

# SENATE BILL No. 269

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 14-8-2; IC 14-27-7.5.

**Synopsis:** Regulation of dams. Provides that the laws regulating dams apply only to a structure that meets two or more of the following conditions: (1) Exceeds 20 feet in height. (2) Has a drainage area above the dam of more than one square mile. (3) Impounds a volume of more than 100 acre-feet of water. Requires the department of natural resources (department) to establish a classification system for dams based on: (1) the height of the structure and the volume of water impounded by the structure; and (2) the force of the water and the likely consequences resulting from the uncontrolled release of its contents due to a failure or misoperation of the structure. Changes the classification categories for dams from high hazard, significant hazard, and low hazard to high capacity, significant capacity, and low capacity. Changes the standard to determine potential consequences for a failure from "may cause" to "likely to cause". Requires the department to have jurisdiction over a dam to raise the dam's classification to high capacity upon receiving a request from a downstream owner. Provides that changes to the law do not affect past inspections.

**Effective:** July 1, 2022.

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January 10, 2022, read first time and referred to Committee on Natural Resources.

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Second Regular Session of the 122nd General Assembly (2022)

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 2021 Regular Session of the General Assembly.

# SENATE BILL No. 269

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 14-8-2-41.5 IS ADDED TO THE INDIANA CODE
- 2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
- 3 1, 2022]: **Sec. 41.5. "Classification system", for purposes of**
- 4 **IC 14-27-7.5, has the meaning set forth in IC 14-27-7.5-2.**
- 5 SECTION 2. IC 14-8-2-121.3 IS REPEALED [EFFECTIVE JULY
- 6 1, 2022]. ~~Sec. 121.3. "Hazard classification", for purposes of~~
- 7 ~~IC 14-27-7.5; has the meaning set forth in IC 14-27-7.5-2.~~
- 8 SECTION 3. IC 14-27-7.5-1 IS AMENDED TO READ AS
- 9 FOLLOWS [EFFECTIVE JULY 1, 2022]: Sec. 1. **(a)** This chapter does
- 10 not apply to the following:
- 11 (1) A structure that meets the following conditions:
- 12 (A) Is built for the sole purpose of erosion control, watering
- 13 livestock, recreation, or providing a haven or refuge for fish or
- 14 wildlife.
- 15 (B) Has a drainage area above the dam of not more than one
- 16 (1) square mile.
- 17 (C) Does not exceed twenty (20) feet in height.



- 1 (D) Does not impound a volume of more than one hundred  
 2 (100) acre-feet of water.
- 3 (2) A structure that is regulated under the federal Mine Safety and  
 4 Health Act of 1977, unless the structure is proposed to be retained  
 5 as a permanent structure after bond release.
- 6 **(b) This chapter applies only to a structure that meets two (2) or**  
 7 **more of the following conditions:**
- 8 **(1) Exceeds twenty (20) feet in height.**  
 9 **(2) Has a drainage area above the dam of more than one (1)**  
 10 **square mile.**  
 11 **(3) Impounds a volume of more than one hundred (100)**  
 12 **acre-feet of water.**
- 13 SECTION 4. IC 14-27-7.5-2 IS AMENDED TO READ AS  
 14 FOLLOWS [EFFECTIVE JULY 1, 2022]: Sec. 2. As used in this  
 15 chapter, ~~"hazard "~~**"classification system"** means a rating assigned to a  
 16 structure by the department based on:
- 17 **(1) the ~~potential~~ height of the structure and the volume of**  
 18 **water impounded by the structure; and**  
 19 **(2) the force of the water and the likely** consequences resulting  
 20 from the uncontrolled release of its contents due to a failure or  
 21 misoperation of the structure.
- 22 SECTION 5. IC 14-27-7.5-8 IS AMENDED TO READ AS  
 23 FOLLOWS [EFFECTIVE JULY 1, 2022]: Sec. 8. (a) The department:  
 24 (1) has, on behalf of the state, jurisdiction and supervision over  
 25 the maintenance and repair of structures in, on, or along the  
 26 rivers, streams, and lakes of Indiana;  
 27 (2) shall exercise care to see that the structures are maintained in  
 28 a good and sufficient state of repair and operating condition to  
 29 fully perform the intended purpose;  
 30 (3) shall grant permits for the construction and operation of  
 31 structures in, on, or along the rivers, streams, and lakes of  
 32 Indiana;  
 33 (4) may adopt rules under IC 4-22-2 for permitting, maintenance,  
 34 and operation that are necessary for the purposes of this chapter;  
 35 and  
 36 (5) may ~~vary~~ **grant variances from** the standards for permits,  
 37 maintenance, and operation, giving due consideration to the  
 38 following:  
 39 (A) The type, **condition**, and location of the structure.  
 40 (B) The hazards to which the structure is or may be exposed.  
 41 (C) The **likely** peril to life or **serious damage to** property if  
 42 the structure fails to perform the structure's function.



1 (b) The department shall establish by rule the criteria for assigning  
 2 a ~~hazard~~ classification **system** to a structure that is based on the  
 3 ~~potential consequences~~ **height of the structure, the volume of water**  
 4 **impounded by the structure, and the force of the water** resulting  
 5 from the uncontrolled release of the structure's contents due to a failure  
 6 of the structure. The ~~hazard~~ classification system must include the  
 7 following classes of structures:

8 (1) High ~~hazard:~~ **capacity:** A structure the failure of which ~~may~~  
 9 **is likely to** cause the loss of life and serious damage to homes,  
 10 industrial and commercial buildings, public utilities, major  
 11 highways, or railroads.

12 (2) Significant ~~hazard:~~ **capacity:** A structure the failure of which  
 13 ~~may~~ **is likely to** damage isolated homes and highways, or cause  
 14 the temporary interruption of public utility services.

