
HOUSE BILL No. 1441

DIGEST OF INTRODUCED BILL

Citations Affected: IC 14-21-1; IC 16-37-1; IC 23-14-67; IC 34-30-2-91.5.

Synopsis: Cemetery maintenance. Provides that if a fee is charged for a death certificate, an additional \$3 fee is imposed to be used by a county cemetery commission (commission) for maintenance of certain cemeteries. Requires a utility to have an approved development plan before disturbing ground within 100 feet of a burial ground. Allows a commission to maintain certain cemeteries established before 1900. Changes appointment requirements for commission members. Allows a commission to use certain tax revenue for township cemeteries. Requires a commission to file an annual report with the division of historic preservation and archeology. Requires township trustees to make an annual report to the commission. Allows the commission to accept donations and maintain pauper burial records. Adds commission duties. Provides that a private property owner who allows a person on the owner's land to access a cemetery is not liable, except for certain actions, for injuries to a person.

Effective: July 1, 2004.

Saunders, Adams T

January 20, 2004, read first time and referred to Committee on Agriculture, Natural Resources and Rural Development.

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Second Regular Session 113th General Assembly (2004)

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 *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2003 Regular Session of the General Assembly.

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HOUSE BILL No. 1441



A BILL FOR AN ACT to amend the Indiana Code concerning natural and cultural resources and to make an appropriation.

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

1 SECTION 1. IC 14-21-1-13.5, AS AMENDED BY P.L.177-2001,
2 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2004]: Sec. 13.5. (a) The division may conduct a program to
4 survey and register in a registry of Indiana cemeteries and burial
5 grounds that the division establishes and maintains all cemeteries and
6 burial grounds in each county in Indiana. The division may conduct the
7 program alone or by entering into an agreement with one (1) or more
8 of the following entities:

- 9 (1) The Indiana Historical Society established under IC 23-6-3.
- 10 (2) A historical society as defined in IC 20-5-17.5-1(a).
- 11 (3) The Historic Landmarks Foundation of Indiana.
- 12 (4) A professional archeologist or historian associated with a
- 13 college or university.
- 14 (5) A township trustee.
- 15 (6) Any other entity that the division selects.

16 (b) In conducting a program under subsection (a), the division may
17 receive gifts and grants under terms, obligations, and liabilities that the



1 director considers appropriate. The director shall use a gift or grant
2 received under this subsection:

- 3 (1) to carry out subsection (a); and
- 4 (2) according to the terms of the gift or grant.

5 ~~(c) At the request of the director,~~ The auditor of state shall establish
6 **a cemetery and burial ground trust fund is established** for purposes
7 of holding money received under subsection (b).

8 **(d) The pioneer cemetery account is established within the trust**
9 **fund from money received under IC 16-37-1-9 and IC 16-37-1-11.**
10 **Money in the account shall be distributed to county cemetery**
11 **commissions for the following purposes:**

- 12 **(1) To maintain and repair cemeteries under IC 23-14-67.**
- 13 **(2) To purchase land that contains a cemetery that will be**
14 **maintained by a county cemetery commission.**
- 15 **(3) To replace and repair tombstones and grave markers**
16 **located in cemeteries under IC 23-14-67. However, any**
17 **replacement or repair conducted under this subdivision must**
18 **be made in accordance with guidelines established by the**
19 **division.**

20 ~~(e)~~ The director shall administer ~~a~~ **the** trust fund established by
21 subsection (c). The expenses of administering the trust fund shall be
22 paid from money in the trust fund.

23 ~~(f)~~ **(f)** The treasurer of state shall invest the money in the trust fund
24 established by subsection (c) that is not currently needed to meet the
25 obligations of the trust fund in the same manner as other public trust
26 funds may be invested. The treasurer of state shall deposit in the trust
27 fund the interest that accrues from the investment of the trust fund.

