

Fences and Weeds

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2010 Township Manual – Chapter 12
Miscellaneous Duties and Other Matters



- The Township Manual was updated in 2021
 - Focusing on SBOA compliance requirements and fiscal matters.
 - Removed several sections quoting the Indiana Code.
 - 2021 Presentation on new manual changes:
<https://www.in.gov/sboa/files/New-Township-Manual.pdf>
- Indiana Codes can be reviewed on IGA's website.
<http://iga.in.gov/>

A photograph of a field of tall, dry weeds, likely ragwort, with several spider webs visible in the foreground. The scene is captured in a soft, hazy light, possibly during dawn or dusk, with a line of trees in the background. The word "Weeds" is overlaid in white text in the center of the image.

Weeds

Detrimental Plants, Noxious Weeds, and Rank Vegetation; IC 15-16-8-1



Sec. 1. As used in this chapter, "detrimental plant" includes the following:

- (1) Canada thistle (*Cirsium arvense*).
 - (2) Johnson grass (*Sorghum halepense*).
 - (3) Columbus grass (*Sorghum almum*).
 - (4) Bur cucumber (*Sicyos angulatus*).
 - (5) Shattercane (*Sorghum bicolor* (L.) Moench spp. *drummondii* (Steud.) deWet).
 - (6) Common waterhemp (*Amaranthus rudis*) and tall waterhemp (*Amaranthus tuberculatus*).
 - (7) Maretail (*Conyza canadensis*).
 - (8) Palmer amaranth or carelessweed (*Amaranthus palmeri*).
 - (9) Poison hemlock (*Conium maculatum*).
 - (10) Powell amaranth (*Amaranthus powellii*).
 - (11) Rough pigweed (*Amaranthus retroflexus*).
 - (12) Smooth pigweed (*Amaranthus hybridus*).
 - (13) In residential areas only, noxious weeds and rank vegetation.
- The term does not include agricultural crops.



Canadian
Thistle



Shattercane
(sorghum bicolor)

Duty to Destroy Detrimental Plants
IC 15-16-8-3



Sec. 3. A **person** owning or possessing real estate in Indiana **shall destroy detrimental plants** by:

- (1) cutting or mowing and, if necessary, by plowing, cultivating, or smothering; or
- (2) using chemicals in the bud stage of growth or earlier, to prevent detrimental plants from maturing on the person's real estate.

Township Trustee Role
IC 15-16-8-4



Sec. 4. (a) If a township trustee:

(1) has reason to believe that detrimental plants may be on real estate; and

(2) gives the owner or person in possession of the real estate **forty-eight (48) hours notice** under subsection (e);

the township trustee may enter the real estate to investigate whether there are detrimental plants on the real estate.

Township Trustee Role IC 15-16-8-4 (Continued)



(b) Except as provided in subsection (d), **if the township trustee determines** by:

(1) investigating real estate located in the trustee's township; or

(2) visual inspection without entering real estate located in the trustee's township;

that a person has detrimental plants growing on real estate, the trustee shall give written notice under subsection (e) to the owner or person in possession of the real estate **to destroy the detrimental plants**. The owner or person in possession of the real estate shall destroy the plants in a manner provided in section 3 of this chapter not more than five (5) days after the notice is received under subsection (f).

Township Trustee Role IC 15-16-8-4 (Continued)



(c) If the detrimental plants are not destroyed as provided in subsection (b), the trustee shall cause the detrimental plants to be destroyed in a manner most practical to the trustee not more than eight (8) days after notice is received by the owner or person in possession of the real estate under subsection (f). The trustee may hire a person to destroy the detrimental plants. The trustee or the person employed to destroy the detrimental plants may enter upon the real estate where the detrimental plants are growing to destroy the detrimental plants and are not civilly or criminally liable for damage to crops, livestock, or other property occurring while carrying out the work, except for gross negligence or willful or wanton destruction.

(d) If the county has established a county weed control board under IC 15-16-7, the township trustee may notify the county weed control board of the real estate containing detrimental plants, and the board shall either assume jurisdiction to control the detrimental plants or decline jurisdiction and refer the matter back to the township trustee. The county weed control board shall notify the township trustee of the board's decision.

Township Trustee Role
IC 15-16-8-4 (Continued)



(e) **Notice** required in subsection (a) or (b) may be given by:

- (1) certified mail; or
- (2) personal service.

(f) Notice under subsection (e) is **considered received** by the owner or person in possession of the real estate:

- (1) if sent by **mail**, on the earlier of:
 - (A) the date of signature of receipt of the mailing; or
 - (B) three (3) business days after the date of mailing; or
- (2) if **served personally**, on the date of delivery.

