



Reprinted
January 27, 2010

HOUSE BILL No. 1118

DIGEST OF HB 1118 (Updated January 26, 2010 2:33 pm - DI 69)

Citations Affected: IC 32-30; IC 36-7.

Synopsis: Nuisance actions by community organizations. Allows a community organization within whose specific geographic boundaries a nuisance exists to bring an action under the laws governing: (1) general nuisance actions, if the community organization does not interfere with the right of a private individual to bring an action to abate or enjoin a private nuisance; (2) actions for indecent nuisances; and (3) actions for drug nuisances; as applicable. Makes the drug nuisance law consistent with the indecent nuisance law by adding the attorney general to the list of prosecuting officials that may bring an action under the drug nuisance law. Defines "nuisance" for purposes of the unsafe building law. Allows a civil action under the unsafe building law to be initiated before the final date of an order or an extension of an order requiring: (1) the completion; or (2) a substantial beginning toward accomplishing the completion; of the remedial action required by the order. Allows a community organization to initiate a civil action under the unsafe building law if the enforcement authority for the county or municipality has filed a civil action regarding the unsafe premises. (Current law prohibits a community organization from initiating a civil action if the enforcement authority has filed an action.) Provides that a community organization must provide notice of its intention to file a civil action under the unsafe building law at least 30 days (rather than 60 days under current law) before commencing the action. Eliminates the requirement that the notice must be given to the enforcement authority.

Effective: July 1, 2010.

Day

January 5, 2010, read first time and referred to Committee on Courts and Criminal Code.
January 19, 2010, amended, reported — Do Pass.
January 26, 2010, read second time, amended, ordered engrossed.

HB 1118—LS 6851/DI 101+



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Second Regular Session 116th General Assembly (2010)

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 2009 Regular and Special Sessions of the General Assembly.

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HOUSE BILL No. 1118

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

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

- 1 SECTION 1. IC 32-30-6-1.2 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2010]: **Sec. 1.2. As used in this chapter, "community
4 organization" has the meaning set forth in IC 36-7-9-2.**
5 SECTION 2. IC 32-30-6-7, AS AMENDED BY P.L.82-2005,
6 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
7 JULY 1, 2010]: Sec. 7. (a) An action to abate or enjoin a nuisance may
8 be brought by any person whose:
9 (1) property is injuriously affected; or
10 (2) personal enjoyment is lessened;
11 by the nuisance.
12 (b) A civil action to abate or enjoin a nuisance may also be brought
13 by:
14 (1) an attorney representing the county in which a nuisance exists;
15 **or**
16 (2) the **corporation counsel or** attorney of any city or town in
17 which a nuisance exists; **or**

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1 **(3) a community organization within whose specific**
2 **geographic boundaries (as defined in the bylaws or articles of**
3 **incorporation of the community organization) the nuisance**
4 **exists.**

5 **However, a community organization may not interfere with the**
6 **right of a private individual to bring an action to abate or enjoin**
7 **a private nuisance.**

8 (c) A county, city, or town that brings a successful action under this
9 section (or IC 34-1-52-2 or IC 34-19-1-2 before their repeal) to abate
10 or enjoin a nuisance caused by the unlawful dumping of solid waste is
11 entitled to recover reasonable attorney's fees incurred in bringing the
12 action.

13 (d) A forestry operation that successfully defends an action under
14 this section is entitled to reasonable costs and attorney's fees incurred
15 in defending the action.

16 SECTION 3. IC 32-30-7-0.5 IS ADDED TO THE INDIANA CODE
17 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
18 1, 2010]: **Sec. 0.5. As used in this chapter, "community**
19 **organization" has the meaning set forth in IC 36-7-9-2.**

20 SECTION 4. IC 32-30-7-4 IS AMENDED TO READ AS
21 FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 4. As used in this
22 chapter, "prosecuting official" refers to public officials who have
23 concurrent jurisdiction to enforce this chapter, including:

- 24 (1) the attorney general;
- 25 (2) the prosecuting attorney of the circuit in which an indecent
26 nuisance exists;
- 27 (3) the corporation counsel or city **or town** attorney of the city **or**
28 **town** (if any) in which an indecent nuisance exists; or
- 29 (4) an attorney representing the county in which an indecent
30 nuisance exists.

