

waters

Sec. 2. (a) The unregulated flow of the rivers and water of Indiana results in periods of destructive floods upsetting the orderly processes of industry, agriculture, commerce, and life in general and causing loss of life and property. The unregulated flow results in periods of inadequate water flow during which municipal, industrial, and agricultural water supplies are made inadequate and the propagation of fish and wildlife is adversely affected.

(b) This unregulated flow is a menace to the general welfare and economy of the people of Indiana. The regulation of the flow of the rivers and water of Indiana is a proper activity of the state, independently or in cooperation with the United States, an agency of the United States, or a political subdivision of the state.

(c) The state should improve or participate in the improvement of the rivers and water of Indiana to regulate the flood and low water flow of the rivers and water and so that the lives and general welfare of the people of Indiana are protected and enhanced.

[Pre-1995 Recodification Citation: 13-2-9-1.5.]

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

IC 14-26-1-3 Public purpose

Sec. 3. Storage reservoirs providing for the regulation of the flow of the rivers and water of Indiana in the interest of:

(1) flood control, water supply for all beneficial purposes, water quality control, navigation, and both general and fish and wildlife recreation; or

(2) any feasible combination of the purposes described in subdivision (1);

are in the public interest and contribute to the general economy, welfare, public health, and safety of the people of Indiana.

[Pre-1995 Recodification Citation: 13-2-9-1.7.]

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

IC 14-26-1-4 Purchase or condemnation of land by commission

Sec. 4. The commission may do the following:

(1) Act on behalf of the state under this chapter.

(2) Purchase or condemn easements or fee simple interests, as provided in this chapter, in land necessary for reservoirs for storage of water to be used for:

(A) any;

(B) a combination of any; or

(C) all;

purposes stated in section 1 of this chapter.

(3) Construct and otherwise develop necessary structures for impoundment of water on sites acquired for reservoirs. If the impoundment inundates or otherwise physically affects properties under the jurisdiction of any other commission or department of the state, the commission shall secure the consent of the other commission or department before proceeding with the impoundment.

[Pre-1995 Recodification Citation: 13-2-9-2 part.]

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

IC 14-26-1-5 Purchase or condemnation of land on behalf of public entity with right or duty to supply or store water

Sec. 5. The commission, on behalf of the state, or a municipality, special taxing district, or public utility that by other law has the right or duty to supply or store water for any of the purposes stated in section 1 of this chapter may do the following:

(1) Purchase the fee simple interest in land or easements over, upon, and across land for the purpose of flooding, inundation, and storage of water necessary to water supply to be used for any of the purposes stated in section 1 of this chapter.

(2) Condemn and take the fee simple interest or easement if a reservoir for water supply

storage is considered to be necessary at any time within twenty (20) years after the date of the taking.

[Pre-1995 Recodification Citation: 13-2-9-3.]

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

IC 14-26-1-6 Statement regarding condemnation of property; valuation

Sec. 6. (a) If an agreement cannot be reached by the owner of the land considered needed for the reservoir site and the taker that is authorized to condemn the site by section 5 of this chapter, the taker must set forth the following:

- (1) The interest to be taken in the land.
- (2) The earliest date on which the taker intends to store water or to start construction to create a reservoir impoundment for the purposes set forth in section 1 of this chapter.

(b) The appraisers appointed by the court in the condemnation proceedings shall value the interest to be taken accordingly, giving due consideration to the fact that the owner of the land has use of the land, subject to the terms of the interest sought to be taken, until the date upon which the land may be inundated according to the terms of the complaint. In arriving at the proper valuation to be paid the owner of the land for the easement or the interest in fee to be taken or purchased, the landowner is considered to own the land for a term of years ending with the date set out in the complaint. The interest taken shall be valued as a remainder interest after that term of years.

[Pre-1995 Recodification Citation: 13-2-9-4.]

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

IC 14-26-1-7 Cost of easement or interest in land

Sec. 7. The cost of an easement or interest in the fee, either purchased or condemned, for present or for future needs, is considered to be the cost of used and useful property commencing with the date the payment for the land or an interest in the land is made. The Indiana utility regulatory commission shall take due note of the fact that a fee simple interest or easement, however acquired, is used and useful property in a rate making proceeding in which a utility owning a fee simple interest or easement is involved.

[Pre-1995 Recodification Citation: 13-2-9-5.]

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

IC 14-26-1-8 Rights of owners from whom easements or remainder interests taken

Sec. 8. (a) The owner of the land from which:

- (1) an easement is taken; or
- (2) the remainder interest in fee simple is taken;

may use and enjoy the land in any way consistent with the rights of the holder of the easement or remainder interest in fee simple.

(b) The owner may use the land for agricultural, recreational, or other purposes, but the use is subject to the dominant purpose of storage of water.

(c) If:

- (1) any improvements are placed on the land after the land is taken or purchased for a reservoir site, either by the taking or purchase of an easement or a fee after a fixed term of years; and
- (2) the improvements interfere with the use of the land for any of the purposes of storage of water;

when the land is used for storage of water, the improvements may be removed without compensation and at the expense of the person who held the land subject to the remainder easement or fee.

[Pre-1995 Recodification Citation: 13-2-9-6.]

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

IC 14-26-1-9 Approval of complaint for condemnation

Sec. 9. A complaint for condemnation, other than by the commission, under this chapter may not be filed in a court unless the taker has received approval from both the department and the department of environmental management. These agencies shall give approval only if the agencies find the following:

- (1) That based on sound engineering principles, the site is satisfactory for water supply storage.
- (2) That there is a probable future need for water supply storage that can be served from the reservoir site.

[Pre-1995 Recodification Citation: 13-2-9-7.]

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

IC 14-26-1-10 Source of money for commission

Sec. 10. (a) The commission shall, when acting on behalf of the state under this chapter, derive the needed money for purchase or taking and for construction of necessary structures for impoundment from either or both of the following:

- (1) The water resources development fund created by IC 14-25-2-4.
 - (2) Appropriations that the general assembly makes available to the commission for these purposes.
- (b) The income derived to the commission from:
- (1) the sale of water from impoundments; or
 - (2) payments made by persons or corporations, private or public, who have contracted with the commission for the maintenance by the commission of certain minimum quantities of stream flow;

shall be deposited in the water resources development fund.

[Pre-1995 Recodification Citation: 13-2-9-8.]

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

IC 14-26-1-11 Cooperation with federal government not authorized

Sec. 11. (a) This section applies to the following multipurpose reservoirs that have been authorized for construction by the United States Congress:

- (1) Big Blue.
- (2) Big Pine.
- (3) Big Walnut.
- (4) Clifty Creek.
- (5) Lafayette.

(b) Notwithstanding Acts 1967, c.100, s.3, Acts 1969, c.434, s.3, and Acts 1969, c.434, s.4, the department may not:

- (1) cooperate with the United States or an agency of the United States in the planning, construction, operation, or maintenance of;
- (2) enter into, on behalf of the state, an agreement with the United States or an agency of the United States relating to; or
- (3) pay a share of the costs for water supply or recreation of;

a reservoir subject to this section.

[Pre-1995 Recodification Citation: 13-2-9-9.]

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

IC 14-26-1-12 Cooperation with federal government authorized

Sec. 12. (a) The department shall cooperate with the United States and the appropriate agencies of the United States in the planning, construction, operation, and maintenance of:

- (1) the Downeyville multiple purpose reservoir, which has been authorized for construction by the Congress of the United States; and
- (2) the Richland Creek reservoir in Greene County if the construction of the Richland

Creek reservoir is authorized by Congress.

(b) The department may, on behalf of the state and subject to the approval of the governor, enter into agreements with the United States or agencies of the United States necessary to do the following:

(1) Fully effectuate the authorized purposes and functions of the reservoirs.

(2) Pay a share of the costs of the reservoirs for the purposes of water supply and recreation.

(c) The state's share of the costs:

(1) must be computed on the basis of the laws of the United States pertaining to multiple purpose reservoir projects; and

(2) must be requested by the department in the regular biennial budget requests.

[Pre-1995 Recodification Citations: 13-2-9-10; 13-2-9-11.]

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

IC 14-26-2 Chapter 2. Lake Preservation

14-26-2-1	Applicability of chapter
14-26-2-1.2	"Acquiescence"
14-26-2-1.5	"Lake"
14-26-2-2	"Natural resources"
14-26-2-3	"Public freshwater lake"
14-26-2-4	"Shoreline or water line"
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14-26-2-8	Accretion rights
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14-26-2-24	Public freshwater lake listing
14-26-2-25	Public freshwater lake petition

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.

[Pre-1995 Recodification Citation: 13-2-11.1-9.]

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.

[Pre-1995 Recodification Citation: 13-2-11.1-1 part.]

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.

[Pre-1995 Recodification Citation: 13-2-11.1-1 part.]

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.

[Pre-1995 Recodification Citation: 13-2-11.1-1 part.]

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.

[Pre-1995 Recodification Citations: 13-2-11.1-1 part; 13-2-11.1-2.]

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

IC 14-26-2-6 Repealed

[Pre-1995 Recodification Citation: 13-2-11.1-3(a).]

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.

[Pre-1995 Recodification Citation: 13-2-11.1-3(b).]

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.

[Pre-1995 Recodification Citation: 13-2-11.1-4.]

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

IC 14-26-2-9 Repealed

[Pre-1995 Recodification Citation: 13-2-11.1-5.]

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.

[Pre-1995 Recodification Citation: 13-2-11.1-6(a), (b), (c).]

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.

