



April 5, 2019

ENGROSSED HOUSE BILL No. 1331

DIGEST OF HB 1331 (Updated April 3, 2019 2:00 pm - DI 128)

Citations Affected: IC 32-25; IC 32-25.5.

Synopsis: Homeowners associations. Provides that, subject to certain specified exceptions, a homeowners association may not: (1) prohibit the owner of a dwelling unit from installing a solar energy system; (2) impose unreasonable limitations on the owner's ability to install or use a solar energy system; or (3) require the removal of a solar energy system that has been installed. Provides, however, that a homeowners association may require preapproval of the location of a solar energy system and of the manner in which the solar energy system is installed. Applies only to rules, covenants, declarations of restrictions, and other governing documents adopted or amended by a homeowners association after June 30, 2019. Provides that if a party to a dispute involving a homeowners association requests mediation, mediation is mandatory. Provides that if neither party requests mediation, or if mediation is unsuccessful, a claimant may begin legal proceedings. Requires a mediator to be selected by the American Mediation Association. Requires a mediation to be conducted in compliance with the rules and procedures of the American Mediation Association. Makes corresponding amendments to the provisions regarding grievance resolutions involving condominium associations.

Effective: July 1, 2019.

Speedy, Hamilton, Torr, Pierce

(SENATE SPONSORS — FREEMAN, MERRITT)

January 14, 2019, read first time and referred to Committee on Utilities, Energy and Telecommunications.

February 14, 2019, amended, reported — Do Pass.

February 18, 2019, read second time, ordered engrossed. Engrossed.

February 19, 2019, read third time, passed. Yeas 90, nays 6.

SENATE ACTION

March 4, 2019, read first time and referred to Committee on Judiciary.

April 4, 2019, amended, reported favorably — Do Pass.

EH 1331—LS 7329/DI 55



April 5, 2019

First Regular Session of the 121st General Assembly (2019)

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 2018 Regular and Special Session of the General Assembly.

ENGROSSED HOUSE BILL No. 1331

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

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

- 1 SECTION 1. IC 32-25-8.5-13, AS ADDED BY P.L.141-2015,
2 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2019]: Sec. 13. (a) The parties are considered to be at an
4 impasse if:
5 (1) the respondent does not request a meeting under section 11 of
6 this chapter;
7 (2) either party fails to attend a meeting agreed upon under
8 section 12 of this chapter; or
9 (3) the parties are unable to settle the claim at a meeting held
10 under section 12 of this chapter.
11 (b) Either party may, not later than ten (10) days after an impasse is
12 reached, request in writing that the other party submit the claim to
13 mediation ~~or binding arbitration.~~ **and the parties shall submit to**
14 **mediation.**
15 (c) ~~The party making the request under subsection (b) is responsible~~
16 ~~for the costs of the mediator or arbitrator.~~
17 SECTION 2. IC 32-25-8.5-14, AS ADDED BY P.L.141-2015,

EH 1331—LS 7329/DI 55



1 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
2 JULY 1, 2019]: Sec. 14. **(a)** If an impasse is reached, ~~and:~~

3 ~~(1) neither party requests mediation or arbitration; or~~

4 ~~(2) mediation or arbitration does not result in a settlement of the~~
5 ~~claim;~~

6 ~~the claimant a party may, begin legal proceedings. not later than ten~~
7 ~~(10) days after the impasse is reached, submit the matter to~~
8 ~~mediation by an impartial mediator to be selected by the American~~
9 ~~Mediation Association from a current listing of mediators from the~~
10 ~~National Academy of Distinguished Neutrals.~~

11 **(b)** The mediation shall be conducted in accordance with the
12 rules and procedures of the American Mediation Association.

13 **(c)** The cost of the mediator and any other direct costs of the
14 mediation shall be equally divided by the parties engaged in the
15 mediation.

16 **(d)** Nothing in this section shall be construed to prohibit good
17 faith settlements voluntarily entered into by the parties.

18 **(e)** If neither party requests mediation, or if mediation is
19 unsuccessful, the claimant may begin legal proceedings.

20 SECTION 3. IC 32-25-8.5-17, AS ADDED BY P.L.141-2015,
21 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
22 JULY 1, 2019]: Sec. 17. The board, on behalf of the association of
23 co-owners, and without the consent of the co-owners, may do any of the
24 following:

25 (1) Negotiate settlements of claims, **participate in mediation**
26 **hearings, or initiate** legal proceedings under this chapter.

27 (2) Execute settlement agreements, waivers, releases of claims, or
28 any other document resulting from application of this chapter.

