

SENATE BILL No. 412

DIGEST OF INTRODUCED BILL

Citations Affected: IC 14-8-2-1.5; IC 14-25.5; IC 14-26-2-23; IC 14-28; IC 25-36.5-1-8.

Synopsis: Natural resources matters. Authorizes the division of water of the department of natural resources to file, in the deed records of a county recorder's office, an affidavit stating that a violation or deficiency that is the subject of an enforcement action exists on a particular property in the county. Provides that: (1) the affidavit must be designed to provide notice of the violation or deficiency to any prospective transferee of the property or any contractor that intends to perform work on the property; and (2) the affidavit shall be removed from the deed records of the county when the violation or deficiency is resolved. Amends the law requiring the natural resources commission to adopt certain rules concerning lakes and reservoirs. Amends the flood control law, which requires a permit to create or maintain a structure, obstruction, deposit, or excavation in a floodway, to: (1) require a person who files a permit application to provide documentation of the person's ownership of the site where the proposed work will be performed or an affidavit from the owner of the site authorizing the performance of the proposed work; (2) allow an applicant to file an amendment to the person's permit application; and (3) provide that two or more persons may jointly apply for a permit. Amends the floodplain management law to: (1) require a permit for the creation, use, or maintenance of a structure, obstruction, deposit, or excavation on any state owned property or state managed property in a floodplain; and (2) provide that the lowest floor of any structure erected on state owned property or state managed property in a floodplain must be least two feet above the 100 year frequency flood elevation. Amends the timber buyers law to provide that information in a timber buyer's records about the timber buyer's transactions with a particular timber grower may be disclosed to that timber grower.

Effective: July 1, 2023.

Glick

January 19, 2023, read first time and referred to Committee on Natural Resources.



First Regular Session of the 123rd General Assembly (2023)

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 2022 Regular Session of the General Assembly.

SENATE BILL No. 412

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 14-8-2-1.5 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2023]: **Sec. 1.5. "Affidavit", for the purposes of IC 14-25.5, has**
4 **the meaning set forth in IC 14-25.5-1-1.5.**

5 SECTION 2. IC 14-25.5-1-1.5 IS ADDED TO THE INDIANA
6 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
7 [EFFECTIVE JULY 1, 2023]: **Sec. 1.5. As used in this article,**
8 **"affidavit" means a written document that:**

9 (1) **is executed under oath or affirmation by an officer or**
10 **employee of the department; and**
11 (2) **states that a violation or deficiency that is the subject of an**
12 **enforcement action under this article exists on a particular**
13 **property.**

14 SECTION 3. IC 14-25.5-2-7 IS ADDED TO THE INDIANA CODE
15 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
16 1, 2023]: **Sec. 7. (a) Subsection (b) applies if a person was issued a**
17 **notice of violation under this chapter and:**



(1) the person:

(A) has exhausted all available administrative remedies relating to the violation; and

(B) did not initiate judicial review of the department's enforcement action under IC 4-21.5-5 within the period allowed by IC 4-21.5-5-5;

(2) the person has initiated judicial review of the department's enforcement action under IC 4-21.5-5 but the court did not set aside the enforcement action; or

(3) the person has entered into a settlement agreement with the department concerning the violation.

(b) The division may file an affidavit for recording in the county recorder's office of the county in which the property on which the violation or deficiency referred to in the notice of violation exists.

(c) An affidavit filed under this section:

(1) must include a sworn statement that a violation or deficiency exists on the property that is the subject of the notice of violation;

(2) shall be recorded by the county recorder in the deed records of the county; and

(3) must be designed and worded so as to provide notice to:

(A) any prospective transferee of; or

(B) any contractor or other person that intends to perform construction work on;

the property on which the violation or deficiency referred to in the notice of violation exists.

(d) The department shall cause the affidavit recorded under this section to be removed from the deed records of the county when the violation or deficiency referred to in the notice of violation is resolved.

