

SENATE BILL No. 539

DIGEST OF INTRODUCED BILL

Citations Affected: IC 8-4.5; IC 32-5-12.

Synopsis: Transportation corridors. Changes the composition of the transportation corridor planning board to include the director of the department of commerce or the director's designee, a representative of parks and recreation interests, and a representative of a public interest in trails and greenways. Permits the state to acquire a railroad's interest in a corridor to preserve a railroad corridor. Makes the general acceptability of the proposed recreational use to the community at large a factor for the Indiana department of transportation to consider in determining whether to acquire part of a railway's interest in a corridor and for the board to use in reviewing applications. Eliminates the requirement that the responsible party post bond sufficient to cover the
(Continued next page)

Effective: July 1, 1999.

Kenley

January 20, 1999, read first time and referred to Committee on Planning and Economic Development.

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Digest Continued

cost of installing a fence between property owners' property and the corridor. Permits recreational use of a corridor that has rail traffic under certain circumstances. Repeals the law concerning abandoned railroad rights-of-way. Removes all references to right-of-way in the transportation corridor planning article and replaces the references with the term corridor.

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Introduced

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.

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SENATE BILL No. 539

A BILL FOR AN ACT to amend the Indiana Code concerning utilities and transportation.

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

- 1 SECTION 1. IC 8-4.5-1-14 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 14. "Property owner"
3 refers to a person that:
4 (1) owns property adjacent to a recreational trail; and
5 (2) is not a responsible party.
6 For purposes of this section, a person that satisfies both subdivisions
7 (1) and (2) is a property owner even if the person owns any part of a
8 ~~right-of-way~~ fee **simple interest in the corridor**.
9 SECTION 2. IC 8-4.5-1-16 IS AMENDED TO READ AS
10 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 16. "Recreational trail"
11 means a trail or path that:
12 (1) includes a ~~right-of-way~~ **corridor** along any part of its length;
13 and
14 (2) is intended to be used for:
15 (A) bicycling;



- 1 (B) exercising;
 2 (C) hiking;
 3 (D) running;
 4 (E) riding:
 5 (i) in or on a vehicle of any kind, regardless of the means of
 6 propelling the vehicle; or
 7 (ii) on any animal;
 8 (F) walking; or
 9 (G) any other recreational purpose.

10 However, the term does not include a highway, road, or street (as
 11 defined in IC 8-23-1-23).

12 SECTION 3. IC 8-4.5-2-2 IS AMENDED TO READ AS
 13 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 2. (a) The board
 14 consists of the following members:

- 15 (1) The commissioner or the commissioner's designee.
 16 (2) The director or the director's designee.
 17 (3) An individual representing agriculture appointed by the
 18 governor.
 19 (4) An individual representing the railroad industry appointed by
 20 the governor.
 21 (5) An individual representing persons interested in the
 22 preservation of railroad corridors for recreational and other uses
 23 appointed by the governor.
 24 (6) An individual representing local government appointed by the
 25 governor.
 26 (7) An individual representing the utility industry appointed by
 27 the governor.
 28 (8) Two (2) individuals appointed by the governor, one (1) of
 29 whom must be a property owner.
 30 **(9) The director of the department of commerce or the**
 31 **director's designee.**
 32 **(10) An individual from a statewide organization representing**
 33 **parks and recreation interests appointed by the governor.**
 34 **(11) An individual representing a public interest in trails and**
 35 **greenways appointed by the governor.**

36 (b) In appointing members of the board, the governor shall appoint
 37 members so that not more than ~~five (5)~~ **six (6)** members of the board
 38 belong to the same political party.

39 SECTION 4. IC 8-4.5-3-4 IS AMENDED TO READ AS
 40 FOLLOWS: Sec. 4. Subject to approval by the board, the Indiana
 41 department of transportation shall file a petition with the Interstate
 42 Commerce Commission for public use conditions on a ~~right-of-way~~



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1 **corridor** that has been identified for preservation under this chapter.

2 SECTION 5. IC 8-4.5-3-5 IS AMENDED TO READ AS
3 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 5. The Indiana
4 department of transportation, in cooperation with any of the following,
5 may file a petition with the Interstate Commerce Commission for
6 public use conditions on any ~~right-of-way~~ **corridor** not described in
7 section 4 of this chapter and for which a petition has been filed:

- 8 (1) The department of natural resources.
9 (2) Local government agencies.
10 (3) Statewide utility associations.
11 (4) Nonprofit special interest groups.

12 SECTION 6. IC 8-4.5-4-1 IS AMENDED TO READ AS
13 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 1. (a) The Indiana
14 department of transportation shall determine whether the state should
15 acquire a railroad's interest in a ~~right-of-way~~ **corridor** that is proposed
16 to be abandoned. The department shall make its recommendations to
17 the board regarding acquisition of a railroad's interest in any
18 ~~right-of-way~~ **corridor**.

