



February 21, 2020

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## ENGROSSED HOUSE BILL No. 1090

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DIGEST OF HB 1090 (Updated February 20, 2020 10:25 am - DI 87)

**Citations Affected:** IC 23-14.

**Synopsis:** Assumption of care of cemeteries. Provides that a township or a county may assume maintenance of a cemetery for which it would otherwise not be responsible. Requires a property owner that has a cemetery located on the owner's property to make a reasonable effort to maintain the cemetery. Provides that a township or county that assumes responsibility for maintaining a cemetery may seek reimbursement from the property owner for the cost of maintenance. Provides that a property owner commits a Class C infraction if the property owner fails to maintain the cemetery after the township or county provides two written notices.

**Effective:** July 1, 2020.

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### Cook, Bacon, Davisson, Schaibley

(SENATE SPONSOR — KOCH)

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January 7, 2020, read first time and referred to Committee on Local Government.  
January 16, 2020, amended, reported — Do Pass.  
January 21, 2020, read second time, amended, ordered engrossed.  
January 22, 2020, engrossed.  
January 27, 2020, read third time, passed. Yeas 63, nays 29.

SENATE ACTION

February 5, 2020, read first time and referred to Committee on Local Government.  
February 20, 2020, amended, reported favorably — Do Pass.

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February 21, 2020

Second Regular Session of the 121st General Assembly (2020)

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 2019 Regular Session of the General Assembly.

## ENGROSSED HOUSE BILL No. 1090

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A BILL FOR AN ACT to amend the Indiana Code concerning business and other associations.

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

- 1 SECTION 1. IC 23-14-67-1, AS AMENDED BY P.L.42-2018,  
2 SECTION 27, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2020]: Sec. 1. (a) This chapter applies to a cemetery that:  
4 (1) is without funds or sources of funds for reasonable  
5 maintenance;  
6 (2) has suffered neglect and deterioration;  
7 (3) may be the burial grounds for an Indiana pioneer leader or  
8 veteran of an American war, including the Revolutionary War;  
9 and  
10 (4) either:  
11 (A) was established before 1875; or  
12 (B) is a burial ground for a veteran of the Civil War.  
13 (b) A county cemetery commission shall determine if a cemetery is  
14 a burial ground for a veteran of the Civil War under subsection  
15 (a)(4)(B) based on evidence presented to the county cemetery  
16 commission from any of the following:  
17 (1) The Indiana historical bureau established by IC 4-23-7.2-2.

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- 1 (2) The Indiana historical society established under IC 23-6-3.  
 2 (3) A historical society (as defined in IC 36-10-13-3).  
 3 (4) ~~The~~ Indiana Landmarks.  
 4 (5) The division of historic preservation and archeology of the  
 5 department of natural resources.  
 6 (6) The Indiana archives and records administration under  
 7 IC 5-15-5.1-5.

8 **(c) A county may also assume responsibility for the maintenance**  
 9 **of a cemetery under IC 23-14-78.**

10 SECTION 2. IC 23-14-68-1, AS AMENDED BY P.L.14-2018,  
 11 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 12 JULY 1, 2020]: Sec. 1. (a) Except as provided in ~~subsection (b)~~  
 13 **subsections (b) and (d)**, this chapter applies to each cemetery that:

- 14 (1) is without funds for maintenance;  
 15 (2) was in existence on February 28, 1939; and  
 16 (3) is operated by a nonprofit organization or is not managed by  
 17 any viable organization.

18 (b) Section 4.5 of this chapter applies to a cemetery that is operated  
 19 by a nonprofit organization.

20 (c) **Except for a cemetery for which a township assumes**  
 21 **responsibility under subsection (d)**, this chapter does not apply to a  
 22 cemetery located on land on which property taxes are assessed and paid  
 23 under IC 6-1.1-4.

24 **(d) A township may assume responsibility for the maintenance**  
 25 **of a cemetery under IC 23-14-78.**

26 SECTION 3. IC 23-14-78 IS ADDED TO THE INDIANA CODE  
 27 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
 28 JULY 1, 2020]:

29 **Chapter 78. Assumption of Care of Certain Cemeteries**

30 **Sec. 1. This chapter applies to private cemeteries that are not**  
 31 **owned or controlled by a cemetery corporation, church,**  
 32 **association, or organization.**

33 **Sec. 2. As used in this chapter, "cemetery" means land in which**  
 34 **human remains are interred, entombed, or inurned. The term does**  
 35 **not include a cemetery that is subject to IC 23-14-33 through**  
 36 **IC 23-14-76.**

