

## **IC 14-28**

### **ARTICLE 28. FLOOD CONTROL**

#### **IC 14-28-1**

##### **Chapter 1. Flood Control**

#### **IC 14-28-1-1**

##### **Legislative intent**

Sec. 1. The following are declared:

(1) The loss of lives and property caused by floods and the damage resulting from floods is a matter of deep concern to Indiana affecting the life, health, and convenience of the people and the protection of property. To prevent and limit floods, all flood control works and structures and the alteration of natural or present watercourses of all rivers and streams in Indiana should be regulated, supervised, and coordinated in design, construction, and operation according to sound and accepted engineering practices so as to best control and minimize the extent of floods and reduce the height and violence of floods.

(2) The channels and that part of the flood plains of rivers and streams that are the floodways should not be inhabited and should be kept free and clear of interference or obstructions that will cause any undue restriction of the capacity of the floodways.

(3) The water resources of Indiana that have been diminishing should be accumulated, preserved, and protected to prevent any loss or waste beyond reasonable and necessary use.

(4) A master plan or comprehensive plan for the entire state to control floods and to accumulate, preserve, and protect the water resources should be investigated, studied, and prepared, policy and practices should be established, and the necessary works should be constructed and placed in operation.

*As added by P.L.1-1995, SEC.21.*

#### **IC 14-28-1-1.2**

##### **"Boundary river" defined**

Sec. 1.2. "Boundary river", for purposes of this chapter, means the part of the Ohio River that forms the boundary between Kentucky and Indiana.

*As added by P.L.135-1997, SEC.11.*

#### **IC 14-28-1-1.3**

##### **"Boundary river floodway" defined**

Sec. 1.3. "Boundary river floodway", for purposes of this chapter, means the floodway (as defined by IC 14-8-2-102) of a boundary river.

*As added by P.L.135-1997, SEC.12.*

**IC 14-28-1-2****"Flood control" defined**

Sec. 2. As used in this chapter, "flood control" means the following:

- (1) The prevention of floods.
- (2) The control, regulation, diversion, or confinement of flood water or flood flow.
- (3) The protection from flood water, according to sound and accepted engineering practice and including all things incidental to or connected with the protection, to minimize the following:
  - (A) The extent of floods.
  - (B) The death, damage, and destruction caused by floods.

*As added by P.L.1-1995, SEC.21.*

**IC 14-28-1-3****"Flood easement" defined**

Sec. 3. As used in this chapter, "flood easement" means an easement on property to be inundated or covered by water.

*As added by P.L.1-1995, SEC.21.*

**IC 14-28-1-4****"Water resources" defined**

Sec. 4. As used in this chapter, "water resources" means surface and subsurface water.

*As added by P.L.1-1995, SEC.21.*

**IC 14-28-1-5****Adoption of rules**

Sec. 5. The commission shall adopt rules under IC 4-22-2 for the following:

- (1) The transaction of commission business.
- (2) The administration and exercise of the commission's powers and duties.

*As added by P.L.1-1995, SEC.21.*

**IC 14-28-1-6****Furnishing of information**

Sec. 6. Each county agent, city engineer, county engineer, county surveyor, and state agency shall obtain, provide, and furnish pertinent data and information that is requested by an order of the commission, subject to the approval of the governor.

*As added by P.L.1-1995, SEC.21.*

**IC 14-28-1-7****Use of state agencies; personnel; purchases**

Sec. 7. The commission may do the following:

- (1) Use any state agency in connection with:
  - (A) the commission's investigation, studies, and preparation of plans; or

- (B) the performance of other duties.
- (2) Employ the technical experts, engineers, and clerical and other assistants that are necessary.
- (3) Through the state purchasing agent purchase the supplies, equipment, instruments, and machinery that the commission considers necessary to perform the commission's duties.

*As added by P.L.1-1995, SEC.21.*

#### **IC 14-28-1-8**

##### **Right of entry upon premises**

Sec. 8. The commission and the commission's agents, engineers, surveyors, and other employees may enter upon any land or water in Indiana for the purpose of making an investigation, an examination, or a survey provided by this chapter.

*As added by P.L.1-1995, SEC.21.*

#### **IC 14-28-1-9**

##### **Hearings**

Sec. 9. The commission may conduct hearings at which at least one (1) of the commission members shall preside. Each commissioner may administer oaths. The commission may obtain information for the commission's purposes from any person, including issuing subpoenas to require the attendance of witnesses and examining witnesses under oath.

*As added by P.L.1-1995, SEC.21.*

#### **IC 14-28-1-10**

##### **Title to property**

Sec. 10. The title to all land, easements, flood easements, or other interest in land or other property or rights acquired by the commission must be:

- (1) approved by the attorney general; and
- (2) taken in the name of the state of Indiana.

*As added by P.L.1-1995, SEC.21.*

#### **IC 14-28-1-11**

##### **Eminent domain powers**

Sec. 11. (a) The commission may exercise the power of eminent domain. If the commission is unable to agree with the owner for the purchase of:

- (1) land;
- (2) an easement;
- (3) a flood easement;
- (4) other interest in land; or
- (5) other property or right that in the commission's opinion is necessary for the commission's purposes;

the commission may acquire the property or right by condemnation under IC 32-24.

- (b) The commission must adopt an appropriate resolution and

deliver the resolution to the attorney general.

(c) The attorney general shall commence and prosecute an action in the name of the state of Indiana on the relation of the commission for the appropriation of the property or right. The title to the property or right acquired vests in the state.

*As added by P.L.1-1995, SEC.21. Amended by P.L.2-2002, SEC.61.*

#### **IC 14-28-1-12**

##### **Jurisdiction; comprehensive studies and plans**

Sec. 12. The commission has jurisdiction over the public and private waters in Indiana and the adjacent land necessary for flood control purposes or for the prevention of flood damage. The commission shall do the following:

- (1) Make a comprehensive study and investigation of all pertinent conditions of the areas in Indiana affected by floods.
- (2) Determine the best method and manner of establishing flood control, giving consideration to the following:
  - (A) The reservoir method.
  - (B) The channel improvement method.
  - (C) The levee method.
  - (D) The flood plain regulation method.
  - (E) Any other practical method.
- (3) Adopt and establish a comprehensive plan or master plan for flood control for all areas of Indiana subject to floods.
- (4) Determine the best and most practical method and manner of establishing and constructing the necessary flood control works.
- (5) Adopt appropriate measures for the prevention of flood damage.

*As added by P.L.1-1995, SEC.21.*

#### **IC 14-28-1-13**

##### **Construction or obtaining of flood control works**

Sec. 13. (a) The commission may construct flood control works or a part of flood control works. The commission may perform the duties in cooperation with any of the following:

- (1) A person.
  - (2) A state agency.
  - (3) Other states or an agency of another state.
  - (4) The United States or any agency of the United States.
- (b) The commission shall obtain flood control works as follows:
- (1) From and through or by cooperation with the United States Army Corps of Engineers or an agency of the United States.
  - (2) By cooperation with and action of cities and towns under Indiana law relating to flood control.
  - (3) By cooperation with and action of landowners in rural areas affected by flood control works under Indiana law relating to levees.

*As added by P.L.1-1995, SEC.21.*

#### **IC 14-28-1-14**

##### **Surveys, investigations, plans, and recommendations regarding water resources**

Sec. 14. The commission shall do the following:

- (1) Make surveys and investigations of the water resources of Indiana, giving consideration to the need for and appropriate sources of suitable water supplies for domestic, agricultural, municipal, industrial, power, transportation, recreation, stream pollution, health, and other beneficial purposes.
- (2) Make and formulate plans and recommendations for the further development, protection, and preservation of the water resources of Indiana for such purposes.

*As added by P.L.1-1995, SEC.21.*

#### **IC 14-28-1-15**

##### **Recommendations and information from department**

Sec. 15. (a) The commission shall, in the course of the commission's investigations and surveys of multiple purpose flood control reservoirs, obtain recommendations from the department relative to the comprehensive planning of:

- (1) recreational facilities;
- (2) hunting and fishing opportunities; and
- (3) forest improvements;

in connection with the reservoirs.

