

## **IC 14-26-2**

### **Chapter 2. Lake Preservation**

#### **IC 14-26-2-1**

##### **Applicability of chapter**

Sec. 1. This chapter does not apply to the following:

- (1) Lake Michigan.
- (2) Land under the waters of Lake Michigan.
- (3) Any part of the land in Indiana that borders on Lake Michigan.

*As added by P.L.1-1995, SEC.19.*

#### **IC 14-26-2-1.2**

##### **"Acquiescence"**

Sec. 1.2. As used in this chapter, "acquiescence" means consent without conditions, tacit or passive compliance, or acceptance.

*As added by P.L.6-2008, SEC.3.*

#### **IC 14-26-2-1.5**

##### **"Lake"**

Sec. 1.5. As used in this chapter, "lake" means a reasonably permanent body of water that:

- (1) existed on March 12, 1947;
- (2) is substantially at rest in a depression in the surface of the earth that is naturally created;
- (3) is of natural origin or part of a watercourse, including a watercourse that has been dammed; and
- (4) covers an area of at least five (5) acres within the shoreline and water line, including bays and coves.

*As added by P.L.6-2008, SEC.4.*

#### **IC 14-26-2-2**

##### **"Natural resources"**

Sec. 2. As used in this chapter, "natural resources" means the water, fish, plant life, and minerals in a public freshwater lake.

*As added by P.L.1-1995, SEC.19.*

#### **IC 14-26-2-3**

##### **"Public freshwater lake"**

Sec. 3. (a) As used in this chapter, "public freshwater lake" means a lake that has been used by the public with the acquiescence of a riparian owner.

(b) The term does not include the following:

- (1) Lake Michigan.
- (2) A lake lying wholly or in part within the corporate boundaries of any of the three (3) cities having the largest population in a county having a population of more than four hundred thousand (400,000) but less than seven hundred

thousand (700,000).

(3) A privately owned body of water:

(A) used for the purpose of; or

(B) created as a result of;

surface coal mining.

*As added by P.L.1-1995, SEC.19.*

#### **IC 14-26-2-4**

##### **"Shoreline or water line"**

Sec. 4. As used in this chapter, "shoreline or water line" means:

(1) if the water level has been legally established, the line formed on the bank or shore by the water surface at the legally established average normal level; or

(2) if the water level has not been legally established, the line formed by the water surface at the average level as determined by:

(A) existing water level records; or

(B) if water level records are not available, the action of the water that has marked upon the soil of the bed of the lake a character distinct from that of the bank with respect to vegetation as well as the nature of the soil.

*As added by P.L.1-1995, SEC.19.*

#### **IC 14-26-2-5**

##### **Public rights**

Sec. 5. (a) As used in this section, "natural scenic beauty" means the natural condition as left by nature without manmade additions or alterations.

(b) As used in this section, "recreational purpose" means the following:

(1) Fishing.

(2) Boating.

(3) Swimming.

(4) The storage of water to maintain water levels.

(5) Any other purpose for which lakes are ordinarily used and adapted.

(c) The:

(1) natural resources and the natural scenic beauty of Indiana are a public right; and

(2) public of Indiana has a vested right in the following:

(A) The preservation, protection, and enjoyment of all the public freshwater lakes of Indiana in their present state.

(B) The use of the public freshwater lakes for recreational purposes.

(d) The state:

(1) has full power and control of all of the public freshwater lakes in Indiana both meandered and unmeandered; and

(2) holds and controls all public freshwater lakes in trust for the use of all of the citizens of Indiana for recreational purposes.

(e) A person owning land bordering a public freshwater lake does not have the exclusive right to the use of the waters of the lake or any part of the lake.

*As added by P.L.1-1995, SEC.19.*

#### **IC 14-26-2-6**

##### **Repealed**

*(As added by P.L.1-1995, SEC.19. Repealed by P.L.152-2006, SEC.4.)*

#### **IC 14-26-2-7**

##### **Construction of ditches or dams so as to lower water level prohibited**

Sec. 7. (a) This section applies to a public freshwater lake, regulated or otherwise, that covers an area of at least ten (10) acres.

(b) A person may not order or recommend the:

- (1) construction;
- (2) reconstruction;
- (3) recleaning; or
- (4) repair;

of a ditch, dam, or other project that will affect or is likely to affect a lowering of the water level of the public freshwater lake.

