



Reprinted
February 27, 2018

ENGROSSED HOUSE BILL No. 1089

DIGEST OF HB 1089 (Updated February 26, 2018 3:21 pm - DI 129)

Citations Affected: IC 14-8; IC 14-30.

Synopsis: St. Joseph River basin commission. Amends the law concerning the St. Joseph River basin commission (commission). Removes an individual appointed by the governor who is a member of a soil and water conservation district from the list of individuals who serve on the commission. Authorizes the county executive from each participating county to appoint either of the following as members to the commission: (1) From each participating county, the county surveyor or the county surveyor's designee. (2) Subject to certain conditions, the executive director or chairman of a soil and water conservation district. Authorizes a political subdivision in a participating county to enter into a cooperative agreement with the commission and at least one other legal entity to authorize the commission to develop a plan to improve water quality and mitigate flooding. Authorizes the commission: (1) to enter into contracts to implement a cooperative agreement; (2) to adopt rules under which the commission may require that increased water runoff resulting from new construction be impounded on the construction site; (3) to acquire and dispose of conservation easements and real or personal property; and
(Continued next page)

Effective: July 1, 2018.

Ober, Zent, Kersey

(SENATE SPONSORS — GLICK, DORIOT)

January 3, 2018, read first time and referred to Committee on Natural Resources.
January 30, 2018, amended, reported — Do Pass.
February 1, 2018, read second time, ordered engrossed. Engrossed.
February 5, 2018, read third time, passed. Yeas 71, nays 21.

SENATE ACTION

February 7, 2018, read first time and referred to Committee on Natural Resources.
February 19, 2018, amended, reported favorably — Do Pass.
February 26, 2018, read second time, amended, ordered engrossed.

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(4) to adopt rules restricting construction within the 100 year flood plains of the basin. Requires the commission to schedule a public meeting in each participating county regarding a plan to improve water quality and mitigate flooding. Specifies that the commission must include certain information with respect to the content of the notice of the public meeting. Authorizes the commission to employ staff. Provides that the commission, the commission's executive board, or employees or authorized representatives of the commission may enter land within the 100 year flood plain of any watercourse in the basin to investigate suspected violations of the flood control laws. Requires written notice to an owner of the affected land 21 days before an entry on the land and requires the commission to hold a hearing on the necessity of the entry if an owner of the affected land appeals to the commission.



Reprinted
February 27, 2018

Second Regular Session of the 120th General Assembly (2018)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2017 Regular Session of the General Assembly.

ENGROSSED HOUSE BILL No. 1089

A BILL FOR AN ACT to amend the Indiana Code concerning natural resources.

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

1 SECTION 1. IC 14-8-2-208, AS AMENDED BY P.L.106-2012,
2 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2018]: Sec. 208. "Political subdivision" has the following
4 meaning:

- 5 (1) For purposes of IC 14-12-1, the meaning set forth in
6 IC 14-12-1-2.
7 (2) For purposes of IC 14-13-2 **and IC 14-30-3**, the meaning set
8 forth in IC 36-1-2-13.
9 (3) For purposes of IC 14-32-8, the meaning set forth in
10 IC 14-32-8-2.

11 SECTION 2. IC 14-8-2-304 IS AMENDED TO READ AS
12 FOLLOWS [EFFECTIVE JULY 1, 2018]: Sec. 304. (a) "Watercourse",
13 for purposes of IC 14-25 through ~~IC 14-29~~, **IC 14-30**, means a channel
14 that:

- 15 (1) has defined banks;
16 (2) is cut by erosion of running water through turf, soil, rock, or
17 other material; and

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- 1 (3) has a bottom over which water flows for substantial periods of
 2 the year.
- 3 (b) The term includes the following:
- 4 (1) The upstream and downstream parts of a watercourse that is
 5 lost in a swamp or a lake if the watercourse emerges from the
 6 swamp or lake in a well defined channel.
- 7 (2) A watercourse that has been improved by confining the
 8 watercourse in an artificial channel.
- 9 SECTION 3. IC 14-30-3-3.5 IS ADDED TO THE INDIANA CODE
 10 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 11 1, 2018]: **Sec. 3.5. As used in this chapter, "plan" refers to a plan
 12 described in section 26(1) of this chapter.**
- 13 SECTION 4. IC 14-30-3-8 IS AMENDED TO READ AS
 14 FOLLOWS [EFFECTIVE JULY 1, 2018]: Sec. 8. The commission
 15 consists of the following individuals:
- 16 (1) From each participating county the following:
- 17 (A) The executive of each second class city or the executive's
 18 designee.
- 19 (B) If the county does not have a second class city, the
 20 executive of the municipality with the largest population or the
 21 executive's designee.
- 22 (2) A member of the county executive or the county executive's
 23 designee from each participating county.
- 24 (3) The county health officer or the health officer's designee from
 25 each participating county.
- 26 ~~(4) An individual appointed by the governor who is a member of
 27 the board of supervisors of a soil and water conservation district
 28 that contains a part of the basin within all or part of the district's
 29 boundaries.~~
- 30 **(4) A member appointed by the county executive from each
 31 participating county. A member appointed under this
 32 subdivision must be either of the following:**
- 33 **(A) From each participating county, the county surveyor
 34 or the county surveyor's designee.**
- 35 **(B) The executive director or, if a county does not have an
 36 executive director, the chairman of a soil and water
 37 conservation district that:**
- 38 **(i) is subject to IC 14-32;**
- 39 **(ii) includes territory in a participating county; and**
- 40 **(iii) includes territory in the basin.**
- 41 (5) The director or the director's designee.
- 42 SECTION 5. IC 14-30-3-15 IS AMENDED TO READ AS