(b) The recommendations from the department must be accompanied by supporting data and information, as far as is feasible, including the following:

- (1) Plans and policies for the acquisition, development, maintenance, operation, and use of land.
- (2) Estimates of costs and benefits.
- (3) Proposed sources of money.

(c) The information shall:

- (1) be made available to the public; and
- (2) be included as an integral part of the reports pertaining to multiple purpose flood control reservoirs that are prepared by the commission.

*As added by P.L.1-1995, SEC.21.*

#### **IC 14-28-1-16**

##### **Promotion of local efforts; cooperation with individuals and agencies**

Sec. 16. The commission shall do the following:

- (1) Encourage and promote local initiative and effort in providing flood control and in the development of water resources, subject to the regulation and control provided by law.
- (2) Cooperate with, advise, disseminate information to, and assist any person or state agency in matters relating to flood control and the development of water resources, including flood plain regulations or controls.

*As added by P.L.1-1995, SEC.21.*

#### **IC 14-28-1-17**

##### **Cooperation with federal government**

Sec. 17. The commission may do the following:

- (1) Represent and act for and in behalf of the state, subject to the approval of the governor, in all matters of flood control and the water resources of Indiana with the United States and any other state.
- (2) Cooperate with, obtain, approve, and accept flood control works from and through the United States Army Corps of Engineers.
- (3) Cooperate with and obtain, approve, and accept works or a grant of any character or description from and through an agency of the United States relating to flood control and water resources and administer the expenditures of money in connection with the grant.

*As added by P.L.1-1995, SEC.21.*

#### **IC 14-28-1-18**

##### **Easements and rights-of-way**

Sec. 18. (a) This section applies to real property:

- (1) for which the state has the custody, management, possession, or control; and
- (2) in which the state has a right, a title, or an interest.

(b) The state may, with the written approval of the governor, give, grant, and convey to any person:

- (1) easements;
- (2) rights-of-way; and
- (3) the right and privilege;

to construct, erect, maintain, operate, and use any works or structures in connection with flood control or water resources on and in the real property.

*As added by P.L.1-1995, SEC.21.*

#### **IC 14-28-1-19**

##### **Applicability of laws regarding structures in floodways**

Sec. 19. Sections 20, 21, 22, 23, 24, and 25 of this chapter do not apply to any of the following:

- (1) An abode or a residence constructed on land that meets the following conditions:
  - (A) Is between the 791.0 mile marker and the 791.5 mile marker on the Ohio River.
  - (B) Is adjacent to a recreational area.
  - (C) Has been or may be filled to or above an elevation of three hundred seventy-eight (378) feet above sea level.
  - (D) Is properly protected by riprap in a manner that minimizes the possibility of erosion by river currents.
- (2) An abode or a residence if the following conditions are met:

- (A) The abode or residence is rebuilt upon the area of the original foundation and is substantially the same configuration as the former abode or residence.
  - (B) The abode or residence was unintentionally destroyed by a means other than floodwater.
  - (C) The rebuilding of the abode or residence is begun within one (1) year and completed within two (2) years after the destruction of the former abode or residence.
  - (D) The abode or residence is located in the floodway of a stream having a watershed upstream from the abode or residence of less than fifteen (15) square miles in area.
  - (E) The lowest floor of the rebuilt abode or residence, including the basement, is at or above the one hundred (100) year frequency flood elevation if the abode or residence was totally destroyed.
  - (F) A variance is obtained from the county or municipality for the lowest floor of the abode or residence to be below the one hundred (100) year frequency flood elevation if the damage to the former abode or residence is less than one hundred percent (100%).
  - (G) An ordinance allowing the rebuilding of an abode or a residence is adopted by any of the following:
    - (i) The legislative body of the city or town in which the abode or residence is located.
    - (ii) The legislative body of the county in which the abode or residence is located if the abode or residence is not located in a city or town.
- (3) A property that is to be rehabilitated and reused as an abode or residence if the following conditions are met:
- (A) The property is located between the South Newton Bridge (Veterans Memorial Bridge) located at 85.30 miles from the mouth of the Patoka River and the bridge that is part of State Road 164 located at 85.90 miles from the mouth of the Patoka River.
  - (B) The property is a former industrial site.
  - (C) The property is adjacent to a navigable waterway.
  - (D) The property is located adjacent to a riverwalk.
  - (E) The property is a property in need of revitalization.
  - (F) The property is vacant or in danger of becoming vacant.
  - (G) The lowest floor that is used as an abode or residence is at least two (2) feet above the one hundred (100) year frequency flood elevation.

*As added by P.L.1-1995, SEC.21. Amended by P.L.108-2013, SEC.4.*

#### **IC 14-28-1-20**

##### **Erection of structures in floodways prohibited**

Sec. 20. A person may not do any of the following:

- (1) Erect in or on any floodway a permanent structure for use as an abode or a place of residence, except as authorized under

sections 24, 25, and 26.5 of this chapter.

(2) Except as authorized under section 26.5 of this chapter, erect, make, use, or maintain in or on any floodway, or suffer or permit the erection, making, use, or maintenance in or on any floodway, a structure, an obstruction, a deposit, or an excavation that will do any of the following:

(A) Adversely affect the efficiency of or unduly restrict the capacity of the floodway.

(B) By virtue of the nature, design, method of construction, state of maintenance, or physical condition do any of the following:

(i) Constitute an unreasonable hazard to the safety of life or property.

(ii) Result in unreasonably detrimental effects upon the fish, wildlife, or botanical resources.

(3) Reconstruct or allow or permit the reconstruction of an abode or a residence located in a floodway, except as authorized under sections 24, 25, and 26.5 of this chapter.

*As added by P.L.1-1995, SEC.21. Amended by P.L.135-1997, SEC.13.*

#### **IC 14-28-1-21**

##### **Nuisance abatement**

Sec. 21. A structure, an obstruction, a deposit, or an excavation described in section 20(2) of this chapter is a public nuisance. The director may commence, maintain, and prosecute an appropriate action to enjoin or abate a nuisance, including the following:

(1) Any of the nuisances described in section 20(2) of this chapter.

(2) Any other nuisance that:

(A) adversely affects flood control or the safety of life or property; or

(B) is unreasonably detrimental to fish, wildlife, or botanical resources.

*As added by P.L.1-1995, SEC.21.*

#### **IC 14-28-1-22**

##### **Construction permits**

Sec. 22. (a) As used in subsection (b)(1) with respect to a stream, "total length" means the length of the stream, expressed in miles, from the confluence of the stream with the receiving stream to the upstream or headward extremity of the stream, as indicated by the solid or dashed, blue or purple line depicting the stream on the most current edition of the seven and one-half (7 1/2) minute topographic quadrangle map published by the United States Geological Survey, measured along the meanders of the stream as depicted on the map.

(b) This section does not apply to the following:

(1) A reconstruction or maintenance project (as defined in IC 36-9-27) on a stream or an open regulated drain if the total



length of the stream or open drain is not more than ten (10) miles.

(2) A construction or reconstruction project on a state or county highway bridge in a rural area that crosses a stream having an upstream drainage area of not more than fifty (50) square miles 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 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 valid for two (2) years after the issuance of the permit; and
- (2) to:
  - (A) the Indiana department of transportation or a county highway department if there is any federal funding for the project; or
  - (B) an electric utility for the construction of a power generating facility;

is valid for five (5) years from the date of issuance.

A permit that is active and was issued under subdivision (1) before July 1, 2014, is valid for two (2) years beginning July 2014, and a

permit that is active and was issued under subdivision (2) before July 1, 2014, is valid for five (5) years beginning July 2014.

(h) A permit issued under:

- (1) subsection (g)(1) may be renewed one (1) time for a period not to exceed two (2) additional years; and
- (2) subsection (g)(2) may be renewed one (1) time for a period not to exceed five (5) additional years.

(i) The director shall send a copy of each permit issued under this section to each river basin commission organized under:

- (1) IC 14-29-7 or IC 13-2-27 (before its repeal); or
- (2) IC 14-30-1 or IC 36-7-6 (before its repeal);

that is affected.

