

## CONFERENCE COMMITTEE REPORT DIGEST FOR HB 1074

**Citations Affected:** IC 14-34.

**Synopsis:** Natural resources issues. Conference committee report for EHB 1074. Amends the general recreational user statute (which provides that a person who goes through the premises of another for a recreational purpose does not have an assurance that the premises are safe for that purpose) to create separate provisions applying exclusively to an individual who enters a premises for the purpose of hunting, fishing, trapping, or preparing to hunt, fish, or trap. Makes the separate provisions for hunting, fishing, and trapping substantively identical to the general recreational user statute with the exception of not providing that the special provisions are not intended to affect existing Indiana case law on the liability of a land owner with respect to invited guests. Makes the law on the regulation of dams, dikes, and levees inapplicable to certain dams, dikes, floodwalls, or levees. Authorizes the director of the DNR to issue a surface coal mining and reclamation permit subject to the condition that the permittee obtain or maintain in force other licenses or permits required for the mining operation. Establishes the conditions concerning proposed revisions in surface coal mining permits that categorize a proposed revision as significant, nonsignificant, or a minor field revision. Provides procedures for the review and approval of each of these three categories of permit revisions. Establishes criteria to determine that a proposed change in the area covered by a mining permit is an incidental boundary revision. Allows an incidental boundary revision to occur without applying for a new permit. Repeals a provision requiring the natural resources commission to adopt rules defining nonsignificant revisions of a surface coal mining and reclamation operations permit. (Deletes everything from EHB 1074 and inserts: (1) general recreational user provisions in SECTIONS 1, 4, and 5 of ESB 177 as it left the house; and (2) ESB 272 as it left the house.)

**Effective:** July 1, 1998.

Adopted

Rejected

## CONFERENCE COMMITTEE REPORT

**MR. PRESIDENT:**

*Your Conference Committee appointed to confer with a like committee from the House upon Engrossed Senate Amendments to Engrossed House Bill No. 1074 respectfully reports that said two committees have conferred and agreed as follows to wit:*

that the House recede from its dissent from all Senate amendments and that the House now concur in all Senate amendments to the bill and that the bill be further amended as follows:

- 1 Delete everything after the enacting clause and insert the following:
- 2 SECTION 1. IC 14-8-2-117.3, AS ADDED BY P.L.178-1995,
- 3 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 4 JULY 1, 1998]: Sec. 117.3. "Governmental entity", for the purposes of
- 5 IC 14-22-10-2 **and IC 14-22-10-2.5**, has the meaning set forth in IC
- 6 14-22-10-2(a).
- 7 SECTION 2. IC 14-22-10-2, AS AMENDED BY P.L.138-1997,
- 8 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 9 JULY 1, 1998]: Sec. 2. (a) As used in this section **and section 2.5 of**
- 10 **this chapter**, "governmental entity" means any of the following:
- 11 (1) The government of the United States of America.
- 12 (2) The state of Indiana.
- 13 (3) A county.
- 14 (4) A city.
- 15 (5) A town.
- 16 (6) A township.
- 17 (7) The following, if created by the Constitution of the United
- 18 States, the Constitution of the State of Indiana, a statute, an
- 19 ordinance, a rule, or an order:
- 20 (A) An agency.
- 21 (B) A board.
- 22 (C) A commission.
- 23 (D) A committee.
- 24 (E) A council.
- 25 (F) A department.
- 26 (G) A district.
- 27 (H) A public body corporate and politic.

1 (b) As used in this section **and section 2.5 of this chapter**,  
 2 "monetary consideration" means a fee or other charge for permission  
 3 to go upon a tract of land. The term does not include:

- 4 (1) the gratuitous sharing of game, fish, or other products of the  
 5 recreational use of the land;  
 6 (2) services rendered for the purpose of wildlife management; or  
 7 (3) contributions in kind made for the purpose of wildlife  
 8 management.

9 (c) As used in this section **and section 2.5 of this chapter**,  
 10 "owner" means a governmental entity or another person that:

- 11 (1) has a fee interest in;  
 12 (2) is a tenant, a lessee, or an occupant of; or  
 13 (3) is in control of;

14 a tract of land.