(e) The presence of an affidavit recorded under this section in the deed records of the county in which the property referred to in the affidavit is located does not deprive the holder of title to the property of marketable record title (as defined in IC 32-20-2-2) for the purposes of IC 32-20.

SECTION 4. IC 14-26-2-23, AS AMENDED BY P.L.195-2017, SECTION 41, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 23. (a) Unless a person obtains a permit from the department under this section and conducts the activities according to the terms of the permit, a person may not conduct the following activities:

(1) Over, along, or lakeward of the shoreline or water line of a



public freshwater lake:

(A) excavate;

(B) place fill; or

(C) place, modify, or repair a temporary or permanent structure.

(2) Construct a wall whose lowest point would be:

(A) below the elevation of the shoreline or water line; and

(B) within ten (10) feet landward of the shoreline or water line, as measured perpendicularly from the shoreline or water line;

of a public freshwater lake.

(3) Change the water level, area, or depth of a public freshwater lake or the location of the shoreline or water line.

(b) An application for a permit for an activity described in subsection (a) must be accompanied by the following:

(1) A nonrefundable minimum fee of one hundred dollars (\$100).

(2) A project plan that provides the department with sufficient information concerning the proposed excavation, fill, temporary structure, or permanent structure.

(3) A written acknowledgment from the landowner that any additional water area created under the project plan is part of the public freshwater lake and is dedicated to the general public use with the public rights described in section 5 of this chapter.

(c) The department may issue a permit after investigating the merits of the application. In determining the merits of the application, the department may consider any factor, including cumulative effects of the proposed activity upon the following:

(1) The shoreline, water line, or bed of the public freshwater lake.

(2) The fish, wildlife, or botanical resources.

(3) The public rights described in section 5 of this chapter.

(4) The management of watercraft operations under IC 14-15.

(5) The interests of a landowner having property rights abutting the public freshwater lake or rights to access the public freshwater lake.

(d) A contractor or agent of the landowner who engages in an activity described in subsection (a)(1), (a)(2), or (a)(3) must comply with the terms of a permit issued under this section.

(e) The commission shall adopt rules under IC 4-22-2 to do the following:

(1) Assist in the administration of this chapter.

(2) Provide objective standards for issuing permits under this section, including standards for the configuration of piers, boat stations, platforms, and similar structures. The standards:



(A) may provide for a common use if the standard is needed to accommodate the interests of landowners having:

- (i) property rights abutting the public freshwater lake; or
- (ii) rights to access the public freshwater lake; and

(B) shall exempt any class of activities, ~~from licensing~~ including **the construction or placement of** temporary structures, ~~from licensing~~ if the commission finds that the class is unlikely to pose more than a minimal potential for harm to the public rights described in section 5 of this chapter.

~~(3) Establish a process under IC 4-21.5 for the mediation of disputes among persons with competing interests or between a person and the department. A rule adopted under this subsection must provide that:~~

~~(A) if good faith mediation under the process fails to achieve a settlement, the department shall make a determination of the dispute; and~~

~~(B) a person affected by the determination of the department may seek administrative review by the commission.~~

~~(4) (3) Subject to IC 14-10-2-1, set the permit application fee at or above the minimum fee established in subsection (b).~~

~~(f) After:~~

~~(1) a final agency action in a mediation under subsection (e)(3) that makes a determination of a dispute among persons with competing riparian interests; and~~

~~(2) the completion of judicial review or the expiration of the opportunity for judicial review;~~

~~a party to the dispute may seek enforcement of the determination in a civil proceeding. The remedy provided under this subsection is supplemental to any other legal remedy of the party.~~

~~SECTION 5. IC 14-28-1-19.5 IS REPEALED [EFFECTIVE JULY 1, 2023]. Sec. 19.5. For purposes of this chapter, property owners may jointly apply for a permit.~~

~~SECTION 6. IC 14-28-1-22, AS AMENDED BY P.L.141-2022, SECTION 44, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 22. (a) As used in subsection (b)(1) with respect to a stream, "total length" means the length of the stream, expressed in miles, from the confluence of the stream with the receiving stream to the upstream or headward extremity of the stream, as indicated by the solid or dashed, blue or purple line depicting the stream on the most current edition of the seven and one-half (7 1/2) minute topographic quadrangle map published by the United States Geological Survey, measured along the meanders of the stream as depicted on the map.~~



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

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

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

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

(4) Any other activity that is determined by the commission, according to rules adopted under IC 4-22-2, to pose not more than a minimal threat to floodway areas.