(j) The permit holder shall post and maintain a permit issued under this section at the authorized site.

(k) For the purposes of this chapter, the lowest floor of a building, including a residence or abode, that is to be constructed or reconstructed in the one hundred (100) year floodplain of an area protected by a levee that is:

- (1) inspected; and
- (2) found to be in good or excellent condition;

by the United States Army Corps of Engineers shall not be lower than the one hundred (100) year frequency flood elevation plus one (1) foot.

*As added by P.L.1-1995, SEC.21. Amended by P.L.180-1995, SEC.4; P.L.2-1997, SEC.53; P.L.135-1997, SEC.14; P.L.2-1998, SEC.59; P.L.154-2002, SEC.1; P.L.186-2003, SEC.75; P.L.76-2010, SEC.1; P.L.219-2014, SEC.33; P.L.155-2015, SEC.19.*

### **IC 14-28-1-23**

#### **Removal of structures or obstructions**

Sec. 23. (a) The director may remove or eliminate a structure, an obstruction, a deposit, or an excavation in a floodway that:

- (1) adversely affects the efficiency of or unduly restricts the capacity of the floodway;
- (2) constitutes an unreasonable hazard to the safety of life or property; or
- (3) is unreasonably detrimental to fish, wildlife, or botanical resources;

by an action in condemnation.

(b) In assessing the damages in the proceedings, the appraisers and the court shall take into consideration whether the structure, obstruction, deposit, or excavation is legally in or on the floodway.

*As added by P.L.1-1995, SEC.21.*

### **IC 14-28-1-24**

#### **Reconstruction permits; violations**

Sec. 24. (a) This section does not apply to the reconstruction of a residence located in a boundary river floodway.

(b) A person may not begin the reconstruction of an abode or a

residence that is located in a floodway and is substantially damaged (as defined in 44 CFR 59.1, as in effect on January 1, 1993) unless the person has:

- (1) obtained a permit under this section or section 26.5 of this chapter; or
- (2) demonstrated to the department through the submission of material facts, plans, and specifications that the material used to elevate the reconstructed abode or residence:
  - (A) does not extend beyond the original foundation of the abode or residence; and
  - (B) meets the criteria set forth in subsection (d)(2) through (d)(7).

(c) A person who desires to reconstruct an abode or a residence that does not meet the requirements under subsection (b)(2) must file with the director a verified written application for a permit accompanied by a nonrefundable fee of fifty dollars (\$50). An application submitted under this section must do the following:

- (1) Set forth the material facts concerning the proposed reconstruction.
- (2) Include the plans and specifications for the reconstruction.

(d) The director may issue a permit to an applicant under this section only if the applicant has clearly proven all of the following:

- (1) The abode or residence will be reconstructed:
  - (A) in the area of the original foundation and in substantially the same configuration as the former abode or residence; or
  - (B) in a location that is, as determined by the director, safer than the location of the original foundation.
- (2) The lowest floor elevation of the abode or residence as reconstructed, including the basement, will be at least two (2) feet above the one hundred (100) year flood elevation.
- (3) The abode or residence will be designed or modified and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.
- (4) The abode or residence will be reconstructed with materials resistant to flood damage.
- (5) The abode or residence will be reconstructed by methods and practices that minimize flood damages.
- (6) The abode or residence will be reconstructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and located to prevent water from entering or accumulating within the components during conditions of flooding.
- (7) The abode or residence, as reconstructed, will comply with the minimum requirements for floodplain management set forth in 44 CFR Part 60, as in effect on January 1, 1993.

(e) When granting a permit under this section, the director may establish and incorporate into the permit certain conditions and restrictions that the director considers necessary for the purposes of

this chapter.

(f) A permit issued by the director under this section is void if the reconstruction authorized by the permit is not commenced within two (2) years after the permit is issued.

(g) The director shall send a copy of each permit issued under this section to each river basin commission organized under:

- (1) IC 14-29-7 or IC 13-2-27 (before its repeal); or
- (2) IC 14-30-1 or IC 36-7-6 (before its repeal);

that is affected by the permit.

(h) The person to whom a permit is issued under this section shall post and maintain the permit at the site of the reconstruction authorized by the permit.

(i) A person who knowingly:

- (1) begins the reconstruction of an abode or a residence in violation of subsection (b);
- (2) violates a condition or restriction of a permit issued under this section; or
- (3) fails to post and maintain a permit at a reconstruction site in violation of subsection (h);

commits a Class B infraction. Each day that the person is in violation of subsection (b), the permit, or subsection (h) constitutes a separate infraction.

*As added by P.L.1-1995, SEC.21. Amended by P.L.135-1997, SEC.15; P.L.71-2004, SEC.17; P.L.53-2008, SEC.1.*

#### **IC 14-28-1-25**

##### **Reconstruction permit exception; violation**

Sec. 25. (a) A person who desires to reconstruct an abode or a residence that:

- (1) is located in a floodway; and
- (2) is not substantially damaged (as defined in 44 CFR 59.1, as in effect on January 1, 1997);

is not required to obtain a permit from the department for the reconstruction of the abode or residence if the reconstruction will meet the requirements set forth in 44 CFR Part 60, as in effect on January 1, 1997.

(b) A person who knowingly reconstructs an abode or a residence described in subsection (a) in a way that does not comply with the requirements referred to in subsection (a) commits a Class B infraction.

*As added by P.L.1-1995, SEC.21. Amended by P.L.135-1997, SEC.16; P.L.71-2004, SEC.18; P.L.53-2008, SEC.2.*

#### **IC 14-28-1-26**

##### **Additions to structures in floodways**

Sec. 26. (a) This section does not apply to the construction of an addition to a residence located in a boundary river floodway.

(b) Subject to:

- (1) subsection (c); and

(2) the restrictions imposed by the unit (as defined in IC 36-1-2-23) in which the abode or residence is located; a person may construct at least one (1) addition to an abode or a residence that is located in a floodway.

(c) A person may not construct an addition to an abode or a residence located in a floodway if the addition, in combination with all other additions to the abode or residence that have been constructed since the abode or residence was originally built, would increase the market value of the abode or residence to an amount more than fifty percent (50%) greater than:

(1) the market value of the abode or residence if no additions have been constructed since the abode or residence was originally built; or

(2) the approximate market value the abode or residence would have in the form in which the abode or residence was originally built if at least one (1) addition has already been constructed.

(d) For the purposes of subsection (c), the market value of an abode or a residence does not include the value of the land on which the abode or residence is built.

*As added by P.L.1-1995, SEC.21. Amended by P.L.135-1997, SEC.17.*

#### **IC 14-28-1-26.5**

##### **Mobile home or residence in boundary river floodway; permits**

Sec. 26.5. (a) This section applies to the following activities:

(1) The placement or replacement of a mobile home within a boundary river floodway.

(2) The repair of a residence that:

(A) is located in a boundary river floodway; and

(B) has been damaged by floodwaters or another means; except for the reconstruction of a residence to which section 25 of this chapter applies.

(3) The construction of an:

(A) addition to; or

(B) improvement of;

a residential structure within a boundary river floodway.

(4) The construction of a new residence within a boundary river floodway.

(b) The federal regulations that:

(1) were adopted by the director of the Federal Emergency Management Agency to implement the National Flood Insurance Act (42 U.S.C. 4001 et seq.);

(2) are published in 44 CFR Parts 59 through 60; and

(3) are in effect on January 1, 1997;

are adopted as the criteria for determining whether an activity referred to in subsection (a) is allowed in Indiana. However, the lowest floor of a new residence constructed within a boundary river floodway referred to in subsection (a)(4) must be at least two (2) feet above the one hundred (100) year frequency flood elevation.

(c) A person who wishes to perform an activity referred to in subsection (a) is authorized to perform the activity if:

- (1) the federal regulations described in subsection (b) as the governing criteria allow the activity; and
- (2) the person obtains a permit for the activity under this section.