*As added by P.L.1-1995, SEC.19. Amended by P.L.6-2008, SEC.5.*

#### **IC 14-26-2-8**

##### **Accretion rights**

Sec. 8. Accretion rights in public freshwater lakes are limited to land from which the waters have receded or may recede from natural causes only. Accretion rights do not accrue to a riparian landowner as a consequence of lowering the public freshwater lake level by any of the following:

- (1) Drainage.
- (2) Extending the shoreline into the water of the public freshwater lake by filling the public freshwater lake with soil or any other substance.
- (3) Extending the shoreline away from the public freshwater lake by excavating, dredging, or channeling through the shoreline.

*As added by P.L.1-1995, SEC.19. Amended by P.L.6-2008, SEC.6.*

#### **IC 14-26-2-9**

*(As added by P.L.1-1995, SEC.19. Amended by P.L.186-2003, SEC.69. Repealed by P.L.152-2006, SEC.4.)*

#### **IC 14-26-2-10**

##### **Notice and hearing**

Sec. 10. (a) Notwithstanding any other provision of law but subject to section 11 of this chapter, the department may not authorize:

- (1) the changing of the level;
- (2) the dredging, other than to maintain channels or construct sea walls, beaches, or near-shore access improvements on a lot by lot basis; or
- (3) the mining;

of a public freshwater lake without giving notice and the opportunity for a public hearing at the county seat of the county in which the public freshwater lake is located.

(b) The notice must:

- (1) generally describe the project for which a permit has been requested to authorize;
- (2) state that the public has a right to request that a hearing be held on the proposed project;
- (3) state that persons interested in or affected by the proposed project may speak at the hearing; and
- (4) be published two (2) times, seven (7) days apart, in two (2) daily newspapers in the county in which the public freshwater lake is located, in the manner prescribed by IC 5-3-1.

(c) If a hearing is requested within ten (10) days after the final publication of the notice, the department shall do the following:

- (1) Hold a public hearing in the manner stated in the notice.
- (2) Give notice of the date, time, and place of the hearing as prescribed in subsection (b).
- (3) Consider the public comments concerning the proposed project before the department makes a decision concerning the proposal.

*As added by P.L.1-1995, SEC.19. Amended by P.L.6-2008, SEC.7.*

## **IC 14-26-2-11**

### **Sand mining**

Sec. 11. (a) This section applies to a private lake that lies wholly or in part within any of the three (3) cities having the largest population in a county having a population of more than four hundred thousand (400,000) but less than seven hundred thousand (700,000).

(b) Sand mining may be conducted at the lake only if approved by resolution of the legislative body of the city after a public hearing.

(c) A sand mining operation at the lake:

- (1) is subject to and shall be conducted in accordance with the regulations and permit process of the United States Army Corps of Engineers and the United States Environmental Protection Agency; and
- (2) is subject to local supervision and monitoring by the city engineer of the city in which the lake lies.

(d) A person performing the sand mining is liable for any damages directly attributable to the sand mining operation to any real property located within a one (1) mile radius of the lake.

(e) After mining operations are completed, the lake may not be used as a sanitary landfill or as a hazardous waste site.

*As added by P.L.1-1995, SEC.19.*

#### **IC 14-26-2-12**

##### **Permit to construct channels**

Sec. 12. (a) The department may not issue a permit for the construction of a channel into a public freshwater lake unless:

- (1) the channel follows the path of a stream already in existence; or
- (2) the applicant proves that fifty-one percent (51%) of the property owners abutting the shoreline of the public freshwater lake approve of the channel construction.

(b) This section does not prevent the department from issuing a permit to construct small private drainage channels.

*As added by P.L.1-1995, SEC.19. Amended by P.L.6-2008, SEC.8.*

#### **IC 14-26-2-13**

##### **Sewage disposal facilities for housing developments**

Sec. 13. As a condition precedent to action by the department, written approval by the department of environmental management must be obtained for the construction of sewage disposal facilities for housing developments of at least five (5) lots if the developments are an integral part of a change in shoreline requested under this chapter.

*As added by P.L.1-1995, SEC.19.*

#### **IC 14-26-2-14**

##### **Applicability to private cooling or pollution control ponds**

Sec. 14. (a) This section applies to an off-stream, privately owned pond, lake, reservoir, or other body of water designed and constructed primarily for the reduction or control of pollutants or cooling before discharge of the water into the public water of Indiana.

(b) A body of water subject to this section does not become a body of public water for the purpose of permitting the state to regulate the quality of water.

(c) The state and the citizens of Indiana do not acquire a continuing right or interest in a body of water subject to this section if the owner permits entrance to or recreational use of the body of water by the public.

(d) IC 14-22-10-2 applies to a body of water operated under this section.