29 SECTION 4. IC 32-25.5-3.5 IS ADDED TO THE INDIANA CODE
30 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
31 JULY 1, 2019]:

32 **Chapter 3.5. Homeowners Association Restrictions on Solar**
33 **Energy Systems**

34 **Sec. 1. This chapter does not apply to:**

35 **(1) rules;**

36 **(2) covenants;**

37 **(3) declarations of restrictions; or**

38 **(4) other governing documents;**

39 **of a homeowners association adopted or amended by the**
40 **homeowners association before July 1, 2019.**

41 **Sec. 2. As used in this chapter, the "cost of installing a solar**
42 **energy system" includes both the cost of labor and the cost of**



1 equipment.

2 **Sec. 3.** As used in this chapter, "dwelling unit" has the meaning
3 set forth in IC 32-31-5-3.

4 **Sec. 4.** As used in this chapter, "solar energy system" has the
5 meaning set forth in IC 36-7-2-8(a).

6 **Sec. 5. (a)** Except as provided in subsection (b) and section 7 of
7 this chapter, a homeowners association may not:

8 (1) prohibit the owner of a dwelling unit from installing a
9 solar energy system;

10 (2) impose unreasonable limitations on the owner's ability to
11 install or use a solar energy system; or

12 (3) require the removal of a solar energy system that has been
13 installed.

14 **(b)** A homeowners association may require preapproval of:

15 (1) the location of a solar energy system; and

16 (2) the manner in which a solar energy system is installed.

17 **Sec. 6.** For purposes of section 5(a)(2) of this chapter,
18 unreasonable limitations on an owner's ability to install or use a
19 solar energy system include any restriction that:

20 (1) inhibits the solar energy system from functioning at its
21 intended maximum efficiency; or

22 (2) increases the cost of installing the solar energy system to
23 an amount reasonably estimated to be more than ten percent
24 (10%) higher than the cost of installing the solar energy
25 system in the absence of the restriction.

26 **Sec. 7.** A homeowners association may prohibit the installation
27 or use of a solar energy system or may require the removal of a
28 solar energy system that has been installed if any of the following
29 apply:

30 (1) A court has found that the solar energy system threatens
31 public health or safety.

32 (2) A court has found that the solar energy system violates a
33 law.

34 (3) The solar energy system has been installed on property
35 owned or maintained by the homeowners association.

36 (4) The solar energy system has been installed on property
37 owned in common by the members of the homeowners
38 association.

39 (5) The solar energy system has been installed in a location
40 other than:

41 (A) the roof of:

42 (i) the dwelling unit of the owner installing the solar



- 1 energy system; or
 2 (ii) another structure;
 3 approved by the homeowners association; or
 4 (B) a fenced yard or patio owned and maintained by the
 5 owner of the dwelling unit.
- 6 (6) The solar energy system is mounted on the roof of the
 7 dwelling unit of the owner installing the solar energy system
 8 and:
- 9 (A) extends above or beyond the roof of the dwelling unit
 10 by more than six (6) inches;
 11 (B) is mounted other than in the roof location designated
 12 by the homeowners association, unless mounting the solar
 13 energy system in the roof location designated by the
 14 homeowners association:
 15 (i) would significantly increase the cost of the solar
 16 energy system; or
 17 (ii) would significantly decrease the efficiency of the
 18 solar energy system;
 19 and an alternative solar energy system affording
 20 comparable cost and efficiency could not be mounted in the
 21 roof location designated by the homeowners association;
 22 (C) does not conform to the slope of the roof and has a top
 23 edge that is not parallel to the roof line; or
 24 (D) has a frame, support bracket, or visible piping or
 25 wiring that is not in a silver, bronze, or black tone
 26 commonly available in the marketplace.
- 27 (7) The solar energy system is mounted on a roof that is:
 28 (A) owned by the owner of the dwelling unit; but
 29 (B) maintained by the homeowners association.
- 30 (8) The solar energy system is installed in a fenced yard or
 31 patio rather than on the roof of a dwelling and is taller than
 32 the fence line.
- 33 (9) The solar energy system is installed in a manner that voids
 34 material warranties.
- 35 (10) The installation of the solar energy system device would
 36 substantially interfere with the use and enjoyment of land by
 37 causing unreasonable discomfort or annoyance to a
 38 reasonable person of ordinary sensibilities.
- 39 SECTION 5. IC 32-25.5-5-12, AS ADDED BY P.L.141-2015,
 40 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 41 JULY 1, 2019]: Sec. 12. (a) The parties are considered to be at an
 42 impasse if:



- 1 (1) the respondent does not request a meeting under section 10 of
 2 this chapter;
 3 (2) either party fails to attend a meeting agreed upon under
 4 section 11 of this chapter; or
 5 (3) the parties are unable to settle the claim at a meeting held
 6 under section 11 of this chapter.
- 7 (b) ~~Either party may, not later than ten (10) days after an impasse is~~
 8 ~~reached, request in writing to the other party that the other party submit~~
 9 ~~the claim to mediation or binding arbitration.~~
- 10 (c) ~~The party making the request under subsection (b) is responsible~~
 11 ~~for the costs of the mediator or arbitrator.~~
- 12 SECTION 6. IC 32-25.5-5-13, AS ADDED BY P.L.141-2015,
 13 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 14 JULY 1, 2019]: Sec. 13. (a) If an impasse is reached, ~~and:~~
 15 (1) ~~neither party requests mediation or arbitration; or~~
 16 (2) ~~mediation or arbitration does not result in a settlement of the~~
 17 ~~claim;~~
 18 **the claimant may begin legal proceedings: a party may, not later than**
 19 **ten (10) days after the impasse is reached, submit the matter to**
 20 **mediation by an impartial mediator to be selected by the American**
 21 **Mediation Association from a current listing of mediators from the**
 22 **National Academy of Distinguished Neutrals.**
- 23 (b) **The mediation shall be conducted in accordance with the**
 24 **rules and procedures of the American Mediation Association.**
- 25 (c) **The cost of the mediator and any other direct costs of the**
 26 **mediation shall be equally divided by the parties engaged in the**
 27 **mediation.**
- 28 (d) **Nothing in this section shall be construed to prohibit good**
 29 **faith settlements voluntarily entered into by the parties.**
- 30 (e) **If neither party requests mediation, or if mediation is**
 31 **unsuccessful, the claimant may begin legal proceedings.**
- 32 SECTION 7. IC 32-25.5-5-14, AS ADDED BY P.L.141-2015,
 33 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 34 JULY 1, 2019]: Sec. 14. (a) This section applies if a claim is settled
 35 through negotiation ~~or mediation. or arbitration.~~
- 36 (b) The settlement of the claim must be documented in a written
 37 agreement signed by each of the parties.
- 38 (c) If a party fails to abide by the settlement agreement signed under
 39 subsection (b), the other party may begin legal proceedings without
 40 again complying with this chapter.
- 41 (d) If a party who begins legal proceedings under subsection (c)
 42 prevails in those legal proceedings, the party is entitled to recover from



- 1 the other party:
- 2 (1) court costs;
- 3 (2) attorney's fees; and
- 4 (3) all other reasonable costs incurred in enforcing the settlement
- 5 agreement.
- 6 SECTION 8. IC 32-25.5-5-16, AS ADDED BY P.L.141-2015,
- 7 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 8 JULY 1, 2019]: Sec. 16. The board, on behalf of the homeowners
- 9 association, and without the consent of the members of the
- 10 homeowners association, may do any of the following:
- 11 (1) Negotiate settlements of claims, ~~or legal proceedings~~
- 12 **participate in mediation hearings, or initiate legal proceedings**
- 13 under this chapter.
- 14 (2) Execute settlement agreements, waivers, releases of claims, or
- 15 any other documents resulting from application of this chapter.



COMMITTEE REPORT

Mr. Speaker: Your Committee on Utilities, Energy and Telecommunications, to which was referred House Bill 1331, 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 3, between lines 29 and 30, begin a new line block indented and insert:

"(9) The solar energy system is installed in a fenced yard or patio owned and maintained by the owner of the dwelling unit, as described in subdivision (5)(B), but is not obscured from adjacent residences, unless the owner of the dwelling unit complies with any screening requirements that:

(A) are imposed by the homeowners association;

(B) consist of:

**(i) shrubbery, trees, or other noninvasive plant species;
or**

(ii) decorative fencing that meets the requirements of any local ordinances applicable to fences; and

(C) provide a visual screen.

(10) The solar energy system is installed such that it is distinctly visible from a public street or right-of-way."

Page 3, line 30, delete "(9)" and insert "(11)".

Page 3, line 32, delete "(10)" and insert "(12)".

and when so amended that said bill do pass.

(Reference is to HB 1331 as introduced.)

SOLIDAY

Committee Vote: yeas 7, nays 3.



COMMITTEE REPORT

Madam President: The Senate Committee on Judiciary, to which was referred House Bill No. 1331, 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 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 32-25-8.5-13, AS ADDED BY P.L.141-2015, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 13. (a) The parties are considered to be at an impasse if:

- (1) the respondent does not request a meeting under section 11 of this chapter;
- (2) either party fails to attend a meeting agreed upon under section 12 of this chapter; or
- (3) the parties are unable to settle the claim at a meeting held under section 12 of this chapter.