(d) To obtain a permit for an activity referred to in subsection (a), a person must:

- (1) file with the director a verified written application for a permit on a form provided by the department; and
- (2) pay to the department a nonrefundable fee of ten dollars (\$10).

(e) An application filed under this section must:

- (1) set forth the material facts concerning the proposed activity; and
- (2) in the case of an activity described in subsection (a)(1), (a)(3), or (a)(4), include plans and specifications for the construction, reconstruction, or repair.

(f) If an application submitted under this section meets the requirements set forth in subsections (d) and (e), the director may not reject the application unless the regulations adopted as the governing criteria under subsection (b) do not allow the activity.

(g) If the federal regulations adopted as the governing criteria under subsection (b) authorize a type of activity only when certain conditions are met, a permit that the director issues for that type of activity may require the applicant, in carrying out the activity, to meet the same conditions.

(h) If:

- (1) there is a dispute under this section about the elevation of a site; and
- (2) the elevation of the site has been determined by a professional surveyor;

the elevation determined by the professional surveyor must be used as the accepted elevation.

*As added by P.L.135-1997, SEC.18. Amended by P.L.121-2003, SEC.1; P.L.57-2013, SEC.18.*

#### **IC 14-28-1-27**

##### **Contaminants in lakes or floodways prohibited**

Sec. 27. (a) Except as provided in subsection (b), this section does not apply to the following:

- (1) A person using chemicals in a normal manner in the production of agricultural products.
- (2) A person acting in accordance with an appropriate permit issued by the director.
- (3) A person acting in accordance with a permit issued by the department of environmental management under water pollution control laws (as defined in IC 13-11-2-261) or environmental management laws (as defined in IC 13-11-2-71).

(b) This section applies to the permitting requirements set forth in the following:

- (1) Section 22 of this chapter.
- (2) IC 14-26-2.

(c) A person may not put, throw, dump, or leave a contaminant, garbage, or solid waste:

- (1) in, upon, or within fifteen (15) feet of a lake; or
- (2) in or upon a floodway.

*As added by P.L.1-1995, SEC.21. Amended by P.L.1-1996, SEC.66.*

#### **IC 14-28-1-28**

##### **Commission floodways**

Sec. 28. (a) The commission may by order:

- (1) establish a floodway as a commission floodway; and
- (2) alter, change, or revoke and terminate the commission floodway.

(b) In the order establishing the commission floodway, the commission shall fix the following:

- (1) The floodway's length at any practical distance.
- (2) The floodway's width or the landside limits so as to include parts of the flood plains adjoining the channel that, with the channel, are reasonably required to efficiently carry and discharge the flood waters or flood flow of the river or stream.

(c) Notwithstanding any other provision of law, an order establishing a commission floodway is not in force until notice has been given as follows:

- (1) In writing to the county executive in the county affected.
- (2) By publication at least two (2) times, seven (7) days apart, as follows:
  - (A) In two (2) daily newspapers in the city of Indianapolis as provided in IC 5-3-1-6.
  - (B) In newspapers in the counties where all or part of the commission floodway is established as provided in IC 5-3-1-6.

(d) All of the area within a commission floodway is the floodway for all purposes of this chapter.

*As added by P.L.1-1995, SEC.21.*

#### **IC 14-28-1-29**

##### **Coordination of flood control works; approval of plans or specifications**

Sec. 29. (a) All works of any nature for flood control in Indiana that are established and constructed shall be coordinated in design, construction, and operation according to sound and accepted engineering practice so as to effect the best flood control obtainable throughout Indiana. A:

- (1) person may not construct or install any works of any nature for flood control; and
- (2) court may not enter the final order or judgment establishing



or ordering works constructed;  
unless the proposed works and the plans and specifications are approved by the commission.

(b) The interested parties must file a verified written application with the commission. The commission shall consider all the pertinent facts relating to the proposed works that will affect flood control in Indiana and shall determine whether the proposed works in the plans and specifications will:

- (1) be in aid of and acceptable as part of; or
- (2) adversely affect and interfere with;

flood control in Indiana.

(c) The commission shall enter an order approving or disapproving the application, plans, and specifications. If the commission disapproves the application, the order must set forth the objectionable features so that the proposed works and plans and specifications may be corrected or adjusted to obtain the approval of the commission.

*As added by P.L.1-1995, SEC.21.*

#### **IC 14-28-1-30**

##### **Applicability of IC 4-21.5**

Sec. 30. IC 4-21.5 applies to the commission.

*As added by P.L.1-1995, SEC.21.*

#### **IC 14-28-1-31**

##### **Reports to governor**

Sec. 31. The commission shall report to the governor periodically the results of the commission's study, investigation, and experience so that any necessary additional powers and duties may be obtained to effect and obtain complete flood control and the protection and preservation of water resources.

*As added by P.L.1-1995, SEC.21.*

#### **IC 14-28-1-32**

##### **Violations; Class B infractions**

Sec. 32. (a) A person who knowingly violates section 20(2), 20(3), or 29 of this chapter commits a Class B infraction.

(b) Each day of continuing violation after conviction of the offense constitutes a separate offense.

*As added by P.L.1-1995, SEC.21. Amended by P.L.71-2004, SEC.19.*

#### **IC 14-28-1-33**

##### **Violations; Class C infractions**

Sec. 33. (a) A person who knowingly fails to:

- (1) comply with the requirements of section 20(1) of this chapter; or
- (2) obtain a permit under section 22 of this chapter;

commits a Class B infraction.

(b) Each day a person violates section 20(1) or 22 of this chapter constitutes a separate infraction.

*As added by P.L.1-1995, SEC.21. Amended by P.L.71-2004, SEC.20.*

#### **IC 14-28-1-34**

##### **Violations; penalties**

Sec. 34. A person who knowingly fails to comply with section 22(j) of this chapter commits a Class B infraction. Each day a person violates section 22(j) of this chapter constitutes a separate infraction.  
*As added by P.L.1-1995, SEC.21. Amended by P.L.180-1995, SEC.5; P.L.71-2004, SEC.21; P.L.219-2014, SEC.34.*

#### **IC 14-28-1-35**

##### **Injunctive relief**

Sec. 35. The commission may enjoin a violation of this chapter under IC 14-25.5-2.  
*As added by P.L.1-1995, SEC.21. Amended by P.L.71-2004, SEC.22.*

#### **IC 14-28-1-36**

##### **Civil penalties**

Sec. 36. In addition to other penalties prescribed by this chapter, the director may impose a civil penalty under IC 14-25.5-4.  
*As added by P.L.1-1995, SEC.21. Amended by P.L.71-2004, SEC.23.*

#### **IC 14-28-1-37**

##### **Process to improve efficiency in wetland regulatory programs**

Sec. 37. The department and the department of environmental management shall, not later than January 1, 2015, develop and implement a process to improve efficiency and transparency in programs for:

- (1) water quality certifications from the department of environmental management under IC 13-13-5-1(1) and Section 401 of the federal Clean Water Act (33 U.S.C. 1341);
- (2) permits from the department of environmental management for wetland activity in a state regulated wetland under IC 13-18-22; and
- (3) permits from the director for a structure, obstruction, deposit, or excavation in a floodway under IC 14-28-1.

*As added by P.L.214-2014, SEC.2.*

#### **IC 14-28-1-38**

##### **Duties of departments in establishing process**

Sec. 38. (a) As used in this section, "permit" means any of the following:

- (1) A water quality certification from the department of environmental management under IC 13-13-5-1(1) and Section 401 of the federal Clean Water Act (33 U.S.C. 1341).
- (2) A permit from the department of environmental management for wetland activity in a state regulated wetland under IC 13-18-22.
- (3) A permit from the director for a structure, obstruction,

deposit, or excavation in a floodway under IC 14-28-1.

(b) In establishing the process required under section 37 of this chapter, the department and the department of environmental management shall do the following:

(1) Determine:

(A) how to inform a person who proposes to perform work for which a permit is required of the need to seek a permit for the work; and

(B) how to ensure that a person proposing to perform work for which a permit is required is informed of every state permit the person needs in order to do the work.