(e) This section does not affect the duties of the department to enforce Indiana fish and wildlife laws as the laws apply to public entrance or recreational use of the body of water.

*As added by P.L.1-1995, SEC.19.*

#### **IC 14-26-2-14.5**

##### **Determination of public use of a lake**

Sec. 14.5. (a) For purposes of determining the acquiescence of a riparian owner to allow the public use of a lake, indicators of acquiescence include the following:

- (1) Evidence that the general public has used the lake for recreational purposes.

(2) Evidence that the riparian owner did not object to the operation by another person of a privately owned boat rental business, campground, or commercial enterprise that allowed nonriparian owners to gain access throughout the lake.

(3) A record of regulation of previous construction activities on the lake by the department or the department of conservation (before its repeal).

(b) Acquiescence does not exist if a lake has been adjudicated after March 12, 1947, to be a private lake and the department, or the department of conservation (before its repeal), was a party to the adjudication.

*As added by P.L.6-2008, SEC.9.*

#### **IC 14-26-2-15**

##### **Applicability to Tippecanoe River impoundments**

Sec. 15. (a) This section applies to impoundments of the Tippecanoe River that are formed by a dam or control structure owned and operated by a public utility for the generation of hydroelectric power. However, this section does not restrict the department's ability to regulate the safety or maintenance of a dam or other control structure under IC 14-27-7.5.

(b) As used in this section, "alterations to the shoreline" does not include the making of canals or inlets.

(c) As used in this section, "construction" includes the building of a pier.

(d) Notwithstanding any other law, the department may not regulate or interfere with alterations to the shoreline of or construction on the impoundments.

*As added by P.L.1-1995, SEC.19. Amended by P.L.186-2003, SEC.70.*

#### **IC 14-26-2-16**

##### **Applicability to water supply reservoirs**

Sec. 16. (a) As used in this section, "water supply reservoir" means a body of water formed by a dam wholly owned and operated by a municipality or a public utility (as defined in IC 8-1-2-1) for the purpose of providing water utility service to the public. The term does not include the following:

(1) Tributary streams that drain into the body of water.

(2) Wetlands associated with those streams.

(b) Notwithstanding any other law, the department may not regulate the following activities conducted within the one hundred (100) year flood level of a water supply reservoir:

(1) Sediment removal, dredging for the purpose of providing water supply storage, seawall construction, or the maintenance of water intake structures.

(2) Restoration or stabilization of the shoreline.

(c) This section does not restrict the department's ability to regulate the safety or maintenance of a dam or other control structure

under IC 14-27-7.5.

*As added by P.L.1-1995, SEC.19. Amended by P.L.186-2003, SEC.71.*

#### **IC 14-26-2-17**

##### **Expiration of permit**

Sec. 17. (a) Subject to subsection (b), a permit issued under this chapter expires two (2) years after the permit is issued.

(b) The commission may adopt rules under IC 4-22-2 providing that a type of permit specified in the rules expires more than two (2) years after it is issued.

*As added by P.L.1-1995, SEC.19. Amended by P.L.25-2009, SEC.1.*

#### **IC 14-26-2-18**

##### **Posting and keeping of permit**

Sec. 18. The person to whom a permit is issued under this chapter shall do the following:

(1) Post the permit at the site of the activity authorized by the permit.

(2) Keep the permit posted at the site where the activity is authorized until the activity is completed.

*As added by P.L.1-1995, SEC.19.*

#### **IC 14-26-2-19**

##### **Remedies for violations**

Sec. 19. The department may seek relief under IC 14-25.5-4 for the violation of this chapter.

*As added by P.L.1-1995, SEC.19. Amended by P.L.71-2004, SEC.4.*

#### **IC 14-26-2-20**

##### **Department may bring action for damages**

Sec. 20. The department may bring an action under IC 14-25.5-4 for damages caused by a person who violates this chapter.

*As added by P.L.1-1995, SEC.19. Amended by P.L.71-2004, SEC.5.*

#### **IC 14-26-2-21**

##### **Violations**

Sec. 21. A person who violates section 7 or 23 of this chapter commits a Class B infraction.

*As added by P.L.1-1995, SEC.19. Amended by P.L.71-2004, SEC.6; P.L.195-2014, SEC.32.*

#### **IC 14-26-2-22**

##### **Additional civil penalties**

Sec. 22. In addition to other penalties prescribed by this chapter or IC 13-2-11.1 (before its repeal), the director may impose a civil penalty of not more than ten thousand dollars (\$10,000) under IC 14-25.5-4 for a violation of section 7 or 23 of this chapter.

