

HOUSE BILL No. 1496

DIGEST OF INTRODUCED BILL

Citations Affected: IC 14-10-2; IC 14-28-1.

Synopsis: Natural resource matters. Requires the natural resources commission (commission) to adopt rules to determine rental rates for marina slips, and provides that those rules may not regulate any other amenities or services provided by marinas. Voids certain nonrule policy documents. Provides that a permit issued to a quarrying or aggregate company for excavation of certain industrial materials is valid for the duration of the permitted project subject to periodic compliance evaluations. Establishes that a permit issued for aggregate operations becomes void if construction has not commenced within two years of the issuance of the permit. Requires a permit holder to notify the commission within six months after completing a permitted project. Provides that a permit issued on or before July 1, 2014, that remains active for a quarrying or aggregate company for excavation of certain industrial materials is valid for the duration of the permitted project subject to permit conditions and periodic evaluations, and requires the holder of the permit to notify the commission not later than January 1, 2022, if the permitted project is still active. Provides that failure to notify the commission will cause the permit to expire. Requires the holder of the permit to notify the commission that the project is completed within six months after the project's completion.

Effective: Upon passage; July 1, 2014 (retroactive); July 1, 2021.

Bartels, Eberhart

January 14, 2021, read first time and referred to Committee on Natural Resources.



First Regular Session of the 122nd General Assembly (2021)

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 2020 Regular Session of the General Assembly.

HOUSE BILL No. 1496



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 14-10-2-4.5 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE
3 UPON PASSAGE]: **Sec. 4.5. (a) The commission shall adopt rules**
4 **under IC 4-22-2 and section 4 of this chapter to determine rental**
5 **rates for marina slips. Rules adopted by the commission under this**
6 **section may not regulate any other amenities or services offered by**
7 **a marina.**
8 **(b) This section invalidates:**
9 **(1) any rule previously adopted by the commission regarding**
10 **marinas; and**
11 **(2) Information Bulletin #20 regarding marinas or any other**
12 **statement or guideline regarding marinas adopted by the**
13 **commission under IC 4-22-7-7(a)(5).**
14 **(c) The commission shall adopt rules under IC 4-22-2**
15 **concerning rental rates for marina slips. In adopting the rules**
16 **required by this subsection, the commission may adopt emergency**
17 **rules in the manner provided by IC 4-22-2-37.1. Notwithstanding**



1 **IC 4-22-2-37.1(g), an emergency rule adopted by the commission**
 2 **under this subsection and in the manner provided by**
 3 **IC 4-22-2-37.1 expires not later than one (1) year after the rule is**
 4 **accepted for filing by the publisher of the Indiana Register.**

5 SECTION 2. IC 14-10-2-4.6 IS ADDED TO THE INDIANA CODE
 6 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE
 7 UPON PASSAGE]: **Sec. 4.6. (a) The following are void:**

8 **(1) 312 Natural Resources Commission 09-919 NR 20091125.**

9 **(2) 312 Natural Resources Commission 17-263 NR 20170524.**

10 **(3) 312 Natural Resources Commission 17-31 NR 20170125.**

11 **Not later than July 1, 2021, the publisher of the Indiana**
 12 **Administrative Code and the Indiana Register shall remove 312**
 13 **Natural Resources Commission 09-919 NR 20091125, 312 Natural**
 14 **Resources Commission 17-263 NR 20170524, and 312 Natural**
 15 **Resources Commission 17-31 NR 20170125 from the Indiana**
 16 **Administrative Code.**

17 **(b) This section expires January 1, 2022.**

18 SECTION 3. IC 14-28-1-22, AS AMENDED BY P.L.156-2020,
 19 SECTION 61, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 20 JULY 1, 2021]: **Sec. 22. (a) As used in subsection (b)(1) with respect**
 21 **to a stream, "total length" means the length of the stream, expressed in**
 22 **miles, from the confluence of the stream with the receiving stream to**
 23 **the upstream or headward extremity of the stream, as indicated by the**
 24 **solid or dashed, blue or purple line depicting the stream on the most**
 25 **current edition of the seven and one-half (7 1/2) minute topographic**
 26 **quadrangle map published by the United States Geological Survey,**
 27 **measured along the meanders of the stream as depicted on the map.**

28 **(b) This section does not apply to the following:**

29 **(1) A reconstruction or maintenance project (as defined in**
 30 **IC 36-9-27) on a stream or an open regulated drain if the total**
 31 **length of the stream or open drain is not more than ten (10) miles.**

32 **(2) A construction or reconstruction project on a state or county**
 33 **highway bridge in a rural area that crosses a stream having an**
 34 **upstream drainage area of not more than fifty (50) square miles**
 35 **and the relocation of utility lines associated with the construction**
 36 **or reconstruction project if confined to an area not more than one**
 37 **hundred (100) feet from the limits of the highway construction**
 38 **right-of-way.**

39 **(3) The performance of an activity described in subsection (c)(1)**
 40 **or (c)(2) by a surface coal mining operation that is operated under**
 41 **a permit issued under IC 14-34.**

42 **(4) Any other activity that is determined by the commission,**



1 according to rules adopted under IC 4-22-2, to pose not more than
2 a minimal threat to floodway areas.

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

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

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

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

13 (C) Except as otherwise provided in Indiana law, free logs or
14 affixed logs that are crossways in the channel must be cut,
15 relocated, and removed from the floodplain. Logs may be
16 maintained in the floodplain if properly anchored or otherwise
17 secured so as to resist flotation or dislodging by the flow of
18 water and placement in an area that is not a wetland. Logs
19 must be removed and secured with a minimum of damage to
20 vegetation.

