1) A reconstruction or maintenance project (as defined in**



- 1 IC 36-9-27) on a stream or an open regulated drain if the total  
 2 length of the stream or open drain is not more than ten (10) miles.  
 3 (2) A construction or reconstruction project on a state or county  
 4 highway bridge in a rural area that crosses a stream having an  
 5 upstream drainage area of not more than fifty (50) square miles  
 6 and the relocation of utility lines associated with the construction  
 7 or reconstruction project if confined to an area not more than one  
 8 hundred (100) feet from the limits of the highway construction  
 9 right-of-way.  
 10 (3) The performance of an activity described in subsection (c)(1)  
 11 or (c)(2) by a surface coal mining operation that is operated under  
 12 a permit issued under IC 14-34.  
 13 (4) Any other activity that is determined by the commission,  
 14 according to rules adopted under IC 4-22-2, to pose not more than  
 15 a minimal threat to floodway areas.  
 16 (5) An activity in a boundary river floodway to which section 26.5  
 17 of this chapter applies.  
 18 (6) *The activities of a forestry operation that are:*  
 19 *(A) conducted in compliance with the Indiana Logging and*  
 20 *Forestry Best Management Practices Field Guide published*  
 21 *by the department of natural resources; and*  
 22 *(B) confined to a waterway that has a watershed not greater*  
 23 *than ten (10) square miles.*  
 24 ~~(6)~~ (7) The removal of a logjam or mass of wood debris that has  
 25 accumulated in a river or stream, subject to the following  
 26 conditions:  
 27 (A) Work must not be within a salmonid stream designated  
 28 under 327 IAC 2-1.5-5 without the prior written approval of  
 29 the department's division of fish and wildlife.  
 30 (B) Work must not be within a natural, scenic, or recreational  
 31 river or stream designated under 312 IAC 7-2.  
 32 (C) Except as otherwise provided in Indiana law, free logs or  
 33 affixed logs that are crossways in the channel must be cut,  
 34 relocated, and removed from the floodplain. Logs may be  
 35 maintained in the floodplain if properly anchored or otherwise  
 36 secured so as to resist flotation or dislodging by the flow of  
 37 water and placement in an area that is not a wetland. Logs  
 38 must be removed and secured with a minimum of damage to  
 39 vegetation.  
 40 (D) Isolated or single logs that are embedded, lodged, or  
 41 rooted in the channel, and that do not span the channel or  
 42 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 (c) A person who desires to:
- 24 (1) erect, make, use, or maintain a structure, an obstruction, a
- 25 deposit, or an excavation; or
- 26 (2) suffer or permit a structure, an obstruction, a deposit, or an
- 27 excavation to be erected, made, used, or maintained;
- 28 in or on a floodway **is required to obtain a permit from the**
- 29 **department and** must file with the director a verified written
- 30 application for ~~a~~ **the permit, except as provided in section 21.9 of this**
- 31 **chapter. The permit application must be accompanied by a**
- 32 **nonrefundable minimum fee of two hundred dollars (\$200).**
- 33 (d) ~~The~~ A permit application ~~for a permit~~ filed under this section:
- 34 (1) must set forth the material facts ~~together with~~ concerning the
- 35 structure, obstruction, deposit, or excavation; and
- 36 (2) must be accompanied by plans and specifications for the
- 37 structure, obstruction, deposit, or excavation.
- 38 (e) A person who files a permit application under this section must
- 39 provide:
- 40 (1) documentation of the person's ownership of the site where the
- 41 proposed work will be performed; or
- 42 (2) an affidavit from the owner of the site where the proposed



- 1           work will be performed expressly authorizing the performance of  
2           the proposed work on that site.
- 3           (f) A person who applies for a permit under this section may file an  
4           amendment to the person's permit application. The director may  
5           approve a permit application amendment filed under this subsection  
6           only if the permit, as amended by the amendment, would meet the  
7           requirements of this section.
- 8           (g) Two (2) or more persons may jointly apply for a permit under  
9           this section.
- 10          ~~(e)~~ (h) *An applicant* A person described in subsection (c) must  
11          receive a permit from the director for the work before beginning  
12          construction. The director shall issue a permit only if, in the opinion of  
13          the director, the applicant has clearly proven that the structure,  
14          obstruction, deposit, or excavation will not do any of the following:
- 15                (1) Adversely affect the efficiency of or unduly restrict the  
16                capacity of the floodway.
- 17                (2) Constitute an unreasonable hazard to the safety of life or  
18                property.
- 19                (3) Result in unreasonably detrimental effects upon fish, wildlife,  
20                or botanical resources.
- 21          ~~(f)~~ (i) In deciding whether to issue a permit under this section, the  
22          director shall consider the cumulative effects of the structure,  
23          obstruction, deposit, or excavation. The director may incorporate in and  
24          make a part of an order of authorization conditions and restrictions that  
25          the director considers necessary for the purposes of this chapter.
- 26          ~~(g)~~ (j) *The following apply to a permit issued under this section:*
- 27                (1) *Except as provided in subdivisions (2) and (3), a permit is*  
28                *valid for two (2) years after the date of issuance of the permit.*
- 29                (2) *A permit issued to:*
- 30                    (A) the Indiana department of transportation or a county  
31                    highway department *in connection with a construction project,*  
32                    if there is any federal funding for the project; or
- 33                    (B) an electric utility for the construction of a power  
34                    generating facility;
- 35                is valid for five (5) years from the date of issuance ~~and~~ *of the*  
36                *permit.*
- 37                (3) *is valid for the duration of a permitted project subject to*  
38                *periodic compliance evaluations for A permit issued to a*  
39                *quarrying or aggregate company for the excavation of industrial*  
40                *materials, including:*
- 41                    (A) clay and shale;
- 42                    (B) crushed limestone and dolostone;





- 1 (C) dimension limestone;  
 2 (D) dimension sandstone;  
 3 (E) gypsum;  
 4 (F) peat;  
 5 (G) construction sand and gravel; and  
 6 (H) industrial sand;

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

9 However, a permit issued under this section expires if construction is  
 10 not commenced within two (2) years after the permit is issued. *Except*  
 11 *as provided under section 22.1 of this chapter, a permit that is active*  
 12 *and was issued under subdivision (1) before July 1, 2014, is valid for*  
 13 *two (2) years beginning July 2014, and a permit that is active and was*  
 14 *issued under subdivision (2) before July 1, 2014, is valid for five (5)*  
 15 *years beginning July 2014.*

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

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

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

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

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

29 (1) IC 14-29-7 or IC 13-2-27 (before its repeal); or

30 (2) IC 14-13-9, IC 14-30-1 (before its repeal), or IC 36-7-6  
 31 (before its repeal);

32 that is affected.

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

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

39 (1) inspected; and

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

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



1 SECTION 5. IC 14-28-3-5 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2024]: Sec. 5. **Except as provided**  
3 **in IC 14-28-1-21.9**, a county or municipality may not issue a permit for  
4 a structure, ~~an~~ obstruction, a deposit, or ~~an~~ excavation within a flood  
5 hazard area or part of a flood hazard area that lies within a floodway  
6 without the prior written approval of the commission as provided in  
7 IC 14-28-1.