[Pre-1995 Recodification Citation: 13-2-11.1-6(d).]

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.

[Pre-1995 Recodification Citation: 13-2-11.1-7.]

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.

[Pre-1995 Recodification Citation: 13-2-11.1-8.]

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.

[Pre-1995 Recodification Citation: 13-2-11.1-10.]

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.

[Pre-1995 Recodification Citation: 13-2-11.1-11.]

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.

[Pre-1995 Recodification Citation: 13-2-11.1-15.]

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.

[Pre-1995 Recodification Citation: 13-2-11.1-3(c).]

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.

[Pre-1995 Recodification Citation: 13-2-11.1-3(d).]

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.

[Pre-1995 Recodification Citation: 13-2-11.1-12.]

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.

[Pre-1995 Recodification Citation: 13-2-11.1-13.]

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.

[Pre-1995 Recodification Citation: 13-2-11.1-14.]

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.

[Pre-1995 Recodification Citation: 13-2-11.1-16.]

As added by P.L.1-1995, SEC.19. Amended by P.L.24-2001, SEC.3; P.L.71-2004, SEC.7; P.L.195-2014, SEC.33.

IC 14-26-2-23 Prohibited activities; permit; applications; fees; 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 minimum 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.

(4) Subject to IC 14-10-2-1, set the permit application fee at or above the minimum fee established in subsection (b).

(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; P.L.195-2017, SEC.41.

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.

IC 14-26-3 Chapter 3. Lakes, Rivers, and Streams Preservation Suits; Parties

14-26-3-1	"Lake" defined
14-26-3-2	"River" defined
14-26-3-3	Department becoming party to or prosecuting action to preserve lakes, rivers, or streams
14-26-3-4	Courts recognizing department's right to become party
14-26-3-5	Department becoming party to drainage proceeding
14-26-3-6	Department as party in interest

IC 14-26-3-1 "Lake" defined

Sec. 1. As used in this chapter, "lake" includes both meandered and unmeandered lakes.

[Pre-1995 Recodification Citation: 13-2-12-3 part.]

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

IC 14-26-3-2 "River" defined

Sec. 2. As used in this chapter, "river" includes both navigable and nonnavigable rivers and streams.

[Pre-1995 Recodification Citation: 13-2-12-3 part.]

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

IC 14-26-3-3 Department becoming party to or prosecuting action to preserve lakes, rivers, or streams

Sec. 3. The department may do the following:

(1) Become a party, either plaintiff or defendant, to any cause or legal action:

(A) that is pending in any court in Indiana; or

(B) that is brought or commenced in any court in Indiana;

affecting the preservation or maintenance of the lakes, rivers, and streams in Indiana.

(2) Commence and prosecute any cause in any court in Indiana for the purpose of preserving and maintaining the waters of the state.

[Pre-1995 Recodification Citation: 13-2-12-1.]

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

IC 14-26-3-4 Courts recognizing department's right to become party

Sec. 4. A court acting under Indiana law shall recognize the right of the department to become a party to any action involving the preservation and maintenance of lakes, rivers, and streams for the purposes set out in this chapter.

[Pre-1995 Recodification Citation: 13-2-12-2.]

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

IC 14-26-3-5 Department becoming party to drainage proceeding

Sec. 5. For the purposes and in the manner provided in this chapter, the department may become a party to any drainage proceeding in any court acting under Indiana law, to prosecute or defend any cause that in the opinion of the officers of the department will injuriously affect the water levels of a lake, river, or stream in Indiana.

[Pre-1995 Recodification Citation: 13-2-12-3 part.]

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

IC 14-26-3-6 Department as party in interest

Sec. 6. In the interest of public health and convenience, the department is a party in interest in the matters set out in this chapter. Nonbenefit or the nonownership of land affected by a cause may not be pleaded in any court acting under Indiana law as a bar to the right of the department to appear, commence, prosecute, or defend in the cause.

[Pre-1995 Recodification Citation: 13-2-12-4.]
As added by P.L. 1-1995, SEC. 19.

IC 14-26-4 Chapter 4. Lakes; Average Normal Water Level

14-26-4-1	"Average normal water level" defined
14-26-4-2	Establishment and maintenance of average normal water level
14-26-4-3	Reports; preparation
14-26-4-4	Method of determination
14-26-4-5	Reports; filing
14-26-4-6	Reports; docket; notice
14-26-4-7	Court to hear evidence
14-26-4-8	Findings; judgments
14-26-4-9	Lake level record
14-26-4-10	Monument
14-26-4-11	Applicability to dams, spillways, and control works
14-26-4-12	Construction of dams, spillways, or control works

IC 14-26-4-1 "Average normal water level" defined

Sec. 1. As used in this chapter, "average normal water level" of a lake means the level between high water that occurs as a result of excessive precipitation and low water that occurs during protracted dry periods that will do the following:

- (1) Provide the most benefit to the public.
- (2) Best protect the public health, welfare, and safety.
- (3) Best preserve the natural resources of Indiana.

[Pre-1995 Recodification Citation: 13-2-13-2 part.]

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

IC 14-26-4-2 Establishment and maintenance of average normal water level

Sec. 2. The department may do the following:

- (1) Have established, by appropriate legal action, the average normal water level or area of all natural and artificial lakes of Indiana.
- (2) Construct or sponsor and supervise the construction of dams, spillways, and control works necessary to maintain the average normal water level.

[Pre-1995 Recodification Citation: 13-2-13-1(a) part.]

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

IC 14-26-4-3 Reports; preparation

Sec. 3. A concise report containing a description of the lake and location, together with all data necessary to reveal and fix:

- (1) the average normal water level or area of the lake; and
 - (2) the highest elevation to which the water has risen during the prior ten (10) years;
- shall be prepared and signed by an officer of the department.

[Pre-1995 Recodification Citation: 13-2-13-1(a) part.]

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

IC 14-26-4-4 Method of determination

Sec. 4. The average normal water level shall be determined by means such as the following:

- (1) Old surveys.
- (2) Testimony of old inhabitants.
- (3) The extent to which drainage and other artificial causes have increased or decreased the natural ground water of the area and affected the water levels of the lake.
- (4) Water level measurements made by the following:
 - (A) The United States Geological Survey.
 - (B) The department.
 - (C) Other agencies.

(D) Individuals.

(5) Any other pertinent surrounding facts or circumstances.

[Pre-1995 Recodification Citation: 13-2-13-2 part.]

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

IC 14-26-4-5 Reports; filing

Sec. 5. The department shall file the report with the following:

- (1) The commission.
- (2) The clerk of the circuit court with jurisdiction in the county in which the greatest area of the lake is situated.

[Pre-1995 Recodification Citation: 13-2-13-1(a) part.]

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

IC 14-26-4-6 Reports; docket; notice

Sec. 6. The clerk of the circuit court shall do the following:

- (1) Immediately docket the report as a cause of action pending in the circuit court of the county.
- (2) Cause notice to be published for two (2) consecutive weeks in two (2) newspapers of general circulation in each county in which the lake is situated. The notice must briefly describe the nature of the report and fix a day for the hearing of the report.

[Pre-1995 Recodification Citation: 13-2-13-1(a) part.]

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

IC 14-26-4-7 Court to hear evidence

Sec. 7. The court shall, on the day fixed in the notice or on a later day to be fixed by the court, hear all of the evidence submitted respecting the matter submitted by the following:

- (1) The department.
- (2) Any other agency of government.
- (3) Any affected landowners.

[Pre-1995 Recodification Citation: 13-2-13-1(a) part.]

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

IC 14-26-4-8 Findings; judgments

Sec. 8. (a) After the hearing, the court shall do the following:

- (1) Make findings of fact.
 - (2) Give an appropriate judgment establishing the level and area of the lake.
- (b) If the judgment is favorable to the moving party, a description of:
- (1) a monument;
 - (2) the location of the monument; and
 - (3) all data furnished by the report;

shall be made a part of the court's findings and judgment by reference.

[Pre-1995 Recodification Citation: 13-2-13-1(a) part.]

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

IC 14-26-4-9 Lake level record

Sec. 9. (a) If the judgment is favorable to the moving party, the findings and judgment of the court properly certified by the clerk of the court shall be recorded in a lake level record to be kept in the recorder's office of each county having land draining into the lake. Each county in which is situated a lake other than a private lake shall provide record books for this purpose. The county recorders may make the recordings by pasting or otherwise securely attaching the report containing all descriptive material in the record, which shall be properly indexed and paged.

(b) The clerk and the county recorder may not make or enter of record a charge for their

services.

(c) Certified copies of the record of the judgment of the court as kept in the office of the clerk of the circuit court and of the records recorded in the office of the county recorder shall be received in evidence in any court in Indiana as conclusive evidence of all matters contained in the records.

(d) The department shall make and keep a similar record as a part of the public records of the state.

[Pre-1995 Recodification Citation: 13-2-13-1(a) part.]

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

IC 14-26-4-10 Monument

Sec. 10. Within one (1) year after the court has established the average normal water level or area, the department shall construct a suitable permanent monument as prescribed in the findings of the court on the shore of the lake. The monument must contain the following:

- (1) The name of the lake.
- (2) The average water normal level.
- (3) The size if established.
- (4) The highest level to which the lake has risen during the ten (10) years preceding the time of the filing of the complaint.

[Pre-1995 Recodification Citation: 13-2-13-1(b).]

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

IC 14-26-4-11 Applicability to dams, spillways, and control works

Sec. 11. The requirements and procedure prescribed by this chapter for reports, notice, court procedure, and record apply to all dams, spillways, and control works provided for in this chapter.