19 (b) Acquisition of a railroad's interest in a ~~right-of-way~~ **corridor** is
20 subject to approval of the board.

21 SECTION 7. IC 8-4.5-4-2 IS AMENDED TO READ AS
22 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 2. The state may
23 acquire any part of a railroad's interest in a ~~right-of-way~~ **corridor** under
24 this chapter for any of the following purposes:

- 25 (1) A present or future rail line.
26 (2) A transportation corridor.
27 (3) A communication corridor.
28 (4) A recreational trail.
29 (5) A utility corridor.
30 (6) **The preservation of a railroad corridor.**
31 (7) Any combination of purposes described in subdivisions (1)
32 through ~~(5)~~: **(6)**.

33 SECTION 8. IC 8-4.5-4-3 IS AMENDED TO READ AS
34 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 3. (a) The Indiana
35 department of transportation shall hold at least one (1) public meeting
36 in each county through which the ~~right-of-way~~ **corridor** passes before
37 determining whether the state should acquire a railroad's interest in a
38 ~~right-of-way~~ **corridor** that is proposed to be abandoned. Notice of the
39 meeting must be given in accordance with IC 5-14-1.5.

40 (b) In addition to the notice requirements of IC 5-14-1.5, the
41 department shall give notice of a meeting under this section to the
42 following:



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- 1 (1) The county commissioners of each county through which the
 2 railroad's interest in the proposed abandoned ~~right-of-way~~
 3 **corridor** passes.
 4 (2) The legislative body of each city or town:
 5 (A) through which the railroad's interest in the ~~right-of-way~~
 6 **corridor** passes; or
 7 (B) that is within one (1) mile of any part of the railroad's
 8 interest in the ~~right-of-way~~ **corridor**.
 9 (3) The railroad that proposes to abandon the railroad's interest in
 10 the ~~right-of-way~~ **corridor**.
 11 (4) The Indiana utility regulatory commission.

12 Notice must be given to the persons described in subdivisions (1)
 13 through (4) not later than the date notice is required to be published
 14 under IC 5-14-1.5.

15 (c) The department may hold additional meetings before making a
 16 determination under this chapter.

17 (d) The department shall hold a meeting under this section in each
 18 county through which the railroad's interest in the ~~right-of-way~~
 19 **corridor** passes.

20 SECTION 9. IC 8-4.5-4-4 IS AMENDED TO READ AS
 21 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 4. In determining
 22 whether the state should acquire any part of a railroad's interest in a
 23 ~~right-of-way~~ **corridor**, the Indiana department of transportation shall
 24 consider the following factors:

- 25 (1) The potential for future use of the railroad's interest in the
 26 ~~right-of-way~~ **corridor** as a freight or high-speed passenger rail
 27 line, considering the following:
 28 (A) The potential need for use of the railroad's interest in the
 29 ~~right-of-way~~ **corridor** for future transportation purposes.
 30 (B) The cost of maintaining the railroad's interest in the
 31 ~~right-of-way~~ **corridor** during any time before the future
 32 transportation use will begin.
 33 (C) The effect of any interim use and the future transportation
 34 use of the railroad's interest in the ~~right-of-way~~ **corridor** on
 35 property owners.
 36 (D) Any relevant requirement of any federal law.
 37 (E) Any other factor the department considers relevant.
 38 (2) Based on the recommendation of the department of natural
 39 resources, the potential for recreational use of the railroad's
 40 interest in the ~~right-of-way~~ **corridor** considering the following:
 41 (A) The recreational value of the railroad's interest in the
 42 ~~right-of-way~~ **corridor**.



