



February 25, 2000

ENGROSSED HOUSE BILL No. 1184

DIGEST OF HB 1184 (Updated February 24, 2000 11:12 AM - DI 76)

Citations Affected: IC 14-8; IC 14-21.

Synopsis: Cemeteries and burial grounds. Provides that the department of natural resources (DNR) alone or with the assistance of certain entities may survey and register all cemeteries and burial grounds in Indiana in a registry that the DNR establishes and maintains. Allows the DNR to accept donations and establish a trust fund for the cemetery survey. Requires a person who wishes to disturb the ground within 100 feet of a recorded cemetery or burial ground for erecting, altering, or repairing a structure to submit a development plan to the DNR for approval according to standards established by rule. Makes certain exceptions. Requires the DNR to review the development plan not later than 60 days after the plan is submitted. Provides a separate approval procedure for plans of governmental entities. Requires a person who records any interest in property where a burial ground or cemetery is known to be located to record the deed to the property with the appropriate county recorder. Requires that the deed must indicate that the deed pertains to property on which a burial ground or cemetery is known to be located. Requires the county recorder to send a copy of the deed to: (1) the department of natural resources; and (2) the local cemetery board, or if no local cemetery board exists, to the county commissioners; not later than thirty (30) days after the deed is recorded.

Effective: July 1, 2000.

Lytle, Bischoff, Dillon, Stevenson

(SENATE SPONSORS — WHEELER, MERRITT, LEWIS, CRAYCRAFT)

January 10, 2000, read first time and referred to Committee on Agriculture, Natural Resources and Rural Development.

January 25, 2000, amended, reported — Do Pass.

January 31, 2000, read second time, amended, ordered engrossed.

February 1, 2000, engrossed.

February 7, 2000, read third time, passed. Yeas 98, nays 0.

SENATE ACTION

February 10, 2000, read first time and referred to Committee on Corrections, Criminal and Civil Procedures.

February 24, 2000, amended, reported favorably — Do Pass.

EH 1184—LS 6803/DI 22+



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February 25, 2000

Second Regular Session 111th General Assembly (2000)

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 1999 General Assembly.

ENGROSSED HOUSE BILL No. 1184

A BILL FOR AN ACT to amend the Indiana Code concerning burial grounds and cemeteries.

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

- 1 SECTION 1. IC 14-8-2-13.5 IS ADDED TO THE INDIANA CODE
2 AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2000]: **Sec. 13.5. "Archeological plan", for purposes of**
4 **IC 14-21-1, has the meaning set forth in IC 14-21-1-8(b).**
5 SECTION 2. IC 14-8-2-30 IS AMENDED TO READ AS
6 FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 30. "Burial ground", for
7 purposes of ~~IC 14-21-1~~ **IC 14-21**, has the meaning set forth in
8 IC 14-21-1-3.
9 SECTION 3. IC 14-8-2-37.5 IS ADDED TO THE INDIANA CODE
10 AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY
11 1, 2000]: **Sec. 37.5. "Cemetery", for purposes of IC 14-21, has the**
12 **meaning set forth in IC 23-14-33-7.**
13 SECTION 4. IC 14-8-2-68.5 IS ADDED TO THE INDIANA CODE
14 AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY
15 1, 2000]: **Sec. 68.5. "Development plan", for purposes of**
16 **IC 14-21-1, has the meaning set forth in IC 14-21-1-8(c).**
17 SECTION 5. IC 14-8-2-127 IS AMENDED TO READ AS

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1 FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 127. "Human remains",
 2 for purposes of ~~IC 14-21-1~~ **IC 14-21**, has the meaning set forth in
 3 IC 14-21-1-7.

4 SECTION 6. IC 14-8-2-219 IS AMENDED TO READ AS
 5 FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 219. "Property" has the
 6 following meaning:

7 (1) For purposes of IC 14-12-2 **and IC 14-21-3**, the meaning set
 8 forth in IC 14-12-2-6.

9 (2) For purposes of IC 14-18-8, the meaning set forth in
 10 IC 14-18-8-1.