15 (d) A person who goes upon or through the premises, including  
 16 caves, of another:

- 17 (1) with or without permission; and  
 18 (2) either:  
 19 (A) without the payment of monetary consideration; or  
 20 (B) with the payment of monetary consideration directly or  
 21 indirectly on the person's behalf by an agency of the state or  
 22 federal government;

23 for the purpose of ~~hunting, fishing~~, swimming, ~~trapping~~, camping,  
 24 hiking, sightseeing, or any other purpose (**other than the purposes**  
 25 **described in section 2.5 of this chapter**) does not have an assurance  
 26 that the premises are safe for the purpose.

27 (e) The owner of the premises does not:

- 28 (1) assume responsibility; or  
 29 (2) incur liability;

30 for an injury to a person or property caused by an act or failure to act  
 31 of other persons using the premises.

32 (f) This section does not affect the following:

- 33 (1) Existing Indiana case law on the liability of owners or  
 34 possessors of premises with respect to the following:  
 35 (A) Business invitees in commercial establishments.  
 36 (B) Invited guests.  
 37 (2) The attractive nuisance doctrine.

38 (g) This section does not excuse the owner or occupant of  
 39 premises from liability for injury to a person or property caused by a  
 40 malicious or an illegal act of the owner or occupant.

41 SECTION 3. IC 14-22-10-2.5 IS ADDED TO THE INDIANA  
 42 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 43 [EFFECTIVE JULY 1, 1998]: **Sec. 2.5. (a) A person who goes upon**  
 44 **or through the premises, including caves, of another:**

- 45 (1) **with or without permission; and**  
 46 (2) **either:**  
 47 (A) **without the payment of monetary consideration; or**  
 48 (B) **with the payment of monetary consideration directly**  
 49 **or indirectly on the person's behalf by an agency of the**  
 50 **state or federal government;**

51 **for the purpose of hunting, fishing, trapping, or preparing to hunt,**

1 **fish, or trap, does not have an assurance that the premises are safe**  
 2 **for that purpose.**

3 **(b) The owner of the premises does not:**

4 **(1) assume responsibility; or**

5 **(2) incur liability;**

6 **for an injury to a person or property caused by an act or failure to**  
 7 **act of other persons using the premises.**

8 **(c) This section does not affect Indiana case law on the liability**  
 9 **of owners or possessors of premises with respect to the following:**

10 **(1) Business invitees in commercial establishments.**

11 **(2) The attractive nuisance doctrine.**

12 **(d) This section does not excuse the owner or occupant of**  
 13 **premises from liability for injury to a person or property caused**  
 14 **by a malicious or an illegal act of the owner or occupant.**

15 SECTION 4. IC 14-27-7-4, AS ADDED BY P.L.1-1995,  
 16 SECTION 20, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 17 JULY 1, 1998]: Sec. 4. (a) The department shall make an engineering  
 18 inspection of all dams, levees, dikes, and floodwalls and appurtenant  
 19 works:

20 (1) at least one (1) time every two (2) years or at more frequent  
 21 intervals if the exigencies of the case require; or

22 (2) upon the written request of an affected person or agency.

23 (b) The department shall place in the files of the department a  
 24 report of each inspection conducted under subsection (a).

25 (c) This chapter does not apply to the following:

26 (1) A dam that meets the following conditions:

27 (A) Is built for the sole purpose of erosion control, watering  
 28 livestock, recreation, or providing a haven or refuge for fish  
 29 or wildlife.

30 (B) Has a drainage area above the dam of not more than one  
 31 (1) square mile.

32 (C) Does not exceed twenty (20) feet in height from the  
 33 natural stream bed to spillway level.

34 (D) Does not impound more than one hundred (100)  
 35 acre-feet of water.

36 (2) A levee, dike, or floodwall that meets the following  
 37 conditions:

38 (A) Is under a single private ownership.

39 (B) Provides protection only to land or other property under  
 40 the single private ownership.

41 **(3) A dam, dike, floodwall, or levee that is regulated under**  
 42 **the federal Mine Safety and Health Act of 1977, unless the**  
 43 **dam, dike, floodwall, or levee is proposed to be retained as a**  
 44 **permanent structure after bond release.**

45 SECTION 5. IC 14-34-4-18, AS ADDED BY P.L.1-1995,  
 46 SECTION 27, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 47 JULY 1, 1998]: Sec. 18. (a) Each permit issued by the director is  
 48 subject to conditions imposed by the director. The conditions must  
 49 include at a minimum a requirement for the operator to pay to the  
 50 federal Office of Surface Mining all fees owed under 30 CFR Part 870.

