



March 26, 1999

**ENGROSSED  
HOUSE BILL No. 1638**

DIGEST OF HB 1638 (Updated March 24, 1999 2:58 pm - DI 100)

**Citations Affected:** IC 15-1.5; IC 36-7; noncode.

**Synopsis:** Agriculture. Provides that the limitation on the number of years a trustee of the Center for Agricultural Science and Heritage may serve does not include any time of not more than two years the trustee serves as an initial appointee or to fill a vacancy. Provides that a county, municipality or the state may require an agricultural nonconforming use to be maintained and operated in compliance with: (1) all state environmental and state health laws and rules; and (2) (Continued next page)

**Effective:** Upon passage; July 1, 1999.

**Grubb, Dillon, Leuck**

(SENATE SPONSORS — WEATHERWAX, LEWIS, JACKMAN, WOLF, NUGENT)

January 21, 1999, read first time and referred to Committee on Agriculture, Natural Resources and Rural Development.  
February 18, 1999, amended, reported — Do Pass.  
March 1, 1999, read second time, amended, ordered engrossed.  
March 2, 1999, engrossed.  
March 8, 1999, read third time, recommitted to Committee of One, amended; passed. Yeas 94, nays 1.  
March 9, 1999, re-engrossed.

SENATE ACTION

March 11, 1999, read first time and referred to Committee on Agriculture and Small Business.  
March 25, 1999, amended, reported favorably — Do Pass.

EH 1638—LS 7113/DI 75+



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requirements to which conforming agricultural use land is subject under the county's comprehensive plan or zoning ordinance. Defines agricultural use and agricultural nonconforming use. Provides that an agricultural use of land that constitutes an agricultural nonconforming use may be changed to another agricultural nonconforming use without losing agricultural nonconforming use status. Requires the attorney general and the commissioner of agriculture to jointly conduct a study of the contractual arrangements prevalent throughout the livestock production industry.

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March 26, 1999

First Regular Session 111th General Assembly (1999)

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 1998 General Assembly.

## ENGROSSED HOUSE BILL No. 1638

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

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

- 1 SECTION 1. IC 15-1.5-10.5-5 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 5. (a) The term of an  
3 individual appointed to the trustees under section 4(a)(11) of this  
4 chapter:  
5 (1) is three (3) years; and  
6 (2) expires September 30 of the year of expiration.  
7 (b) A member appointed under section 4(a)(11) of this chapter may  
8 be reappointed to the trustees. ~~However,~~ **Except as provided in**  
9 **subsection (c)**, a member appointed under section 4(a)(11) may not  
10 serve for more than nine (9) years in any twelve (12) year period.  
11 (c) **For purposes of the limitation on the number of years a**  
12 **member may serve under subsection (b), any time of not more than**  
13 **two (2) years a member serves:**  
14 (1) **as an initial appointment to the trustees; or**  
15 (2) **to fill a vacancy;**  
16 **may not be considered.**

EH 1638—LS 7113/DI 75+



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1 SECTION 2. IC 36-7-4-616 IS AMENDED TO READ AS  
 2 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 616. (a) ~~As used in this~~  
 3 ~~section, "nonconforming use land" means land that satisfies both of the~~  
 4 ~~following:~~

5 (1) ~~The land is agricultural land that is used contrary to a~~  
 6 ~~comprehensive plan or zoning ordinance established for the area~~  
 7 ~~where the land is located.~~

8 (2) ~~The land was used for agricultural purposes before the~~  
 9 ~~adoption of a comprehensive plan or zoning ordinance for the~~  
 10 ~~area where the land is located.~~

11 (b) ~~Land remains as nonconforming use land as long as the land is~~  
 12 ~~used for agricultural purposes for any three (3) year period in a five (5)~~  
 13 ~~year period. The definitions used in this section apply only to this~~  
 14 ~~section.~~

15 (b) ~~As used in this section, "agricultural use" refers to land that~~  
 16 ~~is used for:~~

17 (1) ~~the production of livestock or livestock products,~~  
 18 ~~commercial aquaculture, equine or equine products, land~~  
 19 ~~designated as a conservation reserve plan, pastureland,~~  
 20 ~~poultry or poultry products, horticultural or nursery stock,~~  
 21 ~~fruit, vegetables, forage, grains, timber, trees, bees and apiary~~  
 22 ~~products, tobacco, or other agricultural crops, in the case of~~  
 23 ~~land that was not subject to a comprehensive plan or zoning~~  
 24 ~~ordinance before the most recent plan or zoning ordinance,~~  
 25 ~~including any amendments, was adopted; or~~

26 (2) ~~agricultural purposes as defined in or consistent with a~~  
 27 ~~comprehensive plan or zoning ordinance that:~~

