



February 11, 2021

HOUSE BILL No. 1496

DIGEST OF HB 1496 (Updated February 9, 2021 3:13 pm - DI 139)

Citations Affected: IC 14-28.

Synopsis: Natural resource matters. 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: July 1, 2014 (retroactive); July 1, 2021.

Bartels, Eberhart

January 14, 2021, read first time and referred to Committee on Natural Resources.
February 11, 2021, amended, reported — Do Pass.

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February 11, 2021

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 14-28-1-22, AS AMENDED BY P.L.156-2020,
2 SECTION 61, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2021]: Sec. 22. (a) As used in subsection (b)(1) with respect
4 to a stream, "total length" means the length of the stream, expressed in
5 miles, from the confluence of the stream with the receiving stream to
6 the upstream or headward extremity of the stream, as indicated by the
7 solid or dashed, blue or purple line depicting the stream on the most
8 current edition of the seven and one-half (7 1/2) minute topographic
9 quadrangle map published by the United States Geological Survey,
10 measured along the meanders of the stream as depicted on the map.
11 (b) This section does not apply to the following:
12 (1) A reconstruction or maintenance project (as defined in
13 IC 36-9-27) on a stream or an open regulated drain if the total
14 length of the stream or open drain is not more than ten (10) miles.
15 (2) A construction or reconstruction project on a state or county
16 highway bridge in a rural area that crosses a stream having a
17 upstream drainage area of not more than fifty (50) square miles

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- 1 and the relocation of utility lines associated with the construction
2 or reconstruction project if confined to an area not more than one
3 hundred (100) feet from the limits of the highway construction
4 right-of-way.
- 5 (3) The performance of an activity described in subsection (c)(1)
6 or (c)(2) by a surface coal mining operation that is operated under
7 a permit issued under IC 14-34.
- 8 (4) Any other activity that is determined by the commission,
9 according to rules adopted under IC 4-22-2, to pose not more than
10 a minimal threat to floodway areas.
- 11 (5) An activity in a boundary river floodway to which section 26.5
12 of this chapter applies.
- 13 (6) The removal of a logjam or mass of wood debris that has
14 accumulated in a river or stream, subject to the following
15 conditions:
- 16 (A) Work must not be within a salmonid stream designated
17 under 327 IAC 2-1.5-5 without the prior written approval of
18 the department's division of fish and wildlife.
- 19 (B) Work must not be within a natural, scenic, or recreational
20 river or stream designated under 312 IAC 7-2.
- 21 (C) Except as otherwise provided in Indiana law, free logs or
22 affixed logs that are crossways in the channel must be cut,
23 relocated, and removed from the floodplain. Logs may be
24 maintained in the floodplain if properly anchored or otherwise
25 secured so as to resist flotation or dislodging by the flow of
26 water and placement in an area that is not a wetland. Logs
27 must be removed and secured with a minimum of damage to
28 vegetation.
- 29 (D) Isolated or single logs that are embedded, lodged, or
30 rooted in the channel, and that do not span the channel or
31 cause flow problems, must not be removed unless the logs are
32 either of the following:
- 33 (i) Associated with or in close proximity to larger
34 obstructions.
- 35 (ii) Posing a hazard to navigation.
- 36 (E) A leaning or severely damaged tree that is in immediate
37 danger of falling into the waterway may be cut and removed if
38 the tree is associated with or in close proximity to an
39 obstruction. The root system and stump of the tree must be left
40 in place.
- 41 (F) To the extent practicable, the construction of access roads
42 must be minimized, and should not result in the elevation of