51 **(b) The director may issue a permit subject to the condition**

1 **that the permittee obtain or maintain in force other licenses or**  
 2 **permits required for the surface coal mining and reclamation**  
 3 **operation. However, the imposition of a condition under this**  
 4 **subsection does not authorize or require the director to administer**  
 5 **or enforce the requirements of any federal law or of any state law**  
 6 **other than this article.**

7 SECTION 6. IC 14-34-5-7, AS ADDED BY P.L.1-1995,  
 8 SECTION 27, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 9 JULY 1, 1998]: Sec. 7. (a) ~~The director may approve an application for~~  
 10 ~~a revision of a permit submitted under section 5 of this chapter if the~~  
 11 ~~application is based only on nonsignificant revisions of the permit: (as~~  
 12 ~~defined in the rules adopted under section 6 of this chapter):~~ **A change**  
 13 **in mining or reclamation operations from the approved mining and**  
 14 **reclamation plans that would adversely affect the permittee's**  
 15 **compliance with this article is a permit revision subject to review**  
 16 **and approval as provided in this section and sections 8 through 8.4**  
 17 **of this chapter.**

18 (b) ~~The director may approve an application under subsection (a)~~  
 19 ~~without notice and a hearing.~~ **A permit revision is either:**

- 20 (1) **a significant revision subject to sections 8 and 8.1 of this**  
 21 **chapter;**
- 22 (2) **a nonsignificant revision subject to sections 8.2 and 8.3 of**  
 23 **this chapter; or**
- 24 (3) **a minor field revision subject to section 8.4 of this**  
 25 **chapter.**

26 (c) **Permit revisions may be approved by:**

- 27 (1) **the director; or**
- 28 (2) **the director's designated representative.**

29 (d) **A permit revision may not be approved unless the**  
 30 **permittee demonstrates and the director or the director's**  
 31 **designated representative finds the following:**

- 32 (1) **That reclamation as required by this article and by the**  
 33 **rules adopted by the commission under IC 14-34-2-1 can be**  
 34 **accomplished.**
- 35 (2) **That applicable requirements of IC 14-34-4-7 that are**  
 36 **pertinent to the permit revision are met.**
- 37 (3) **That the permit revision complies with all applicable**  
 38 **requirements of this article and the rules adopted by the**  
 39 **commission under IC 14-34-2-1.**

40 SECTION 7. IC 14-34-5-8, AS ADDED BY P.L.1-1995,  
 41 SECTION 27, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 42 JULY 1, 1998]: Sec. 8. (a) ~~Unless an application for revision of a~~  
 43 ~~permit submitted under section 5 of this chapter is based only on~~  
 44 ~~nonsignificant revisions (as defined in the rules adopted under section~~  
 45 ~~6 of this chapter);~~ **or minor field revisions,** the application may be  
 46 approved only after the notice and hearing requirements of this article  
 47 for issuance of a permit have been fulfilled.

48 (b) The director may impose other conditions for approval of the  
 49 application.

50 SECTION 8. IC 14-34-5-8.1 IS ADDED TO THE INDIANA  
 51 CODE AS A NEW SECTION TO READ AS FOLLOWS

1 [EFFECTIVE JULY 1, 1998]: **Sec. 8.1.** For purposes of sections 7  
 2 and 8 of this chapter, a proposed revision of a permit is significant  
 3 if any of the following conditions exists:

4 (1) The changes may result in an adverse impact beyond that  
 5 previously considered, affecting cultural resources that are  
 6 listed on or eligible to be listed on:

7 (A) the National Register of Historic Places; or

8 (B) the register of Indiana historic sites and historic  
 9 structures established under IC 14-21-1.

10 (2) Blasting will be used in a manner that is likely to cause  
 11 adverse impacts beyond that previously considered to  
 12 persons or property outside the permit area.

13 (3) The changes may result in an adverse impact beyond that  
 14 previously considered, affecting a water supply to which  
 15 IC 14-25-4 applies.

16 (4) The changes:

17 (A) require the identification, disturbance, or handling  
 18 of toxic forming or acid forming materials different  
 19 from those previously considered; and

20 (B) have the potential for causing an additional impact  
 21 not previously considered.

22 (5) The changes may result in an adverse impact on fish,  
 23 wildlife, and related environmental values beyond that  
 24 previously considered.