37 **Sec. 3. As used in this chapter, "property owner" means the**  
 38 **owner of record of a parcel of real property that contains a**  
 39 **cemetery to which this chapter applies.**

40 **Sec. 4. (a) A county or a township may agree to maintain a**  
 41 **cemetery to which this chapter applies. If a county or a township**  
 42 **agrees to maintain a cemetery to which this chapter applies, it shall**



1 maintain the cemetery as described in IC 23-14-68-3. A county or  
 2 a township that assumes the maintenance responsibilities for a  
 3 cemetery under this section may seek reimbursement from the  
 4 property owner for the costs of maintaining the cemetery.

5 (b) Prior to a county or township assuming the maintenance  
 6 responsibilities for a cemetery under this section, a property owner  
 7 must do the following:

8 (1) Employ a professional surveyor to conduct a survey of the  
 9 property on which the cemetery is located.

10 (2) Convey to the county or township, without consideration,  
 11 an easement or fee simple title to the portion of the property  
 12 on which the cemetery is located.

13 (3) If the portion of the property on which the cemetery is  
 14 located is not accessible by a public road, convey to the  
 15 township or county, without consideration, an easement for  
 16 access to the cemetery.

17 (c) A property owner who transfers the maintenance  
 18 responsibilities for a cemetery under this section may not file an  
 19 application for the property to receive the cemetery tax assessment  
 20 rate under IC 6-1.1-6.8.

21 (d) A property owner must make a reasonable effort to maintain  
 22 a cemetery on the property owner's property. For purposes of this  
 23 subsection, a reasonable effort to maintain a cemetery means the  
 24 maintenance responsibilities described in IC 23-14-68-3. However,  
 25 a property owner is not required to construct a fence where there  
 26 is not one unless the township or the county provides the supplies,  
 27 labor, and other expenses for the construction.

28 (e) A property owner who fails to perform the maintenance  
 29 responsibilities required under subsection (d) commits a Class C  
 30 infraction if:

31 (1) the township or the county provides two (2) written notices  
 32 to the property owner, at the property owner's address of  
 33 record, stating that the property owner is not maintaining the  
 34 cemetery as required and may be subject to a Class C  
 35 infraction; and

36 (2) the property owner fails to maintain the cemetery as  
 37 required by this chapter within thirty (30) days after the  
 38 second notice provided under subdivision (1).

39 **Sec. 5. Nothing in this chapter allows a property owner to sell or**  
 40 **furnish plots (as defined in IC 23-14-33-25).**



## COMMITTEE REPORT

Mr. Speaker: Your Committee on Local Government, to which was referred House Bill 1090, 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, delete lines 12 through 13.

Page 2, line 14, delete "Sec. 6." and insert "**Sec. 5.**".

Page 2, line 21, delete "Sec. 7." and insert "**Sec. 6.**".

and when so amended that said bill do pass.

(Reference is to HB 1090 as introduced.)

ZENT

Committee Vote: yeas 12, nays 1.

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 HOUSE MOTION

Mr. Speaker: I move that House Bill 1090 be amended to read as follows:

Page 1, delete lines 1 through 7, begin a new paragraph and insert: "SECTION 1. IC 23-14-67-1, AS AMENDED BY P.L.42-2018, SECTION 27, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 1. (a) This chapter applies to a cemetery that:

- (1) is without funds or sources of funds for reasonable maintenance;
- (2) has suffered neglect and deterioration;
- (3) may be the burial grounds for an Indiana pioneer leader or veteran of an American war, including the Revolutionary War; and
- (4) either:
  - (A) was established before 1875; or
  - (B) is a burial ground for a veteran of the Civil War.

(b) A county cemetery commission shall determine if a cemetery is a burial ground for a veteran of the Civil War under subsection (a)(4)(B) based on evidence presented to the county cemetery commission from any of the following:

- (1) The Indiana historical bureau established by IC 4-23-7.2-2.
- (2) The Indiana historical society established under IC 23-6-3.
- (3) A historical society (as defined in IC 36-10-13-3).

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(4) ~~The~~ Indiana Landmarks.

(5) The division of historic preservation and archeology of the department of natural resources.

(6) The Indiana archives and records administration under IC 5-15-5.1-5.