1 FOLLOWS [EFFECTIVE JULY 1, 2018]: Sec. 15. (a) ~~A majority of all~~
 2 ~~the~~ **Fourteen (14)** members of the commission ~~constitutes~~ **constitute**
 3 a quorum. **However, the commission may not take action unless a**
 4 **quorum is present and at least one (1) member from each**
 5 **participating county is present among the members establishing a**
 6 **quorum.**

7 (b) An affirmative vote of a majority of the entire membership is
 8 required for the commission to take action.

9 SECTION 6. IC 14-30-3-19 IS AMENDED TO READ AS
 10 FOLLOWS [EFFECTIVE JULY 1, 2018]: Sec. 19. The commission
 11 may do the following:

12 (1) Provide a forum for the discussion, study, and evaluation of
 13 water resource issues of common concern in the basin.

14 (2) Facilitate and foster cooperative planning and coordinated
 15 management of the basin's water and related land resources.

16 (3) Develop positions on major water resource issues and serve as
 17 an advocate of the basin's interests before Congress and federal,
 18 state, and local governmental agencies.

19 (4) Develop plans **and tools** to improve water quality **or mitigate**
 20 **flooding** in the basin.

21 (5) Publicize, advertise, and distribute reports on the
 22 commission's purposes, objectives, studies, and findings.

23 (6) When requested, make recommendations in matters related to
 24 the commission's functions and objectives to political
 25 subdivisions in the basin and to other public and private agencies.

26 (7) When requested, act as a coordinating agency for programs
 27 and activities of other public and private agencies that are related
 28 to the commission's objectives.

29 **(8) Employ staff.**

30 **(9) Enter into contracts for the purposes of this chapter.**

31 **(10) Exercise the powers of a political subdivision specified in**
 32 **a cooperative agreement described in section 26 of this**
 33 **chapter.**

34 SECTION 7. IC 14-30-3-26 IS ADDED TO THE INDIANA CODE
 35 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 36 1, 2018]: Sec. 26. **A political subdivision in a participating county**
 37 **may under IC 36-1-7 enter into a cooperative agreement with the**
 38 **commission and at least one (1) other legal entity to authorize the**
 39 **commission to:**

40 **(1) develop a plan to improve water quality or mitigate**
 41 **flooding in the part of the basin that is described in the**
 42 **cooperative agreement;**



1 **(2) exercise any of the other powers of the political subdivision**
 2 **to regulate watercourses in the basin; or**

3 **(3) develop and promote good soil and water conservation**
 4 **practices and procedures.**

5 SECTION 8. IC 14-30-3-27 IS ADDED TO THE INDIANA CODE
 6 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 7 1, 2018]: **Sec. 27. In developing a plan to improve water quality or**
 8 **mitigate flooding in the part of the basin described in a cooperative**
 9 **agreement entered into under section 26 of this chapter, the**
 10 **commission shall determine the best method and manner, giving**
 11 **consideration to the following:**

12 **(1) The increase infiltration method.**

13 **(2) The channel improvement method.**

14 **(3) The wetland restoration method.**

15 **(4) Flood plain regulation.**

16 **(5) All nonstructural methods.**

17 SECTION 9. IC 14-30-3-28 IS ADDED TO THE INDIANA CODE
 18 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 19 1, 2018]: **Sec. 28. (a) The commission shall schedule a public**
 20 **meeting in accordance with IC 5-14-1.5 in each participating**
 21 **county to gain input regarding the development of the plan before**
 22 **the plan is implemented in accordance with this chapter.**

23 **(b) The commission shall do the following:**

24 **(1) At least ten (10) days before the public meeting in each**
 25 **participating county, post a copy of the proposed plan on the**
 26 **commission's Internet web site or the Internet web site of the**
 27 **participating county (if the county maintains an Internet web**
 28 **site).**