11 SECTION 7. IC 14-21-1-8 IS AMENDED TO READ AS
 12 FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 8. **(a) As used in this**
 13 **chapter, "plan" refers to:**

14 **(1) an archeological plan, as described in subsection (b); or**

15 **(2) a development plan, as described in subsection (c).**

16 **(b) As used in this chapter, "plan" "archeological plan" means an**
 17 **archeological a plan for the systematic recovery, analysis, and**
 18 **disposition by scientific methods of material evidence and information**
 19 **about the life and culture in past ages.**

20 **(c) As used in this chapter, "development plan" means a plan**
 21 **for the erection, alteration, or repair of any structure.**

22 SECTION 8. IC 14-21-1-13.5 IS ADDED TO THE INDIANA
 23 CODE AS A NEW SECTION TO READ AS FOLLOWS
 24 [EFFECTIVE JULY 1, 2000]: **Sec. 13.5. (a) The division may**
 25 **conduct a program to survey and register in a registry of Indiana**
 26 **cemeteries and burial grounds that the division establishes and**
 27 **maintains all cemeteries and burial grounds in each county in**
 28 **Indiana. The division may conduct the program alone or by**
 29 **entering into an agreement with one (1) or more of the following**
 30 **entities:**

31 **(1) The Indiana historical society established under IC 23-6-3.**

32 **(2) A historical society as defined in IC 20-5-17.5-1(a).**

33 **(3) The Historic Landmarks Foundation of Indiana.**

34 **(4) A professional archeologist or historian associated with a**
 35 **college or university.**

36 **(5) A township trustee.**

37 **(6) Any other entity that the division selects.**

38 **(b) In conducting a program under subsection (a), the division**
 39 **may receive gifts and grants under terms, obligations, and**
 40 **liabilities that the director considers appropriate. The director**
 41 **shall use a gift or grant received under this subsection:**

42 **(1) to carry out subsection (a); and**

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- 1 **(2) according to the terms of the gift or grant.**
 2 **(c) At the request of the director, the auditor of state shall**
 3 **establish a trust fund for purposes of holding money received**
 4 **under subsection (b).**
 5 **(d) The director shall administer a trust fund established by**
 6 **subsection (c). The expenses of administering the trust fund shall**
 7 **be paid from money in the trust fund.**
 8 **(e) The treasurer of state shall invest the money in the trust fund**
 9 **established by subsection (c) that is not currently needed to meet**
 10 **the obligations of the trust fund in the same manner as other public**
 11 **trust funds may be invested. The treasurer of state shall deposit in**
 12 **the trust fund the interest that accrues from the investment of the**
 13 **trust fund.**
 14 **(f) Money in the trust fund at the end of a state fiscal year does**
 15 **not revert to the state general fund.**
 16 **(g) Nothing in this section may be construed to authorize**
 17 **violation of the confidentiality of information requirements of 16**
 18 **U.S.C. 470(w) and 16 U.S.C. 470(h)(h).**
 19 SECTION 9. IC 14-21-1-25 IS AMENDED TO READ AS
 20 FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 25. (a) The commission
 21 shall adopt rules establishing standards for plans.
 22 **(b) With respect to archeological plans, the rules must impose a**
 23 **standard of conduct that does the following:**
 24 (1) Promotes the scientific investigation and conservation of past
 25 cultures.
 26 (2) Considers the interests and expertise of amateur archeologists
 27 and professional archeologists.
 28 **(c) With respect to development plans, the rules must impose a**
 29 **standard of conduct that preserves and protects both of the**
 30 **following:**
 31 (1) **The rights and interests of landowners.**
 32 (2) **The sensitivity of human beings for treating human**
 33 **remains with respect and dignity, as determined by the**
 34 **commission.**
 35 ~~(b)~~ **(d) Plans required under this chapter must be submitted to the**
 36 **department for approval according to rules adopted by the commission.**
 37 SECTION 10. IC 14-21-1-26.5 IS ADDED TO THE INDIANA
 38 CODE AS A NEW SECTION TO READ AS FOLLOWS
 39 [EFFECTIVE JULY 1, 2000]: **Sec. 26.5. (a) Notwithstanding**
 40 **IC 23-14-44-1, this section does not apply to the following:**
 41 (1) **A public utility (as defined in IC 8-1-2-1(a)).**
 42 (2) **A corporation organized under IC 8-1-13.**