[Pre-1995 Recodification Citation: 13-2-13-1(a) part.]

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

IC 14-26-4-12 Construction of dams, spillways, or control works

Sec. 12. The department may do the following:

- (1) Accept contributions or grants-in-aid from:
 - (A) an individual;
 - (B) a group of individuals; or
 - (C) county, state, or federal agencies;to finance the construction of dams, spillways, or control works to maintain the average normal water level of a lake.
- (2) Sponsor the building of dams, spillways, or control works to maintain the average normal water level of a lake.
- (3) Sponsor the building of dams, spillways, or control works by:
 - (A) an individual;
 - (B) a group of individuals; or
 - (C) county, state, or federal agencies.

The department shall supervise the construction.

[Pre-1995 Recodification Citation: 13-2-13-1(a) part.]

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

IC 14-26-5 Chapter 5. Lowering of Ten Acre Lakes

14-26-5-1	Applicability of chapter
14-26-5-2	"Normal water level of a lake" defined
14-26-5-3	Permit required for certain work on ditches and drains; exception
14-26-5-4	Request for permits; fees
14-26-5-5	Permits; investigation upon request
14-26-5-6	Permits; issuance
14-26-5-7	Safeguards
14-26-5-7.4	Time requirements for approval or refusal of permit request
14-26-5-7.6	Refusal of permit request; notice and hearing
14-26-5-8	Permits; expiration
14-26-5-9	Permits, posting, keeping
14-26-5-10	Complaints; filing
14-26-5-11	Complaints; contents
14-26-5-12	Complaints; service of summons
14-26-5-13	Intervention in proceedings
14-26-5-14	Court to hear evidence de novo
14-26-5-15	Appeals
14-26-5-16	Injunctive relief
14-26-5-17	Violations

IC 14-26-5-1 Applicability of chapter

Sec. 1. This chapter applies to freshwater lakes having an area of at least ten (10) acres.

[Pre-1995 Recodification Citation: 13-2-15-1(a) part.]

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

IC 14-26-5-2 "Normal water level of a lake" defined

Sec. 2. As used in this chapter, "normal water level of a lake" means:

- (1) the water level of the lake established by law; or
- (2) if the water level has not been established, the level where the presence and action of the water has been so constant as to give to the bed of the lake a character distinct from that of the surrounding land with regard to vegetation and the nature of the soil.

[Pre-1995 Recodification Citation: 13-2-15-3.]

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

IC 14-26-5-3 Permit required for certain work on ditches and drains; exception

Sec. 3. (a) This section does not apply to a ditch or drain if:

- (1) water from the ditch or drain empties into a lake before activities referred to in subsection (b) begin;
- (2) water from the ditch or drain continues to empty into the lake at the same location after the activities are completed; and
- (3) the activities are conducted using best management practices for soil and erosion control.

(b) A person may not:

- (1) locate, make, dig, dredge, construct, reconstruct, repair, or reclean; or
- (2) order or recommend the location, establishment, construction, reconstruction, repair, or recleaning of;

a ditch or drain having a bottom depth lower than the normal water level of a lake within one-half (1/2) mile of the lake without a permit from the department.

[Pre-1995 Recodification Citation: 13-2-15-1(a) part.]

As added by P.L.1-1995, SEC.19. Amended by P.L.28-2007, SEC.1.

IC 14-26-5-4 Request for permits; fees

Sec. 4. (a) A request for a permit may be made by any person interested in the proposed work by filing with the department the following:

- (1) A brief statement and description of the work.
- (2) Plans and specifications for the work.
- (3) An investigation fee of a minimum of twenty-five dollars (\$25).

(b) Subject to IC 14-10-2-1, the commission may set an investigation fee above the minimum fee established under subsection (a)(3).

[Pre-1995 Recodification Citation: 13-2-15-1(b) part.]

As added by P.L.1-1995, SEC.19. Amended by P.L.195-2017, SEC.42.

IC 14-26-5-5 Permits; investigation upon request

Sec. 5. The department shall promptly consider a request by making an investigation of the land, water, lakes, fish, wildlife, and botanical resources that may be affected by the proposed work.

[Pre-1995 Recodification Citation: 13-2-15-1(b) part.]

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

IC 14-26-5-6 Permits; issuance

Sec. 6. If the department finds that the proposed work will not:

- (1) endanger:
 - (A) the legally established water level of a lake; or
 - (B) the normal water level of a lake whose water level has not been legally established; or

(2) result in unreasonably detrimental effects upon fish, wildlife, or botanical resources; the department shall promptly grant the request and issue a permit to the person requesting the permit.

[Pre-1995 Recodification Citation: 13-2-15-1(b) part.]

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

IC 14-26-5-7 Safeguards

Sec. 7. If the department finds that the proposed work could be done provided certain safeguards are included in the proposed work, the department shall designate the safeguards that will in the department's opinion protect the lake.

[Pre-1995 Recodification Citation: 13-2-15-1(b) part.]

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

IC 14-26-5-7.4 Time requirements for approval or refusal of permit request

Sec. 7.4. If a request for a permit is submitted under this chapter by or for a county drainage board for a project for the reconstruction or maintenance of a regulated drain under IC 36-9-27, the department shall approve or refuse the request within one hundred fifty (150) calendar days after the request is deemed complete by the department. A request held more than one hundred fifty (150) calendar days by the department without being either approved or refused shall be considered approved.

As added by P.L.180-1995, SEC.2.

IC 14-26-5-7.6 Refusal of permit request; notice and hearing

Sec. 7.6. (a) If the department refuses to issue a permit after an investigation under section 5 of this chapter, the department shall promptly cause a public notice to be given by one (1) publication in a newspaper of general circulation published in the county in which the lake or any part of the lake is located. The notice must state that, on the date set forth in the notice, which may not be less than ten (10) days after the publication, at a designated place in the county, the department will hold a hearing on the request, and any interested person appearing at the hearing will have the right to be heard. The notice must contain a brief

description of the proposed work and a statement of the department's reasons for refusing to issue a permit and of the safeguards, if any, that the department considers necessary to protect the water level of the lake. The hearing shall be held by the director of the department or by the director's designee. A hearing held under this subsection is a nonevidentiary hearing. The rules of evidence and IC 4-21.5 do not apply to the hearing.

(b) If the request of a county drainage board for a permit for a project for the reconstruction and maintenance of a regulated drain under IC 36-9-27 is refused, the department shall publish the public notice required by subsection (a) within sixty (60) days after the permit is refused.

As added by P.L.180-1995, SEC.3.

IC 14-26-5-8 Permits; expiration

Sec. 8. A permit issued under this chapter expires two (2) years after the permit is issued.

[Pre-1995 Recodification Citation: 13-2-15-1(c).]

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

IC 14-26-5-9 Permits, posting, keeping

Sec. 9. 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.

[Pre-1995 Recodification Citation: 13-2-15-1(d).]

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

IC 14-26-5-10 Complaints; filing

Sec. 10. (a) Except as provided in subsection (b), a person, firm, limited liability company, or corporation that is adversely affected by a decision of the department may appeal the decision by filing a complaint in the circuit or superior court of the county in which the lake or a part of the lake is situated.

(b) If the proposed work is the work petitioned for in a pending drainage proceeding, the complaint:

- (1) must be filed in the court in which the drainage proceeding is pending; and
- (2) shall be heard and determined as part of the drainage proceeding.

[Pre-1995 Recodification Citation: 13-2-15-2 part.]

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

IC 14-26-5-11 Complaints; contents

Sec. 11. A complaint must do the following:

- (1) State the interest of the person filing the appeal, whether the person is:
 - (A) proposing to construct, reconstruct, repair, or reclean a ditch or drain on the person's own land; or
 - (B) a petitioner or other party or public officer in a pending drainage proceeding.
- (2) Set forth the plans and specifications of the proposed work.
- (3) State the action taken by the department in granting or withholding approval.
- (4) State the objections and causes of appeal from the decision of the department.

[Pre-1995 Recodification Citation: 13-2-15-2 part.]

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

IC 14-26-5-12 Complaints; service of summons

Sec. 12. A complaint must be filed in the court within thirty (30) days from the date of the decision of the department by causing summons to be issued and served upon the director as summons are served in other civil cases.

[Pre-1995 Recodification Citation: 13-2-15-2 part.]

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

IC 14-26-5-13 Intervention in proceedings

Sec. 13. Any person, firm, limited liability company, or corporation interested in or affected by the proposed work may intervene in the proceedings before the court.

[Pre-1995 Recodification Citation: 13-2-15-2 part.]

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

IC 14-26-5-14 Court to hear evidence de novo

Sec. 14. The court shall hear de novo all evidence relevant to the issues determined by the department.

[Pre-1995 Recodification Citation: 13-2-15-2 part.]

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

IC 14-26-5-15 Appeals

Sec. 15. An appeal may be had from the finding and judgment of the court as provided by law in other civil cases.

[Pre-1995 Recodification Citation: 13-2-15-2 part.]

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

IC 14-26-5-16 Injunctive relief

Sec. 16. A person, firm, limited liability company, or corporation that violates or threatens to violate this chapter is subject to an injunction upon a complaint filed by any of the following:

- (1) Any person whose land or interest in land may be damaged by the violation.
- (2) The department.

[Pre-1995 Recodification Citation: 13-2-15-4.]

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

IC 14-26-5-17 Violations

Sec. 17. A person who knowingly violates section 3 of this chapter commits a Class B infraction.