(2) Change the:

(A) application forms;

(B) application processes; or

(C) application forms and application processes;

used by the department and the department of environmental management for purposes of permits as necessary to ensure that a person proposing to perform work for which a permit is required is not required to provide the same information separately to the department and the department of environmental management.

(3) Determine how either the department or the department of environmental management may serve as the single point of contact, for purposes of:

(A) distributing and receiving permit applications;

(B) obtaining information needed to complete the processing of permit applications; and

(C) issuing permits;

for an applicant who does not need to have independent contact with the department that is not serving as the single point of contact.

(4) Create an internal process to ensure that the appropriate office within the department and the department of environmental management receives and timely reviews each permit application.

(5) Ensure that the processing of each permit application is monitored.

*As added by P.L.214-2014, SEC.3.*

**IC 14-28-2**

**Repealed**

*(Repealed by P.L.2-1997, SEC.89.)*

### **IC 14-28-3**

#### **Chapter 3. Flood Plain Management**

### **IC 14-28-3-1**

#### **Legislative finding**

Sec. 1. The general assembly finds the following:

(1) That the loss of lives and property, the disruption of commerce and government services, and the unsanitary conditions caused by floods, all of which are detrimental to the health, safety, and welfare of the people of Indiana, are a matter of deep concern.

(2) That structural measures alone do not provide an adequate solution to flood problems.

(3) That it is necessary to enact and implement a state flood plain management program to decrease existing flood damages, mitigate future flood damages, and promote the health, safety, and general welfare of the people of Indiana.

*As added by P.L.1-1995, SEC.21.*

### **IC 14-28-3-2**

#### **Adoption of rules**

Sec. 2. The commission shall develop and adopt appropriate rules under IC 4-22-2, including consideration of nonconforming uses, as minimum standards for the delineation and regulation of all flood hazard areas within Indiana. The commission and all counties and municipalities shall consider the production of crops, pasture, forests, and park and recreational uses to be conforming uses. These specific conforming uses shall be included as minimum standards in adoption of the rules.

*As added by P.L.1-1995, SEC.21.*

### **IC 14-28-3-3**

#### **Designation and regulation of flood hazard areas by subdivisions**

Sec. 3. (a) All counties and municipalities are encouraged and authorized to delineate and regulate all flood hazard areas within their respective jurisdictions by adopting and implementing all necessary ordinances, rules, and regulations under procedures established by law. For ordinances, rules, and regulations adopted after June 30, 1974, the ordinances, rules, and regulations:

(1) may not be less restrictive than the minimum rules of the commission adopted under section 2 of this chapter; and

(2) must be approved by the commission before the effective date.

(b) This chapter does not prevent a county or municipality from adopting ordinances, rules, and regulations that are more restrictive than the minimum rules adopted by the commission.

*As added by P.L.1-1995, SEC.21.*

#### **IC 14-28-3-4**

##### **Assistance and cooperation from commission**

Sec. 4. (a) The commission may provide technical data and information and otherwise assist a county or municipality in the following:

- (1) The identification and delineation of all flood hazard areas within the jurisdiction of the county or municipality.
- (2) The preparation of all necessary ordinances, rules, and regulations.

(b) The commission may cooperate with a state, regional, local, or federal board, commission, or agency in the preparation of necessary information or data.

*As added by P.L.1-1995, SEC.21.*

#### **IC 14-28-3-5**

##### **Commission approval required for certain permits within flood hazard areas**

Sec. 5. A county or municipality may not issue a permit for a structure, an obstruction, a deposit, or an excavation within a flood hazard area or part of a flood hazard area that lies within a floodway without the prior written approval of the commission as provided in IC 14-28-1.

*As added by P.L.1-1995, SEC.21.*

#### **IC 14-28-3-6**

##### **Cooperation of public agencies and personnel**

Sec. 6. City, county, and state employees, agencies, boards, districts, and commissions may cooperate with and furnish information to the commission or a county or municipality for the purpose of implementing this chapter.

*As added by P.L.1-1995, SEC.21.*

## **IC 14-28-4**

### **Chapter 4. Flood Plain Commissions**

#### **IC 14-28-4-1**

##### **"Commission" defined**

Sec. 1. As used in this chapter, "commission" refers to a flood plain commission established under this chapter.

*As added by P.L.1-1995, SEC.21.*

#### **IC 14-28-4-2**

##### **"Improvement location permit" defined**

Sec. 2. As used in this chapter, "improvement location permit" means a permit to alter, expand, or enlarge any use of land or structure. The term includes the erection of a structure.

*As added by P.L.1-1995, SEC.21.*

#### **IC 14-28-4-3**

##### **Establishment of flood plain commissions**

Sec. 3. A county or municipality may establish a flood plain commission by ordinance of the unit's legislative body. The commission may regulate land uses within identified flood hazard areas under this chapter.

*As added by P.L.1-1995, SEC.21.*

#### **IC 14-28-4-4**

##### **Members**

Sec. 4. The commission, to be known as the "\_\_\_\_\_ Flood Plain Commission", consists of three (3) members as follows:

(1) One (1) member of the legislative body of the county or municipality to be appointed by the legislative body.

(2) Two (2) citizens who reside within the jurisdiction of the legislative body and who do not hold an elective public office to be appointed as follows:

(A) The board of commissioners, for a county.

(B) The city executive, for a city.

(C) The town executive, for a town.

*As added by P.L.1-1995, SEC.21.*

#### **IC 14-28-4-5**

##### **Term of members; filling of vacancies**

Sec. 5. (a) Commission members serve terms of one (1) year, beginning with the first Monday of January of each year. The initial members serve from the date of establishment of the commission until the first Monday of January of the following year.

(b) If a vacancy occurs, the appointing authority shall appoint a member to fill the unexpired term.

*As added by P.L.1-1995, SEC.21.*

#### **IC 14-28-4-6**

##### **Officers**

Sec. 6. (a) At the first regular meeting of each year the commission shall elect from the members of the commission the following officers:

- (1) A president.
- (2) A vice president.
- (3) A secretary.

(b) The vice president may act as president of the commission during the absence or disability of the president.

*As added by P.L.1-1995, SEC.21.*

#### **IC 14-28-4-7**

##### **Regular meetings**

Sec. 7. The commission shall fix the time for holding regular meetings, but the commission shall meet at least one (1) time in January, April, July, and October.

*As added by P.L.1-1995, SEC.21.*

#### **IC 14-28-4-8**

##### **Special meetings**

Sec. 8. (a) A special meeting of the commission may be called by any member upon written request to the secretary.

(b) The secretary shall send to all the members, at least two (2) days in advance of a special meeting, a written notice fixing the time and place of the meeting.

(c) Written notice of a special meeting is not required if:

- (1) the time of the special meeting has been fixed in a regular meeting; or
- (2) all members are present at the special meeting.

*As added by P.L.1-1995, SEC.21.*

#### **IC 14-28-4-9**

##### **Quorum**

Sec. 9. A majority of the members of the commission constitutes a quorum. To be official, an action of the commission must be authorized by a majority of the commission at a regular or special meeting.

*As added by P.L.1-1995, SEC.21.*

#### **IC 14-28-4-10**

##### **Disqualification of interested members**

Sec. 10. A member of the commission or legislative body of the county or municipality may not participate in a hearing or decision upon a zoning matter, other than the preparation and adoption of an initial flood plain zoning ordinance, in which the member is directly or indirectly interested in a financial sense. If a disqualification under this section occurs:

- (1) this fact shall be entered on the records of the commission or



legislative body; and  
(2) the remaining members shall act upon the matter.  
*As added by P.L.1-1995, SEC.21.*

#### **IC 14-28-4-11**

##### **General powers of commissions**

Sec. 11. The commission may do the following:

- (1) Exercise general supervision of and make rules for the administration of the affairs of the commission.
- (2) Prescribe uniform rules pertaining to investigations and hearings.
- (3) Supervise the fiscal affairs and responsibilities of the commission.
- (4) Keep an accurate and a complete record of all commission proceedings and assume responsibility for the custody and preservation of all papers and documents of the commission.
- (5) Make recommendations and an annual report to the legislative body of the county or municipality concerning the operation of the commission.
- (6) Make recommendations to the legislative body on the adoption of the initial flood plain zoning ordinance and amendments and any other matter within the commission's jurisdiction under this chapter.
- (7) Prepare, publish, and distribute reports, ordinances, and other material relating to the activities authorized under this chapter.
- (8) Sue and be sued collectively by the commission's legal name, service of process being had on the president of the commission or any of the members in an action.
- (9) Invoke any legal, equitable, or special remedy for the enforcement of this chapter or the commission's action taken under this chapter.

