

SENATE BILL No. 477

DIGEST OF INTRODUCED BILL

Citations Affected: IC 14-27-7.3; IC 14-28-1-22.

Synopsis: Low head dams. Provides that the state does not assume ownership of or responsibility for a low head dam that is not listed as owned by the state on the department of natural resources' (department) low head dam roster (roster). Permits a person to remove without a permit certain low head dams that are located on a navigable waterway and that are encroachments. Requires the department to establish warning sign standards and requirements for low head dams that are on the roster. Allows for a bond of \$1,000,000 to serve as proof of financial responsibility for a person that owns a low head dam. Provides that a permit issued by the director after January 1, 2021, for the removal of a low head dam does not expire until two years after certain judicial appeal processes are complete.

Effective: July 1, 2025.

Busch

January 13, 2025, read first time and referred to Committee on Natural Resources.



First Regular Session of the 124th General Assembly (2025)

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 2024 Regular Session of the General Assembly.

SENATE BILL No. 477

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 14-27-7.3-1, AS ADDED BY P.L.104-2020,
2 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2025]: Sec. 1. **(a)** This chapter does not apply to a dam that is
4 regulated by the Federal Energy Regulatory Commission or owned by
5 the Army Corps of Engineers.

6 **(b) For purposes of this chapter, the state does not assume**
7 **ownership of or responsibility for a low head dam that is not listed**
8 **on the roster under section 4 as owned by the state.**

9 SECTION 2. IC 14-27-7.3-5, AS ADDED BY P.L.104-2020,
10 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
11 JULY 1, 2025]: Sec. 5. The department shall do the following:

12 (1) Establish warning **sign** standards **and requirements** for low
13 head dams that are on the roster. **The department may reference**
14 **standards or best practices established by the Federal**
15 **Emergency Management Agency.**

16 (2) Provide information on low head dam safety.

17 (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.

SECTION 3. IC 14-27-7.3-6, AS ADDED BY P.L.104-2020, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2025]: 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 **or a political subdivision, obtain and maintain proof of financial responsibility for the low head dam in the form of:**

(A) **a bond for not less than one million dollars (\$1,000,000); or**

(B) 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 **or bond.**

SECTION 4. IC 14-27-7.3-8.1 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2025]: **Sec. 8.1. (a) It is the public policy of the state that low head dams are a threat to:**

(1) **public safety;**

(2) **stream ecological processes; and**

(3) **navigability.**

(b) **It is in the public interest to remove low head dams that are an encroachment on navigable waterways to:**

(1) **promote public safety for recreational use and enjoyment of the public trust;**

(2) **avoid adverse effects to fish, wildlife, and botanical resources; and**



(3) not impair the navigability of a waterway.

(c) A low head dam located on a navigable waterway is an encroachment subject to removal under section 8.2 of this chapter unless it is:

(1) owned and operated by a public utility (as defined by IC 8-1-2-1(a)) or a municipally owned utility (as defined by IC 8-1-2-1(h)); or

(2) owned, managed, or operated by the department.

SECTION 5. IC 14-27-7.3-8.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2025]: Sec. 8.2. (a) A person under this chapter may remove a low head dam that is an encroachment without a permit issued by the department under IC 14-28-1 or IC 14-29-1 if the following conditions are met:

(1) The removal will not adversely affect the efficiency of or unduly restrict the capacity of the floodway, as provided by 312 IAC.

(2) The removal will not constitute an unreasonable hazard to the safety of life or property, as provided by 312 IAC.

(3) The removal will not result in unreasonable detrimental effects upon fish, wildlife, or botanical resources, as provided by 312 IAC.

(4) Other conditions established by rule under IC 4-22-2.

(b) A person seeking to remove a low head dam under this section shall notify the department not later than thirty (30) days before beginning removal of the low head dam, and shall provide the following information:

(1) The name, address, telephone number, and electronic mail address of the person.

(2) A description of the proposed activity.

(3) The location of the proposed activity, including appropriate mapping.

(4) Evidence the proposed activity meets the requirements under subsection (a).

(c) This section does not exempt a person from other federal, state, or local permitting requirements.

SECTION 6. IC 14-27-7.3-12, AS ADDED BY P.L.104-2020, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2025]: Sec. 12. The department ~~may~~ shall adopt rules under IC 4-22-2 to implement this chapter.

SECTION 7. IC 14-27-7.3-13.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS



[EFFECTIVE JULY 1, 2025]: **Sec. 13.1. A permit issued by the director after January 1, 2021, for the removal of a low head dam does not expire until two (2) years after any:**

(1) local, state, or federal administrative or judicial appeals of that permit; or

(2) other local, state, or federal permit required to implement that permit;

have been finally adjudicated.