[Pre-1995 Recodification Citation: 13-2-15-1(e).]

As added by P.L.1-1995, SEC.19. Amended by P.L.71-2004, SEC.8.

IC 14-26-6 Chapter 6. Lowering of Twenty Acre Lakes

14-26-6-1	Applicability of chapter
14-26-6-2	Exemptions
14-26-6-3	Violations

IC 14-26-6-1 Applicability of chapter

Sec. 1. This chapter applies to lakes having an area greater than twenty (20) acres.

[Pre-1995 Recodification Citation: 13-2-16-1 part.]

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

IC 14-26-6-2 Exemptions

Sec. 2. This chapter does not apply to any of the following:

(1) An artificial lake that is created or used in or in connection with the following:

- (A) Supplying a city or town with water.
- (B) The generation of electric energy.
- (C) The storage of water for a use described in clause (A) or (B).

(2) The waters of Lake Michigan.

(3) A lake owned or controlled by the department.

(4) The waters of an artificial lake in a town located in a county having a population of more than forty-seven thousand five hundred (47,500) but less than forty-eight thousand (48,000).

[Pre-1995 Recodification Citation: 13-2-16-2.]

As added by P.L.1-1995, SEC.19. Amended by P.L.170-2002, SEC.94; P.L.119-2012, SEC.120.

IC 14-26-6-3 Violations

Sec. 3. A person who knowingly lowers the water level of a lake more than twelve (12) inches below the high water mark established by the dam or other artificial device creating the lake commits a Class B infraction.

[Pre-1995 Recodification Citation: 13-2-16-1 part.]

As added by P.L.1-1995, SEC.19. Amended by P.L.71-2004, SEC.9.

IC 14-26-7 Chapter 7. Lakes; Restrictions on Ditches and Drains

14-26-7-1	Applicability of chapter
14-26-7-2	Ditches or drains through line of freshwater lake; dam required
14-26-7-3	Ditches or drains within one-half mile of freshwater lake; dam required
14-26-7-4	Construction of dams
14-26-7-5	Interference with dam, bank, or levee prohibited
14-26-7-6	Interference with banks or shores of freshwater lakes prohibited
14-26-7-7	Alteration of dam, spillway, or outlet to lake
14-26-7-8	Violations

IC 14-26-7-1 Applicability of chapter

Sec. 1. This chapter applies to the following:

- (1) The construction of new ditches and drains.
- (2) Alterations, changes, or other improvements to existing ditches and drains.

[Pre-1995 Recodification Citation: 13-2-17-1 part.]

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

IC 14-26-7-2 Ditches or drains through line of freshwater lake; dam required

Sec. 2. A:

- (1) person may not locate, make, dig, dredge, or in any manner construct; and
- (2) court, county executive, body of viewers, or drainage commissioners may not order or recommend the location, establishment, or construction of;

a ditch or drain cutting into, through, or upon the line of a freshwater lake unless a dam has been provided for and constructed to adequately protect the water level of each lake likely to be affected.

[Pre-1995 Recodification Citation: 13-2-17-1 part.]

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

IC 14-26-7-3 Ditches or drains within one-half mile of freshwater lake; dam required

Sec. 3. A person may not locate, dig, make, dredge, or in any way construct a ditch or drain having a bottom depth lower than the level of a freshwater lake as established by law within one-half (1/2) mile of any point on the line of the lake unless a dam has been provided for and constructed to adequately protect the water level of each lake likely to be affected.

[Pre-1995 Recodification Citation: 13-2-17-1 part.]

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

IC 14-26-7-4 Construction of dams

Sec. 4. A dam required by this chapter shall be constructed:

- (1) before any work on the proposed drainage; and
- (2) according to plans and specifications furnished or approved by the engineering division.

[Pre-1995 Recodification Citation: 13-2-17-1 part.]

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

IC 14-26-7-5 Interference with dam, bank, or levee prohibited

Sec. 5. A person may not:

- (1) cut into or around;
- (2) attempt to cut into or around;
- (3) interfere with; or
- (4) attempt to interfere with, change, or destroy;

a dam, bank, or levee constructed under Indiana law for the purpose of maintaining the water

level of a freshwater lake at the established level.

[Pre-1995 Recodification Citation: 13-2-17-2 part.]

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

IC 14-26-7-6 Interference with banks or shores of freshwater lakes prohibited

Sec. 6. A person may not:

- (1) cut into or through;
- (2) attempt to cut into or through;
- (3) interfere with; or
- (4) attempt to interfere with;

the banks or shores of a freshwater lake or any part of the lake in such a way as to lower or tend to lower the water of the lake.

[Pre-1995 Recodification Citation: 13-2-17-2 part.]

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

IC 14-26-7-7 Alteration of dam, spillway, or outlet to lake

Sec. 7. Subject to IC 14-26-8 and IC 36-9-27, a person, court, county executive, body of viewers, or drainage board may not do any of the following:

- (1) Interfere with, change, alter, or attempt to interfere with, change, or alter a bank, dam, spillway, or outlet of a freshwater lake.
- (2) Dig, dredge, or in any way lower or attempt to lower an outlet or part of an outlet to a freshwater lake at any point in the outlet within three-fourths (3/4) mile of the lake.

[Pre-1995 Recodification Citation: 13-2-17-3.]

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

IC 14-26-7-8 Violations

Sec. 8. A person who violates this chapter commits a Class A infraction. Notwithstanding IC 34-28-5-4, a judgment for a Class A infraction imposed under this section may not exceed five thousand dollars (\$5,000).

[Pre-1995 Recodification Citation: 13-2-17-4.]

As added by P.L.1-1995, SEC.19. Amended by P.L.195-2014, SEC.34.

IC 14-26-8**Chapter 8. Lakes; Changes in Levels**

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14-26-8-63	Petition filed under section 62 of this chapter; additional assessments
14-26-8-64	Elevation of lake levels

IC 14-26-8-1 Applicability of chapter

Sec. 1. This chapter applies to lakes having an area of at least ten (10) acres.

[Pre-1995 Recodification Citation: 13-2-18-1 part.]

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

IC 14-26-8-2 "Shoreline or water line" defined

Sec. 2. As used in this chapter, "shoreline or water line" means the line that is formed around a lake by the intersection of the water in the lake with the adjoining land when the surface elevation of the lake is:

- (1) normal;
- (2) at the average level; or
- (3) at the average normal level established by law.

[Pre-1995 Recodification Citation: 13-2-18-24.]

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

IC 14-26-8-3 Petition for control dam or other structure to maintain lake level

Sec. 3. (a) If:

- (1) at least twenty percent (20%) of the owners of land abutting upon or within one-fourth (1/4) mile of the shoreline or water line of a lake;
- (2) the department; or
- (3) the board of commissioners of a county in which a lake is located;

desire to stabilize, raise, or establish and maintain the level of the lake by means of a control dam or other structure, diverting water into or away from the lake, pumping water into or out of the lake, or other means, the landowners, department, or county commissioners may apply either separately or jointly for the construction, reconstruction, alteration, and rehabilitation of a control dam or other structure, the construction of pumping stations, the construction, reconstruction, repair, or recleaning of outlet or inlet ditches, or other means by filing a petition with the circuit or superior court of the county in which the greater or greatest area of the lake lies.

(b) A petition must be filed in duplicate with the clerk of the court.

(c) If the petition is approved by the court, attorney's fees become a part of the total costs of the project. If the petition is dismissed, the petitioners shall pay the attorney's fees.

[Pre-1995 Recodification Citation: 13-2-18-1 part.]

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

IC 14-26-8-4 Contents of petition

Sec. 4. A petition must do the following:

- (1) State the name of the lake.
- (2) State the lake's location by section, township, range, and county.
- (3) State the lake's approximate surface area in acres.
- (4) Describe the nature of the work desired, whether it is:
 - (A) the construction, reconstruction, alteration, or rehabilitation of a control dam;
 - (B) the construction of a pumping station or a diversion ditch;
 - (C) the construction, reconstruction, repair, or recleaning of an outlet ditch;
 - (D) a combination of any number of purposes permitted by this subdivision; or
 - (E) another purpose.

- (5) Allege that the work is practicable and of public need.
- (6) State the level at which it is desired to maintain or stabilize the lake. The level must be stated with reference to at least one (1) of the following:
 - (A) Sea level datum if ascertainable.
 - (B) A lawfully established staff gauge installed in the lake from which the desired water level can be readily observed by an interested or affected party.
- (7) If the lake lies in more than one (1) county, show the approximate surface area of the lake in acres that lies in each county.
- (8) If the lake or any part of the lake lies within a city or town, state the approximate surface area of the lake that lies within the city or town.

[Pre-1995 Recodification Citation: 13-2-18-2 part.]

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

IC 14-26-8-5 Lake lying in two or more counties

Sec. 5. If the lake lies in at least two (2) counties, the surveyor of the county in which the greater or greatest area of the lake lies shall prepare the plans and specifications and the report required by this chapter.

[Pre-1995 Recodification Citation: 13-2-18-2 part.]

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

IC 14-26-8-6 Bond to accompany petition

Sec. 6. If the petition is initiated by the owners of land abutting upon or within four hundred forty (440) yards of the shoreline or water line of the lake, the petition must be accompanied by a bond with good and sufficient freehold sureties to be approved by the clerk of the circuit or superior court. The bond must be:

- (1) payable to the state; and
- (2) conditioned to pay all costs if the court denies the petition.

[Pre-1995 Recodification Citation: 13-2-18-2 part.]