- 1 the floodplain.
- 2 (G) To the extent practicable, work should be performed
- 3 exclusively from one (1) side of a waterway. Crossing the bed
- 4 of a waterway is prohibited.
- 5 (H) To prevent the flow of sediment laden water back into the
- 6 waterway, appropriate sediment control measures must be
- 7 installed.
- 8 (I) Within fifteen (15) days, all bare and disturbed areas must
- 9 be revegetated with a mixture of grasses and legumes. Tall
- 10 fescue must not be used under this subdivision, except that low
- 11 endophyte tall fescue may be used in the bottom of the
- 12 waterway and on side slopes.
- 13 (c) A person who desires to:
- 14 (1) erect, make, use, or maintain a structure, an obstruction, a
- 15 deposit, or an excavation; or
- 16 (2) suffer or permit a structure, an obstruction, a deposit, or an
- 17 excavation to be erected, made, used, or maintained;
- 18 in or on a floodway must file with the director a verified written
- 19 application for a permit accompanied by a nonrefundable minimum fee
- 20 of two hundred dollars (\$200).
- 21 (d) The application for a permit must set forth the material facts
- 22 together with plans and specifications for the structure, obstruction,
- 23 deposit, or excavation.
- 24 (e) An applicant must receive a permit from the director for the
- 25 work before beginning construction. The director shall issue a permit
- 26 only if in the opinion of the director the applicant has clearly proven
- 27 that the structure, obstruction, deposit, or excavation will not do any of
- 28 the following:
- 29 (1) Adversely affect the efficiency of or unduly restrict the
- 30 capacity of the floodway.
- 31 (2) Constitute an unreasonable hazard to the safety of life or
- 32 property.
- 33 (3) Result in unreasonably detrimental effects upon fish, wildlife,
- 34 or botanical resources.
- 35 (f) In deciding whether to issue a permit under this section, the
- 36 director shall consider the cumulative effects of the structure,
- 37 obstruction, deposit, or excavation. The director may incorporate in and
- 38 make a part of an order of authorization conditions and restrictions that
- 39 the director considers necessary for the purposes of this chapter.
- 40 (g) A permit issued under this section:
- 41 (1) is valid for two (2) years after the issuance of the permit; ~~and~~
- 42 (2) to:



- 1 (A) the Indiana department of transportation or a county
 2 highway department if there is any federal funding for the
 3 project; or
 4 (B) an electric utility for the construction of a power
 5 generating facility;
 6 is valid for five (5) years from the date of issuance; **and**
 7 **(3) is valid for the duration of a permitted project subject to**
 8 **periodic compliance evaluations for a quarrying or aggregate**
 9 **company for the excavation of industrial materials, including:**
 10 (A) clay and shale;
 11 (B) crushed limestone and dolostone;
 12 (C) dimension limestone;
 13 (D) dimension sandstone;
 14 (E) gypsum;
 15 (F) peat;
 16 (G) construction sand and gravel; and
 17 (H) industrial sand.

18 **However, a permit issued under this section expires if construction**
 19 **is not commenced within two (2) years after the permit is issued.**
 20 **Except as provided under section 22.1 of this chapter,** a permit that
 21 is active and was issued under subdivision (1) before July 1, 2014, is
 22 valid for two (2) years beginning July 2014, and a permit that is active
 23 and was issued under subdivision (2) before July 1, 2014, is valid for
 24 five (5) years beginning July 2014.

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

- 28 ~~(h)~~ **(i)** A permit issued under:
 29 (1) subsection (g)(1) may be renewed one (1) time for a period not
 30 to exceed two (2) additional years; and
 31 (2) subsection (g)(2) may be renewed one (1) time for a period not
 32 to exceed five (5) additional years.

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

- 35 (1) IC 14-29-7 or IC 13-2-27 (before its repeal); or
 36 (2) IC 14-13-9, IC 14-30-1 (before its repeal), or IC 36-7-6
 37 (before its repeal);

38 that is affected.

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

41 ~~(k)~~ **(l)** For the purposes of this chapter, the lowest floor of a
 42 building, including a residence or abode, that is to be constructed or



1 reconstructed in the one hundred (100) year floodplain of an area
2 protected by a levee that is:

- 3 (1) inspected; and
4 (2) found to be in good or excellent condition;

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

7 SECTION 2. IC 14-28-1-22.1 IS ADDED TO THE INDIANA
8 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
9 [EFFECTIVE JULY 1, 2014 (RETROACTIVE)]: **Sec. 22.1. (a) A**
10 **permit issued under section 22(g)(1) of this chapter on or before**
11 **July 1, 2014, for a quarrying or aggregate company that is active**
12 **for the excavation of industrial materials, including:**

- 13 (1) clay and shale;
14 (2) crushed limestone and dolostone;
15 (3) dimension limestone;
16 (4) dimension sandstone;
17 (5) gypsum;
18 (6) peat;
19 (7) construction sand and gravel; and
20 (8) industrial sand;

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

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

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

30 SECTION 3. IC 14-28-1-34, AS AMENDED BY P.L.219-2014,
31 SECTION 34, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
32 JULY 1, 2021]: Sec. 34. A person who knowingly fails to comply with
33 section ~~22(j)~~ **22(k)** of this chapter commits a Class B infraction. Each
34 day a person violates section ~~22(j)~~ **22(k)** of this chapter constitutes a
35 separate infraction.

36 SECTION 4. **An emergency is declared for this act.**



COMMITTEE REPORT

Mr. Speaker: Your Committee on Natural Resources, to which was referred House Bill 1496, 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, delete lines 1 through 17.

Page 2, delete lines 1 through 17.

Re-number all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1496 as introduced.)

EBERHART

Committee Vote: yeas 11, nays 0.

