



February 14, 2022

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## ENGROSSED SENATE BILL No. 269

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DIGEST OF SB 269 (Updated February 14, 2022 1:11 pm - DI 139)

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

**Synopsis:** Regulation of dams. Provides that the laws regulating dams do not apply to a structure that is a low hazard dam or significant hazard dam that meets only one of the following conditions: (1) Has a drainage area above the dam of not more than one square mile. (2) Does not exceed 20 feet in height. (3) Does not impound 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  
(Continued next page)

**Effective:** July 1, 2022.

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### Donato, Leising, Buck

(HOUSE SPONSORS — MANNING, LEONARD)

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

January 24, 2022, reported favorably — Do Pass.

January 31, 2022, read second time, amended, ordered engrossed.

February 1, 2022, engrossed. Read third time, passed. Yeas 39, nays 10.

#### HOUSE ACTION

February 7, 2022, read first time and referred to Committee on Natural Resources.

February 14, 2022, amended, reported — Do Pass.

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ES 269—LS 7064/DI 129



## Digest Continued

standard to determine potential consequences for a failure from "may cause" to "likely to cause". Provides that for a dam constructed after June 30, 2022, if the department determines that the property owner's structure is a high hazard, significant hazard, or low hazard dam, the department shall provide the property owner with a notice stating the classification of the dam that the property owner owns. Requires that, notwithstanding an engineering inspection performed by the property owner or a consultant of the property owner, the department provide the property owner notice at least five days before performing an inspection. Requires the department to have jurisdiction over a dam to raise the dam's classification to high hazard upon receiving a request from a downstream owner. Requires the property owner of a high hazard dam to prepare an emergency action plan and provide a copy to the department and the emergency management agency. Provides that changes to the law do not affect past inspections.

**ES 269—LS 7064/DI 129**



February 14, 2022

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.

## ENGROSSED SENATE BILL No. 269

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

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1 Health Act of 1977, unless the structure is proposed to be retained  
2 as a permanent structure after bond release.

3 **(3) Except for a structure under subsection (b), a structure**  
4 **that is a low hazard dam or a significant hazard dam that**  
5 **meets only one (1) of the following conditions:**

6 **(A) Has a drainage area above the dam of not more than**  
7 **one (1) square mile.**

8 **(B) Does not exceed twenty (20) feet in height.**

9 **(C) Does not impound a volume of more than one hundred**  
10 **(100) acre-feet of water.**

11 **(b) This chapter applies to a structure that is listed on the roster**  
12 **of low head dams provided in IC 14-27-7.3.**

13 SECTION 3. 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 4. 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: A structure the failure of which ~~may~~ **is likely to**  
 9 cause the loss of life and serious damage to homes, industrial and  
 10 commercial buildings, public utilities, major highways, or  
 11 railroads.

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

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

17 **(c) For a dam constructed after June 30, 2022, if the department**  
 18 **determines that the property owner's structure is a high hazard,**  
 19 **significant hazard, or low hazard dam, the department shall**  
 20 **provide the property owner with a notice stating the classification**  
 21 **of the dam that the property owner owns.**

22 SECTION 5. IC 14-27-7.5-14 IS AMENDED TO READ AS  
 23 FOLLOWS [EFFECTIVE JULY 1, 2022]: Sec. 14. **(a) Subject to**  
 24 **subsection (b),** the department and the department's agents, engineers,  
 25 geologists, and other employees may, for purposes of determining the  
 26 department's jurisdiction and performing the engineering inspections  
 27 provided in sections 9 and 10 of this chapter, enter upon any land or  
 28 water in Indiana without liability for trespass. The owner of a structure  
 29 shall do the following:

30 (1) Cooperate with the department and the department's agents,  
 31 engineers, geologists, and other employees in the conduct of the  
 32 inspections.

33 (2) Facilitate access to the structure.

34 (3) Furnish upon request the plans, specifications, operating and  
 35 maintenance data, or other information that is pertinent to the  
 36 structure.

37 **(b) Notwithstanding an engineering inspection performed by the**  
 38 **property owner or a consultant of the property owner, not less**  
 39 **than five (5) business days before an inspection is conducted under**  
 40 **this section, the department shall provide the property owner of a**  
 41 **structure with notice of the intended inspection date. The notice**  
 42 **must be by mail or by a means of electronic transmission approved**



1 **by the owner.**

2 SECTION 6. IC 14-27-7.5-16 IS AMENDED TO READ AS  
3 FOLLOWS [EFFECTIVE JULY 1, 2022]: Sec. 16. (a) A property  
4 owner, the owner's representative, or an individual who resides  
5 downstream from a structure:

6 (1) over which the department ~~does not have~~ **has** jurisdiction  
7 under this chapter; and  
8 (2) that the property owner, the owner's representative, or the  
9 individual believes would cause a loss of life or **serious** damage  
10 to the person's home, industrial or commercial building, public  
11 utility, major highway, or railroad if the structure fails;  
12 may request in writing that the department declare the structure a high  
13 hazard structure.