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1 **(3) A municipally owned utility (as defined in IC 8-1-2-1(h)).**

2 **(4) A surface coal mining and reclamation operation**
 3 **permitted under IC 14-34.**

4 **(b) The requirement under this subsection applies only if the**
 5 **person intends to construct a new structure or intends to**
 6 **significantly alter or repair an existing structure, and does not**
 7 **apply to any activity that would reasonably be considered routine**
 8 **repair or maintenance. Except as provided in subsection (c), a**
 9 **person may not disturb the ground within one hundred (100) feet**
 10 **of a recorded burial ground or cemetery for the purpose of**
 11 **erecting, altering, or repairing any structure without having a**
 12 **development plan approved by the department under section 25 of**
 13 **this chapter or in violation of a development plan approved by the**
 14 **department under section 25 of this chapter. The department must**
 15 **review the development plan not later than sixty (60) days after the**
 16 **development plan is submitted.**

17 **(c) A development plan for a governmental entity to disturb**
 18 **ground within one hundred (100) feet of a recorded burial ground**
 19 **or cemetery must be approved as follows:**

20 **(1) A development plan of a municipality requires approval of**
 21 **the executive of the municipality and does not require the**
 22 **approval of the department. However, if the burial ground or**
 23 **cemetery is located outside the municipality, approval is also**
 24 **required by the executive of the county where the burial**
 25 **ground or cemetery is located. A county cemetery commission**
 26 **established under IC 23-14-67-2 may advise the executive of**
 27 **the municipality on whether to approve a development plan.**

28 **(2) A development plan of a governmental entity other than:**

29 **(A) a municipality; or**

30 **(B) the state;**

31 **requires the approval of the executive of the county where the**
 32 **governmental entity is located and does not require the**
 33 **approval of the department. However, if the governmental**
 34 **entity is located in more than one (1) county, only the**
 35 **approval of the executive of the county where the burial**
 36 **ground or cemetery is located is required. A county cemetery**
 37 **commission established under IC 23-14-67-2 may advise the**
 38 **county executive on whether to approve a development plan.**

39 **(3) A development plan of the state requires the approval of**
 40 **the department.**

41 **(d) A person who recklessly, knowingly, or intentionally**
 42 **violates this section commits a Class A misdemeanor. However, the**



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1 offense is a Class D felony if the person disturbs buried human
2 remains or grave markers while committing the offense.

3 SECTION 11. IC 14-21-3 IS ADDED TO THE INDIANA CODE
4 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
5 JULY 1, 2000]:

6 **Chapter 3. Recording Interests in Property Containing a Burial**
7 **Ground or Cemetery**

8 **Sec. 1. (a) Before a person may record any interest in property**
9 **on which a burial ground or cemetery is known to be located, the**
10 **owner of the property must record the deed to the property in the**
11 **recorder's office of the county where the property is located. The**
12 **bottom portion of the deed must state in capital letters in bold type**
13 **that the deed pertains to property on which a burial ground or**
14 **cemetery is known to be located.**

15 **(b) The county recorder shall send a copy of the deed to:**

16 **(1) the department; and**

17 **(2) the local cemetery board, or if no local cemetery board**
18 **exists, to the county commissioners;**

19 **not later than thirty (30) days after the deed is recorded under**
20 **subsection (a).**

21 **Sec. 2. The recording that this chapter requires is in addition to**
22 **any recording that may be required by IC 23-14-34-1.**

23 **Sec. 3. Beginning January 1, 2003:**

24 **(1) a person who violates section 1 of this chapter commits a**
25 **Class C infraction; and**

26 **(2) each period of thirty (30) days during which a deed that**
27 **section 1 of this chapter requires to be recorded remains**
28 **unrecorded constitutes a separate infraction.**

29 **Sec. 4. Nothing in this chapter may be construed to authorize**
30 **violation of the confidentiality of information requirements of 16**
31 **U.S.C. 470(w) and 16 U.S.C. 470(h)(h).**

32 **Sec. 5. This chapter does not apply to the following:**

33 **(1) A public utility (as defined in IC 8-1-2-1(a)).**

34 **(2) A corporation organized under IC 8-1-13.**

35 **(3) A municipally owned utility (as defined in IC 8-1-2-1(h)).**

36 **(4) Property that has been subject to bonding or other**
37 **financial assurances released by the appropriate**
38 **governmental agency after compliance with applicable state**
39 **laws.**



COMMITTEE REPORT

Mr. Speaker: Your Committee on Agriculture, Natural Resources and Rural Development, to which was referred House Bill 1184, 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, line 21, delete ":".