*As added by P.L.1-1995, SEC.21.*

#### **IC 14-28-4-12**

##### **Annual budgets**

Sec. 12. The commission shall prepare and submit an annual budget. After the legislative body of the county or municipality has passed an ordinance creating a commission:

- (1) money may be appropriated to carry out the duties of the commission; and
- (2) the commission may expend, under procedure provided by law, money appropriated to the commission for purposes and activities authorized by this chapter.

*As added by P.L.1-1995, SEC.21.*

#### **IC 14-28-4-13**

##### **Special nonreverting commission funds**

Sec. 13. (a) The commission, county, or municipality may accept

gifts, donations, and grants from private and governmental sources for commission purposes. Money accepted shall be deposited in a special nonreverting commission fund available for expenditure by the commission for the purpose designated by the donor.

(b) The disbursing officer of the county or municipality shall draw warrants against regular funds or the special nonreverting fund only upon claims signed by the president and secretary of the commission.  
*As added by P.L.1-1995, SEC.21.*

#### **IC 14-28-4-14**

##### **Per diem compensation and traveling expenses**

Sec. 14. (a) The county or municipality may compensate the members of the commission for service on the commission.

(b) When the commission determines that it is necessary for members to attend in another city or county a state, regional, or national conference or interview dealing with planning or related problems, the commission may pay the actual expenses of the attending member if the amount has been made available in the commission's appropriation.

(c) The commission may approve a per diem allowance to a member for the purpose of attending a regular or special meeting held by the commission if the amount has been made available in the commission's appropriation.

*As added by P.L.1-1995, SEC.21.*

#### **IC 14-28-4-15**

##### **Proposed initial flood plain zoning ordinances**

Sec. 15. (a) To assure the promotion of public health, safety, convenience, and the general welfare within the commission's jurisdiction, the commission shall prepare a proposed initial flood plain zoning ordinance. The ordinance must provide for the following:

- (1) The classification of all land within the jurisdiction of the county or municipality into flood plain or nonflooding areas.
- (2) The regulation of land use and the location or construction of buildings and other structures within the areas designated as flood plain areas.

(b) In establishing flood plain districts and regulations, the commission may use the special flood hazard area maps supplied by the Federal Insurance Administration or any other criteria approved by the department.

*As added by P.L.1-1995, SEC.21.*

#### **IC 14-28-4-16**

##### **Land classified as flood plain area; effectiveness of mappings or identification**

Sec. 16. (a) As used in this section, "flood protection grade" means the elevation of the lowest point around the perimeter of a building at which flood water may enter the interior of the building.

- (b) The land classified as flood plain areas may be:
  - (1) defined and subclassified in the ordinance as floodway or floodway fringe; and
  - (2) further identified as to flood protection grade.

(c) The mappings or other identification of the areas become effective only at the time that accurate information is made available to the commission and authenticated by the department or the United States Department of Housing and Urban Development.

*As added by P.L.1-1995, SEC.21.*

#### **IC 14-28-4-17**

##### **Ordinance may require buildings or land to conform; improvement location permit fees**

Sec. 17. (a) A flood plain zoning ordinance may require that:

- (1) a structure may not be located;
- (2) a use may not be changed; and
- (3) an improvement location permit may not be issued for a structure or change of use;

on land either platted or unplatted within the jurisdiction of the commission unless the structure or use and location conform to the requirements of the flood plain zoning ordinance.

(b) The:

- (1) commission may set; and
- (2) zoning administrator may collect;

reasonable fees for the issuance of improvement location permits.

*As added by P.L.1-1995, SEC.21.*

#### **IC 14-28-4-18**

##### **Zoning administrators; judicial review of administrator's final decision**

Sec. 18. (a) A flood plain zoning ordinance must designate:

- (1) the county auditor;
- (2) the county surveyor; or
- (3) the municipal clerk or clerk-treasurer;

as applicable, as the zoning administrator who issues improvement location permits within the jurisdiction of the commission and in conformance with the flood plain ordinance.

(b) A final decision of the zoning administrator may be judicially reviewed in the same manner and subject to the same limitations as a final decision of a board of zoning appeals under IC 36-7-4.

*As added by P.L.1-1995, SEC.21. Amended by P.L.126-2011, SEC.1.*

#### **IC 14-28-4-19**

##### **Presentation of proposed ordinance to legislative body**

Sec. 19. (a) The commission shall prepare and present the proposed initial zoning ordinance, with explanatory maps, to the legislative body of the county or municipality.

(b) The legislative body shall do the following:

- (1) Consider the proposed initial zoning ordinance.

- (2) Return the ordinance within forty-five (45) days with any suggestions and recommendations to the commission for the commission's final report.

*As added by P.L.1-1995, SEC.21.*

#### **IC 14-28-4-20**

##### **Final report of commission on proposed ordinance**

Sec. 20. A county or municipality may not pass an ordinance under this chapter until:

- (1) the legislative body of the county or municipality receives; and
- (2) the natural resources commission approves;

the final report of the commission.

*As added by P.L.1-1995, SEC.21.*

#### **IC 14-28-4-21**

##### **Legislative action on proposed ordinance; hearing**

Sec. 21. (a) After the commission submits the final report, the legislative body of the county or municipality shall give all interested persons an opportunity to be heard with reference to the final report at a public hearing convenient for all persons affected. The legislative body shall publish notice of the hearing in a daily newspaper of general circulation in the county or municipality.

(b) The notice must state the following:

- (1) The time and place of the hearing.
- (2) That the report contains a flood plain zoning ordinance for the county or municipality.
- (3) That written objections to the proposed zoning ordinance filed with the clerk of the legislative body at or before the hearings will be heard.
- (4) That the hearing will be continued as is necessary.

(c) The notice shall be published at least two (2) times within the ten (10) days before the time set for the hearing, during which time the proposed zoning ordinance shall be kept on file in the office of the commission or other designated place for public examination.

(d) Upon completion of the public hearing, the legislative body shall proceed to consider the ordinance.

*As added by P.L.1-1995, SEC.21.*

#### **IC 14-28-4-22**

##### **Legislative body may amend or supplement regulations or boundaries in ordinance**

Sec. 22. The legislative body of the county or municipality may amend or supplement the regulations and district boundaries fixed by ordinance under this chapter or IC 13-2-22.6 (before its repeal). However, the area designated as flood plain may not be changed unless the change is based upon data:

- (1) supplied by the United States Department of Housing and Urban Development; or

(2) supplied or approved by the department.  
*As added by P.L.1-1995, SEC.21.*

#### **IC 14-28-4-23**

##### **Petition to amend or supplement zoning ordinance**

Sec. 23. The:

- (1) commission; or
- (2) owners of at least fifty percent (50%) of the land area involved in the matter set forth in a petition;

may present signed petitions to the legislative body of the county or municipality requesting an amendment or supplement of the regulations of the zoning ordinance.

*As added by P.L.1-1995, SEC.21.*

#### **IC 14-28-4-24**

##### **Referral of proposed amendment, supplement, or repeal to commission**

Sec. 24. The legislative body shall refer a proposed ordinance for the amendment, supplement, or repeal of the zoning ordinance not originating from petition of the commission to the commission for consideration and a report before the legislative body of the county or municipality takes final action.

*As added by P.L.1-1995, SEC.21.*

#### **IC 14-28-4-25**

##### **Legislative action on proposed amendment, supplement, or repeal; hearing**

Sec. 25. (a) Before the commission submits to the legislative body:

- (1) a petition; or
- (2) a report on a proposed ordinance referred to the commission; for an amendment, a supplement, or a repeal of the zoning ordinance, the commission shall hold a public hearing.