28 (A) ~~the land was subject to; and~~

29 (B) ~~was repealed before the adoption of the most recent~~  
 30 ~~comprehensive plan or zoning ordinance, including any~~  
 31 ~~amendments.~~

32 (c) ~~As used in this section, "agricultural nonconforming use"~~  
 33 ~~means the agricultural use of land that is not permitted under the~~  
 34 ~~most recent comprehensive plan or zoning ordinance, including~~  
 35 ~~any amendments, for the area where the land is located.~~

36 (d) ~~An agricultural use of land that constitutes an agricultural~~  
 37 ~~nonconforming use may be changed to another agricultural use of~~  
 38 ~~land without losing agricultural nonconforming use status.~~

39 (e) ~~(e) A county or municipality may not, through the county or~~  
 40 ~~municipality's zoning authority, do any of the following:~~

41 (1) ~~Terminate an agricultural nonconforming use or~~  
 42 ~~nonconforming use land as long as if the agricultural~~

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1 nonconforming use has been maintained for at least any three (3)  
 2 year period in a five (5) year period.  
 3 (2) Restrict ~~any~~ **an** agricultural nonconforming use. ~~on~~  
 4 ~~nonconforming use land.~~  
 5 (3) Require ~~an owner of nonconforming use land to obtain~~ any of  
 6 the following for the **agricultural nonconforming** use of the  
 7 land: ~~for agricultural purposes:~~  
 8 (A) A variance for the land.  
 9 (B) A special exception for the land.  
 10 (C) A special use for the land.  
 11 (D) A contingent use for the land.  
 12 (E) A conditional use for the land.  
 13 **(f) Notwithstanding subsection (e), this section does not prohibit**  
 14 **a county, a municipality, or the state from requiring an**  
 15 **agricultural nonconforming use to be maintained and operated in**  
 16 **compliance with all:**  
 17 **(1) state environmental and state health laws and rules; and**  
 18 **(2) requirements to which conforming agricultural use land**  
 19 **is subject under the county's comprehensive plan or zoning**  
 20 **ordinance.**  
 21 SECTION 3. IC 36-7-11.1-13.1 IS AMENDED TO READ AS  
 22 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 13.1. (a) ~~As used in this~~  
 23 ~~section, "nonconforming use land" means land that satisfies both of the~~  
 24 ~~following:~~  
 25 ~~(1) The land is agricultural land that is used contrary to a~~  
 26 ~~comprehensive plan or zoning ordinance established for the area~~  
 27 ~~where the land is located.~~  
 28 ~~(2) The land was used for agricultural purposes before the~~  
 29 ~~adoption of a comprehensive plan or zoning ordinance for the~~  
 30 ~~area where the land is located.~~  
 31 ~~(b) Land remains as nonconforming use land as long as the land is~~  
 32 ~~used for agricultural purposes for any three (3) year period in a five (5)~~  
 33 ~~year period. The definitions used in this section apply only to this~~  
 34 ~~section.~~  
 35 **(b) As used in this section, "agricultural use" refers to land that**  
 36 **is used for:**  
 37 **(1) the production of livestock or livestock products,**  
 38 **commercial aquaculture, equine or equine products, poultry**  
 39 **or poultry products, horticultural or nursery stock, fruit,**  
 40 **vegetables, forage, grains, timber, trees, bees and apiary**  
 41 **products, tobacco, or other agricultural crops, in the case of**  
 42 **land that was not subject to a comprehensive plan or zoning**

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1 ordinance before the most recent plan or zoning ordinance,  
2 including any amendments, was adopted; or

3 (2) agricultural purposes as defined in or consistent with a  
4 comprehensive plan or zoning ordinance that:

5 (A) the land was subject to; and

6 (B) was repealed before the adoption of the most recent  
7 comprehensive plan or zoning ordinance, including any  
8 amendments.

9 (c) As used in this section, "agricultural nonconforming use"  
10 means the agricultural use of the land is not permitted under the  
11 most recent comprehensive plan or zoning ordinance, including  
12 any amendments, for the area where the land is located.

13 (d) An agricultural use of land that constitutes an agricultural  
14 nonconforming use may be changed to another agricultural use of  
15 land without losing agricultural nonconforming use status.

16 (e) A county or municipality may not, through the county or  
17 municipality's zoning authority, do any of the following:

18 (1) Terminate an agricultural nonconforming use on  
19 nonconforming use land as long as if the agricultural  
20 nonconforming use is maintained for at least any three (3) year  
21 period in a five (5) year period.

22 (2) Restrict any an agricultural nonconforming use. on  
23 nonconforming use land.

