

HOUSE BILL No. 1303

DIGEST OF INTRODUCED BILL

Citations Affected: IC 14-28-1.

Synopsis: Floodway excavation permits. Provides that a conservancy district may perform maintenance work on a drainage ditch that the conservancy district has maintained for the previous 10 years without having to obtain a permit from the director of the department of natural resources.

Effective: July 1, 2001.

Grubb, Mangus

January 9, 2001, read first time and referred to Committee on Agriculture, Natural Resources and Rural Development.

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First Regular Session 112th General Assembly (2001)

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 2000 General Assembly.

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HOUSE BILL No. 1303



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 14-28-1-20 IS AMENDED TO READ AS
- 2 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 20. A person may not
- 3 do any of the following:
- 4 (1) Erect in or on any floodway a permanent structure for use as
- 5 an abode or a place of residence, except as authorized under
- 6 sections 24, 25, and 26.5 of this chapter.
- 7 (2) Except as authorized under ~~section~~ **sections 22(b)(6) and** 26.5
- 8 of this chapter, erect, make, use, or maintain in or on any
- 9 floodway, or suffer or permit the erection, making, use, or
- 10 maintenance in or on any floodway, a structure, an obstruction, a
- 11 deposit, or an excavation that will do any of the following:
- 12 (A) Adversely affect the efficiency of or unduly restrict the
- 13 capacity of the floodway.
- 14 (B) By virtue of the nature, design, method of construction,
- 15 state of maintenance, or physical condition do any of the
- 16 following:
- 17 (i) Constitute an unreasonable hazard to the safety of life or



1 property.

2 (ii) Result in unreasonably detrimental effects upon the fish,
3 wildlife, or botanical resources.

4 (3) Reconstruct or allow or permit the reconstruction of an abode
5 or a residence located in a floodway, except as authorized under
6 sections 24, 25, and 26.5 of this chapter.

7 SECTION 2. IC 14-28-1-22 IS AMENDED TO READ AS
8 FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 22. (a) As used in
9 subsection (b)(1) with respect to a stream, "total length" means the
10 length of the stream, expressed in miles, from the confluence of the
11 stream with the receiving stream to the upstream or headward
12 extremity of the stream, as indicated by the solid or dashed, blue or
13 purple line depicting the stream on the most current edition of the
14 seven and one-half (7 1/2) minute topographic quadrangle map
15 published by the United States Geological Survey, measured along the
16 meanders of the stream as depicted on the map.

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

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

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

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

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

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

36 **(6) The maintenance by a conservancy district established**
37 **under IC 14-33 of a drainage ditch that has been in existence**
38 **for more than ten (10) years, involving the removal of**
39 **obstructions, deposits, or other materials that adversely affect**
40 **the efficiency or restrict the capacity of the drainage ditch.**
41 **For purposes of this subdivision, maintenance includes:**

42 **(A) excavation;**

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- 1 **(B) the side-casting of excavated material;**
 2 **(C) the creation, clearance, and maintenance of ditch**
 3 **maintenance access ways; and**
 4 **(D) periodic maintenance described in IC 36-9-27-34(c).**
 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 fee of fifty
 12 dollars (\$50).
 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 void if construction is not commenced within two (2) years
 34 after the issuance of the permit; and
 35 (2) to:
 36 (A) the Indiana department of transportation or a county
 37 highway department if there is any federal funding for the
 38 project; or
 39 (B) an electric utility for the construction of a power
 40 generating facility;
 41 is valid for five (5) years from the date of issuance and remains
 42 valid indefinitely if construction is commenced within five (5)

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- 1 years after the permit is issued.
- 2 (h) The director shall send a copy of each permit issued under this
- 3 section to each river basin commission organized under:
- 4 (1) IC 14-29-7 or IC 13-2-27 (before its repeal); or
- 5 (2) IC 14-30-1 or IC 36-7-6 (before its repeal);
- 6 that is affected.
- 7 (i) The permit holder shall post and maintain a permit issued under
- 8 this section at the authorized site.

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