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

IC 14-26-8-7 Docketing of petition; notice of hearing

Sec. 7. (a) Within ten (10) days after the filing of a petition, the clerk shall docket the petition as a cause of action pending in the circuit or superior court. The clerk shall cause notice to be given at least thirty (30) days before the date set for the hearing as follows:

- (1) By publication one (1) time each week for two (2) consecutive weeks in not less than two (2) newspapers of general circulation published in each county in which the lake is located. If there are not two (2) newspapers of general circulation published in a county, notice shall be published in one (1) newspaper of general circulation published in the county.
- (2) By posting a written or printed notice at the door of the courthouse in each county in which the lake lies.
- (3) By sending written notice to the following:
 - (A) The county surveyor and county commissioners of each county affected.
 - (B) The department.

(b) The notice must do the following:

- (1) Briefly describe the location and nature of the proposed work contained in the petition.
- (2) Fix a day for the hearing on the petition.

[Pre-1995 Recodification Citation: 13-2-18-3 part.]

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

IC 14-26-8-8 Viewers; determination

Sec. 8. Before the date set for the hearing, the names of the viewers of the proposed work

described in the petition shall be determined as follows:

- (1) The president of the board of commissioners of each county affected shall submit in writing to the clerk of the court in which the petition is filed the name of a member of the board of commissioners of the county who will be a viewer.
- (2) The director shall submit to the clerk the name of a representative of the department who will serve as a viewer.
- (3) The surveyor of each county affected shall serve as a viewer.

[Pre-1995 Recodification Citation: 13-2-18-3 part.]

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

IC 14-26-8-9 Viewers; appointment and qualifications

Sec. 9. On the day set for the hearing on the form of a petition, the court shall appoint two (2) viewers who shall, with the viewers designated under section 8 of this chapter, pass upon the project as set out. The two (2) viewers appointed by the court:

- (1) must be reputable freeholders;
- (2) may not be qualified to sign the petitions;
- (3) may not be related to an affected landowner; and
- (4) must be residents of a county in which the lake lies.

[Pre-1995 Recodification Citation: 13-2-18-4 part.]

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

IC 14-26-8-10 Restrictions on county commissioners as viewers

Sec. 10. If a petition is filed alone by owners of land abutting or within four hundred forty (440) yards of the shoreline or water line of the lake, a member of the board of county commissioners may not serve as a viewer.

[Pre-1995 Recodification Citation: 13-2-18-4 part.]

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

IC 14-26-8-11 Remonstrance or objection; time requirements

Sec. 11. The following have ten (10) days, exclusive of Sundays, from the date of the hearing on the form of a petition to file with the court a remonstrance or an objection to the merits of the petition, notice, or eligibility of any of the viewers:

- (1) A person named in the petition.
- (2) A person who owns land abutting or within one-fourth (1/4) mile of the shoreline or water line of the lake.
- (3) The department.
- (4) The board of commissioners of a county in which the lake lies.

[Pre-1995 Recodification Citation: 13-2-18-5 part.]

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

IC 14-26-8-12 Remonstrance or objection; dismissal of defective petition

Sec. 12. After the ten (10) days prescribed by section 11 of this chapter have elapsed, the court shall consider each remonstrance or objection, if any. If the court finds the petition defective, the court shall dismiss the petition unless the petition is amended within a time fixed by the court.

[Pre-1995 Recodification Citation: 13-2-18-5 part.]

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

IC 14-26-8-13 Replacement of disqualified viewers

Sec. 13. If at least one (1) of the viewers is disqualified, the court shall, within ten (10) days of the date of disqualification, appoint an individual having the qualifications required by this chapter to replace the disqualified viewer as follows:

- (1) If the surveyor is disqualified, the court may appoint a qualified registered engineer

to replace the disqualified surveyor.

(2) If a county commissioner is disqualified, the court shall appoint another county commissioner from the same county to replace the disqualified commissioner.

(3) If the representative of the department is disqualified, the court shall appoint a new representative from the department selected from a list of two (2) representatives recommended by the director.

[Pre-1995 Recodification Citation: 13-2-18-5 part.]

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

IC 14-26-8-14 Objections to viewers; time requirements

Sec. 14. The following have ten (10) days, exclusive of Sundays, to file a written objection to the new viewers:

(1) A person named in the petition.

(2) A person who owns land abutting or within one-fourth (1/4) mile of the shoreline or water line of the lake.

(3) The department.

(4) The county in which the lake lies if a joint petition is filed.

[Pre-1995 Recodification Citation: 13-2-18-5 part.]

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

IC 14-26-8-15 Objections to viewers; disqualification

Sec. 15. After the ten (10) days prescribed by section 14 of this chapter have elapsed, the court shall consider each objection to the viewers. If the court disqualifies a viewer who was appointed to replace a previously disqualified viewer, the court shall make another appointment and continue under the same procedure until there is no further disqualification of viewers.

[Pre-1995 Recodification Citation: 13-2-18-5 part.]

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

IC 14-26-8-16 Dismissal of petition

Sec. 16. If within ten (10) days, exclusive of Sundays, following the date of the hearing of the petition, at least fifty-one percent (51%) of the landowners abutting or within four hundred forty (440) yards of the shoreline or water line of the lake remonstrate in writing against the proposed project described in the petition, the petition shall be dismissed at the cost of the petitioners whose land abuts or lies within four hundred forty (440) yards of the shoreline or water line of the lake.

[Pre-1995 Recodification Citation: 13-2-18-6.]

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

IC 14-26-8-17 Referral of petition to viewers

Sec. 17. (a) If:

(1) a remonstrance has not been filed within ten (10) days of the date of the hearing; and

(2) the court considers the petition sufficient;

the court shall make an order referring the petition to the viewers.

(b) An objection to the petition or the acting of the viewers not made within the ten (10) days is considered waived.

(c) In the order referring the matter to the viewers, the court shall fix a time when the viewers shall meet and make a report. The clerk shall deliver to the viewers a duplicate copy of the petition and the order.

(d) A viewer who cannot meet on the date specified by the court may notify the court in writing, and the court shall set another date for the viewers to meet. If it is not possible for all of the viewers to meet on the new day specified by the court, a majority of the viewers

may meet and view the proposed project.

[Pre-1995 Recodification Citation: 13-2-18-7 part.]

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

IC 14-26-8-18 Inspection and report by viewers

Sec. 18. The viewers shall do the following:

- (1) Make a personal inspection of the proposed project described in the petition.
- (2) Consider whether the project is practicable and is of public need.
- (3) File a report within ten (10) days from the time of the inspection. The opinion of the majority prevails.

[Pre-1995 Recodification Citation: 13-2-18-7 part.]

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

IC 14-26-8-19 Viewers' findings; dismissal of petition

Sec. 19. If the viewers find that the proposed work is not practicable and of public need:

- (1) the viewers shall make a written report of the findings to the court; and
- (2) the court shall dismiss the petition at the cost of the petitioners who own land abutting or within one-fourth (1/4) mile of the water or shoreline of the lake.

[Pre-1995 Recodification Citation: 13-2-18-7 part.]

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

IC 14-26-8-20 Viewers' findings; referral to county surveyor

Sec. 20. If the viewers find that the proposed work is practicable and of public need:

- (1) the viewers shall make a written report of the finding to the court; and
- (2) the court shall do the following:
 - (A) Direct the surveyor of the county in which the greatest area of the lake lies to prepare plans and specifications for the proposed project.
 - (B) Set a date for the surveyor to file the surveyor's preliminary report with the court.

[Pre-1995 Recodification Citation: 13-2-18-7 part.]

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

IC 14-26-8-21 Surveyor; preliminary report; plans; specifications

Sec. 21. (a) The surveyor's preliminary report must include the following:

- (1) Plans and specifications.
- (2) Cost estimates.
- (3) Damages.
- (4) Assessments.
- (5) Other information that is considered necessary and proper.

(b) The department may on request of the surveyor prepare the plans and specifications.

(c) The surveyor in preparing plans and specifications may, upon the recommendation of the department, vary from the general plan described in the petition if necessary to carry out the purpose of the petition, subject to final approval by the court.

[Pre-1995 Recodification Citation: 13-2-18-7 part.]

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

IC 14-26-8-22 County surveyor

Sec. 22. (a) The county surveyor shall estimate the cost of the project and assess the benefits or damages to all affected landowners, each county in which the lake lies, and the department if:

- (1) the petition is a joint petition between the owners of land abutting or within one-fourth (1/4) mile of the shoreline or water line of the lake and the county or the department; or
- (2) the petition has been filed separately or jointly by the department or the county.

(b) If the petition was filed only by the landowners abutting or within one-fourth (1/4) mile of the shoreline or water line of the lake, the county and the department may not be assessed.

[Pre-1995 Recodification Citation: 13-2-18-7 part.]

As added by P.L.1-1995, SEC.19. Amended by P.L.57-2013, SEC.12.

IC 14-26-8-23 Requirements of assessments of benefits or damages

Sec. 23. The assessing of benefits or damages is to be made:

- (1) on each separate tract of land to be affected;
- (2) to easements held by railways or other corporations; and
- (3) to cities, towns, and other public or private corporations;

including any land or water right or easement injuriously or beneficially affected.

[Pre-1995 Recodification Citation: 13-2-18-7 part.]

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

IC 14-26-8-24 Apportionment of costs of improvements

Sec. 24. (a) The cost of the improvement asked for in the petition shall be paid as follows:

(1) If the petition is filed separately by the owners of land abutting upon or within one-fourth (1/4) mile of the shoreline or water line of the lake, proportionately to the benefits received by the owners.