24 (3) Require an owner of nonconforming use land to obtain any of  
25 the following for the nonconforming agricultural  
26 nonconforming use of the land:

27 (A) A variance for the land.

28 (B) A special exception for the land.

29 (C) A special use for the land.

30 (D) A contingent use for the land.

31 (E) A conditional use for the land.

32 (F) A permit for work under section 8 of this chapter.

33 (G) A certificate of appropriateness.

34 (f) Notwithstanding subsection (e), this section does not prohibit  
35 a county, a municipality, or the state from requiring an  
36 agricultural nonconforming use to be maintained and operated in  
37 compliance with all:

38 (1) state environmental and state health laws and rules; and

39 (2) requirements to which conforming agricultural use land  
40 is subject under the county's comprehensive plan or zoning  
41 ordinance.

42 SECTION 4. [EFFECTIVE UPON PASSAGE] (a) The attorney

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1       **general and the commissioner of agriculture shall jointly conduct**  
2       **a study of the contractual arrangements prevalent throughout the**  
3       **livestock production industry.**  
4       (b) **The study must conclude by December 1, 1999.**  
5       (c) **By December 31, 1999, the attorney general and the**  
6       **commissioner of agriculture shall jointly report to the legislative**  
7       **council the findings and recommendations of the study conducted**  
8       **under subsection (a).**  
9       (d) **This SECTION expires January 1, 2000.**  
10       **SECTION 5. An emergency is declared for this act.**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Agriculture, Natural Resources and Rural Development, to which was referred House Bill 1638, 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:

Delete the title and insert the following:

A BILL FOR AN ACT concerning agriculture.

Delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

and when so amended that said bill do pass.

(Reference is to HB 1638 as introduced.)

LYTLE, Chair

Committee Vote: yeas 13, nays 0.

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## HOUSE MOTION

Mr. Speaker: I move that House Bill 1638 be amended to read as follows:

Delete the title and insert the following:

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

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 15-1.5-10.5-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 5. (a) The term of an individual appointed to the trustees under section 4(a)(11) of this chapter:

- (1) is three (3) years; and
- (2) expires September 30 of the year of expiration.

(b) A member appointed under section 4(a)(11) of this chapter may be reappointed to the trustees. ~~However,~~ **Except as provided in subsection (c)**, a member appointed under section 4(a)(11) may not serve for more than nine (9) years in any twelve (12) year period.

**(c) For purposes of the limitation on the number of years a member may serve under subsection (b), any time of not more than two (2) years a member serves:**

- (1) as an initial appointment to the trustees; or**
- (2) to fill a vacancy;**

**may not be considered."**

Renumber all SECTIONS consecutively.

(Reference is to HB 1638 as printed February 19, 1999.)

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## HOUSE MOTION

Mr. Speaker: I move that House Bill 1638 be recommitted to a Committee of One, its author, with specific instructions to amend as follows:

Page 1, between lines 16 and 17, begin a new paragraph and insert:  
 "SECTION 2. IC 36-7-4-616 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 616. (a) ~~As used in this section, "nonconforming use land" means land that satisfies both of the following:~~

(1) ~~The land is agricultural land that is used contrary to a comprehensive plan or zoning ordinance established for the area where the land is located.~~

(2) ~~The land was used for agricultural purposes before the adoption of a comprehensive plan or zoning ordinance for the area where the land is located.~~

(b) ~~Land remains as nonconforming use land as long as the land is used for agricultural purposes for any three (3) year period in a five (5) year period. The definitions used in this section apply only to this section.~~

(b) **As used in this section, "agricultural use" refers to land that is used for:**

(1) **the production of livestock or livestock products, commercial aquaculture, equine or equine products, land designated as a conservation reserve plan, pastureland, poultry or poultry products, horticultural or nursery stock, fruit, vegetables, forage, grains, timber, trees, bees and apiary products, or other agricultural crops, in the case of land that was not subject to a comprehensive plan or zoning ordinance before the most recent plan or zoning ordinance, including any amendments, was adopted; or**

(2) **agricultural purposes as defined in or consistent with a comprehensive plan or zoning ordinance that:**

(A) **the land was subject to; and**

(B) **was repealed before the adoption of the most recent comprehensive plan or zoning ordinance, including any amendments.**

(c) **As used in this section, "agricultural nonconforming use" means the agricultural use of land that is not permitted under the most recent comprehensive plan or zoning ordinance, including any amendments, for the area where the land is located.**

(d) **An agricultural use of land that constitutes an agricultural nonconforming use may be changed to another agricultural use of**

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**land without losing agricultural nonconforming use status.**

~~(e)~~ (e) A county or municipality may not, **through the county or municipality's zoning authority**, do any of the following:

- (1) Terminate an agricultural nonconforming use ~~on nonconforming use land as long as~~ **if** the agricultural nonconforming use has been maintained for at least any three (3) year period in a five (5) year period.
- (2) Restrict ~~any an~~ agricultural nonconforming use. ~~on nonconforming use land.~~
- (3) Require an owner of nonconforming use land to obtain any of the following for the **agricultural nonconforming** use of the land: ~~for agricultural purposes:~~
  - (A) A variance for the land.
  - (B) A special exception for the land.
  - (C) A special use for the land.
  - (D) A contingent use for the land.
  - (E) A conditional use for the land.