25 (6) The addition of:

26 (A) a coal processing facility; or

27 (B) a permanent support facility;

28 is proposed, and the addition of the facility will cause an  
 29 impact not previously considered, except that the addition of  
 30 a temporary coal processing facility used exclusively for  
 31 crushing and screening need not be considered a significant  
 32 revision.

33 (7) The changes will cause:

34 (A) a new or an updated probable hydrologic  
 35 consequences determination; or

36 (B) a cumulative hydrologic impact analysis to be  
 37 required under IC 14-34-3-3.

38 (8) A postmining land use will be changed to any of the  
 39 following:

40 (A) A residential land use.

41 (B) A commercial or industrial land use.

42 (C) A recreational land use.

43 (D) Developed water resources as defined in rules  
 44 adopted by the commission under IC 14-34-2-1 that  
 45 meets the size criteria of 30 CFR 77.216(a).

46 SECTION 9. IC 14-34-5-8.2 IS ADDED TO THE INDIANA  
 47 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 48 [EFFECTIVE JULY 1, 1998]: **Sec. 8.2.** For purposes of sections 7, 8,  
 49 and 8.3 of this chapter, a proposed permit revision is nonsignificant  
 50 if any of the following conditions exist:

51 (1) For surface mines, changes of the:

- 1                   (A) direction of mining; or  
 2                   (B) location of mining equipment;  
 3 within the permit area.  
 4 (2) The substitution of mining equipment designed for the  
 5 same purpose, the use of which is not detrimental to the  
 6 achievement of final reclamation or subsidence control.  
 7 (3) For underground mines, any change in the direction or  
 8 location of mining within the permit area or shadow area in  
 9 response to unanticipated events.  
 10 (4) A postmining land use change other than a change  
 11 described in section 8.1(8) of this chapter.  
 12 (5) Any other change in the mining or reclamation plan that  
 13 the director reasonably determines:  
 14                   (A) will not have a significant effect:  
 15                   (i) on the achievement of final reclamation plans  
 16                   under IC 14-34-3-12;  
 17                   (ii) on subsidence control plans; and  
 18                   (iii) on the surrounding area;  
 19                   (B) does not involve significant delay in achieving final  
 20 reclamation or significant change in the land use; or  
 21                   (C) is necessitated by unanticipated and unusually  
 22 adverse weather conditions, other acts of God, strikes,  
 23 or other causes beyond the reasonable control of the  
 24 permittee, if all steps specified by the director to  
 25 maximize environmental protection are taken.
- 26                   SECTION 10. IC 14-34-5-8.3 IS ADDED TO THE INDIANA  
 27 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 28 [EFFECTIVE JULY 1, 1998]: **Sec. 8.3. A nonsignificant revision in**  
 29 **a mining or reclamation plan must be:**  
 30                   (1) reviewed; and  
 31                   (2) approved in writing;  
 32 **by the director before it may be implemented.**
- 33                   SECTION 11. IC 14-34-5-8.4 IS ADDED TO THE INDIANA  
 34 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 35 [EFFECTIVE JULY 1, 1998]: **Sec. 8.4. (a) For purposes of sections**  
 36 **7 and 8 of this chapter, a proposed revision of a permit is a minor**  
 37 **field revision if the proposed change:**  
 38                   (1) does not require technical review or design analysis; and  
 39                   (2) is capable of being evaluated in the field by the director's  
 40 designated delegate for compliance with the requirements of  
 41 section 7(d) of this chapter.  
 42                   (b) A minor field revision may be approved by a field inspector  
 43 in an inspection report or on a form signed in the field.  
 44                   (c) A minor field revision approved under this section:  
 45                   (1) must be properly documented and separately filed; and  
 46                   (2) may include the following:  
 47                   (A) Soil stockpile location and configurations.  
 48                   (B) As-built pond certifications.  
 49                   (C) Minor transportation facilities changes.  
 50                   (D) Any of the following for a pond:  
 51                   (i) Depth.

- 1 (ii) Shape.
- 2 (iii) Orientation.
- 3 (E) An area for temporary drainage control or
- 4 temporary water storage.
- 5 (F) Equipment changes.
- 6 (G) Explosive storage areas.
- 7 (H) Minor mine management or support facility
- 8 locations (except for the disposal or storage of refuse).
- 9 (I) Adding United States Natural Resources
- 10 Conservation Service conservation practices.
- 11 (J) Methods of erosion protection on diversions.
- 12 (K) Temporary cessation of mining.
- 13 (L) Minor diversion location changes.