**(c) A county may also assume responsibility for the maintenance of a cemetery under IC 23-14-78.**

SECTION 2. IC 23-14-68-1, AS AMENDED BY P.L.14-2018, SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2020]: Sec. 1. (a) Except as provided in ~~subsection (b)~~ **subsections (b) and (d)**, this chapter applies to each cemetery that:

- (1) is without funds for maintenance;
- (2) was in existence on February 28, 1939; and
- (3) is operated by a nonprofit organization or is not managed by any viable organization.

(b) Section 4.5 of this chapter applies to a cemetery that is operated by a nonprofit organization.

(c) **Except for a cemetery for which a township assumes responsibility under subsection (d)**, this chapter does not apply to a cemetery located on land on which property taxes are assessed and paid under IC 6-1.1-4.

**(d) A township may assume responsibility for the maintenance of a cemetery under IC 23-14-78."**

Page 1, line 11, delete "Maintenance of Cemeteries on Private Property" and insert "**Assumption of Care of Certain Cemeteries**".

Page 1, delete lines 12 through 13, begin a new paragraph and insert:

**"Sec. 1. This chapter does not apply to those cemeteries owned or required to be maintained by:**

- (1) a person that operates and conducts the business of a cemetery;**
- (2) a city or town under IC 23-14-65;**
- (3) a county under IC 23-14-67; or**
- (4) a township under IC 23-14-68."**

Page 2, delete lines 1 through 18, begin a new paragraph and insert:

**"Sec. 3. As used in this chapter, "property owner" means the owner of record of a parcel of real property that contains a cemetery to which this chapter applies.**

**Sec. 4. (a) A county or a township may agree to maintain a cemetery to which this chapter applies. If a county or a township agrees to maintain a cemetery to which this chapter applies, it shall maintain the cemetery as described in IC 23-14-68-3.**



**(b) Prior to a county or township assuming the maintenance responsibilities for a cemetery under this section, a property owner must do the following:**

**(1) Employ a professional surveyor to conduct a survey of the property on which the cemetery is located.**

**(2) Convey to the county or township, without consideration, an easement or fee simple title to the portion of the property on which the cemetery is located.**

**(3) If the portion of the property on which the cemetery is located is not accessible by a public road, convey to the township or county, without consideration, an easement for access to the cemetery.**

**(c) A property owner who transfers the maintenance responsibilities for a cemetery under this section may not file an application for the property to receive the cemetery tax assessment rate under IC 6-1.1-6.8.**

**(d) A property owner must make a reasonable effort to maintain a cemetery on the property owner's property. If a property owner does not reasonably maintain a cemetery, the county or the township may maintain the cemetery as described in IC 23-14-68-3. If the county or the township assumes maintenance of the cemetery under this subsection, the county or the township may file a lien on the property in the amount required to maintain the cemetery as described in IC 23-14-68-3."**

Page 2, line 19, delete "Sec. 6." and insert "Sec. 5."

Page 2, line 19, delete "who is".

Page 2, line 20, delete "maintaining a cemetery under this section".

Renumber all SECTIONS consecutively.

(Reference is to HB 1090 as printed January 17, 2020.)

CLERE

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#### COMMITTEE REPORT

Madam President: The Senate Committee on Local Government, to which was referred House Bill No. 1090, 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 2, delete lines 30 through 36, begin a new paragraph and insert:

**"Sec. 1. This chapter applies to private cemeteries that are not**

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**owned or controlled by a cemetery corporation, church, association, or organization."**

Page 3, line 5, after "IC 23-14-68-3." insert **"A county or a township that assumes the maintenance responsibilities for a cemetery under this section may seek reimbursement from the property owner for the costs of maintaining the cemetery."**

Page 3, line 23, delete "If a property owner" and insert **"For purposes of this subsection, a reasonable effort to maintain a cemetery means the maintenance responsibilities described in IC 23-14-68-3. However, a property owner is not required to construct a fence where there is not one unless the township or the county provides the supplies, labor, and other expenses for the construction."**

Page 3, delete lines 24 through 29.

Page 3, between lines 29 and 30, begin a new paragraph and insert:

**"(e) A property owner who fails to perform the maintenance responsibilities required under subsection (d) commits a Class C infraction if:**

- (1) the township or the county provides two (2) written notices to the property owner, at the property owner's address of record, stating that the property owner is not maintaining the cemetery as required and may be subject to a Class C infraction; and**
- (2) the property owner fails to maintain the cemetery as required by this chapter within thirty (30) days after the second notice provided under subdivision (1)."**

and when so amended that said bill do pass.

(Reference is to HB 1090 as reprinted January 22, 2020.)

BUCK, Chairperson

Committee Vote: Yeas 8, Nays 0.