(2) If the petition is filed jointly by the owners of land abutting upon the lake and the department or the commissioners of each county in which the lake lies or separately by the department or the commissioners of each county in which the lake lies, as follows:

(A) Twenty-five percent (25%) of the cost of the improvement shall be paid by the property owners abutting or within one-fourth (1/4) mile of the shoreline or water line of the lake.

(B) Twenty-five percent (25%) of the cost shall be paid by the county.

(C) Fifty percent (50%) of the cost shall be paid by the department.

(b) The county surveyor shall apportion the cost of the project accordingly in the surveyor's report and notices of assessments and damages shall be sent to all affected parties as prescribed in section 25 of this chapter.

(c) If the lake lies in at least two (2) counties, the cost to be paid by each county must be proportionate to the area of the lake that lies in each county. For the purpose of determining the area of the lake that lies in each county, the professional surveyor may use aerial photographs made by the United States Department of Agriculture.

[Pre-1995 Recodification Citation: 13-2-18-8.]

As added by P.L.1-1995, SEC.19. Amended by P.L.57-2013, SEC.13.

IC 14-26-8-25 Surveyor; notice of hearing

Sec. 25. (a) The court shall set a date:

- (1) not less than thirty (30); or
- (2) more than forty (40);

days after the surveyor's preliminary report has been filed for the surveyor's hearing on the report.

(b) The surveyor shall, within five (5) days after the date for the hearing is set, notify by registered mail, return receipt requested, all owners of land abutting upon or within four hundred forty (440) yards of the shoreline or water line of the lake. The return receipts are prima facie evidence of notice. The notice must give a brief description of the following:

- (1) The project.
- (2) The project's location.
- (3) A description of the owners' land that is assessed or damaged, if any.
- (4) The amount of assessment or damages, if any.
- (5) The date and place of the hearing.

(c) If the residence of a landowner cannot be ascertained or if a mailed notice is returned undelivered, the surveyor shall publish notice to all persons in this category by one (1) publication:

(1) in a newspaper of general circulation published and printed in the county in which the lake lies; or

(2) if a paper is not published in the county, in a newspaper in an adjoining county; at least ten (10) days before the date fixed for the hearing.

(d) The mailed and published notices must notify the owners that all remonstrances and claims for compensation or damages must be filed in writing with the clerk on or before the day of the surveyor's hearing.

(e) The clerk shall notify the surveyor of the receipt of remonstrances or claims on or before the day of the surveyor's hearing.

(f) The surveyor shall file the following:

(1) Proof of publication of the published notice in the form of a publisher's affidavit.

(2) Proof of the mailed notice by return receipts.

[Pre-1995 Recodification Citation: 13-2-18-9.]

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

IC 14-26-8-26 Surveyor; hearing; final report

Sec. 26. (a) On the day fixed by the court for the hearing on the report the surveyor shall do the following:

(1) Be present at the place designated in the notice.

(2) Hear all objections made to damages and assessments.

(b) The surveyor may adjourn the hearing as necessary or to any other suitable or available room in the courthouse of the county that is considered necessary until all objections are heard. All persons interested shall take notice of an adjournment without further notice.

(c) All objections to the damages and assessments must be verified and in writing.

(d) After hearing all objections that are offered to the damages and assessments, the surveyor shall confirm or change the damages and assessments as justice requires. If the damages and assessments are changed, the surveyor shall show the changed amount assessed and the date the change was made.

(e) Upon concluding the hearing the surveyor shall make a final report to the court.

[Pre-1995 Recodification Citation: 13-2-18-10.]

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

IC 14-26-8-27 Remonstrance against surveyor's final report; time requirements; contents

Sec. 27. (a) The following entities have ten (10) days from the date the surveyor's final report is filed with the court to remonstrate against the final report:

(1) An owner of land affected by the work as proposed in the petition or in the surveyor's final report.

(2) The commissioners of a county in which the lake lies.

(3) The department.

(b) A remonstrance must be in writing, must be filed with the court, and may be for any of the following causes:

(1) That the report of the surveyor is not according to law.

(2) That the proposed work as reported by the surveyor will not be sufficient to accomplish the purpose set out in the petition.

(3) That the amount of the assessment is exorbitant.

(4) That the amount of the assessment is too much as compared with other land assessed, specifying the other land.

(5) That the amount of the assessment of others is too low, specifying the others.

- (6) That the amount of the damages is inadequate.
- (7) That the owner's land will be damaged and the owner has not been given damages.
- (8) That the owner's land has been assessed for benefits and the owner's land will not be benefited or will be damaged if the proposed work is accomplished.
- (9) That the assessment against a county or the department is greater than the public benefit to be received.
- (10) That the proposed project is not practicable and of public need or utility.

[Pre-1995 Recodification Citation: 13-2-18-11.]

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

IC 14-26-8-28 Remonstrance against surveyor's final report; order to amend or file new report

Sec. 28. If after a hearing the court decides that any of the causes of remonstrance described in section 27 of this chapter is true, the court may do either of the following:

- (1) Direct the surveyor to amend and perfect the report.
- (2) Set aside the report and refer the matter back to the surveyor for a new report.

[Pre-1995 Recodification Citation: 13-2-18-12 part.]

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

IC 14-26-8-29 Remonstrance against surveyor's final report; new report

Sec. 29. (a) In making an order for a new report, the court shall fix the time when the surveyor shall report.

(b) When a new report is made and filed, a person whose land is reported as affected in the report may remonstrate within the same time and for the same causes that are allowed to remonstrate against the first report. However, a second remonstrance may only concern new matters contained in the second or amended report.

[Pre-1995 Recodification Citation: 13-2-18-12 part.]

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

IC 14-26-8-30 Remonstrance against surveyor's final report; trial of facts

Sec. 30. The court shall try all questions of facts arising on a petition, report, or remonstrance without a jury.

[Pre-1995 Recodification Citation: 13-2-18-12 part.]

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

IC 14-26-8-31 Remonstrance against surveyor's final report; modification of assessments

Sec. 31. (a) If a remonstrance is sustained by the court, the court may modify and equalize the assessments, as justice requires, by doing the following:

- (1) Diminishing the assessments on some tracts and increasing the assessments on other tracts.
- (2) Giving or withholding damages.

(b) For purposes of this section each person whose land is:

- (1) reported as affected; or
- (2) stated in the petition as affected;

is considered to be in court by virtue of the notices originally given to the parties on the pendency of the petition.

(c) If:

- (1) the land described in the petition as affected by the proposed work; and
- (2) the surveyor has reported the land as neither benefited nor damaged;

the court may, if the facts and justice warrant, make assessments against the land.

(d) The assessments as changed, modified, equalized, or made are valid.

[Pre-1995 Recodification Citation: 13-2-18-12 part.]

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

IC 14-26-8-32 Remonstrance against surveyor's final report; confirmation of assessments

Sec. 32. If the finding and judgment of the court is against each remonstrance:

- (1) the assessments made by the surveyor shall be confirmed; and
- (2) the order confirming is final and conclusive.

[Pre-1995 Recodification Citation: 13-2-18-12 part.]

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

IC 14-26-8-33 Remonstrance against surveyor's final report; dismissal of proceedings

Sec. 33. If the finding and judgment of the court is in support of a remonstrance, the proceedings shall be dismissed at the cost of the petitioners whose land abuts or lies within four hundred forty (440) yards of the shoreline or water line of the lake.

[Pre-1995 Recodification Citation: 13-2-18-12 part.]

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

IC 14-26-8-34 Approval of assessments where no remonstrance filed

Sec. 34. If after the ten (10) days allowed for remonstrances there is no appeal or remonstrance, the court shall do the following:

- (1) Make an order declaring the proposed work established and approving assessments as made by the surveyor or as equalized and modified as provided in section 31 of this chapter.
- (2) Assign the duty of carrying out the order to the county surveyor.

[Pre-1995 Recodification Citation: 13-2-18-12 part.]

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

IC 14-26-8-35 Appeal from approval and confirmation of assessments

Sec. 35. The order of the court approving and confirming the assessments and declaring the proposed work established is final and conclusive, unless an appeal is taken. An appeal may be taken from the final judgment of the circuit or superior court to the supreme court or court of appeals as in other civil cases.

[Pre-1995 Recodification Citation: 13-2-18-13.]

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

IC 14-26-8-36 Contracts for construction of improvements; notice; bidding

Sec. 36. (a) The county surveyor shall proceed to have the improvement constructed as provided by section 32 or 34 of this chapter. The county surveyor shall keep in the surveyor's office copies of the plans and specifications, which shall be open for the inspection of any landowner interested or any contractor who may be a prospective bidder on the work.

(b) The county surveyor shall give notice in a newspaper of general circulation printed and published in the following:

- (1) Each county in which the lake lies.
- (2) Each county where land assessed as benefited is situated.

(c) The notice must state that on a certain day and date, which may not be less than fifteen (15) days from the date of the publication, the surveyor will do the following:

- (1) Receive sealed bids for the furnishing of all material and labor necessary for the construction of the work.
- (2) Let the contract to the lowest and best bidder or reject all bids and re-advertise for new bids.

(d) The surveyor may:

- (1) let the work as a whole; or

(2) subdivide the work into at least two (2) sections and let the work in separate contracts that will, in the surveyor's best judgment, most speedily and economically accomplish the completion of the work.

[Pre-1995 Recodification Citation: 13-2-18-14.]