31 SECTION 5. IC 32-30-7-7 IS AMENDED TO READ AS
32 FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 7. (a) If an indecent
33 nuisance exists:

- 34 (1) a prosecuting official; ~~or~~
- 35 (2) any resident of the county in which the indecent nuisance
36 exists; **or**
- 37 (3) **a community organization within whose specific**
38 **geographic boundaries (as defined in the bylaws or articles of**
39 **incorporation of the community organization) the indecent**
40 **nuisance exists;**

41 may bring an action to abate the indecent nuisance and to perpetually
42 enjoin the maintenance of the indecent nuisance.

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1 (b) If a person ~~other than a prosecuting official~~ **described in**
2 **subsection (a)(2)** institutes an action under this chapter, the
3 complainant shall execute a bond to the person against whom
4 complaint is made, with good and sufficient surety to be approved by
5 the court or clerk in a sum of at least one thousand dollars (\$1,000) to
6 secure to the party enjoined the damages the party may sustain if:

- 7 (1) the action is wrongfully brought;
- 8 (2) the action is not prosecuted to final judgment;
- 9 (3) the action is dismissed;
- 10 (4) the action is not maintained; or
- 11 (5) it is finally decided that the injunction ought not to have been
12 granted.

13 The party aggrieved by the issuance of the injunction has recourse
14 against the bond for all damages suffered, including damages to the
15 aggrieved party's property, person, or character and including
16 reasonable attorney's fees incurred in defending the action.

17 (c) A person **described in subsection (a)(2)** who institutes an action
18 and executes a bond may recover the bond and reasonable attorney's
19 fees incurred in trying the action if the existence of an indecent
20 nuisance is admitted or established in an action as provided in this
21 chapter.

22 (d) If a prosecuting official institutes an action under this chapter (or
23 IC 34-1-52.5 or IC 34-19-2 before their repeal) and the existence of an
24 indecent nuisance is admitted or established in the action, the
25 governmental entity that employs the prosecuting official is entitled to
26 all reasonable attorney's fees incurred by the entity in instituting the
27 action. The fees shall be deposited in:

- 28 (1) the state general fund, if the action is instituted by the attorney
29 general;
- 30 (2) the operating budget of the office of the prosecuting attorney,
31 if the action is instituted by a prosecuting attorney;
- 32 (3) the operating budget of the office of the corporation counsel
33 or city **or town** attorney, if the action is instituted by a corporation
34 counsel or city **or town** attorney; or
- 35 (4) the county general fund, if the action is instituted by an
36 attorney representing the county.

37 **(e) In any action filed under this chapter by a person described**
38 **in subsection (a)(3), a court may award reasonable attorney's fees,**
39 **court costs, and other reasonable expenses of litigation to the**
40 **prevailing party.**

41 SECTION 6. IC 32-30-7-20 IS AMENDED TO READ AS
42 FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 20. (a) This section

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1 applies to an indecent nuisance complaint under this chapter filed by
2 a ~~private~~ person **described in section 7(a)(2) or 7(a)(3) of this**
3 **chapter.**

4 (b) The court shall not voluntarily dismiss the complaint unless:
5 (1) the complainant and the complainant's attorney, **if applicable,**
6 file a sworn statement setting forth the reason why the action
7 should be dismissed; and
8 (2) the dismissal is approved in writing or in open court by the
9 prosecuting attorney of the circuit in which the alleged indecent
10 nuisance is located.

11 (c) If the judge believes that the action should not be dismissed, the
12 judge may direct the prosecuting attorney to prosecute the action to
13 judgment at the expense of the county.

14 (d) If:
15 (1) the action is brought by a ~~private~~ person **described in section**
16 **7(a)(2) or 7(a)(3) of this chapter;**
17 (2) the court finds that there were no reasonable grounds or
18 probable cause for bringing said action; and
19 (3) the case is dismissed either:
20 (A) for the reason described in subdivision (2) before trial; or
21 (B) for want of prosecution;

22 the costs may be taxed to the person who brought the case.