**(f) Notwithstanding subsection (e), this section does not prohibit a county, a municipality, or the state from requiring an agricultural nonconforming use to be maintained and operated in compliance with all:**

- (1) state environmental and state health laws and rules; and
- (2) requirements to which conforming agricultural use land, **through the county or municipality's zoning authority, is subject under the comprehensive plan or zoning ordinance.**

SECTION 3. IC 36-7-11.1-13.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 13.1. (a) ~~As used in this section, "nonconforming use land"~~ means land that satisfies both of the following:

- (1) ~~The land is agricultural land that is used contrary to a comprehensive plan or zoning ordinance established for the area where the land is located.~~
- (2) ~~The land was used for agricultural purposes before the adoption of a comprehensive plan or zoning ordinance for the area where the land is located.~~

~~(b) Land remains as nonconforming use land as long as the land is used for agricultural purposes for any three (3) year period in a five (5) year period. The definitions used in this section apply only to this section.~~

**(b) As used in this section, "agricultural use" refers to land that is used for:**

- (1) the production of livestock or livestock products,



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commercial aquaculture, equine or equine products, poultry or poultry products, horticultural or nursery stock, fruit, vegetables, forage, grains, timber, trees, bees and apiary products, or other agricultural crops, in the case of land that was not subject to a comprehensive plan or zoning ordinance before the most recent plan or zoning ordinance, including any amendments, was adopted; or

(2) agricultural purposes as defined in or consistent with a comprehensive plan or zoning ordinance that:

(A) the land was subject to; and

(B) was repealed before the adoption of the most recent comprehensive plan or zoning ordinance, including any amendments.

(c) As used in this section, "agricultural nonconforming use" means the agricultural use of the land is not permitted under the most recent comprehensive plan or zoning ordinance, including any amendments, for the area where the land is located.

(d) An agricultural use of land that constitutes an agricultural nonconforming use may be changed to another agricultural use of land without losing agricultural nonconforming use status.

(e) A county or municipality may not, through the county or municipality's zoning authority, do any of the following:

(1) Terminate an agricultural nonconforming use on nonconforming use land as long as if the agricultural nonconforming use is maintained for at least any three (3) year period in a five (5) year period.

(2) Restrict any an agricultural nonconforming use. on nonconforming use land.

(3) Require an owner of nonconforming use land to obtain any of the following for the nonconforming agricultural nonconforming use of the land:

(A) A variance for the land.

(B) A special exception for the land.

(C) A special use for the land.

(D) A contingent use for the land.

(E) A conditional use for the land.

(F) A permit for work under section 8 of this chapter.

(G) A certificate of appropriateness.

(f) Notwithstanding subsection (e), this section does not prohibit a county, a municipality, or the state from requiring an agricultural nonconforming use to be maintained and operated in compliance with all:

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**(1) state environmental and state health laws and rules; and  
(2) requirements to which conforming agricultural use land,  
through the county or municipality's zoning authority, is  
subject under the comprehensive plan or zoning ordinance."**

Renumber all SECTIONS consecutively.

(Reference is to HB 1638 as reprinted March 2, 1999 - Printer's Error.)

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COMMITTEE REPORT

Mr. Speaker: Your Committee of One, to which was referred House Bill 1638, begs leave to report that said bill has been amended as directed.

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COMMITTEE REPORT

Mr. President: The Senate Committee on Agriculture and Small Business, to which was referred House Bill No. 1638, 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, line 21, after "products," insert "**tobacco**,".

Page 3, line 17, after "land" delete ",,".

Page 3, line 18, delete "through the county or municipality's zoning authority,".

Page 3, line 19, before "comprehensive" insert "**county's**".

Page 3, line 40, after "products," insert "**tobacco**,".

Page 4, line 38, after "land" delete ",,".

Page 4, line 39, delete "through the county or municipality's zoning authority,".

Page 4, line 40, before "comprehensive" insert "**county's**".

and when so amended that said bill do pass.

(Reference is to HB 1638 as reprinted March 9, 1999.)

NUGENT, Chairperson

Committee Vote: Yeas 4, Nays 3.

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