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

IC 14-26-8-37 Contractor's bond; requirement

Sec. 37. A person who has successfully bid for the whole or a part of the work shall, when the work is awarded to the person, do the following:

- (1) Enter into a contract with the surveyor to perform the work.
- (2) Give bond that:
 - (A) must be approved by the court;
 - (B) is payable to the state; and
 - (C) is in a proper penalty for the performance of the contract;

that the person will pay all damages occasioned by nonfulfillment of the contract. The damages may be recovered in a court with jurisdiction.

[Pre-1995 Recodification Citation: 13-2-18-15 part.]

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

IC 14-26-8-38 Contractor's bond; default

Sec. 38. If a person who is assessed is damaged by reason of the default and failure of the contractor to complete the work within the limit, the contractor in default is liable on the bond to the person damaged to the full extent of the damages. The damages may be recovered in a court with jurisdiction in a suit or an action on the bond by the state on the relation of the person damaged for the use of the person or party injured.

[Pre-1995 Recodification Citation: 13-2-18-15 part.]

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

IC 14-26-8-39 Contractor's bond; action on bond

Sec. 39. The surveyor may bring suit on the bond in a court with jurisdiction to recover any increased cost, expense, or damage of or to the work because of the failure of the contractor.

[Pre-1995 Recodification Citation: 13-2-18-15 part.]

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

IC 14-26-8-40 Contractor's bond; aggregate liability of surety

Sec. 40. The aggregate liability of the surety on a bond for all liabilities may not exceed the penalty of the bond.

[Pre-1995 Recodification Citation: 13-2-18-15 part.]

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

IC 14-26-8-41 Contracts for construction of improvements; court approval

Sec. 41. A contract may not be let until the court approves the contract.

[Pre-1995 Recodification Citation: 13-2-18-15 part.]

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

IC 14-26-8-42 Contractor's final report

Sec. 42. When the contractor has finished the contractor's work, the surveyor shall make a final report to the court showing that the work has been completed and accepted.

[Pre-1995 Recodification Citation: 13-2-18-15 part.]

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

IC 14-26-8-43 New assessments where no contract let

Sec. 43. (a) If the surveyor is unable to let a contract and construct the proposed improvement for the estimated cost of construction, the surveyor shall report the fact to the court.

(b) The court shall immediately order a new assessment of benefits and damages if requested in writing by at least two-thirds (2/3) of the original petitioners.

(c) If the order for a new assessment is made:

(1) the procedure provided for following the making of the original assessment shall be followed with respect to the new assessment and subsequent actions; and

(2) the landowners have the same right to remonstrate and appeal as is provided for original assessments.

[Pre-1995 Recodification Citation: 13-2-18-16.]

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

IC 14-26-8-44 Payment of costs of improvements

Sec. 44. The costs and expenses of an improvement petitioned for under this chapter shall be out of the county general fund or the general lake improvement fund as described in this chapter, except the part of the cost to be paid by the department. The costs and expenses include the following:

(1) The contract price for the work.

(2) The traveling expenses of the surveyor.

(3) The expenses of the viewers.

(4) Court costs.

(5) Notices.

(6) Advertising.

(7) Attorney's fees.

[Pre-1995 Recodification Citation: 13-2-18-17 part.]

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

IC 14-26-8-45 Surveyor; traveling expenses; compensation; bond

Sec. 45. (a) If the surveyor or the surveyor's deputy uses a car owned by the surveyor or the deputy or a hired conveyance in carrying out the improvement petitioned for under this chapter, the surveyor or deputy may include traveling expenses incident to the work at an amount for mileage at a rate determined by the county fiscal body.

(b) The surveyor and the surveyor's deputy:

(1) are not entitled to receive compensation for services in addition to the statutory salary except for expenses as provided in section 44 of this chapter; and

(2) are not required to give any additional bond other than the official bond.

[Pre-1995 Recodification Citation: 13-2-18-17 part.]

As added by P.L.1-1995, SEC.19. Amended by P.L.10-1997, SEC.19.

IC 14-26-8-46 Viewers; expenses

Sec. 46. The viewers, other than the surveyors, the county commissioners, and the representative of the department, are entitled to the following:

(1) Six dollars (\$6) a day for expenses incurred in viewing the proposed improvement.

(2) An amount for mileage at a rate determined by the county fiscal body.

[Pre-1995 Recodification Citation: 13-2-18-17 part.]

As added by P.L.1-1995, SEC.19. Amended by P.L.10-1997, SEC.20.

IC 14-26-8-47 Attorney's fees

Sec. 47. (a) Except as provided in subsections (b) and (c), the attorney's fees paid may not exceed four percent (4%) of the estimated cost of construction.

(b) If an appeal is taken or other extra proceedings are conducted, the court may allow a reasonable additional amount for the extra legal services actually provided.

(c) If:

- (1) the aggregate cost is less than one thousand five hundred dollars (\$1,500); and
- (2) the petition is filed separately by the owners of land abutting or within one-fourth (1/4) mile of the shoreline or water line of the lake;

the court shall fix a reasonable amount instead of the four percent (4%) for the petitioners' attorney's fees.

[Pre-1995 Recodification Citation: 13-2-18-17 part.]

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

IC 14-26-8-48 Verified bill; partial payment; full payment

Sec. 48. (a) A payment may not be made for work done under this chapter until a verified bill has been:

- (1) presented to the surveyor;
- (2) approved by the surveyor;
- (3) filed with the auditor; and
- (4) allowed by the commissioners.

(b) A partial payment may not be made to a contractor that exceeds seventy-five percent (75%) of the cost of the improvement.

(c) Full payment may not be made until:

- (1) sixty-one (61) days after the completion and acceptance of the work; and
- (2) after the contractor has filed with the surveyor an affidavit that all bills for labor, other service, or materials that have been used in the construction of or incorporated in the work have been paid in full.

[Pre-1995 Recodification Citation: 13-2-18-17 part.]

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

IC 14-26-8-49 General lake improvement funds

Sec. 49. (a) The board of county commissioners of each county may establish a general lake improvement fund. The fund shall be used to pay for the construction of dams and other works to raise, stabilize, or maintain lake levels under this chapter. The fund includes the following:

- (1) Taxes levied or collected for lake improvement purposes.
- (2) The proceeds of bonds issued and sold for lake improvement purposes.
- (3) Assessments for benefits to property under this chapter.
- (4) Other money that is provided by law to be paid into the fund.

(b) If the board of county commissioners considers it inadvisable to establish a general lake improvement fund, payments for projects under this chapter shall be paid into and shall be paid from the county general fund.

[Pre-1995 Recodification Citation: 13-2-18-18 part.]

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

IC 14-26-8-50 Levy of real property tax

Sec. 50. The fiscal body of a county concerned in work authorized in this chapter may, upon request of the board of county commissioners, approve the levy and collection of a tax upon all real property in the county to raise money to carry out this chapter.

[Pre-1995 Recodification Citation: 13-2-18-18 part.]

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

IC 14-26-8-51 County surveyor

Sec. 51. (a) The county surveyor in charge of a project established under this chapter shall, within ten (10) days after letting the contract for construction, carefully compute the entire cost of the improvement, including the following:

- (1) Incidental costs, expenses, and damages.

(2) Attorney's fees as allowed by the court.

(b) The county surveyor shall apportion the costs and expenses to the tracts of land assessed in proportion to the total assessment against the respective parcels of land benefited by the construction of the work. The apportionment to the respective tracts or parcels of land may not exceed the benefits assessed against the tracts or parcels, respectively.

(c) The county surveyor shall certify the assessments, apportionments, and time to make payments to the county auditor. If the improvement affects the landowners in more than one (1) county, the county surveyor shall certify the assessments, apportionments, and time to make payments to the auditor of each other county affected.

[Pre-1995 Recodification Citation: 13-2-18-19 part.]

As added by P.L.1-1995, SEC.19. Amended by P.L.57-2013, SEC.14.

IC 14-26-8-52 Auditor; notice of assessments

Sec. 52. The auditor of each county affected shall give notice by publication in a newspaper published in the county, not less than thirty (30) days before the day for payment of assessments, of the following:

(1) That the assessment sheet has been prepared and placed in the hands of the county treasurer for collection.

(2) The time and manner in which the assessments are required to be paid.

(3) That a person affected who desires to pay the assessment to discharge the person's land from all liability to the assessment on or before the day named in the order may do so.

[Pre-1995 Recodification Citation: 13-2-18-19 part.]

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

IC 14-26-8-53 Auditor; extension of assessments upon duplicate

Sec. 53. (a) The auditor shall then extend the assessments upon a special duplicate:

(1) to be provided for the auditor at the expense of the county;

(2) to be known as the lake duplicate; and

(3) for recording all assessments under this chapter in the county.

(b) Except as provided in subsection (c), in extending the assessments upon the duplicates, the auditor shall, in the first instance, extend the assessments for the full period of payment of all assessments, as fixed by the surveyor.

(c) Assessments of less than twenty-five dollars (\$25) shall be paid within one (1) year.

(d) The auditor shall calculate and add to each successive installment interest at the rate of six percent (6%) per year until the date fixed for payment.

[Pre-1995 Recodification Citation: 13-2-18-19 part.]

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

IC 14-26-8-54 Assessments less than \$25

Sec. 54. (a) The provisions of this chapter permitting the payment of assessments in installments do not apply to assessments of less than twenty-five dollars (\$25).

(b) If:

(1) one (1) landowner owns more than one (1) tract of land; and

(2) an assessment of less than twenty-five dollars (\$25) is made against at least one (1) of the tracts of land;

all assessments less than twenty-five dollars (\$25) shall be paid within one (1) year.