15 (3) Low ~~hazard:~~ **capacity:** A structure the failure of which ~~may~~ **is**  
 16 **likely to** damage farm buildings, agricultural land, or local roads.

17 SECTION 6. IC 14-27-7.5-9 IS AMENDED TO READ AS  
 18 FOLLOWS [EFFECTIVE JULY 1, 2022]: Sec. 9. (a) The owner of a  
 19 high ~~hazard~~ **capacity** structure shall:

20 (1) have a professional engineer licensed under IC 25-31 make an  
 21 engineering inspection of the high ~~hazard~~ **capacity** structure at  
 22 least one (1) time every two (2) years;

23 (2) submit a report of the inspection in a form approved by the  
 24 department to the department. The report must include at least the  
 25 following information:

26 (A) An evaluation of the structure's condition, spillway  
 27 capacity, operational adequacy, and structural integrity.

28 (B) A determination of whether deficiencies exist that could  
 29 lead to the failure of the structure, and recommendations for  
 30 maintenance, repairs, and alterations to the structure to  
 31 eliminate deficiencies, including a recommended schedule for  
 32 necessary upgrades to the structure.

33 (b) If after an inspection under subsection (a) the licensed  
 34 professional engineer who conducted the inspection determines that  
 35 maintenance, repairs, or alterations to a high ~~hazard~~ **capacity** structure  
 36 are necessary to remedy deficiencies in the structure, the owner shall  
 37 perform the recommended maintenance, repairs, or alterations.

38 (c) The department shall issue a notice of violation under section 11  
 39 of this chapter to the owner of a high ~~hazard~~ **capacity** structure who  
 40 fails to:

41 (1) have the structure inspected under subsection (a);

42 (2) perform recommended maintenance, repairs, or alterations to



1 the structure under subsection (b); or  
 2 (3) biennially submit the inspection report prepared under  
 3 subsection (a).

4 (d) The department may make an engineering inspection of a high  
 5 **hazard capacity** structure to ensure compliance with this chapter.

6 SECTION 7. IC 14-27-7.5-10, AS AMENDED BY P.L.195-2017,  
 7 SECTION 43, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 8 JULY 1, 2022]: Sec. 10. (a) The department shall make an engineering  
 9 inspection of:

10 (1) a significant **hazard capacity** structure at least one (1) time  
 11 every three (3) years; and

12 (2) a low **hazard capacity** structure at least one (1) time every five  
 13 (5) years;

14 or at more frequent intervals if the exigencies of the case require.

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

17 (c) The department shall charge the following for engineering  
 18 inspections:

19 (1) For a significant **hazard capacity** structure under subsection  
 20 (a)(1), a minimum fee of two hundred dollars (\$200).

21 (2) For a low **hazard capacity** structure under subsection (a)(2),  
 22 a minimum fee of one hundred dollars (\$100).

23 (d) Subject to IC 14-10-2-1, the commission may set an engineering  
 24 inspection fee above the minimum fee established under subsection (c).

25 SECTION 8. IC 14-27-7.5-16 IS AMENDED TO READ AS  
 26 FOLLOWS [EFFECTIVE JULY 1, 2022]: Sec. 16. (a) A property  
 27 owner, the owner's representative, or an individual who resides  
 28 downstream from a structure:

29 (1) over which the department ~~does not have~~ **has** jurisdiction  
 30 under this chapter; and

31 (2) that the property owner, the owner's representative, or the  
 32 individual believes would cause a loss of life or **serious** damage  
 33 to the person's home, industrial or commercial building, public  
 34 utility, major highway, or railroad if the structure fails;

35 may request in writing that the department declare the structure a high  
 36 **hazard capacity** structure.

37 (b) If the department receives a request under subsection (a), the  
 38 department shall:

39 (1) investigate the structure and the area downstream from the  
 40 structure;

41 (2) notify the owner of the structure that the structure is being  
 42 investigated;



- 1 (3) review written statements and technical documentation from  
 2 any interested party; and  
 3 (4) after considering the available information, determine whether  
 4 or not the structure **is meets the requirements to be classified as**  
 5 a high **hazard capacity** structure.
- 6 (c) The department shall issue a written notice of the department's  
 7 determination under subsection (b) to:  
 8 (1) the individual who requested the determination; and  
 9 (2) the owner of the structure that is the subject of the request.
- 10 (d) Either:  
 11 (1) the individual who requested a determination; or  
 12 (2) the owner of the structure that is the subject of the request;  
 13 may request an administrative review under IC 4-21.5-3-6 within thirty  
 14 (30) days after receipt of the written determination.
- 15 (e) If the department determines that a structure is a high **hazard**  
 16 **capacity** structure under subsection (b), the provisions of this chapter  
 17 concerning high **hazard capacity** structures apply to the structure.
- 18 SECTION 9. IC 14-27-7.5-17 IS ADDED TO THE INDIANA  
 19 CODE AS A NEW SECTION TO READ AS FOLLOWS  
 20 [EFFECTIVE JULY 1, 2022]: **Sec. 17. (a) Notwithstanding sections**  
 21 **9 and 10 of this chapter, a structure that before July 1, 2022, was**  
 22 **inspected under this chapter as a:**  
 23 (1) **high hazard structure is not required to be reinspected for**  
 24 **two (2) years from the date of the previous inspection;**  
 25 (2) **significant hazard structure is not required to be**  
 26 **reinspected for three (3) years from the date of the previous**  
 27 **inspection; or**  
 28 (3) **low hazard structure is not required to be reinspected for**  
 29 **five (5) years from the date of the previous inspection;**  
 30 **unless exigent circumstances require additional inspections of the**  
 31 **structure.**  
 32 (b) **This section expires July 1, 2027.**

