

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 ENROLLED ACT No. 269

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AN ACT to amend the Indiana Code concerning natural and cultural resources.

*Be it enacted by the General Assembly of the State of Indiana:*

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.

SECTION 2. IC 14-27-7.5-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: Sec. 1. **(a)** This chapter does not apply to the following:

- (1) A structure that meets the following conditions:
  - (A) Is built for the sole purpose of erosion control, watering livestock, recreation, or providing a haven or refuge for fish or wildlife.
  - (B) Has a drainage area above the dam of not more than one (1) square mile.
  - (C) Does not exceed twenty (20) feet in height.
  - (D) Does not impound a volume of more than one hundred (100) acre-feet of water.
- (2) A structure that is regulated under the federal Mine Safety and Health Act of 1977, unless the structure is proposed to be retained as a permanent structure after bond release.
- (3) Except for a structure under subsection (b), a structure that is a low hazard dam or a significant hazard dam that**

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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.

SECTION 3. IC 14-27-7.5-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: Sec. 2. As used in this chapter, "hazard classification **system**" means a rating assigned to a structure by the department based on:

- (1) the ~~potential~~ **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.

SECTION 4. IC 14-27-7.5-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: Sec. 8. (a) The department:

- (1) has, on behalf of the state, jurisdiction and supervision over the maintenance and repair of structures in, on, or along the rivers, streams, and lakes of Indiana;
- (2) shall exercise care to see that the structures are maintained in a good and sufficient state of repair and operating condition to fully perform the intended purpose;
- (3) shall grant permits for the construction and operation of structures in, on, or along the rivers, streams, and lakes of Indiana;
- (4) may adopt rules under IC 4-22-2 for permitting, maintenance, and operation that are necessary for the purposes of this chapter; and
- (5) may vary the standards for permits, maintenance, and operation, giving due consideration to the following:
  - (A) The type, **condition**, and location of the structure.
  - (B) The hazards to which the structure is or may be exposed.
  - (C) The **likely** peril to life or **serious damage to** property if the structure fails to perform the structure's function.

(b) The department shall establish by rule the criteria for assigning a hazard classification **system** to a structure that is based on the ~~potential consequences~~ **height of the structure, the volume of water impounded by the structure, and the force of the water** resulting from the uncontrolled release of the structure's contents due to a failure



of the structure. The hazard classification system must include the following classes of structures:

- (1) High hazard: A structure the failure of which **may is likely to** cause the loss of life and serious damage to homes, industrial and commercial buildings, public utilities, major highways, or railroads.
- (2) Significant hazard: A structure the failure of which **may is likely to** damage isolated homes and highways, or cause the temporary interruption of public utility services.
- (3) Low hazard: A structure the failure of which **may is likely to** damage farm buildings, agricultural land, or local roads.

**(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.**

SECTION 5. 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) Notwithstanding an engineering inspection performed by the property owner or a consultant of the property owner, 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.**

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



(1) over which the department does not have jurisdiction under this chapter; and

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

may request in writing that the department declare the structure a high hazard structure.

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

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

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

(3) review written statements and technical documentation from any interested party; and

(4) after considering the available information, determine whether or not the structure is a high hazard structure.

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

(1) the individual who requested the determination; and

(2) the owner of the structure that is the subject of the request.

(d) Either:

(1) the individual who requested a determination; or

(2) the owner of the structure that is the subject of the request;

may request an administrative review under IC 4-21.5-3-6 within thirty (30) days after receipt of the written determination.

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

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

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

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

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



unless exigent circumstances require additional inspections of the structure.

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

SECTION 8. 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 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.**



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President of the Senate

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President Pro Tempore

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Speaker of the House of Representatives

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Governor of the State of Indiana

Date: \_\_\_\_\_ Time: \_\_\_\_\_

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