*As added by P.L.1-1995, SEC.19. Amended by P.L.24-2001, SEC.3;*

**IC 14-26-2-23**

**Prohibited activities; permit applications; rules; mediation; civil enforcement**

Sec. 23. (a) Unless a person obtains a permit from the department under this section and conducts the activities according to the terms of the permit, a person may not conduct the following activities:

(1) Over, along, or lakeward of the shoreline or water line of a public freshwater lake:

(A) excavate;

(B) place fill; or

(C) place, modify, or repair a temporary or permanent structure.

(2) Construct a wall whose lowest point would be:

(A) below the elevation of the shoreline or water line; and

(B) within ten (10) feet landward of the shoreline or water line, as measured perpendicularly from the shoreline or water line;

of a public freshwater lake.

(3) Change the water level, area, or depth of a public freshwater lake or the location of the shoreline or water line.

(b) An application for a permit for an activity described in subsection (a) must be accompanied by the following:

(1) A nonrefundable fee of one hundred dollars (\$100).

(2) A project plan that provides the department with sufficient information concerning the proposed excavation, fill, temporary structure, or permanent structure.

(3) A written acknowledgment from the landowner that any additional water area created under the project plan is part of the public freshwater lake and is dedicated to the general public use with the public rights described in section 5 of this chapter.

(c) The department may issue a permit after investigating the merits of the application. In determining the merits of the application, the department may consider any factor, including cumulative effects of the proposed activity upon the following:

(1) The shoreline, water line, or bed of the public freshwater lake.

(2) The fish, wildlife, or botanical resources.

(3) The public rights described in section 5 of this chapter.

(4) The management of watercraft operations under IC 14-15.

(5) The interests of a landowner having property rights abutting the public freshwater lake or rights to access the public freshwater lake.

(d) A contractor or agent of the landowner who engages in an activity described in subsection (a)(1), (a)(2), or (a)(3) must comply with the terms of a permit issued under this section.

(e) The commission shall adopt rules under IC 4-22-2 to do the following:



- (1) Assist in the administration of this chapter.
- (2) Provide objective standards for issuing permits under this section, including standards for the configuration of piers, boat stations, platforms, and similar structures. The standards:
  - (A) may provide for a common use if the standard is needed to accommodate the interests of landowners having property rights abutting the public freshwater lake or rights to access the public freshwater lake; and
  - (B) shall exempt any class of activities from licensing, including temporary structures, if the commission finds that the class is unlikely to pose more than a minimal potential for harm to the public rights described in section 5 of this chapter.
- (3) Establish a process under IC 4-21.5 for the mediation of disputes among persons with competing interests or between a person and the department. A rule adopted under this subsection must provide that:
  - (A) if good faith mediation under the process fails to achieve a settlement, the department shall make a determination of the dispute; and
  - (B) a person affected by the determination of the department may seek administrative review by the commission.

(f) After:

- (1) a final agency action in a mediation under subsection (e)(3) that makes a determination of a dispute among persons with competing riparian interests; and
- (2) the completion of judicial review or the expiration of the opportunity for judicial review;

a party to the dispute may seek enforcement of the determination in a civil proceeding. The remedy provided under this subsection is supplemental to any other legal remedy of the party.

*As added by P.L. 64-2000, SEC.1. Amended by P.L. 152-2006, SEC.3; P.L. 6-2008, SEC.10; P.L. 25-2009, SEC.2.*

#### **IC 14-26-2-24**

##### **Public freshwater lake listing**

Sec. 24. (a) Relying on recommendations of the department and the advisory council established by IC 14-9-6-1, the commission shall adopt, under IC 4-22-7-7(a)(5)(A), and maintain a nonrule policy statement that lists the public freshwater lakes in Indiana. For each public freshwater lake the statement must include the following information:

- (1) The name of the lake.
- (2) The county and specific location within the county where the lake is located.

(b) A person may obtain administrative review from the commission for the listing or nonlisting of a lake as a public freshwater lake through a licensure action, status determination, or enforcement action under IC 4-21.5.

*As added by P.L.6-2008, SEC.11.*

**IC 14-26-2-25**

**Public freshwater lake petition**

Sec. 25. (a) The owner or owners of the entire shoreline or water line of:

- (1) a lake;
- (2) a pond; or
- (3) another reasonably permanent body of water that is substantially at rest;

may petition the department to declare the body of water a public freshwater lake.

(b) If the department, in writing, grants the petition under subsection (a), the body of water becomes subject to this chapter.

*As added by P.L.6-2008, SEC.12.*