[Pre-1995 Recodification Citation: 13-2-18-19 part.]

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

IC 14-26-8-55 Assessments as liens; collection of assessments

Sec. 55. An assessment constitutes a lien upon the tracts or parcels of land and shall be collected at the same time and in the same manner as taxes are collected. After collection the

assessments shall be deposited in the lake improvement fund or the county general fund.

[Pre-1995 Recodification Citation: 13-2-18-19 part.]

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

IC 14-26-8-56 Nonpayment of assessments; sale of land

Sec. 56. (a) If an assessment, an installment, or a part of an assessment or installment is not paid when due, the failure to pay results in the same penalties as for the nonpayment of taxes. The land shall be placed upon the list of land to be sold at tax sale, and the land shall be sold at tax sale at the same time and in the same manner as provided under IC 6-1.1-24. The same penalties apply and the same rights are acquired upon purchase at these sales as in other tax sales, including the execution and delivery of tax deeds and the rights and remedies provided in cases of property sold at tax sale.

(b) Personal property or real property other than that assessed may not be sold for the failure to pay an assessment or installment.

[Pre-1995 Recodification Citation: 13-2-18-19 part.]

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

IC 14-26-8-57 Nonpayment of assessments; public land

Sec. 57. (a) If:

- (1) a municipal corporation or other public corporation fails to pay an assessment for benefits or for property the municipal or other public corporation owns; and
- (2) there is not a provision for selling the property at tax sale;

the municipal or other public corporation is considered to have elected to pay in installments at the same time and in the same manner as provided in other cases. The assessments shall be included in the respective lists, and the municipal or other public corporation shall pay the installments to the county treasurer in the same manner as provided in other cases.

(b) A municipal or other public corporation that fails to pay an installment is liable for the nonpayment. The auditor shall enforce collection by bringing an action in the name of the state of Indiana, on the relation of the county treasurer in behalf of the county for the installment that is due and unpaid, together with penalties. The recovery is without relief from valuation and appraisal laws and includes reasonable attorney's fees for collecting the installment.

[Pre-1995 Recodification Citation: 13-2-18-19 part.]

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

IC 14-26-8-58 Assessments as liens; priority; payment; cancellation

Sec. 58. (a) The amount of an assessment as made or approved and confirmed by the court is a lien upon the land assessed from the time the assessment is approved and confirmed. The lien follows all other improvement liens upon the affected real property in order of priority as to date of attachment.

(b) The county surveyor charged with the construction of the work shall keep in the county surveyor's office a complete copy of the assessments that may, upon demand, be examined by any interested person.

(c) An owner of land assessed for benefits who desires to transfer the property free and clear of the lien for the assessment may deposit with the county treasurer the full amount of the benefits assessed against the tract or parcel of land. When the professional surveyor has made the final computation to the county auditor, the treasurer shall pay to the person paying the assessment the surplus, if any, over the actual assessment. Whenever the owner of a tract or parcel of land has paid to the treasurer and the treasurer's books show the payment, the lien for the assessment on the tract or parcel of land is automatically canceled.

[Pre-1995 Recodification Citation: 13-2-18-20.]

As added by P.L.1-1995, SEC.19. Amended by P.L.57-2013, SEC.15.

IC 14-26-8-59 Lien for labor and materials

Sec. 59. (a) Each subcontractor, laborer, and other person who performs labor or another service or furnishes material that is used in the construction of or incorporated in work under this chapter, including board for laborers and all fuel, oil, and grease used in the operation of machinery used in the construction work, has a lien upon the fund raised for the payment of the work. The lien attaches if written notice is filed with the surveyor:

- (1) within sixty (60) days of furnishing the labor or material; and
- (2) that states the amount due and describes the article furnished.

(b) After the receipt of notice under subsection (a), the surveyor shall withhold payment to the contractor for the work in an amount sufficient to satisfy the lien until the amount is adjusted and paid.

(c) If a contractor and a person claiming a lien disagree on the amount or validity of the lien, the court ordering the construction of the work shall, upon motion of the surveyor, contractor, or person claiming the lien, determine the amount to be paid. The surveyor may pay the amount determined, and on payment the surveyor is released from all liability concerning the payment.

(d) If the surveyor fails to comply with this section, the surveyor is liable on the surveyor's bond for the amount improperly paid over to the contractor.

[Pre-1995 Recodification Citation: 13-2-18-21.]

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

IC 14-26-8-60 Liability of surveyor on bond

Sec. 60. (a) If a surveyor fails to perform any work required of the surveyor by this chapter, after ten (10) days written notice to the surveyor by any interested person the surveyor is liable with the surveyor's sureties on the surveyor's official bond:

- (1) for all damages caused by the failure to perform the duty, including reasonable attorney's fees; and
- (2) to the person damaged.

(b) An action on the bond of the surveyor for failure to perform a duty must be brought in the name of the state on the relation of:

- (1) the county auditor; or
- (2) the person injured.

[Pre-1995 Recodification Citation: 13-2-18-22.]

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

IC 14-26-8-61 Petitions filed under IC 36-9-27; duties of viewers and county surveyors

Sec. 61. (a) If a petition is filed under IC 36-9-27 for the construction, reconstruction, alteration, repair, or recleaning of a drainage ditch that extends into or within one hundred sixty (160) rods of a freshwater lake and has a bottom depth lower than the average normal water level of the lake, the petition may ask that:

- (1) the owners of land abutting or within four hundred forty (440) yards of the shoreline or water line of each lake likely to be affected;
- (2) each county in which the lake lies; and
- (3) the department;

participate in the cost of constructing a dam or structure, diversion ditches, pumping stations, or other appurtenances necessary to protect and preserve the water level of the lake.

(b) If a request is made in a petition under subsection (a), the court having jurisdiction of the drainage proceedings shall appoint additional viewers as prescribed in this chapter to represent the county and the department. The viewers shall file a separate report on whether a dam, other structure, diversion ditch, pumping station, or other appurtenance is practicable and of public need.

(c) If the report of the viewers is in the affirmative, the county surveyor for the drainage

project shall include in the report plans and specifications for the improvement and apportion assessments and damages in the same manner as prescribed in this chapter governing raising or maintaining lake levels.

[Pre-1995 Recodification Citation: 13-2-18-23(a).]

As added by P.L.1-1995, SEC.19. Amended by P.L.57-2013, SEC.16.

IC 14-26-8-62 Petition filed under IC 36-9-27; court proceedings

Sec. 62. (a) If a petition is filed under section 61 of this chapter for the construction, reconstruction, alteration, repair, or recleaning of a drainage ditch that extends to or within one hundred sixty (160) rods of a freshwater lake and has a bottom depth lower than the average normal water level of the lake and the petition does not request the construction of a dam, other structure, diversion ditch, pumping station, or other appurtenance to protect and preserve the water level of each lake likely to be affected:

- (1) twenty percent (20%) of the owners of land abutting or within four hundred forty (440) yards of the shoreline or water line of the lake;
- (2) a county in which the lake lies; or
- (3) the department;

may file a petition addressed to the court having jurisdiction any time before the court order granting the petition for the drainage project to include a dam, other structure, diversion ditch, pumping station, or other appurtenance necessary to protect and preserve the water level of the lake.

(b) Upon receipt of a petition filed under subsection (a), the court shall set a date for a hearing. On that date the court shall hear all evidence submitted regarding the practicability and public need of a dam, other structure, diversion ditch, pumping station, or other appurtenance to protect and preserve the water level of each lake likely to be affected.

(c) If the court rules that the additional construction is necessary, the same procedure shall be followed for inclusion as if the additional construction were included in the petition for the drainage work.

(d) If the court rules adversely on the practicability or public need of a dam, other structure, diversion ditch, pumping station, or other appurtenance, an appeal may be taken from the final judgment of the circuit or superior court to the supreme court or the court of appeals within thirty (30) days.

[Pre-1995 Recodification Citation: 13-2-18-23(b), (c).]

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

IC 14-26-8-63 Petition filed under section 62 of this chapter; additional assessments

Sec. 63. If:

- (1) the construction of a dam, other structure, diversion ditch, pumping station, or other appurtenance in connection with the preservation or stabilization of a lake is petitioned for under section 62 of this chapter in connection with a drainage proceeding; and
- (2) in the county surveyor's opinion, the improvement to the lake will:
 - (A) be beneficial to any person affected by the drainage project; or
 - (B) in any way provide better drainage than if the water level of the lake is left uncontrolled or undisturbed;

the county surveyor for the drainage project may assess a part of the cost of the improvement that would normally be paid by those persons who own land abutting or within four hundred forty (440) yards of the shoreline or water line of the lake to any person affected by the drainage project.

[Pre-1995 Recodification Citation: 13-2-18-23(d).]

As added by P.L.1-1995, SEC.19. Amended by P.L.57-2013, SEC.17.

IC 14-26-8-64 Elevation of lake levels

Sec. 64. (a) The county surveyor shall do the following:

(1) Certify the elevation of a lake level established under this chapter, including the bench mark used for the point of beginning.

(2) Record the elevation of the lake level and the bench mark in the office of the county recorder in each county in which the lake lies.

(b) The elevation of a lake level established under this chapter must refer to at least one (1) of the following:

(1) The United States Coast and Geodetic Survey, first, second, and third order levels.

(2) The United States Geological Survey, third order levels.

[Pre-1995 Recodification Citation: 13-2-18-25.]

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