28 ~~(g)~~ **(g)** Money in the trust fund at the end of a state fiscal year does
29 not revert to the state general fund. **Money in the pioneer cemetery**
30 **account at the end of a state fiscal year does not revert to the trust**
31 **fund.**

32 ~~(h)~~ **(h)** Nothing in this section may be construed to authorize
33 violation of the confidentiality of information requirements of 16
34 U.S.C. 470(w) and 16 U.S.C. 470(h)(h).

35 ~~(i)~~ **(i)** The division may record in each county recorder's office the
36 location of each cemetery and burial ground located in that county.

37 **(j) Money in the trust fund, including money in the pioneer**
38 **cemetery account, is annually appropriated to the division for the**
39 **purposes of this section.**

40 SECTION 2. IC 14-21-1-26.5, AS AMENDED BY P.L.177-2001,
41 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
42 JULY 1, 2004]: Sec. 26.5. (a) Notwithstanding IC 23-14-44-1, this

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- 1 section does not apply to the following:
- 2 ~~(1)~~ ~~A public utility (as defined in IC 8-1-2-1(a)):~~
- 3 ~~(2)~~ **(1)** A corporation organized under IC 8-1-13.
- 4 ~~(3)~~ ~~A municipally owned utility (as defined in IC 8-1-2-1(h)):~~
- 5 ~~(4)~~ **(2)** A surface coal mining and reclamation operation permitted
- 6 under IC 14-34.

7 Except as provided in this subsection ~~subsection~~ **and subsections** (b),
 8 ~~and subsection~~ (c), **and (d)**, a person may not disturb the ground within
 9 one hundred (100) feet of a burial ground or cemetery for the purpose
 10 of erecting, altering, or repairing any structure without having a
 11 development plan approved by the department under section 25 of this
 12 chapter or in violation of a development plan approved by the
 13 department under section 25 of this chapter. The department must
 14 review the development plan not later than sixty (60) days after the
 15 development plan is submitted.

- 16 (b) A development plan:
- 17 (1) must be approved if a person intends to construct a new
- 18 structure or alter or repair an existing structure that would
- 19 significantly impact the burial ground or cemetery; and
- 20 (2) is not required if a person intends to erect, alter, or repair an
- 21 existing structure for an incidental or existing use that would not
- 22 impact the burial ground or cemetery.

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

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

34 (2) A development plan of a governmental entity other than:
 35 (A) a municipality; or
 36 (B) the state;
 37 requires the approval of the executive of the county where the
 38 governmental entity is located and does not require the approval
 39 of the department. However, if the governmental entity is located
 40 in more than one (1) county, only the approval of the executive of
 41 the county where the burial ground or cemetery is located is
 42 required. A county cemetery commission established under

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1 IC 23-14-67-2 may advise the county executive on whether to
2 approve a development plan.

3 (3) A development plan of the state requires the approval of the
4 department.

5 (d) **A development plan for a public utility (as defined in
6 IC 8-1-2-1(a)) or a municipally owned utility (as defined in
7 IC 8-1-2-1(h)) to disturb ground within one hundred (100) feet of
8 a burial ground or cemetery must be reviewed and approved by
9 the Indiana utility regulatory commission.**

10 (e) A person who recklessly, knowingly, or intentionally violates
11 this section commits a Class A misdemeanor. However, the offense is
12 a Class D felony if the person disturbs buried human remains or grave
13 markers while committing the offense.

14 SECTION 3. IC 16-37-1-9 IS AMENDED TO READ AS
15 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 9. (a) A local health
16 department may make a charge under IC 16-20-1-27 for each certificate
17 of birth, death, or stillbirth registration.

18 (b) If the local department of health makes a charge for a certificate
19 of death under subsection (a), a ~~one dollar (\$1)~~ ~~coroners continuing~~
20 ~~education~~ **four dollar (\$4)** fee must be added to the rate established
21 under IC 16-20-1-27. The local department of health shall deposit: ~~any~~

22 **(1) one dollar (\$1) for the coroners continuing education fees**
23 **fund; and**

24 **(2) three dollars (\$3) for the pioneer cemetery account;**
25 with the county auditor within thirty (30) days after collection. The
26 county auditor shall transfer semiannually any coroners continuing
27 education **fund fees and pioneer cemetery account fees** to the
28 treasurer of state.