14 (b) If the department receives a request under subsection (a), the  
15 department shall:

16 (1) investigate the structure and the area downstream from the  
17 structure;  
18 (2) notify the owner of the structure that the structure is being  
19 investigated;  
20 (3) review written statements and technical documentation from  
21 any interested party; and  
22 (4) after considering the available information, determine whether  
23 or not the structure is a high hazard structure.

24 (c) The department shall issue a written notice of the department's  
25 determination under subsection (b) to:

26 (1) the individual who requested the determination; and  
27 (2) the owner of the structure that is the subject of the request.

28 (d) Either:

29 (1) the individual who requested a determination; or  
30 (2) the owner of the structure that is the subject of the request;  
31 may request an administrative review under IC 4-21.5-3-6 within thirty  
32 (30) days after receipt of the written determination.

33 (e) If the department determines that a structure is a high hazard  
34 structure under subsection (b), the provisions of this chapter  
35 concerning high hazard structures apply to the structure.

36 SECTION 7. IC 14-27-7.5-17 IS ADDED TO THE INDIANA  
37 CODE AS A **NEW SECTION** TO READ AS FOLLOWS  
38 [EFFECTIVE JULY 1, 2022]: **Sec. 17. (a) Notwithstanding sections**  
39 **9 and 10 of this chapter, a structure that before July 1, 2022, was**  
40 **inspected under this chapter as a:**

41 (1) **high hazard structure is not required to be reinspected for**  
42 **two (2) years from the date of the previous inspection;**



1           (2) significant hazard structure is not required to be  
2           reinspected for three (3) years from the date of the previous  
3           inspection; or

4           (3) low hazard structure is not required to be reinspected for  
5           five (5) years from the date of the previous inspection;

6           unless exigent circumstances require additional inspections of the  
7           structure.

8           (b) This section expires July 1, 2027.

9           SECTION 8. IC 14-27-7.5-18 IS ADDED TO THE INDIANA  
10          CODE AS A NEW SECTION TO READ AS FOLLOWS  
11          [EFFECTIVE JULY 1, 2022]: **Sec. 18. (a) A property owner of**  
12          **property that contains a high hazard dam shall prepare an**  
13          **emergency action plan that includes the following:**

14           (1) Identifies conditions that may endanger the dam.

15           (2) Identifies remedial actions to prevent or minimize the  
16           downstream impacts of a dam failure.

17           (3) Contains contact information to notify local emergency  
18           personnel and provide effective communications of the dam's  
19           condition.

20           (4) Contains a plan to notify local emergency personnel of an  
21           impending or actual failure of the dam.

22           (5) Contains a plan to notify local emergency personnel after  
23           an unusual or emergency event has ended.

24          A plan prepared under this subsection shall be reviewed every six  
25          (6) years and updated with any changes noted in the dam safety  
26          inspections or contact information, or other changes, since the  
27          initial plan was prepared or the last update was provided,  
28          whichever is later.

29          (b) The property owner shall provide a copy of the emergency  
30          action plan required under this section to the department and the  
31          emergency management agency that serves the county in which the  
32          dam is located.



## COMMITTEE REPORT

Madam President: The Senate Committee on Natural Resources, to which was referred Senate Bill No. 269, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is to SB 269 as introduced.)

GLICK, Chairperson

Committee Vote: Yeas 6, Nays 1

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 SENATE MOTION

Madam President: I move that Senate Bill 269 be amended to read as follows:

Page 3, line 8, delete "hazard: capacity:" and insert "hazard:".

Page 3, line 12, delete "hazard: capacity:" and insert "hazard:".

Page 3, line 15, delete "hazard: capacity:" and insert "hazard:".

Page 3, delete lines 17 through 42, begin a new paragraph and insert:

"SECTION 6. IC 14-27-7.5-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: Sec. 14. **(a) Subject to subsection (b)**, the department and the department's agents, engineers, geologists, and other employees may, for purposes of determining the department's jurisdiction and performing the engineering inspections provided in sections 9 and 10 of this chapter, enter upon any land or water in Indiana without liability for trespass. The owner of a structure shall do the following:

- (1) Cooperate with the department and the department's agents, engineers, geologists, and other employees in the conduct of the inspections.
- (2) Facilitate access to the structure.
- (3) Furnish upon request the plans, specifications, operating and maintenance data, or other information that is pertinent to the structure.