(b) At least ten (10) days before the date set for the hearing, the commission shall publish in a newspaper of general circulation in the county or municipality a notice of the time and place of the hearing.

(c) After the public hearing has been held, the commission may by resolution recommend the proposed amendments to the legislative body of the county or municipality. However:

- (1) the commission may not recommend; and
- (2) the legislative body may not adopt;

flood plain district boundaries less extensive than those established by the United States Department of Housing and Urban Development or the department.

(d) The secretary shall do the following:

- (1) Certify a copy of an amendment to the legislative body.
- (2) Present the amendment at the legislative body's first meeting following commission action.

*As added by P.L.1-1995, SEC.21.*

#### **IC 14-28-4-26**

##### **Building or land violating ordinance declared public nuisance; investigations**

Sec. 26. (a) The legislative body of the county or municipality may declare:

- (1) a building erected, raised, or converted; or
- (2) land or premises used;

in violation of an ordinance or a regulation adopted under this chapter or under IC 13-2-22.6 (before its repeal) to be a common nuisance. The owner of the building, land, or premises is liable for maintaining a common nuisance.

(b) If penalties have been provided for violation of an ordinance, the attorney of the county or municipality shall, upon receipt of information of a violation of an ordinance or a regulation adopted under the county's or municipality's authority, make an investigation of the alleged violation. If the facts are sufficient to establish a reasonable belief that a violation has occurred, the attorney may file a complaint against the violator and prosecute the alleged violation.  
*As added by P.L.1-1995, SEC.21.*

#### **IC 14-28-4-27**

##### **Injunctive relief**

Sec. 27. (a) The commission may institute the following:

- (1) A suit for injunction in the circuit court with jurisdiction in the county to restrain an individual or a governmental entity from violating this chapter or an ordinance adopted under this chapter or under IC 13-2-22.6 (before its repeal).
- (2) A suit for a mandatory injunction directing an individual or a governmental entity to remove a structure erected in violation of:
  - (A) this chapter or IC 13-2-22.6 (before its repeal); or
  - (B) an ordinance adopted under this chapter or under IC 13-2-22.6 (before its repeal).

(b) If the commission is successful in the commission's suit, the respondent shall pay the costs of the action. A change of venue from the county may not be granted.

*As added by P.L.1-1995, SEC.21.*

#### **IC 14-28-4-28**

##### **Compensation or damages precluded for taking of or injury to building or land violating ordinance**

Sec. 28. In:

- (1) a proceeding by a county or municipality for the taking, appropriation, or condemnation of land; or
- (2) an action against a county or municipality;

compensation or damages may not be awarded for the taking of or injury to a structure erected in violation of an ordinance adopted under this chapter or under IC 13-2-22.6 (before its repeal).

*As added by P.L.1-1995, SEC.21.*

### **IC 14-28-4-29**

#### **Purpose of chapter**

Sec. 29. (a) It is the purpose of this chapter to enable counties and municipalities that have not adopted effective land use ordinances under IC 36-7 to comply with the requirements of:

- (1) the federal National Flood Insurance Act (42 U.S.C. 4001 through 4127);
- (2) IC 14-28-1; and
- (3) IC 14-28-3;

by permitting the establishment of a single-purpose zoning authority to adopt minimum standards and regulations for the management of identified flood hazard areas.

(b) Because zoning ordinances adopted under comprehensive planning legislation require extensive preparation time and because the national flood insurance program and the state statutes enacted under the program require identified counties and municipalities to regulate land use and improvements to the land in flood hazard areas before those zoning ordinances can be adequately prepared, this chapter authorizes counties and municipalities that do not have land use regulation ordinances in effect to form single-purpose flood plain commissions to administer certain local ordinances, including the following:

- (1) A set of minimum standards and regulations to meet the requirements of state and federal flood hazard area programs.
- (2) An improvement location permit system to ensure that every new location, land use, or structure in the jurisdiction conforms to flood hazard area regulations.
- (3) A set of enforcement procedures suitable to ensure minimum compliance with the regulations.

*As added by P.L.1-1995, SEC.21.*

### **IC 14-28-4-30**

#### **Powers of state, agencies, and subdivisions not affected**

Sec. 30. (a) This chapter is supplemental to and does not abrogate the powers extended to agencies, bureaus, departments, commissions, divisions, or officials of state government by other statutes, and these powers remain in full effect. Except as otherwise provided in this chapter, powers of supervision and regulation by divisions of state government over counties, municipalities, individuals, firms, limited liability companies, or corporations also are not abrogated and continue in full effect.

(b) This chapter does not restrict or prohibit the state or any of the state's political subdivisions from the commemoration of persons or objects of historical or architectural interest or value as a part of our citizens' heritage.

*As added by P.L.1-1995, SEC.21.*

### **IC 14-28-4-31**

#### **Effect of ordinances adopted under IC 36-7**

Sec. 31. The adoption of a zoning ordinance under IC 36-7 that provides for flood plain management within the jurisdiction of a county or municipality immediately voids a flood plain commission, ordinance, or regulation adopted under:

(1) this chapter; or

(2) IC 13-2-22.6 (before its repeal).

*As added by P.L.1-1995, SEC.21.*



## **IC 14-28-5**

### **Chapter 5. Flood Control Revolving Fund**

#### **IC 14-28-5-0.5**

##### **"Authority"**

Sec. 0.5. "Authority" refers to the Indiana finance authority established by IC 4-4-11-4.

*As added by P.L.155-2015, SEC.20.*

#### **IC 14-28-5-1**

##### **"Flood control program"**

Sec. 1. As used in this chapter, "flood control program" includes the following:

- (1) The removal of obstructions and accumulated debris from channels of streams.
- (2) The clearing and straightening of channels of streams.
- (3) The creating of new and enlarged channels of streams, wherever required.
- (4) The building or repairing of dikes, levees, or other flood protective works.
- (5) The construction of bank protection works for streams.
- (6) The establishment of floodways.

*As added by P.L.1-1995, SEC.21.*

#### **IC 14-28-5-2**

##### **"Fund"**

Sec. 2. As used in this chapter, "fund" refers to the flood control revolving fund created by this chapter.

*As added by P.L.1-1995, SEC.21.*

#### **IC 14-28-5-3**

##### **"Governing board"**

Sec. 3. As used in this chapter, "governing board" means the following:

- (1) The legislative body of a county, city, or town.
- (2) A board created by law to administer the affairs of a special taxing district.

*As added by P.L.1-1995, SEC.21.*

#### **IC 14-28-5-4**

##### **"Local unit"**

Sec. 4. As used in this chapter, "local unit" means county, city, town, or special taxing district created by law.

*As added by P.L.1-1995, SEC.21.*

#### **IC 14-28-5-5**

##### **Creation of fund**

Sec. 5. (a) The flood control revolving fund is created. The

authority shall hold the fund in the name of the authority. The authority shall administer the fund in the manner provided by IC 4-4-11 and this chapter.

(b) Loans may be made from the fund to local units in accordance with this chapter and the rules adopted under this chapter.

(c) Money in the fund does not revert to the state general fund. The fund is a revolving fund to be used exclusively for the purposes of this chapter.

*As added by P.L.1-1995, SEC.21. Amended by P.L.155-2015, SEC.21.*

#### **IC 14-28-5-6**

##### **Administration of fund and chapter**

Sec. 6. Except as otherwise provided with respect to the administration of the fund, the commission shall administer this chapter. The commission may do the following:

- (1) Adopt rules under IC 4-22-2 that are considered necessary by the commission for the proper administration of this chapter.
- (2) Subject to the approval of the budget committee, employ the personnel that are necessary for the efficient administration of this chapter.

*As added by P.L.1-1995, SEC.21. Amended by P.L.53-2008, SEC.3; P.L.155-2015, SEC.22.*

#### **IC 14-28-5-7**

##### **Loans to local units; uses and limits**

Sec. 7. (a) The authority may make an approved loan from the fund to a local unit. The money loaned is to be used by the local unit for the purpose of instituting, accomplishing, and administering an approved flood control program.

