



February 17, 2010

**ENGROSSED
HOUSE BILL No. 1232**

DIGEST OF HB 1232 (Updated February 15, 2010 12:42 pm - DI 14)

Citations Affected: IC 14-28.

Synopsis: Removal of logjams in floodways. Provides that a permit is not required to remove a logjam or mass of wood debris that has accumulated in a river or stream.

Effective: July 1, 2010.

**Dermody, Dembowski, Eberhart,
Davis, Bischoff**

(SENATE SPONSORS — CHARBONNEAU, ARNOLD, STUTZMAN)

January 11, 2010, read first time and referred to Committee on Natural Resources.
January 28, 2010, reported — Do Pass.
February 1, 2010, read second time, ordered engrossed. Engrossed.
February 2, 2010, read third time, passed. Yeas 93, nays 1.

SENATE ACTION

February 8, 2010, read first time and referred to Committee on Natural Resources.
February 16, 2010, amended, reported favorably — Do Pass.

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EH 1232—LS 6797/DI 77+



February 17, 2010

Second Regular Session 116th General Assembly (2010)

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 2009 Regular and Special Sessions of the General Assembly.

ENGROSSED HOUSE BILL No. 1232

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 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 22. (a) As used in
3 subsection (b)(1) with respect to a stream, "total length" means the
4 length of the stream, expressed in miles, from the confluence of the
5 stream with the receiving stream to the upstream or headward
6 extremity of the stream, as indicated by the solid or dashed, blue or
7 purple line depicting the stream on the most current edition of the
8 seven and one-half (7 1/2) minute topographic quadrangle map
9 published by the United States Geological Survey, measured along the
10 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

EH 1232—LS 6797/DI 77+



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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 navigation.

(E) A leaning or severely damaged tree that is in immediate danger of falling into the waterway may be cut and removed if the tree is associated with or in close proximity to an obstruction. The root system and stump of the tree must be left in place.

(F) To the extent practicable, the construction of access roads must be minimized, and should not result in the

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elevation of the floodplain.
(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.

(c) A person who desires to:
(1) erect, make, use, or maintain a structure, an obstruction, a deposit, or an excavation; or
(2) suffer or permit a structure, an obstruction, a deposit, or an excavation to be erected, made, used, or maintained;
in or on a floodway must file with the director a verified written application for a permit accompanied by a nonrefundable fee of two hundred dollars (\$200).

(d) The application for a permit must set forth the material facts together with plans and specifications for the structure, obstruction, deposit, or excavation.

(e) An applicant 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) 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) A permit issued under this section:
(1) is void if construction is not commenced within two (2) years after the issuance of the permit; and

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1 (2) to:
 2 (A) the Indiana department of transportation or a county
 3 highway department if there is any federal funding for the
 4 project; or
 5 (B) an electric utility for the construction of a power
 6 generating facility;
 7 is valid for five (5) years from the date of issuance and remains
 8 valid indefinitely if construction is commenced within five (5)
 9 years after the permit is issued.
 10 (h) The director shall send a copy of each permit issued under this
 11 section to each river basin commission organized under:
 12 (1) IC 14-29-7 or IC 13-2-27 (before its repeal); or
 13 (2) IC 14-30-1 or IC 36-7-6 (before its repeal);
 14 that is affected.
 15 (i) The permit holder shall post and maintain a permit issued under
 16 this section at the authorized site.
 17 (j) For the purposes of this chapter, the lowest floor of a building,
 18 including a residence or abode, that is to be constructed or
 19 reconstructed in the one hundred (100) year floodplain of an area
 20 protected by a levee that is:
 21 (1) inspected; and
 22 (2) found to be in good or excellent condition;
 23 by the United States Army Corps of Engineers shall not be lower than
 24 the one hundred (100) year frequency flood elevation plus one (1) foot.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Natural Resources, to which was referred House Bill 1232, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

BISCHOFF, Chair

Committee Vote: yeas 8, nays 0.

COMMITTEE REPORT

Madam President: The Senate Committee on Natural Resources, to which was referred House Bill No. 1232, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 2, line 14, delete "stream." and insert: "**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 navigation.**
- (E) A leaning or severely damaged tree that is in immediate danger of falling into the waterway may be cut and removed if the tree is associated with or in close proximity to an**

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obstruction. The root system and stump of the tree must be left in place.

(F) To the extent practicable, the construction of access roads must be minimized, and should not result in the elevation of the floodplain.

(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."

and when so amended that said bill do pass.

(Reference is to HB 1232 as printed January 29, 2010.)

MISHLER, Chairperson

Committee Vote: Yeas 6, Nays 1.

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