Certification of Costs

IC 15-16-8-5



Sec. 5. (a) The township trustee **may pay the following costs incurred in cutting or destroying detrimental plants** under this chapter:

(1) Chemicals, (2) Work, (3) Labor, at a **rate per hour to be fixed by the township trustee** commensurate with local hourly wages.

(b) If the trustee believes the infestation of the real estate with detrimental plants is so great and widespread that **cutting or eradication by hand methods is impractical**, the trustee shall use the necessary power machinery or equipment. The trustee may pay for the work at a rate per hour fixed by the township trustee commensurate with the local hourly rate.

(c) When the work has been performed, **the person doing the work shall file an itemized bill for the work in the office of the township trustee**. When the bill has been approved, the trustee shall pay the bill out of the township fund. If there is no money available in the township fund for that purpose, the township board, upon finding an emergency exists, shall act under IC 36-6-6-14(b) or IC 36-6-6-15 to borrow money sufficient to meet the emergency.

(d) The trustee, when submitting estimates to the township board for action, shall include in the **estimates** an item sufficient to cover those expenditures.

Cost Statement

IC 15-16-8-6



Sec. 6. (a) The township trustee shall prepare a statement that contains the following:

(1) A certification of the following costs:

(A) The cost or expense of the work.

(B) The cost of the chemicals.

(C) Twenty dollars (\$20) per day for each day that the trustee or the trustee's agent supervises the performance of the services required under this chapter as compensation for services.

(2) A description of the real estate on which the labor was performed.

(3) A request that the owner or person in possession of the real estate pay the costs under subdivision (1) to the township trustee.

(b) The certified statement prepared under subsection (a) shall be provided:

(1) to the owner or person possessing the real estate by:

(A) mail, using a certificate of mailing; or

(B) personal service; or

(2) by mailing the certified statement to the auditor of state for any real estate owned by the state or to the fiscal officer of another municipality (as defined in IC 5-11-1-16) for real estate owned by the municipality.

Refusal to Reimburse Township

IC 15-16-8-7



Sec. 7. (a) **If the owner** or person in possession of the property **does not pay** the amount set forth in the certified statement under section 6(a) of this chapter **within ten (10) days after receiving the notice** under section 6(b) of this chapter, the township trustee shall file a copy of the certified statement in the office of the county auditor of the county where the real estate is located.

(b) The auditor shall place the amount claimed in the certified statement on the tax duplicate of the real estate. Except as provided in section 8 of this chapter, the amount claimed shall be collected as taxes are collected.

(c) After an amount described in subsection (b) is collected, the **funds shall be deposited in the trustee's township funds** for use at the discretion of the trustee.

Government-Owned Land

IC 15-16-8-8



Sec. 8. (a) This subsection applies to real estate **owned by the state**. The auditor of state shall issue a warrant to pay the amount set forth in the certified statement under section 6(a) of this chapter for real estate owned by the state and shall charge the appropriate fund for the amount.

(b) This subsection applies to real estate **owned by a municipality** (as defined in IC 5-11-1-16) other than the township. The fiscal officer of the municipality shall make the necessary appropriation from the appropriate fund to pay the township the amount set forth in the certified statement under section 6(a) of this chapter for real estate owned by the municipality.

(c) This subsection applies to real estate that is **exempt from property taxation**. The owner of the tax exempt real estate shall pay the amount set forth in the certified statement under section 6(a) of this chapter for the tax exempt real estate. If the owner of the tax exempt real estate fails to pay the amount required by this chapter, the owner is ineligible for the property tax exemption, and the department of local government finance shall deny the property tax exemption for the real estate.

County Auditor's Role IC 15-16-8-9



Sec. 9. Except as provided in sections 5 through 8 of this chapter, **the county auditor, upon receiving and filing a certified statement** under section 7(a) of this chapter, shall:

- (1) immediately place the amounts on the certified statement on the tax duplicate of the county; and
- (2) collect the amounts at the next tax paying time for the proper township or townships, the same as other state, county, or township taxes are collected, including penalties, forfeitures, and sales.

After the amounts are collected, the amounts shall be paid to the proper trustee and **placed in the township fund.**

Budget
IC 15-16-8-10



Sec. 10. When the annual township budget is prepared, a sufficient amount shall be appropriated to enable the township officials to comply with this chapter.