SECTION 8. IC 14-28-1-22, AS AMENDED BY THE TECHNICAL CORRECTIONS BILL OF THE 2025 GENERAL ASSEMBLY, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2025]: 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) A person is not required to obtain a permit from the department for the following activities:

(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 activities of a forestry operation that are:

(A) conducted in compliance with the Indiana Logging and Forestry Best Management Practices Field Guide published by



- 1 the department of natural resources; and
- 2 (B) confined to a waterway that has a watershed not greater
- 3 than ten (10) square miles.
- 4 (7) The removal of a logjam or mass of wood debris that has
- 5 accumulated in a river or stream, subject to the following
- 6 conditions:
- 7 (A) Work must not be within a salmonid stream designated
- 8 under 327 IAC 2-1.5-5 without the prior written approval of
- 9 the department's division of fish and wildlife.
- 10 (B) Work must not be within a natural, scenic, or recreational
- 11 river or stream designated under 312 IAC 7-2.
- 12 (C) Except as otherwise provided in Indiana law, the following
- 13 apply to logs that are crossways in the channel:
- 14 (i) Free logs must be relocated and removed from the flood
- 15 plain. A free log includes a log that is still attached to a root
- 16 system that is no longer in the ground.
- 17 (ii) Affixed logs must be cut, relocated, and removed from
- 18 the ~~floodplain~~ **flood plain**. An affixed log includes a log
- 19 that is still attached to a root system that is still in the
- 20 ground. If the root system is still in the ground, the log must
- 21 be cut so as to allow the root system to remain in the ground.
- 22 However, cutting and removing the affixed log is not
- 23 required if, in the opinion of the individual removing the
- 24 log, the cutting and removing would create an unreasonable
- 25 risk of bodily harm to the individual.
- 26 Logs may be maintained in the ~~floodplain~~ **flood plain** if
- 27 properly anchored or otherwise secured so as to resist flotation
- 28 or dislodging by the flow of water and placement in an area
- 29 that is not a wetland. Logs must be removed and secured with
- 30 a minimum of damage to vegetation.
- 31 (D) Isolated or single logs that are embedded, lodged, or
- 32 rooted in the channel, and that do not span the channel or
- 33 cause flow problems, must not be removed unless the logs are
- 34 either of the following:
- 35 (i) Associated with or in close proximity to larger
- 36 obstructions.
- 37 (ii) Posing a hazard to agriculture, business, navigation, or
- 38 property.
- 39 (E) A leaning or severely damaged tree that is in immediate
- 40 danger of falling into the waterway may be cut and removed.
- 41 The root system and stump of the tree must be left in place.
- 42 (F) To the extent practicable, the construction of access roads



must be minimized, and should not result in the elevation of the ~~floodplain~~ **flood plain**.

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

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

(I) Within fifteen (15) days, all bare and disturbed areas must be revegetated with a mixture of grasses and legumes. Tall fescue must not be used under this subdivision, except that low endophyte tall fescue may be used in the bottom of the waterway and on side slopes.

(J) A logjam or mass of wood debris that is removed from a river or stream may be burned so completely as to eliminate the risk that the resulting ash and remnants will not cause another logjam, unless a local ordinance specifies otherwise.

(K) ~~Subject to clause (M)~~; A person removing a logjam or a mass of wood debris from a river or stream under this subdivision without obtaining a permit:

(i) may use the means that the person believes to present the lowest risk of physical injury to individuals performing the removal work; and

(ii) may, subject to clause (G), use mechanical equipment appropriate to the task of removing the logjam or mass of wood debris.

(L) A person removing a logjam or a mass of wood debris from a river or stream under this subdivision must comply with the following:

(i) Section 404 of the federal Clean Water Act (33 U.S.C. 1344).

(ii) IC 13-18-22 (state regulated wetlands).

(8) The removal of a low head dam located on a navigable waterway that is subject to removal under IC 14-27-7.3-8.2 unless the low head dam is:

(A) owned and operated by a public utility (as defined by IC 8-1-2-1(a)) or a municipally owned utility (as defined by IC 8-1-2-1(h)); or

(B) owned, managed, or operated by the department.

(c) Except for an activity under subsection (b), a person who desires to:

(1) erect, make, use, or maintain a structure, an obstruction, a



1 deposit, or an excavation; or
 2 (2) suffer or permit a structure, an obstruction, a deposit, or an
 3 excavation to be erected, made, used, or maintained;
 4 in or on a floodway must file with the director a verified written
 5 application for a permit. The permit application must be accompanied
 6 by a nonrefundable minimum fee of two hundred dollars (\$200).

7 (d) A permit application filed under this section:

8 (1) must set forth the material facts concerning the structure,
 9 obstruction, deposit, or excavation; and

10 (2) must be accompanied by plans and specifications for the
 11 structure, obstruction, deposit, or excavation.

12 (e) This subsection does not apply to the state or a county, city, or
 13 town. A person who files a permit application under this section must
 14 provide:

15 (1) documentation of the person's ownership of the site where the
 16 proposed work will be performed; or

17 (2) an affidavit from the owner of the site where the proposed
 18 work will be performed expressly authorizing the performance of
 19 the proposed work on that site.

20 (f) A person who applies for a permit under this section may file an
 21 amendment to the person's permit application. The director may
 22 approve a permit application amendment filed under this subsection
 23 only if the permit, as amended by the amendment, would meet the
 24 requirements of this section.

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

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

32 (1) Adversely affect the efficiency of or unduly restrict the
 33 capacity of the floodway.

34 (2) Constitute an unreasonable hazard to the safety of life or
 35 property.

36 (3) Result in unreasonably detrimental effects upon fish, wildlife,
 37 or botanical resources.

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



(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 of the permit.

(3) 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.

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

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

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

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

(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.

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

(o) For the purposes of this chapter, the lowest floor of a building,



1 including a residence or abode, that is to be constructed or
2 reconstructed in the one hundred (100) year ~~flood plain~~ **flood plain** of
3 an area protected by a levee that is:
4 (1) inspected; and
5 (2) found to be in good or excellent condition;
6 by the United States Army Corps of Engineers shall not be lower than
7 the one hundred (100) year frequency flood elevation plus one (1) foot.