**(b) Not less than five (5) business days before an inspection is conducted under this section, the department shall provide the property owner of a structure with notice of the intended inspection date. The notice must be by mail or by a means of electronic transmission approved by the owner.**

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(c) If the department determines that the property owner's structure is a high hazard, significant hazard, or low hazard dam, the department shall provide the property owner with a written document stating the classification of dam that the property owner owns. A copy of the notice must be maintained by the owner of the dam.

(d) If a property owner intends to sell the property that contains a high hazard, significant hazard, or low hazard dam, the property owner shall include a copy of the notice obtained from the department under subsection (c) with the purchase agreement to the intended buyer."

Page 4, delete lines 1 through 24.

Page 4, line 36, delete "hazard capacity" and insert "hazard".

Page 5, line 5, delete "hazard capacity" and insert "hazard".

Page 5, line 15, reset in roman "hazard".

Page 5, line 16, delete "capacity".

Page 5, line 17, delete "hazard capacity" and insert "hazard".

Page 5, after line 32, begin a new paragraph and insert:

"SECTION 9. IC 14-27-7.5-18 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: **Sec. 18. (a) A property owner of property that contains a high hazard dam shall prepare an emergency action plan that includes the following:**

- (1) Identifies conditions that may endanger the dam.
- (2) Identifies remedial actions to prevent or minimize the downstream impacts of a dam failure.
- (3) Contains contact information to notify local emergency personnel and provide effective communications of the dam's condition.
- (4) Contains a plan to advise downstream residents of an impending or actual failure of the dam.
- (5) Contains a plan to notify local emergency personnel and downstream residents after an unusual or emergency event has ended.



**(b) The property owner shall provide a copy of the emergency action plan required under this section to the department and the local fire department that serves the area in which the dam is located. The department shall publish on the department's Internet web site the most recent emergency action plan submitted by the property owner for each high hazard dam."**

Renumber all SECTIONS consecutively.

(Reference is to SB 269 as printed January 25, 2022.)

DONATO

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#### COMMITTEE REPORT

Mr. Speaker: Your Committee on Natural Resources, to which was referred Senate Bill 269, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, delete lines 1 through 7, begin a new paragraph and insert:

"SECTION 1. IC 14-8-2-121.3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: Sec. 121.3. "Hazard classification **system**", for purposes of IC 14-27-7.5, has the meaning set forth in IC 14-27-7.5-2."

Page 2, delete lines 6 through 12, begin a new line block indented and insert:

**"(3) Except for a structure under subsection (b), a structure that is a low hazard dam or a significant hazard dam that meets only one (1) of the following conditions:**

**(A) Has a drainage area above the dam of not more than one (1) square mile.**

**(B) Does not exceed twenty (20) feet in height.**

**(C) Does not impound a volume of more than one hundred (100) acre-feet of water.**

**(b) This chapter applies to a structure that is listed on the roster of low head dams provided in IC 14-27-7.3."**

Page 2, line 15, reset in roman ""hazard".

Page 2, line 15, delete ""classification" and insert "classification".

Page 3, line 2, reset in roman "hazard".

Page 3, line 6, reset in roman "hazard".

Page 3, between lines 16 and 17, begin a new paragraph and insert:

**"(c) For a dam constructed after June 30, 2022, if the department determines that the property owner's structure is a**



**high hazard, significant hazard, or low hazard dam, the department shall provide the property owner with a notice stating the classification of the dam that the property owner owns."**

Page 3, line 32, delete "Not" and insert **"Notwithstanding an engineering inspection performed by the property owner or a consultant of the property owner, not"**.

Page 3, delete lines 37 through 42.

Page 4, delete lines 1 through 5.

Page 4, line 27, reset in roman "is".

Page 4, line 27, delete "meets the requirements to be classified as".

Page 5, delete lines 25 through 35, begin a new line block indented and insert:

**"(4) Contains a plan to notify local emergency personnel of an impending or actual failure of the dam.**

**(5) Contains a plan to notify local emergency personnel after an unusual or emergency event has ended.**

**A plan prepared under this subsection shall be reviewed every six (6) years and updated with any changes noted in the dam safety inspections or contact information, or other changes, since the initial plan was prepared or the last update was provided, whichever is later.**

**(b) The property owner shall provide a copy of the emergency action plan required under this section to the department and the emergency management agency that serves the county in which the dam is located."**

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 269 as reprinted February 1, 2022.)

EBERHART

Committee Vote: yeas 11, nays 0.