Land Exempt from Duty to Destroy
Detrimental Plants
IC 15-16-8-11



Sec. 11. The director of the department of natural resources or the dean of agriculture of Purdue University may totally or partially exempt land that is subject to a program of the department or station from this chapter or any other statute concerning the destruction of detrimental plants.

Assistance to Township Trustees
IC 15-16-8-12



Sec. 12. (a) The **Purdue University cooperative extension** service shall provide technical assistance to township trustees for the control of detrimental plants.

(b) **All law enforcement agencies** *having jurisdiction in a township* shall assist the township trustee in carrying out the duties imposed on the trustee under this chapter.

Failure to Perform Duties
IC 15-16-8-13



Sec. 13. A township trustee who fails to perform the duties required of the trustee by this chapter commits a Class C infraction.

Penalties to Landowners

IC 15-16-8-14



Sec. 14. (a) **A person who:**

- (1) knowingly allows detrimental plants to grow and mature on land owned or possessed by the person;
- (2) knowing of the existence of detrimental plants on land owned or possessed by the person, fails to cut them down or eradicate the plants by chemicals each year, as prescribed in this chapter;
- (3) having charge of or control over any highway:
 - (A) knowingly allows detrimental plants to grow or mature on the right-of-way of the highway; or
 - (B) knowing of the existence of the detrimental plants, fails to cut the plants down or eradicate the plants by using chemicals, as prescribed in this chapter;
- (4) having charge of or control over the right-of-way of a railroad or interurban company:
 - (A) knowingly allows detrimental plants to grow and mature on the right-of-way; or
 - (B) knowing of the existence of the detrimental plants, fails to cut the plants down or eradicate the plants by using chemicals, as prescribed in this chapter; or
- (5) knowingly sells Canada thistle (*cirsium arvense*) seed;

commits a Class C infraction. Each day this section is violated constitutes a separate infraction.

(b) All judgments collected under this section shall be paid to the trustee and placed in the trustee's township funds for use at the discretion of the trustee.

Township Policies



- “Noxious Weeds and Rank Vegetation”
 - Not defined in Indiana Code.
- Consider adopting a policy to clarify when plants (size/height) are considered “noxious/rank”.
- Determine if the County has established a **weed control board**. (IC 15-16-7)

Township Liability



- There have been some legal cases where automobile accidents were attributable to reduced visibility due to weeds and rank vegetation.



Fences



Agricultural Land
IC 32-26-9-0.5



Sec. 0.5. (a) As used in this section, "**agricultural land**" means land that is:

- (1) zoned or otherwise designated as agricultural land;
- (2) used for growing crops or raising livestock; or
- (3) reserved for conservation.

(b) This chapter does not apply to a fence that separates two (2) adjoining parcels of property unless at least one (1) of the adjoining parcels is agricultural land.

Lands Outside or Abutting Municipal
Boundary
IC 32-26-9-2



- It shall be the **duty of all owners of land** *whose lands lie outside the corporate limits of any city, or town, to separate said land from adjoining lands by a partition fence to be constructed upon the line or lines dividing or separating such lands.*
- Except there be an agreement between the landowners as to which part of the partition fence each shall build, repair or rebuild, the landowner whose land **lies to the east of said fence shall build the north half thereof**, and the landowner whose land **lies to the west of said fence shall build the south half thereof**. If the landowner's land **lies north of the fence to be built, rebuilt or repaired, he shall build the west half thereof**, and if the landowners land **lies south of such fence he shall build the east half thereof.**



Lands Outside or Abutting Municipal
Boundary
IC 32-26-9-2



- If either of such landowners shall **have constructed one-half of any partition fence other than the one mentioned above**, and shall have maintained such one-half of the partition fence for a period of not less than five (5) years, such landowner shall thereafter be entitled to continue to maintain such one-half of said fence.

Partition Fence
IC 32-26-9-3



(f) A lawful partition fence is any one (1) of the following that is sufficiently tight and strong to hold cattle, hogs, horses, mules, and sheep:

- (1) A straight board and wire fence, a straight wire fence, a straight board fence, or a picket fence four (4) feet high.
- (2) A straight rail fence four and one-half (4 1/2) feet high.
- (3) A worm rail fence five (5) feet high.

Defaulting Landowner IC 32-26-9-3



- If any **landowner fails to build or repair his portion** of a partition fence, any landowner interested in said fence (after having built or repaired his portion of the fence) **shall give the defaulting landowner twenty (20) days notice to build or repair the fence.** If the defaulting landowner fails to build or repair his portion within the specified time, the interested landowner shall then **notify the township trustee of the township** wherein such lands are located.