(b) The total amount outstanding under loans made under:

- (1) this chapter; and
- (2) IC 13-2-23 (before its repeal);

to one (1) local unit may not exceed three hundred thousand dollars (\$300,000).

*As added by P.L.1-1995, SEC.21. Amended by P.L.53-2008, SEC.4; P.L.155-2015, SEC.23.*

#### **IC 14-28-5-8**

##### **Conditions for local unit to administer flood control program**

Sec. 8. A local unit may institute, accomplish, and administer a flood control program if the following conditions are met:

- (1) The program is authorized and approved by ordinance or resolution enacted by the governing board of the local unit.
- (2) The flood control program has been approved by the authority and the commission.

*As added by P.L.1-1995, SEC.21. Amended by P.L.53-2008, SEC.5; P.L.155-2015, SEC.24.*

### **IC 14-28-5-9**

#### **Loans to local units; conditions**

Sec. 9. The authority shall authorize the making of a loan to a local unit under this chapter only when the following conditions exist:

(1) An application for the loan has been submitted by the local unit to the authority in the manner and form that the authority directs. The application must state the following:

(A) The need for the flood control program and the need for money for instituting, accomplishing, and administering the program.

(B) A detailed description of the program.

(C) An engineering estimate of the cost of the proposed program acceptable to the authority and the commission.

(D) The amount of money considered to be needed.

(E) Other information that is requested by the authority and the commission.

(2) There is a need, as determined by the commission, for the proposed flood control program for the purpose of protecting the health, safety, and general welfare of the inhabitants of the local unit.

(3) The proposed flood control program has been approved by the commission, if before granting the approval, the commission determines the following:

(A) That the program:

(i) is based upon sound engineering principles;

(ii) is in the interest of flood control; and

(iii) will accomplish the objectives of flood control.

(B) That for flood control programs involving the reconstruction or repair of existing flood control works that:

(i) in the judgment of the commission, constitutes an unreasonable obstruction or impediment to the proper discharge of flood flows; or

(ii) by virtue of their nature, location, or design, are subject to frequent damage or destruction;

approval is limited to the work that is necessary to afford emergency protection against actual or threatened damage to life and property.

(4) The local unit agrees and furnishes assurance, satisfactory to the commission, that the local unit will operate and maintain the flood control program, after completion, in a satisfactory manner.

*As added by P.L.1-1995, SEC.21. Amended by P.L.53-2008, SEC.6; P.L.155-2015, SEC.25.*

### **IC 14-28-5-10**

#### **Local unit participation in flood control program; costs**

Sec. 10. (a) The local unit may:

(1) do work; and

(2) provide labor, equipment, and materials from any source at the local unit's disposal;  
for the flood control program.

(b) The commission may do the following:

(1) Evaluate the participation of the local unit in the accomplishment of the project.

(2) Compute the participation as a part or all of the share of cost that the local unit is required to pay toward the total cost of the project for which the loan from the fund is obtained.

(c) Participation authorized under this section must be under the direction of the governing board.

(d) If cash amounts are included in the local unit's share of total cost, the amounts shall be provided in the usual and accepted manner for the financing of the affairs of the local unit.

(e) Costs of engineering and legal services to the borrower may be regarded as a part of the total cost of the project.

*As added by P.L.1-1995, SEC.21. Amended by P.L.53-2008, SEC.7.*

#### **IC 14-28-5-11**

##### **Loans to local units; priority ratings**

Sec. 11. (a) The commission shall determine and ascribe to each applicant for a loan a priority rating. The rating must be based primarily on the need of the local unit for the proposed flood control program as the need is related to the needs of other applicants for loans. Except as provided in subsection (b):

(1) the local units having the highest priority rating shall be given first consideration in making loans under this chapter; and

(2) loans shall be made in descending order as shown by the priority ratings.

(b) If an emergency demands immediate relief from actual or threatened flood damage, the application made by a local unit for a loan may be considered regardless of a previous priority rating ascribed to the applicant.

*As added by P.L.1-1995, SEC.21. Amended by P.L.53-2008, SEC.8.*

#### **IC 14-28-5-12**

##### **Loans to local units; terms; repayment**

Sec. 12. (a) A loan made under this chapter or under IC 13-2-23 (before its repeal):

(1) may be made for a period not to exceed ten (10) years; and

(2) bears interest at the rate of three percent (3%) a year.

(b) A local unit receiving a loan under this chapter shall agree to repay the loan in equal annual installments, including interest on the unpaid balance of the loan. The repayments, including interest, become part of the fund and do not revert to the state general fund. However, if a local unit levies a tax as provided in this chapter, the first installment of the loan becomes due and payable out of money first received from the levying and the collection of a tax authorized under this chapter. A borrower may prepay a loan in full or in part

without interest penalty.

*As added by P.L.1-1995, SEC.21.*

#### **IC 14-28-5-13**

##### **Loans to local units; levy of property taxes to repay**

Sec. 13. A local unit receiving a loan under:

- (1) this chapter; or
- (2) IC 13-2-23 (before its repeal);

may levy an annual tax on personal and real property located within the geographical limits of the local unit for flood control purposes. The tax is in addition to any other tax authorized by law to be levied for flood control purposes. The tax shall be levied at the rate that will produce sufficient revenue to pay the annual installment and interest on a loan made under this chapter or under IC 13-2-23 (before its repeal). The tax at the rate authorized in this section is in addition to the maximum annual rates prescribed by law.

*As added by P.L.1-1995, SEC.21.*

#### **IC 14-28-5-14**

##### **Loans to local units; default or delinquency**

Sec. 14. If a local unit fails to make a payment to the fund or any other payment required by this chapter or under IC 13-2-23 (before its repeal) or is in any way indebted to the fund for an amount incurred or accrued, the state may recover the amount through any of the following:

- (1) The state may, through the attorney general and on behalf of the authority, file a suit in the circuit or a superior court with jurisdiction in the county in which the local unit is located to recover the amount that the local unit owes the fund.
- (2) The auditor of state may, after a sixty (60) day written notice to the local unit, withhold the payment and distribution of state money that the defaulting local unit is entitled to receive under Indiana law.
- (3) For a special taxing district, upon certification by the auditor of state after a sixty (60) day written notice to the special taxing district, the auditor of each county containing land within the special taxing district shall withhold collected tax money for the special taxing district and remit the withheld tax money to the auditor of state. The auditor of state shall make a payment to the fund in the name of the special taxing district. Upon elimination of the delinquency payment, the auditor of state shall certify the fact to the auditors of the counties involved and any additional withheld tax money shall be released to the special taxing district.

*As added by P.L.1-1995, SEC.21. Amended by P.L.53-2008, SEC.9; P.L.155-2015, SEC.26.*

#### **IC 14-28-5-15**

##### **Appropriations from state general fund**

Sec. 15. There is appropriated annually to the commission from the state general fund from money not otherwise appropriated an amount sufficient to administer this chapter, subject to the approval of the budget committee.

*As added by P.L.1-1995, SEC.21.*

## **IC 14-28-6**

### **Chapter 6. Flood Control; Approval of Plans**

#### **IC 14-28-6-1**

##### **Requirements for approval**

Sec. 1. Notwithstanding any other law to the contrary, a person may not construct, install, or undertake a work of any nature that is designed to regulate or control the streams or other water of Indiana for the purpose of preventing floods caused by excessive precipitation or otherwise unless the plans meet the following conditions:

- (1) The plans are submitted to and approved by the department.
- (2) The plans are found to be feasible and will ultimately constitute a part of an integrated plan for the entire state or a designated major watershed.
- (3) The plans are not disadvantageous to any other section of Indiana.

*As added by P.L.1-1995, SEC.21.*

#### **IC 14-28-6-2**

##### **Approval of federal government plans**

Sec. 2. If the federal government or an agency of the federal government develops plans for flood control affecting Indiana or a part of Indiana, the department may:

- (1) approve the plans; and
- (2) permit the use of the plans in the control of floods in Indiana.

*As added by P.L.1-1995, SEC.21.*