Page 2, line 22, delete "(1)".

Page 2, line 22, delete "; or" and insert ".".

Page 2, run in lines 21 through 22.

Page 2, delete lines 23 through 24.

Page 2, between lines 34 and 35, begin a new line block indented and insert:

"(4) A professional archeologist or historian associated with a college or university."

Page 3, line 36, delete "(A)" and insert **"This section does not apply to the following:**

(1) A public utility (as defined in IC 8-1-2-1(a)).

(2) A corporation organized under IC 8-1-13.

(3) A municipally owned utility (as defined in IC 8-1-2-1(h)).

(b) Except as provided in subsection (c), a"

Page 3, line 38, delete ":".

Page 3, line 39, delete "(1)".

Page 3, line 39, delete "; or".

Page 3, run in lines 38 through 39.

Page 3, delete lines 40 through 41.

Page 3, run in lines 39 and 42.

Page 4, delete lines 3 through 4, begin a new paragraph and insert:

"(c) A development plan for a governmental entity to disturb ground within one hundred (100) feet of a recorded burial ground or cemetery must be approved as follows:

(1) A development plan of a municipality requires approval of the executive of the municipality and does not require the approval of the department. However, if the burial ground or cemetery is located outside the municipality, approval is also required by the executive of the county where the burial ground or cemetery is located. A county cemetery commission established under IC 23-14-67-2 may advise the executive of the municipality on whether to approve a development plan.

(2) A development plan of a governmental entity other than:

(A) a municipality; or

(B) the state;



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requires the approval of the executive of the county where the governmental entity is located and does not require the approval of the department. However, if the governmental entity is located in more than one (1) county, only the approval of the executive of the county where the burial ground or cemetery is located is required. A county cemetery commission established under IC 23-14-67-2 may advise the county executive on whether to approve a development plan. (3) A development plan of the state requires the approval of the department."

Page 4, line 5, delete "(c)" and insert "(d)".

Page 4, line 6, delete "subsection (a)" and insert "**this section**".

Page 4, line 15, after "is" insert "**known to be**".

and when so amended that said bill do pass.

(Reference is to HB 1184 as introduced.)

ULMER, Chair

Committee Vote: yeas 12, nays 0.

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HOUSE MOTION

Mr. Speaker: I move that House Bill 1184 be amended to read as follows:

Delete the title and insert the following:

A BILL FOR AN ACT to amend the Indiana Code concerning burial grounds and cemeteries.

Page 2, line 25, delete "record" and insert "**register in a registry of Indiana cemeteries and burial grounds that the division establishes and maintains**".

Page 2, between lines 33 and 34, begin a new line block indented and insert:

"(5) Any other entity that the division selects."

Page 13, between lines 12 and 13, begin a new paragraph and insert:

"SECTION 14. IC 35-43-1-2.1, AS ADDED BY P.L.100-1999, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 2.1. (a) This section does not apply to the following:

(1) A person who acts in a proper and acceptable manner as authorized by IC 14-21 other than a person who disturbs the earth for an agricultural purpose under the exemption to IC 14-21 that is provided in IC 14-21-1-24.

(2) A person who acts in a proper and acceptable manner as authorized by IC 23-14.

(b) A person who recklessly, knowingly, or intentionally:

(1) damages a cemetery or a facility used for memorializing the dead;

(2) damages the grounds owned or rented by a cemetery or facility used for memorializing the dead; **or**

(3) disturbs, defaces, or damages a cemetery monument, grave marker, grave artifact, grave ornamentation, or cemetery enclosure; **or**

(4) disturbs, defaces, or damages a burial ground (as defined in IC 14-21-1-3);

commits cemetery **or burial ground** mischief, a Class A misdemeanor. However, the offense is a Class D felony if the pecuniary loss is at least two thousand five hundred dollars (\$2,500)."