23 SECTION 7. IC 32-30-8-0.5 IS ADDED TO THE INDIANA CODE
24 AS A **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY**
25 **1, 2010]: Sec. 0.5. As used in this chapter, "community**
26 **organization" has the meaning set forth in IC 36-7-9-2.**

27 SECTION 8. IC 32-30-8-4 IS AMENDED TO READ AS
28 FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 4. An action to abate
29 a nuisance under this chapter may be initiated by any of the following:

- 30 (1) **The attorney general.**
31 (1) (2) The prosecuting attorney of the circuit where the nuisance
32 is located.
33 (2) (3) The corporation counsel or city **or town** attorney of a city
34 **or town** in which a nuisance is located.
35 (3) (4) An attorney representing a county in which a nuisance is
36 located.
37 (4) (5) The property owner.
38 (6) **A community organization within whose specific**
39 **geographic boundaries (as defined in the bylaws or articles of**
40 **incorporation of the community organization) the nuisance**
41 **exists.**

42 SECTION 9. IC 32-30-8-5 IS AMENDED TO READ AS

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1 FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 5. (a) **Except as**
2 **provided in section 6 of this chapter**, a person initiating an action
3 under this chapter to abate a nuisance existing on a property shall, at
4 least forty-five (45) days before filing the action, provide notice to:

- 5 (1) each tenant of the property; and
- 6 (2) the owner of record;

7 that a nuisance exists on the property.

8 (b) The notice required under this section must specify the
9 following:

- 10 (1) The date and time the nuisance was first discovered.
- 11 (2) The location on the property where the nuisance is allegedly
12 occurring.

13 (c) The notice must be:

- 14 (1) hand delivered; or
- 15 (2) sent by certified mail;

16 to each tenant and the owner of record.

17 (d) A person initiating an action to abate a nuisance under this
18 chapter shall:

- 19 (1) when notice is provided under this section, produce all
20 evidence in the person's possession or control of the existence of
21 the nuisance; and
- 22 (2) if requested by the owner, assist the owner in the production
23 of witness and physical evidence.

24 SECTION 10. IC 36-7-9-2, AS AMENDED BY P.L.88-2009,
25 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
26 JULY 1, 2010]: Sec. 2. As used in this chapter:

27 "Community organization" means a citizen's group, neighborhood
28 association, neighborhood development corporation, or similar
29 organization that:

- 30 (1) has specific geographic boundaries defined in its bylaws or
31 articles of incorporation and contains at least forty (40)
32 households within those boundaries;
- 33 (2) is a nonprofit corporation that is representative of at least
34 twenty-five (25) households or twenty percent (20%) of the
35 households in the community, whichever is less;
- 36 (3) is operated primarily for the promotion of social welfare and
37 general neighborhood improvement and enhancement;
- 38 (4) has been incorporated for at least two (2) years; and
- 39 (5) is exempt from taxation under Section 501(c)(3) or 501(c)(4)
40 of the Internal Revenue Code.

41 "Continuous enforcement order" means an order that:

- 42 (1) is issued for compliance or abatement and that remains in full

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1 force and effect on a property without further requirements to
2 seek additional:

- 3 (i) compliance and abatement authority; or
- 4 (ii) orders for the same or similar violations;
- 5 (2) authorizes specific ongoing compliance and enforcement
- 6 activities if a property requires reinspection or additional periodic
- 7 abatement;
- 8 (3) can be enforced, including assessment of fees and costs,
- 9 without the need for additional notice or hearing; and
- 10 (4) authorizes the enforcement authority to assess and collect
- 11 ongoing costs for continuous enforcement order activities from
- 12 any party that is subject to the enforcement authority's order.

13 "Department" refers to the executive department authorized by
14 ordinance to administer this chapter. In a consolidated city, this
15 department is the department of metropolitan development, subject to
16 IC 36-3-4-23.

17 "Enforcement authority" refers to the chief administrative officer of
18 the department, except in a consolidated city. In a consolidated city, the
19 division of development services is the enforcement authority, subject
20 to IC 36-3-4-23.

21 "Hearing authority" refers to a person or persons designated as such
22 by the executive of a city or county, or by the legislative body of a
23 town. However, in a consolidated city, the director of the department
24 or a person designated by the director is the hearing authority. An
25 employee of the enforcement authority may not be designated as the
26 hearing authority.

27 "Known or recorded fee interest, life estate interest, or equitable
28 interest of a contract purchaser" means any fee interest, life estate
29 interest, or equitable interest of a contract purchaser held by a person
30 whose identity and address may be determined from:

- 31 (1) an instrument recorded in the recorder's office of the county
- 32 where the unsafe premises is located;
- 33 (2) written information or actual knowledge received by the
- 34 department (or, in the case of a consolidated city, the enforcement
- 35 authority); or
- 36 (3) a review of department (or, in the case of a consolidated city,
- 37 the enforcement authority) records that is sufficient to identify
- 38 information that is reasonably ascertainable.