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- 1 (B) The feasibility of using the railroad's interest in the
 2 ~~right-of-way corridor~~ for recreation.
- 3 (C) The likelihood that there may be significant recreational
 4 use of the railroad's interest in the ~~right-of-way corridor~~ if the
 5 railroad's interest in the ~~right-of-way corridor~~ is converted to
 6 a recreational trail.
- 7 (D) The **general** acceptability of the proposed recreational use
 8 of the railroad's interest in the ~~right-of-way by corridor to~~
 9 property owners **and the community at large**.
- 10 (E) The existence of a willing person, whether public or
 11 private, to operate the railroad's interest in the ~~right-of-way~~
 12 **corridor** for the proposed recreational use.
- 13 (F) Any relevant requirement of any federal law.
- 14 (G) Any other factor the department considers relevant.
- 15 (3) The potential for the use of the railroad's interest in the
 16 ~~right-of-way corridor~~ for communications or utility use.
- 17 (4) Whether there are funds to acquire the railroad's interest in the
 18 ~~right-of-way~~ **corridor**.
- 19 SECTION 10. IC 8-4.5-4-5 IS AMENDED TO READ AS
 20 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 5. (a) After the
 21 department makes a recommendation to the board under section 1 of
 22 this chapter, the board shall hold a public meeting to consider the
 23 recommendation.
- 24 (b) Notice of a meeting under this section must be given in the same
 25 manner and to the same persons as required under section 3 of this
 26 chapter.
- 27 (c) The board may hold additional meetings before making a
 28 determination under this chapter.
- 29 (d) The board shall hold a meeting under this section in a county
 30 through which the railroad's interest in the ~~right-of-way corridor~~
 31 passes.
- 32 SECTION 11. IC 8-4.5-4-6 IS AMENDED TO READ AS
 33 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 6. (a) If:
- 34 (1) a determination is made under this chapter to acquire the
 35 railroad's interest in the ~~right-of-way~~ **corridor**; and
- 36 (2) money is available in the fund;
- 37 the state shall acquire the railroad's interest in the ~~right-of-way~~
 38 **corridor** under IC 4-20.5-3.
- 39 (b) An acquisition by the state under this chapter does not deprive
 40 a public utility of the use of all or part of the railroad's interest in the
 41 ~~right-of-way~~ **corridor**, if, at the time of acquisition:
- 42 (1) the public utility is occupying and using all or part of the

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- 1 railroad's interest in that ~~right-of-way~~ **corridor** for the location
 2 and operation of its facilities; or
 3 (2) the public utility has acquired an interest for use of all or part
 4 of the railroad's interest in the ~~right-of-way~~ **corridor**.
- 5 SECTION 12. IC 8-4.5-4-7 IS AMENDED TO READ AS
 6 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 7. If the state acquires
 7 any interest in the ~~right-of-way~~ **corridor** under this article, all revenues
 8 from a railroad's interest in a ~~right-of-way~~ **corridor** acquired under this
 9 chapter, including payments derived from public utility or other
 10 easements, must be deposited in the fund.
- 11 SECTION 13. IC 8-4.5-4-8 IS AMENDED TO READ AS
 12 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 8. If a railroad's interest
 13 in a ~~right-of-way~~ **corridor** is acquired under this chapter for a
 14 recreational purpose, the railroad's interest in the ~~right-of-way~~ **corridor**
 15 must be developed and operated under IC 8-4.5-5.
- 16 SECTION 14. IC 8-4.5-5-11 IS AMENDED TO READ AS
 17 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 11. (a) The board:
 18 (1) shall review each application;
 19 (2) may verify the contents of an application; and
 20 (3) may visit the trail site that is the subject of an application.
 21 (b) The board shall evaluate each complete application on the basis
 22 of the following criteria:
 23 (1) Whether the predicted use of the trail justifies the construction
 24 and maintenance costs.
 25 (2) Need, in terms of the population to be served and existing
 26 trails in the area.
 27 (3) Compatibility with local, areawide, regional, or statewide
 28 plans.
 29 (4) The **general** acceptability of the proposed trail to property
 30 owners **and the community at large**.
 31 (5) Benefits of multiple uses and recreational opportunities.
 32 (6) Quality of the site.
 33 (7) Economic benefits to the local area.
 34 (8) Accessibility for persons with disabilities.
 35 (9) Interference with any existing public utility use.
 36 (10) Other criteria set by the board.
 37 (c) The board shall determine the applicants to whom grants will be
 38 awarded.
- 39 SECTION 15. IC 8-4.5-6-1 IS AMENDED TO READ AS
 40 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 1. (a) Subject to this
 41 chapter, a ~~right-of-way~~ **corridor** may be used for a recreational trail.
 42 (b) A recreational trail may not be authorized under this chapter to

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1 be used by motorized vehicles except for the following:

- 2 (1) Vehicles used to maintain or provide security for the trail.
 3 (2) Vehicles used by persons with disabilities.

4 (c) A recreational trail may **not** be authorized under this chapter on
 5 any part of a ~~right-of-way~~ **corridor** that has rail traffic **at the**
 6 **discretion of the responsible party and rail traffic operator**
 7 **considering appropriate and safe design and operation.**

8 SECTION 16. IC 8-4.5-6-2 IS AMENDED TO READ AS
 9 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 2. Before a
 10 ~~right-of-way~~ **corridor** in any part of a county may be converted for use
 11 as a recreational trail, a responsible party must file the information
 12 required by section 3 of this chapter with the following:

- 13 (1) The department of natural resources.
 14 (2) If any part of the recreational trail is intended to be located in
 15 a municipality, with the executive of the municipality.
 16 (3) If any part of the recreational trail is intended to be located on
 17 property not within a municipality, with the county executive of
 18 any county in which the recreational trail is intended to be
 19 located.