29 **(2) Publish notice in accordance with IC 5-3-1 of the public**
 30 **meeting at least ten (10) days before the public meeting in**
 31 **each participating county.**

32 **(3) Include the following information in the notices described**
 33 **in subdivisions (1) and (2):**

34 **(A) The date, time, and place of the meeting in each**
 35 **participating county.**

36 **(B) A synopsis of the subject matter of the meeting.**

37 **(C) How an individual may obtain a copy of the proposed**
 38 **plan from the commission.**

39 **(D) That the public is encouraged to make comments at the**
 40 **meeting.**

41 **(c) At the meeting, the commission shall allow the public to be**
 42 **heard on the proposed plan.**



1 SECTION 10. IC 14-30-3-29 IS ADDED TO THE INDIANA
 2 CODE AS A NEW SECTION TO READ AS FOLLOWS
 3 [EFFECTIVE JULY 1, 2018]: **Sec. 29. Before a plan is implemented**
 4 **by a political subdivision, the plan must be approved by the state**
 5 **in accordance with IC 14-25 through IC 14-29.**

6 SECTION 11. IC 14-30-3-30 IS ADDED TO THE INDIANA
 7 CODE AS A NEW SECTION TO READ AS FOLLOWS
 8 [EFFECTIVE JULY 1, 2018]: **Sec. 30. The commission may adopt**
 9 **rules to do the following:**

10 (1) **Require that increased water runoff resulting from new**
 11 **construction be impounded on the construction site.**

12 (2) **Permit the requirement of onsite water impoundment**
 13 **under subdivision (1) to be waived upon payment of a**
 14 **reasonable fee by the developer of the new construction.**

15 SECTION 12. IC 14-30-3-31 IS ADDED TO THE INDIANA
 16 CODE AS A NEW SECTION TO READ AS FOLLOWS
 17 [EFFECTIVE JULY 1, 2018]: **Sec. 31. (a) For the purposes of this**
 18 **chapter, the commission may do the following:**

19 (1) **Acquire by grant, gift, purchase, or devise, and dispose of,**
 20 **conservation easements under IC 32-23-5 in land within the**
 21 **one hundred (100) year flood plains and the wetlands in the**
 22 **basin.**

23 (2) **Acquire, by grant, gift, purchase, or devise, improvements**
 24 **within the one hundred (100) year flood plains of the basin for**
 25 **the purpose of removing those improvements.**

26 (3) **Adopt rules that restrict construction within the one**
 27 **hundred (100) year flood plains of the basin.**

28 (4) **Acquire, dispose of, hold, use, improve, maintain, operate,**
 29 **own, manage, or lease real or personal property by grant, gift,**
 30 **purchase, or devise.**

31 (b) **The commission may exercise the powers granted by this**
 32 **section as follows:**

33 (1) **For purposes of IC 32-23-5.**

34 (2) **To contribute to the following:**

35 (A) **Flood mitigation.**

36 (B) **Flood damage reduction.**

37 (C) **Improvements in water quality.**

38 (D) **Soil conservation.**

39 SECTION 13. IC 14-30-3-32 IS ADDED TO THE INDIANA
 40 CODE AS A NEW SECTION TO READ AS FOLLOWS
 41 [EFFECTIVE JULY 1, 2018]: **Sec. 32. (a) The commission, the**
 42 **executive board, or employees or authorized representatives of the**



1 commission acting under this chapter may:

2 (1) enter the land lying within the one hundred (100) year
3 flood plain of any watercourse in the basin; and

4 (2) enter land lying outside the one hundred (100) year flood
5 plain to gain access to land lying within the one hundred (100)
6 year flood plain in the basin;

7 if necessary to investigate, examine, or survey the land or
8 investigate suspected violations of the Indiana flood control laws.

9 (b) The commission must give twenty-one (21) days written
10 notice to:

11 (1) an owner of the affected land;

12 (2) a contract purchaser of the affected land; or

13 (3) if the land is municipal property (as described in
14 IC 6-1.1-10-5(a)), the executive of the municipality;

15 before exercising the right to enter land under this section. The
16 notice must state the purpose of the entry and that there is a right
17 of appeal under this section.

18 (c) A person described in subsection (b)(1) through (b)(3) may,
19 within the twenty-one (21) day notice period required by
20 subsection (b), appeal the proposed entry under subsection (a) to
21 the commission on the grounds that the proposed entry is not
22 necessary. If a person appeals under this subsection, the
23 commission shall hold a hearing on the necessity of the entry before
24 the right of entry is exercised.

25 (d) A person entering land under this section must use due care
26 to avoid damage to crops or to fences, buildings, and other
27 structures.