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

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

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

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

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

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

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

(ii) Posing a hazard to agriculture, business, navigation, or



- 1 property.
- 2 (E) A leaning or severely damaged tree that is in immediate
- 3 danger of falling into the waterway may be cut and removed.
- 4 The root system and stump of the tree must be left in place.
- 5 (F) To the extent practicable, the construction of access roads
- 6 must be minimized, and should not result in the elevation of
- 7 the floodplain.
- 8 (G) To the extent practicable, work should be performed
- 9 exclusively from one (1) side of a waterway. Crossing the bed
- 10 of a waterway is prohibited.
- 11 (H) To prevent the flow of sediment laden water back into the
- 12 waterway, appropriate sediment control measures must be
- 13 installed.
- 14 (I) Within fifteen (15) days, all bare and disturbed areas must
- 15 be revegetated with a mixture of grasses and legumes. Tall
- 16 fescue must not be used under this subdivision, except that low
- 17 endophyte tall fescue may be used in the bottom of the
- 18 waterway and on side slopes.
- 19 (c) A person who desires to:
- 20 (1) erect, make, use, or maintain a structure, an obstruction, a
- 21 deposit, or an excavation; or
- 22 (2) suffer or permit a structure, an obstruction, a deposit, or an
- 23 excavation to be erected, made, used, or maintained;
- 24 in or on a floodway must file with the director a verified written
- 25 application for a permit. **The permit application must be**
- 26 **accompanied by a nonrefundable minimum fee of two hundred dollars**
- 27 **(\$200).**
- 28 (d) ~~The A permit application for a permit filed under this section:~~
- 29 (1) must set forth the material facts ~~together with~~ **concerning the**
- 30 **structure, obstruction, deposit, or excavation; and**
- 31 **(2) must be accompanied by** plans and specifications for the
- 32 structure, obstruction, deposit, or excavation.
- 33 (e) **A person who files a permit application under this section**
- 34 **must provide:**
- 35 **(1) documentation of the person's ownership of the site where**
- 36 **the proposed work will be performed; or**
- 37 **(2) an affidavit from the owner of the site where the proposed**
- 38 **work will be performed expressly authorizing the**
- 39 **performance of the proposed work on that site.**
- 40 (f) **A person who applies for a permit under this section may file**
- 41 **an amendment to the person's permit application. The director**
- 42 **may approve a permit application amendment filed under this**



subsection only if the permit, as amended by the amendment, would meet the requirements of this section.

(g) Two (2) or more persons may jointly apply for a permit under this section.

(e) (h) An applicant A person described in subsection (c) must receive a permit from the director for the work before beginning construction. The director shall issue a permit only if, in the opinion of the director, the applicant has clearly proven that the structure, obstruction, deposit, or excavation will not do any of the following:

- (1) Adversely affect the efficiency of or unduly restrict the capacity of the floodway.
- (2) Constitute an unreasonable hazard to the safety of life or property.
- (3) Result in unreasonably detrimental effects upon fish, wildlife, or botanical resources.

(f) (i) In deciding whether to issue a permit under this section, the director shall consider the cumulative effects of the structure, obstruction, deposit, or excavation. The director may incorporate in and make a part of an order of authorization conditions and restrictions that the director considers necessary for the purposes of this chapter.

(g) (j) The following apply to a permit issued under this section:

(1) Except as provided in subdivisions (2) and (3), a permit is valid for two (2) years after the date of issuance of the permit.