20 SECTION 17. IC 8-4.5-6-3 IS AMENDED TO READ AS
 21 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 3. A responsible party
 22 must file the following information under section 2 of this chapter:

23 (1) A description and map of the proposed recreational trail. The
 24 information filed under this subdivision must identify the
 25 following:

- 26 (A) The properties for which the responsible party has secured
 27 the legal right to use as a recreational trail.
 28 (B) The properties for which the responsible party has not, at
 29 the time of the filing, secured the legal right to use as a
 30 recreational trail.

31 (2) The name and address of the responsible party. If the
 32 responsible party is not an individual, the following information
 33 about the responsible party must also be included:

- 34 (A) If the responsible party is a governmental entity, the
 35 following:
 36 (i) The name and address of the individual or body
 37 responsible for the administration of the governmental
 38 entity.
 39 (ii) The name, address, and head of any agency of the
 40 governmental entity that will be responsible for the
 41 operation of the recreational trail.

42 (B) If the responsible party is a corporation of any kind, the

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- 1 officers of the corporation and the address at which legal
 2 documents for the corporation may be served.
- 3 (C) If the responsible party is a partnership of any kind, the
 4 names and addresses of all of the partners.
- 5 (D) If the responsible party is any other kind of entity, the
 6 name and address of each individual who satisfies the
 7 following:
- 8 (i) The individual belongs to or is affiliated with the entity.
 9 (ii) The individual has some responsibility for the
 10 organization or governance of the entity.
- 11 (3) A project concept statement for the recreational trail,
 12 including a location map, cross-section, and sketch of the project,
 13 detailed enough to generate project cost estimates. The proposed
 14 project is not required to be designed before filing, but the
 15 concept must be reasonable from a transportation engineering
 16 standpoint and detailed enough to generate project cost estimates.
- 17 (4) An environmental impact statement, if required by law.
- 18 (5) An itemized cost estimate for the total project showing for
 19 each item the cost and funding source.
- 20 (6) Expenses, including personnel costs, costs of goods and
 21 services, contractual services, equipment, utilities, travel, and
 22 taxes. The information provided under this subdivision must
 23 specifically show expenses for:
- 24 (A) trail security;
 25 (B) fencing;
 26 (C) maintenance; and
 27 (D) drainage.
- 28 (7) A trail operation agreement under which the responsible party
 29 agrees to operate the recreational trail. The trail operation
 30 agreement must provide that the responsible party shall grant
 31 easements to persons who own adjacent property on both sides of
 32 the recreational trail permitting those persons to cross the trail in
 33 a reasonable fashion given the use of the adjacent property. The
 34 following may require inclusion of other provisions in the trail
 35 operation agreement considered advisable:
- 36 (A) The department of natural resources.
 37 (B) The executive of a county if an ordinance of the legislative
 38 body of the county is required to authorize the recreational
 39 trail under this chapter.
 40 (C) The executive of a municipality if an ordinance of the
 41 legislative body of the municipality is required to authorize the
 42 recreational trail under this chapter.

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1 (8) If the responsible party is not a governmental entity, a bond in
 2 an amount sufficient to satisfy the responsible party's obligation
 3 to:
 4 (1) erect and maintain fences; or
 5 (2) pay for the cost of fences;
 6 under section 6 of this chapter. The bond shall be made payable
 7 to property owners under section 6 of this chapter if the
 8 responsible party breaches its obligation under section 6 of this
 9 chapter.
 10 SECTION 18. IC 8-4.5-6-6 IS AMENDED TO READ AS
 11 FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 6. (a) At the request of
 12 a property owner, the responsible party (including a governmental
 13 entity), at the responsible party's expense, shall, at the option of the
 14 property owner, ~~do either of the following~~:
 15 (1) erect and maintain fencing between the recreational trail and
 16 the property owner's property. The fencing must be in accordance
 17 with current fencing standards of the Indiana department of
 18 transportation for urban or rural settings, as appropriate to the
 19 location of the recreational trail.
 20 (2) Pay the property owner money equal to the cost of installing
 21 a fence described in subdivision (1) between the property owner's
 22 property and the recreational trail.
 23 (b) If the responsible party is not a governmental entity, failure of
 24 the responsible party to comply with subsection (a) is a breach of the
 25 trail operation agreement. A property owner may recover the costs of
 26 erecting and maintaining a fence from the bond given under section
 27 3(8) of this chapter.
 28 SECTION 19. THE FOLLOWING ARE REPEALED [EFFECTIVE
 29 JULY 1, 1999]: IC 8-4.5-1-18; IC 8-4.5-1-19; IC 32-5-12.

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