29 (c) Notwithstanding IC 16-20-1-27, a charge may not be made for
30 furnishing a certificate of birth, death, or stillbirth registration to a
31 person or to a member of the family of a person who needs the
32 certificate for one (1) of the following purposes:

33 (1) To establish the person's age or the dependency of a member
34 of the person's family in connection with:

35 (A) the person's service in the armed forces of the United
36 States; or

37 (B) a death pension or disability pension of a person who is
38 serving or has served in the armed forces of the United States.

39 (2) To establish or to verify the age of a child in school who
40 desires to secure a work permit.

41 SECTION 4. IC 16-37-1-11, AS AMENDED BY P.L.168-2003,
42 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE

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1 JULY 1, 2004]: Sec. 11. (a) The state department shall charge and
 2 collect a fee of eight dollars (\$8) for each search of the records in the
 3 division of vital records. If the requested record is found, one (1)
 4 certification of the record will be issued without charge. Additional
 5 certifications of the same record will be issued at that time for an
 6 additional fee of four dollars (\$4) for each record.

7 (b) The state department shall charge and collect an additional fee
 8 of eight dollars (\$8) for any amendment to a record previously filed
 9 with the division of vital records.

10 (c) Verification without charge will be issued to an agency of local,
 11 state, or federal government upon written request by the agency.

12 **(d) The state department shall charge and collect an additional**
 13 **fee of three dollars (\$3) for each certificate of death issued by the**
 14 **division of vital records. The state department shall transfer**
 15 **semiannually fees collected under this subsection to the treasurer**
 16 **of state to be deposited in the pioneer cemetery account.**

17 SECTION 5. IC 23-14-67-1 IS AMENDED TO READ AS
 18 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 1. This chapter applies
 19 to cemeteries that **were established before 1900 and:**

- 20 (1) are without funds or sources of funds for reasonable
 21 maintenance;
 22 (2) have suffered neglect and deterioration; **or**
 23 (3) may be the burial grounds for Indiana pioneer leaders or
 24 veterans of an American war, including the Revolutionary War.
 25 **and**
 26 ~~(4) were established before 1850.~~

27 SECTION 6. IC 23-14-67-2 IS AMENDED TO READ AS
 28 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 2. (a) The board of
 29 commissioners of a county may appoint a county cemetery commission
 30 consisting of **not less than** five (5) residents of the county, **of which**
 31 **one (1) member must be a township trustee. A township trustee**
 32 **appointed under this subsection may designate an individual to**
 33 **serve on the trustee's behalf.**

34 (b) The members of a county cemetery commission shall be
 35 appointed for a term of ~~five (5)~~ **four (4)** years. The board of county
 36 commissioners shall stagger the terms of the members to permit the
 37 appointment or a reappointment of **at least** one (1) commission
 38 member per year.

39 SECTION 7. IC 23-14-67-3 IS AMENDED TO READ AS
 40 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 3. A county cemetery
 41 commission may request the levy of an annual tax for the purpose of
 42 restoring and maintaining one (1) or more cemeteries described in

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1 section 1 of this chapter or **IC 23-14-68** that are located in the county.
2 The tax may not exceed fifty cents (\$0.50) on each one hundred dollars
3 (\$100) of assessed valuation of property in the county.

4 SECTION 8. IC 23-14-67-3.5 IS AMENDED TO READ AS
5 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 3.5. (a) Before March
6 1 of each year, a county cemetery commission shall file an annual
7 report with the ~~Indiana historical bureau established by IC 4-23-7-3:~~
8 **division of historic preservation and archeology of the department**
9 **of natural resources.**

10 (b) An annual report filed under this section must include
11 information on the following:

- 12 (1) The budget of the county cemetery commission for the
- 13 preceding calendar year.
- 14 (2) Expenditures made by the county cemetery commission
- 15 during the preceding calendar year.
- 16 (3) Activities of the county cemetery commission during the
- 17 preceding calendar year.
- 18 (4) Plans of the county cemetery commission for the calendar year
- 19 during which the report is filed.