28 (e) Neither the commission, the executive board, nor employees
29 or authorized representatives of the commission acting under this
30 chapter commits criminal trespass under IC 35-43-2-2 by entering
31 land described in subsection (a) for a purpose set forth in
32 subsection (a).



COMMITTEE REPORT

Mr. Speaker: Your Committee on Natural Resources, to which was referred House Bill 1089, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 2, line 12, delete "to control flooding that is".

Page 2, delete lines 13 through 31.

Page 2, line 42, after "plans" insert "**and tools**".

Page 2, line 42, after "quality" insert "**or mitigate flooding**".

Page 3, between lines 8 and 9, begin a new line block indented and insert:

"(8) Employ staff."

Page 3, line 9, delete "(8)" and insert "(9)".

Page 3, line 9, delete "to implement a cooperative agreement".

Page 3, line 10, delete "described in section 26" and insert "**for the purposes**".

Page 3, line 11, delete "(9)" and insert "(10)".

Page 3, line 20, after "to" insert "**improve water quality or**".

Page 3, line 28, after "to" insert "**improve water quality or**".

Page 3, line 31, delete "manner of establishing flood control," and insert "**manner,**".

Page 3, line 33, delete "reservoir" and insert "**increase infiltration**".

Page 3, line 35, delete "levee" and insert "**wetland restoration**".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1089 as introduced.)

EBERHART

Committee Vote: yeas 9, nays 0.

COMMITTEE REPORT

Madam President: The Senate Committee on Natural Resources, to which was referred House Bill No. 1089, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 3, delete lines 21 through 24, begin a new paragraph and insert:

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"SECTION 7. IC 14-30-3-28 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2018]: **Sec. 28. (a) The commission shall schedule a public meeting in accordance with IC 5-14-1.5 in each participating county to gain input regarding the development of the plan before the plan is implemented in accordance with this chapter.**

(b) The commission shall do the following:

(1) At least ten (10) days before the public meeting in each participating county, post a copy of the proposed plan on the commission's Internet web site or the Internet web site of the participating county (if the county maintains an Internet web site).

(2) Publish notice in accordance with IC 5-3-1 of the public meeting at least ten (10) days before the public meeting in each participating county.

(3) Include the following information in the notices described in subdivisions (1) and (2):

(A) The date, time, and place of the meeting in each participating county.

(B) A synopsis of the subject matter of the meeting.

(C) How an individual may obtain a copy of the proposed plan from the commission.

(D) That the public is encouraged to make comments at the meeting.

(c) At the meeting, the commission shall allow the public to be heard on the proposed plan."

and when so amended that said bill do pass.

(Reference is to HB 1089 as printed January 30, 2018.)

GLICK, Chairperson

Committee Vote: Yeas 7, Nays 2.



SENATE MOTION

Madam President: I move that Engrossed House Bill 1089 be amended to read as follows:

Page 2, between lines 12 and 13, begin a new paragraph and insert: "SECTION 4. IC 14-30-3-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2018]: Sec. 8. The commission consists of the following individuals:

- (1) From each participating county the following:
 - (A) The executive of each second class city or the executive's designee.
 - (B) If the county does not have a second class city, the executive of the municipality with the largest population or the executive's designee.
- (2) A member of the county executive or the county executive's designee from each participating county.
- (3) The county health officer or the health officer's designee from each participating county.
- (4) ~~An individual appointed by the governor who is a member of the board of supervisors of a soil and water conservation district that contains a part of the basin within all or part of the district's boundaries.~~
 - (4) **A member appointed by the county executive from each participating county. A member appointed under this subdivision must be either of the following:**
 - (A) **From each participating county, the county surveyor or the county surveyor's designee.**
 - (B) **The executive director or, if a county does not have an executive director, the chairman of a soil and water conservation district that:**
 - (i) **is subject to IC 14-32;**
 - (ii) **includes territory in a participating county; and**
 - (iii) **includes territory in the basin.**
- (5) The director or the director's designee.

SECTION 5. IC 14-30-3-15 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2018]: Sec. 15. (a) ~~A majority of all the~~ **Fourteen (14) members of the commission constitutes constitute** a quorum. **However, the commission may not take action unless a quorum is present and at least one (1) member from each participating county is present among the members establishing a quorum.**

(b) An affirmative vote of a majority of the entire membership is required for the commission to take action."

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Page 3, line 2, delete "control" and insert "**mitigate**".
Page 3, line 12, delete "control" and insert "**mitigate**".
Page 4, line 39, delete "control." and insert "**mitigation.**".
Renumber all SECTIONS consecutively.

(Reference is to EHB 1089 as printed February 20, 2018.)

GLICK