(2) A permit issued to:

- (A) the Indiana department of transportation or a county highway department in connection with a construction project, if there is any federal funding for the project; or
- (B) an electric utility for the construction of a power generating facility;

is valid for five (5) years from the date of issuance and of the permit.

(3) is valid for the duration of a permitted project subject to periodic compliance evaluations for A permit issued to a quarrying or aggregate company for the excavation of industrial materials, including:

- (A) clay and shale;
- (B) crushed limestone and dolostone;
- (C) dimension limestone;
- (D) dimension sandstone;
- (E) gypsum;
- (F) peat;
- (G) construction sand and gravel; and



(H) industrial sand;
**is valid for the duration of the permitted project, subject to
 periodic compliance evaluations.**

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

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

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

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

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

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

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

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

that is affected.

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

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

(1) inspected; and

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

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

SECTION 7. IC 14-28-1-22.1, AS ADDED BY P.L.21-2021, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 22.1. (a) A permit issued under section ~~22(g)(1)~~ **22(j)(3)** of this chapter on or before July 1, 2014, for a quarrying or



aggregate company that is active for the excavation of industrial materials, including:

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

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

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

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

SECTION 8. IC 14-28-1-34, AS AMENDED BY P.L.21-2021, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 34. A person who knowingly fails to comply with section ~~22(k)~~ **22(n)** of this chapter commits a Class B infraction. Each day a person violates section ~~22(k)~~ **22(n)** of this chapter constitutes a separate infraction.

SECTION 9. IC 14-28-3-5.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2023]: Sec. 5.1. **(a) Except as provided in subsection (c), a person must obtain a permit under this section to erect, make, use, or maintain a structure, obstruction, deposit, or excavation in any place in a floodplain that is:**

- (1) state owned property; or**
- (2) state managed property.**

(b) To obtain a permit, a person described in subsection (a) must file with the director a verified written application for a permit. The application must include plans and specifications for the structure, obstruction, deposit, or excavation.

(c) A separate permit is not required under this section for an activity for which a permit has been granted under IC 14-28-1.

(d) Except as provided in subsection (e), the federal regulations that:

- (1) were adopted by the director of the Federal Emergency**



1 **Management Agency to implement the National Flood**
 2 **Insurance Act (42 U.S.C. 4001 et seq.);**
 3 **(2) are published in 44 CFR 59 through 60; and**
 4 **(3) were in effect on January 1, 1997;**
 5 **are adopted as the criteria for determining whether an activity**
 6 **referred to in subsection (a) is allowed in Indiana.**

7 **(e) If the activity referred to in subsection (a) is the proposed**
 8 **erection, making, use, or maintenance of a structure in any place**
 9 **in a floodplain that is:**

10 **(1) state owned property; or**

11 **(2) state managed property;**

12 **the activity is not allowed unless the lowest floor of the structure is**
 13 **at least two (2) feet above the one hundred (100) year frequency**
 14 **flood elevation.**

15 SECTION 10. IC 25-36.5-1-8, AS AMENDED BY P.L.141-2022,
 16 SECTION 53, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 17 JULY 1, 2023]: Sec. 8. (a) The department may inspect the premises
 18 used by any timber buyer in the conduct of the timber buyer's business
 19 at any reasonable time and the books, accounts, records and papers of
 20 every such timber buyer shall at all times during business hours be
 21 subject to inspection by the department.

22 (b) A timber buyer shall keep complete and accurate records and
 23 accounts for each transaction. The timber buyer shall retain records and
 24 accounts for not less than five (5) years after a transaction.

25 (c) The information obtained under this section is exempt under
 26 IC 5-14-3-4(a)(1). Unless otherwise required by judicial order, the
 27 information obtained under this section may be disclosed only **as**
 28 **follows:**

29 **(1) All of the information may be disclosed to the director or**
 30 **the director's designee.**

31 **(2) If a timber buyer had transactions with a particular**
 32 **timber grower, information about those transactions may be**
 33 **disclosed or a to that timber grower.**