14 SECTION 12. IC 14-34-5-8.5 IS ADDED TO THE INDIANA  
 15 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 16 [EFFECTIVE JULY 1, 1998]: **Sec. 8.5. An extension of the area**  
 17 **covered by a permit, except for an incidental boundary revision**  
 18 **under section 8.6 of this chapter, must be made by applying for a**  
 19 **new permit.**

20 SECTION 13. IC 14-34-5-8.6 IS ADDED TO THE INDIANA  
 21 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 22 [EFFECTIVE JULY 1, 1998]: **Sec. 8.6. (a) For the area covered by**  
 23 **a permit to be extended under this section as an incidental**  
 24 **boundary revision, all of the following must apply:**

25 (1) **The extension may not constitute a significant revision to**  
 26 **the method of conduct of mining or reclamation operations**  
 27 **contemplated by the original permit.**

28 (2) **The extension must be required for the orderly and**  
 29 **continuous mining and reclamation operation.**

30 (3) **The extension must adjoin the permit or shadow area**  
 31 **acreage.**

32 (4) **The extended area must be mined and reclaimed in**  
 33 **conformity with the approved permit plans.**

34 (5) **The area of the extension may not exceed the lesser of:**

35 (A) **ten percent (10%) of the area originally covered by**  
 36 **the permit; or**

37 (B) **twenty (20) acres.**

38 (b) **The aggregate of all incidental boundary revisions of a**  
 39 **permit under this section may not exceed the area originally**  
 40 **covered by the permit by more than fifteen percent (15%).**  
 41 **However, the director may waive the limitation under this**  
 42 **subsection if the director finds that:**

43 (1) **all other provisions of this section are met; and**

44 (2) **the interests of the public are not adversely affected.**

45 (c) **The aggregate of all incidental boundary revisions of a**  
 46 **permit under this section that involve coal removal may not exceed**  
 47 **the area originally covered by the permit by more than ten percent**  
 48 **(10%).**

49 (d) **To obtain an incidental boundary revision under this**  
 50 **section, a permittee must submit to the director an application**  
 51 **containing the following:**

- 1           **(1) A statement of the size of:**  
2               **(A) the original permit area; and**  
3               **(B) the additional area that would be added by the**  
4               **boundary revision.**
- 5           **(2) A statement of the uses that:**  
6               **(A) were made of the land before mining; and**  
7               **(B) will be made of the land after mining.**
- 8           **(3) A showing that the requirements of subsection (a) are**  
9           **met.**
- 10           **(4) A map showing the additional area to be added by the**  
11           **boundary revision.**
- 12           **(5) Proof of the permittee's legal right to enter and conduct**  
13           **surface coal mining and reclamation operations on the**  
14           **additional area to be added by the boundary revision.**
- 15           **(6) Any necessary plans that are not contained in the permit**  
16           **already approved.**
- 17           **(7) A statement indicating whether any areas unsuitable for**  
18           **mining are contained in the permit already approved.**
- 19           **(e) An application for an incidental boundary revision may not**  
20           **be approved unless the applicant demonstrates and the director**  
21           **finds the following:**
- 22               **(1) That reclamation of the area as required by this article**  
23               **can be accomplished.**
- 24               **(2) That the application complies with all requirements of**  
25               **this article.**
- 26           **(f) The director shall approve or deny an incidental boundary**  
27           **revision of a permit under this section within thirty (30) days after**  
28           **the application for the proposed boundary revision is submitted to**  
29           **the director, unless the director finds that more than thirty (30)**  
30           **days are needed to adequately review the application and make the**  
31           **findings required by subsection (e).**
- 32           **(g) This section does not alter the general requirements of this**  
33           **article for the submission of fees and bonds.**
- 34           SECTION 14. IC 14-34-5-6 IS REPEALED [EFFECTIVE JULY  
35           1, 1998].  
              (Reference is to EHB 1074 as printed February 17, 1998.)

**Conference Committee Report**  
**on**  
**House Bill 1074**

**S**igned by:

\_\_\_\_\_  
Senator

\_\_\_\_\_  
Representative

\_\_\_\_\_  
Senator

\_\_\_\_\_  
Representative

**Senate Conferees**

**House Conferees**