(b) Either party may, not later than ten (10) days after an impasse is reached, request in writing that the other party submit the claim to mediation ~~or binding arbitration.~~ **and the parties shall submit to mediation.**

~~(c) The party making the request under subsection (b) is responsible for the costs of the mediator or arbitrator.~~

SECTION 2. IC 32-25-8.5-14, AS ADDED BY P.L.141-2015, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 14. ~~(a) If an impasse is reached, and:~~

- ~~(1) neither party requests mediation or arbitration; or~~
- ~~(2) mediation or arbitration does not result in a settlement of the claim;~~

~~the claimant a party may, begin legal proceedings: not later than ten (10) days after the impasse is reached, submit the matter to mediation by an impartial mediator to be selected by the American Mediation Association from a current listing of mediators from the National Academy of Distinguished Neutrals.~~

(b) The mediation shall be conducted in accordance with the rules and procedures of the American Mediation Association.

(c) The cost of the mediator and any other direct costs of the mediation shall be equally divided by the parties engaged in the mediation.

(d) Nothing in this section shall be construed to prohibit good faith settlements voluntarily entered into by the parties.

(e) If neither party requests mediation, or if mediation is



unsuccessful, the claimant may begin legal proceedings.

SECTION 3. IC 32-25-8.5-17, AS ADDED BY P.L.141-2015, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 17. The board, on behalf of the association of co-owners, and without the consent of the co-owners, may do any of the following:

(1) Negotiate settlements of claims, **participate in mediation hearings, or initiate** legal proceedings under this chapter.

(2) Execute settlement agreements, waivers, releases of claims, or any other document resulting from application of this chapter."

Page 3, line 7, delete "four (4)" and insert "**six (6)**".

Page 3, delete lines 30 through 42.

Page 4, delete line 1.

Page 4, line 2, delete "(11)" and insert "**(9)**".

Page 4, line 4, delete "(12)" and insert "**(10)**".

Page 4, after line 7, begin a new paragraph and insert:

"SECTION 5. IC 32-25.5-5-12, AS ADDED BY P.L.141-2015, SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 12. ~~(a)~~ The parties are considered to be at an impasse if:

(1) the respondent does not request a meeting under section 10 of this chapter;

(2) either party fails to attend a meeting agreed upon under section 11 of this chapter; or

(3) the parties are unable to settle the claim at a meeting held under section 11 of this chapter.

~~(b) Either party may, not later than ten (10) days after an impasse is reached, request in writing to the other party that the other party submit the claim to mediation or binding arbitration:~~

~~(c) The party making the request under subsection (b) is responsible for the costs of the mediator or arbitrator:~~

SECTION 6. IC 32-25.5-5-13, AS ADDED BY P.L.141-2015, SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 13. **(a)** If an impasse is reached, ~~and:~~

~~(1) neither party requests mediation or arbitration; or~~

~~(2) mediation or arbitration does not result in a settlement of the claim;~~

~~the claimant may begin legal proceedings:~~ **a party may, not later than ten (10) days after the impasse is reached, submit the matter to mediation by an impartial mediator to be selected by the American Mediation Association from a current listing of mediators from the National Academy of Distinguished Neutrals.**



(b) The mediation shall be conducted in accordance with the rules and procedures of the American Mediation Association.

(c) The cost of the mediator and any other direct costs of the mediation shall be equally divided by the parties engaged in the mediation.

(d) Nothing in this section shall be construed to prohibit good faith settlements voluntarily entered into by the parties.

(e) If neither party requests mediation, or if mediation is unsuccessful, the claimant may begin legal proceedings.

SECTION 7. IC 32-25.5-5-14, AS ADDED BY P.L.141-2015, SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 14. (a) This section applies if a claim is settled through negotiation ~~or~~ mediation. ~~or arbitration.~~

(b) The settlement of the claim must be documented in a written agreement signed by each of the parties.

(c) If a party fails to abide by the settlement agreement signed under subsection (b), the other party may begin legal proceedings without again complying with this chapter.

(d) If a party who begins legal proceedings under subsection (c) prevails in those legal proceedings, the party is entitled to recover from the other party:

- (1) court costs;
- (2) attorney's fees; and
- (3) all other reasonable costs incurred in enforcing the settlement agreement.

SECTION 8. IC 32-25.5-5-16, AS ADDED BY P.L.141-2015, SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 16. The board, on behalf of the homeowners association, and without the consent of the members of the homeowners association, may do any of the following:

- (1) Negotiate settlements of claims, ~~or legal proceedings~~ **participate in mediation hearings, or initiate legal proceedings** under this chapter.



(2) Execute settlement agreements, waivers, releases of claims, or any other documents resulting from application of this chapter."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1331 as printed February 15, 2019.)

HEAD, Chairperson

Committee Vote: Yeas 8, Nays 2.