Notification
IC 32-26-9-3



- **If the fence** sought to be built or repaired **is on a township line**, the complaining landowner shall notify the trustee of the township wherein the lands of the complaining landowner are located, of the improvements he desires made.
- **Within a reasonable time after being notified**, the trustee shall estimate the cost of the fence in question and make out a statement and **notify the defaulting landowner of the probable cost** of said fence. If after twenty (20) days after receiving a notice under this section the fence is not built or repaired, the township trustee shall build or repair the fence. In such construction the trustee *shall use only the materials for such fences as are most commonly used by the farmers of the community.*

Disqualification & Floodgates
IC 32-26-9-3



- **In case the township trustee is disqualified** (being an *interested party* himself, or *related to any of the interested parties*), the trustee of an adjoining township residing nearest to where such fence is situated shall build or repair the partition fence.
- In case of disagreement between landowners, **floodgates** shall be constructed by the township trustee in the manner and according to the conditions for constructing partition fences.

Ditch or Creek in Division Line IC 32-26-9-3



(g) This subsection applies if a **ditch or creek crosses the division line** between two (2) property owners, causing additional expense in the maintenance of the part over the stream. If the property owners cannot agree upon the proportionate share of each property owner, the township trustee shall appoint three (3) disinterested citizens who shall apportion the partition fence to be built by each property owner.

(i) This subsection applies if a **ditch or creek forms, covers, or marks the dividing line** or a part of the dividing line between the properties of separate and different property owners **so that partition fences** required under this chapter **cannot be built and maintained on the dividing line**. The partition fences shall be built and maintained under this chapter as near to the boundary line as is practical, and each property owner shall build a separate partition fence on the property owner's property and maintain the fence at the property owner's cost.

Arbitrators IC 32-26-9-3



(l) The determination of a majority of the arbitrators of any matter or matters submitted to them under this section is final and binding on each property owner. The **compensation of the arbitrators is two dollars (\$2) each, which shall be paid by the property owners** in the proportion each property owner is ordered to bear the expense of a gate or structure.

(m) This subsection **applies if either or both of the property owners fail to construct or compensate** for constructing the structure determined upon by the arbitrators in the proportion determined **within thirty (30) days after the determination**. The township trustee shall proceed at once to construct the gate or structure and collect the cost of the gate or structure, including the compensation of the arbitrators, from the defaulting property owner in the same manner as is provided for ordinary partition fences. The floodgate or other structure shall be repaired, rebuilt, or replaced according to the determination of the arbitrators.

Expenses
IC 32-26-9-4



- As soon as the trustee has had a line fence built, rebuilt, or repaired, he shall make out a certified statement in triplicate of the actual cost incurred by him in such construction. One copy is to be handed to or mailed to the landowner affected by the work, one copy is to be retained by the trustee as a township record, and the other copy is to be filed in the county auditor's office of the county wherein the fence is located and where the lands of the landowner affected are located.

Expenses
IC 32-26-9-4



- At the same time, the trustee shall file with the county auditor a claim against the county for the amount shown in the statement. The claim, if not in error, shall be allowed by the county commissioners and the county auditor shall issue a warrant out of the County General Fund to the township trustee submitting the claim. The amount so paid out shall be placed by the county auditor on the tax duplicate against the lands of the landowner affected by the work, and shall be collected as other taxes are collected and when collected shall be paid into the County General Fund.

Personal Liability
IC 32-26-9-6



Sec. 5. The township trustee has no personal liability for a contract the trustee makes under this chapter for building, rebuilding, or repairing fences under this chapter. The contractor shall receive payment from the township funds, which shall be reimbursed when the contract price is paid into the county treasury.

Other Considerations



- All payments for expenses involved in the construction or repair of line fences by the township trustee **should be paid from the Township Fund without appropriation**. The warrant received from the county auditor as reimbursement for the costs shown will be receipted to the Township Fund.
- Fences erected by railroad companies along their rights of way are not partition fences, hence the township trustee is not authorized to build or repair such fences. *Cleveland, C., C. & I. R. Co. v. Crossley, 36 Ind. 370 (1870); Jeffersonville, M. & I. R. Co. v. Sullivan, 38 Ind.*
- Official Opinion 89-19 concerns the strength of a line fence as does IC 32-26-9-3(f).

Purdue University Fence Law Resource



- On our website we have posted a resource provided by Purdue University.
- *“Patience, neighborliness, good judgment, and legal counsel may be necessary to avoid liability, even when landowners think they are within their rights.”*
- <https://www.in.gov/sboa/files/Fence-Law-resource.pdf>



Questions?