Renumber all SECTIONS consecutively.

(Reference is to HB 1184 as printed January 26, 2000.)

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HOUSE MOTION

Mr. Speaker: I move that House Bill 1184 be amended to read as follows:

Page 3, between lines 39 and 40, begin a new line block indented and insert:

"(4) A surface coal mining and reclamation operation permitted under IC 14-34."

Page 5, between lines 14 and 15, begin a new paragraph and insert:

"Sec. 5. This chapter does not apply to the following:

- (1) A public utility (as defined in IC 8-1-2-1(a)).**
- (2) A corporation organized under IC 8-1-13.**
- (3) A municipally owned utility (as defined in IC 8-1-2-1(h)).**
- (4) Property that has been subject to bonding or other financial assurances released by the appropriate governmental agency after compliance with applicable state laws."**

Page 5, line 20, after "Sec.1." insert "(a)".

Page 5, between lines 25 and 26, begin a new paragraph and insert:

"(b) The term does not include the following:

- (1) Property owned by:**
 - (A) a public utility (as defined in IC 8-1-2-1(a));**
 - (B) a corporation organized under IC 8-1-13; or**
 - (C) a municipally owned utility (as defined in IC 8-1-2-1).**
- (2) Property that has been subject to bonding or other financial assurances released by the appropriate governmental agency after compliance with applicable state laws."**

(Reference is to HB 1184 as printed January 26, 2000.)

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 HOUSE MOTION

Mr. Speaker: I move that House Bill 1184 be amended to read as follows:

Page 13, between lines 7 and 8, begin a new paragraph and insert:

"SECTION 13. IC 23-14-41-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5. (a) A

- (†) surviving spouse, or**
- (‡) parent, child, or heir**

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of the deceased record owner of a family burial plot who has a right of interment, entombment, or inurnment in the plot may:

(1) waive that right in favor of another relative or spouse of the deceased record owner through a written instrument that is recorded with the cemetery; **or**

(2) **transfer that right through sale or another method.**

A transfer under subdivision (2) must be recorded with the cemetery to be valid.

(b) After a written waiver is recorded under subsection ~~(a)~~ **(a)(1)**, the body of the individual in whose favor the waiver is made may be interred, entombed, or inurned in the family burial plot."

Page 13, after line 18, begin a new paragraph and insert:

"SECTION 16. **An emergency is declared for this act.**"

Renumber all SECTIONS consecutively.

(Reference is to HB 1184 as printed on January 26, 2000.)

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COMMITTEE REPORT

Mr. President: The Senate Committee on Corrections, Criminal and Civil Procedures, to which was referred House Bill No. 1184, 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, between lines 35 and 36, begin a new line block indented and insert:

"(5) A township trustee."

Page 2, line 36, delete "(5)" and insert "(6)".

Page 3, line 38, delete "This" and insert **"Notwithstanding IC 23-14-44-1, this"**.

Page 4, line 3, after "(b)" insert **"The requirement under this subsection applies only if the person intends to construct a new structure or intends to significantly alter or repair an existing structure, and does not apply to any activity that would reasonably be considered routine repair or maintenance."**

Page 4, line 9, after "." insert **"The department must review the development plan not later than sixty (60) days after the development plan is submitted."**

Page 5, delete lines 1 through 8, begin a new paragraph and insert:

"Sec. 1. (a) Before a person may record any interest in property on which a burial ground or cemetery is known to be located, the owner of the property must record the deed to the property in the recorder's office of the county where the property is located. The bottom portion of the deed must state in capital letters in bold type that the deed pertains to property on which a burial ground or cemetery is known to be located.

(b) The county recorder shall send a copy of the deed to:

(1) the department; and

(2) the local cemetery board, or if no local cemetery board exists, to the county commissioners;

not later than thirty (30) days after the deed is recorded under subsection (a)."

Page 5, line 14, delete "survey" and insert **"deed"**.

Page 5, delete lines 28 through 42.

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Delete pages 6 through 14.
and when so amended that said bill do pass.

(Reference is to HB 1184 as reprinted February 1, 2000.)

MEEKS R, Chairperson

Committee Vote: Yeas 10, Nays 0.

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