21 (D) Isolated or single logs that are embedded, lodged, or
22 rooted in the channel, and that do not span the channel or
23 cause flow problems, must not be removed unless the logs are
24 either of the following:

25 (i) Associated with or in close proximity to larger
26 obstructions.

27 (ii) Posing a hazard to navigation.

28 (E) A leaning or severely damaged tree that is in immediate
29 danger of falling into the waterway may be cut and removed if
30 the tree is associated with or in close proximity to an
31 obstruction. The root system and stump of the tree must be left
32 in place.

33 (F) To the extent practicable, the construction of access roads
34 must be minimized, and should not result in the elevation of
35 the floodplain.

36 (G) To the extent practicable, work should be performed
37 exclusively from one (1) side of a waterway. Crossing the bed
38 of a waterway is prohibited.

39 (H) To prevent the flow of sediment laden water back into the
40 waterway, appropriate sediment control measures must be
41 installed.

42 (I) Within fifteen (15) days, all bare and disturbed areas must



- 1 be revegetated with a mixture of grasses and legumes. Tall
 2 fescue must not be used under this subdivision, except that low
 3 endophyte tall fescue may be used in the bottom of the
 4 waterway and on side slopes.
- 5 (c) A person who desires to:
- 6 (1) erect, make, use, or maintain a structure, an obstruction, a
 7 deposit, or an excavation; or
 8 (2) suffer or permit a structure, an obstruction, a deposit, or an
 9 excavation to be erected, made, used, or maintained;
- 10 in or on a floodway must file with the director a verified written
 11 application for a permit accompanied by a nonrefundable minimum fee
 12 of two hundred dollars (\$200).
- 13 (d) The application for a permit must set forth the material facts
 14 together with plans and specifications for the structure, obstruction,
 15 deposit, or excavation.
- 16 (e) An applicant must receive a permit from the director for the
 17 work before beginning construction. The director shall issue a permit
 18 only if in the opinion of the director the applicant has clearly proven
 19 that the structure, obstruction, deposit, or excavation will not do any of
 20 the following:
- 21 (1) Adversely affect the efficiency of or unduly restrict the
 22 capacity of the floodway.
 23 (2) Constitute an unreasonable hazard to the safety of life or
 24 property.
 25 (3) Result in unreasonably detrimental effects upon fish, wildlife,
 26 or botanical resources.
- 27 (f) In deciding whether to issue a permit under this section, the
 28 director shall consider the cumulative effects of the structure,
 29 obstruction, deposit, or excavation. The director may incorporate in and
 30 make a part of an order of authorization conditions and restrictions that
 31 the director considers necessary for the purposes of this chapter.
- 32 (g) A permit issued under this section:
- 33 (1) is valid for two (2) years after the issuance of the permit; ~~and~~
 34 (2) to:
- 35 (A) the Indiana department of transportation or a county
 36 highway department if there is any federal funding for the
 37 project; or
 38 (B) an electric utility for the construction of a power
 39 generating facility;
- 40 is valid for five (5) years from the date of issuance; **and**
 41 **(3) is valid for the duration of a permitted project subject to**
 42 **periodic compliance evaluations for a quarrying or aggregate**



1 **company for the excavation of industrial materials, including:**

2 **(A) clay and shale;**

3 **(B) crushed limestone and dolostone;**

4 **(C) dimension limestone;**

5 **(D) dimension sandstone;**

6 **(E) gypsum;**

7 **(F) peat;**

8 **(G) construction sand and gravel; and**

9 **(H) industrial sand.**

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

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

20 ~~(h)~~ **(i)** A permit issued under:

21 (1) subsection (g)(1) may be renewed one (1) time for a period not
 22 to exceed two (2) additional years; and

23 (2) subsection (g)(2) may be renewed one (1) time for a period not
 24 to exceed five (5) additional years.

25 ~~(i)~~ **(j)** The director shall send a copy of each permit issued under this
 26 section to each river basin commission organized under:

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

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

30 that is affected.

31 ~~(j)~~ **(k)** The permit holder shall post and maintain a permit issued
 32 under this section at the authorized site.

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

37 (1) inspected; and

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

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

41 SECTION 4. IC 14-28-1-22.1 IS ADDED TO THE INDIANA
 42 CODE AS A **NEW** SECTION TO READ AS FOLLOWS



1 [EFFECTIVE JULY 1, 2014 (RETROACTIVE)]: **Sec. 22.1. (a) A**
 2 **permit issued under section 22(g)(1) of this chapter on or before**
 3 **July 1, 2014, for a quarrying or aggregate company that is active**
 4 **for the excavation of industrial materials, including:**

- 5 (1) clay and shale;
 6 (2) crushed limestone and dolostone;
 7 (3) dimension limestone;
 8 (4) dimension sandstone;
 9 (5) gypsum;
 10 (6) peat;
 11 (7) construction sand and gravel; and
 12 (8) industrial sand;

13 is valid for the duration of the permitted project subject to the
 14 permit conditions and periodic compliance evaluations.

15 (b) The holder of a permit described in subsection (a) shall
 16 notify the department not later than January 1, 2022, if the
 17 permitted project is still active. Failure to notify the department
 18 not later than January 1, 2022, will cause the permit to expire.

19 (c) The holder of a permit described in subsection (a) is required
 20 to notify the department that the permitted project is complete not
 21 later than six (6) months after completing the permitted project.

22 SECTION 5. IC 14-28-1-34, AS AMENDED BY P.L.219-2014,
 23 SECTION 34, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 24 JULY 1, 2021]: Sec. 34. A person who knowingly fails to comply with
 25 section ~~22(j)~~ **22(k)** of this chapter commits a Class B infraction. Each
 26 day a person violates section ~~22(j)~~ **22(k)** of this chapter constitutes a
 27 separate infraction.

28 SECTION 6. **An emergency is declared for this act.**