20 (c) The ~~Indiana historical bureau~~ **division of historic preservation**
21 **and archeology of the department of natural resources** shall make
22 reports filed under this section available for public inspection under
23 IC 5-14-3.

24 SECTION 9. IC 23-14-67-4 IS AMENDED TO READ AS
25 FOLLOWS [EFFECTIVE JULY 1, 2004]: Sec. 4. (a) A county
26 cemetery commission established under this chapter shall:

- 27 (1) present an annual plan and budget; and
 - 28 (2) make an annual report;
- 29 to the board of county commissioners and the county council for
30 approval.

31 (b) **Before March 1 of each year, each township trustee shall**
32 **present an annual report to the county cemetery commission that**
33 **includes the following information:**

- 34 (1) **Records of the pauper burials.**
- 35 (2) **Whether new burials are being allowed in a cemetery**
- 36 **maintained by the trustee under IC 23-14-68.**
- 37 (3) **A summary of all expenditures for cemetery restoration**
- 38 **and maintenance, including to whom each expenditure was**
- 39 **paid.**
- 40 (4) **Recommendations for future funding needs.**

41 SECTION 10. IC 23-14-67-5 IS ADDED TO THE INDIANA
42 CODE AS A **NEW** SECTION TO READ AS FOLLOWS

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1 [EFFECTIVE JULY 1, 2004]: **Sec. 5. (a) A county cemetery**
2 **commission may do the following:**

3 (1) **Accept for the county the donation of real property that**
4 **complies with the following conditions:**

5 (A) **The real property contains a cemetery that is described**
6 **under section 1 of this chapter.**

7 (B) **The county surveyor has completed a survey of the real**
8 **property and has provided a copy of the survey to the**
9 **county cemetery commission.**

10 (C) **The owner of the real property deeds the property to**
11 **the county.**

12 (2) **Accept donations, apply for grants, and coordinate**
13 **volunteers to restore and maintain cemeteries.**

14 (3) **Accept and maintain pauper burial records from township**
15 **trustees.**

16 (b) **A county cemetery commission shall do the following:**

17 (1) **Assist township trustees with the restoration and**
18 **maintenance of abandoned cemeteries under IC 23-14-68.**

19 (2) **Notify the county auditor and county recorder of the**
20 **location of cemeteries within the county.**

21 (3) **Educate local officials and residents concerning the legal**
22 **requirements regarding the care, protection, and preservation**
23 **of cemeteries.**

24 (4) **Designate cemeteries within the county as active or**
25 **inactive with regard to future burials.**

26 SECTION 11. IC 23-14-67-6 IS ADDED TO THE INDIANA
27 CODE AS A NEW SECTION TO READ AS FOLLOWS
28 [EFFECTIVE JULY 1, 2004]: **Sec. 6. (a) Except as provided in**
29 **subsection (b), a private property owner who gratuitously allows**
30 **a person on the owner's land to obtain access to or visit a cemetery**
31 **is not liable for any injury to the person visiting or obtaining access**
32 **to a cemetery.**

33 (b) **This section does not apply to the following:**

34 (1) **A property owner's willful, wanton, or intentional**
35 **misconduct.**

36 (2) **A property owner's willful or malicious failure to warn of**
37 **a dangerous condition.**

38 SECTION 12. IC 34-30-2-91.5 IS ADDED TO THE INDIANA
39 CODE AS A NEW SECTION TO READ AS FOLLOWS
40 [EFFECTIVE JULY 1, 2004]: **Sec. 91.5. IC 23-14-67-6 (Concerning**
41 **a private property owner allowing access or a visit to a cemetery).**

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