39 "Known or recorded substantial property interest" means any right
40 in real property, including a fee interest, a life estate interest, a future
41 interest, a mortgage interest, or an equitable interest of a contract
42 purchaser, that:

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- 1 (1) may be affected in a substantial way by actions authorized by
- 2 this chapter; and
- 3 (2) is held by a person whose identity and address may be
- 4 determined from:
 - 5 (A) an instrument recorded in the recorder's office of the
 - 6 county where the unsafe premises is located;
 - 7 (B) written information or actual knowledge received by the
 - 8 department (or, in the case of a consolidated city, the
 - 9 enforcement authority); or
 - 10 (C) a review of department (or, in the case of a consolidated
 - 11 city, the enforcement authority) records that is sufficient to
 - 12 identify information that is reasonably ascertainable.

"Nuisance" has the meaning set forth in IC 32-30-6-6.

"Substantial property interest" means any right in real property that may be affected in a substantial way by actions authorized by this chapter, including a fee interest, a life estate interest, a future interest, a mortgage interest, or an equitable interest of a contract purchaser.

SECTION 11. IC 36-7-9-3.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 3.5. (a) An enforcement authority may administer and enforce this chapter in conjunction with any enforcement or civil action under IC 32-30-6, IC 32-30-7, IC 32-30-8, IC 36-1-6, IC 36-7-10.1, or IC 36-7-36.**

(b) A community organization may bring a civil action under section 17 of this chapter in conjunction with any civil action under IC 32-30-6, IC 32-30-7, or IC 32-30-8.

SECTION 12. IC 36-7-9-4, AS AMENDED BY P.L.66-2005, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 4. (a) For purposes of this chapter, a building or structure, or any part of a building or structure, that is:**

- 31 (1) in an impaired structural condition that makes it unsafe to a
- 32 person or property;
- 33 (2) a fire hazard;
- 34 (3) a hazard to the public health;
- 35 (4) a public nuisance;
- 36 (5) dangerous to a person or property because of a violation of a
- 37 statute or ordinance concerning building condition or
- 38 maintenance; or
- 39 (6) vacant and not maintained in a manner that would allow
- 40 human habitation, occupancy, or use under the requirements of a
- 41 statute or an ordinance;
- 42 is considered an unsafe building.

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1 (b) For purposes of this chapter:
 2 (1) an unsafe building; and
 3 (2) the tract of real property on which the unsafe building is
 4 located;
 5 are considered unsafe premises.

6 (c) For purposes of this chapter, a tract of real property that does not
 7 contain a building or structure, not including land used for production
 8 agriculture, is considered an unsafe premises if the tract of real
 9 property is:

- 10 (1) a fire hazard;
- 11 (2) a hazard to public health;
- 12 (3) a public nuisance; or
- 13 (4) dangerous to a person or property because of a violation of a
 14 statute or an ordinance.

15 SECTION 13. IC 36-7-9-4.5 IS AMENDED TO READ AS
 16 FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 4.5. (a) In Indiana,
 17 especially in urban areas, there exist a large number of unoccupied
 18 structures that are not maintained and that constitute a hazard to public
 19 health, safety, and welfare.

20 (b) Vacant structures often become dilapidated because the
 21 structures are not maintained and repaired by the owners or persons in
 22 control of the structures.

23 (c) Vacant structures attract children, become harborage for vermin,
 24 serve as temporary abodes for vagrants and criminals, and are likely to
 25 be damaged by vandals or set ablaze by arsonists.

26 (d) Unkept grounds surrounding vacant structures invite dumping
 27 of garbage, trash, and other debris.

28 (e) Many vacant structures are situated on narrow city lots and in
 29 close proximity to neighboring structures, thereby increasing the risk
 30 of conflagration and spread of insect and rodent infestation.

31 (f) Vacant, deteriorated structures contribute to blight, cause a
 32 decrease in property values, and discourage neighbors from making
 33 improvements to properties.

34 (g) Structures that remain boarded up for an extended period of time
 35 also exert a blighting influence and contribute to the decline of the
 36 neighborhood by decreasing property values, discouraging persons
 37 from moving into the neighborhood, and encouraging persons to move
 38 out of the neighborhood.

39 (h) Vacant structures often continue to deteriorate to the point that
 40 demolition of the structure is required, thereby decreasing available
 41 housing in a community and further contributing to the decline of the
 42 neighborhood.

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1 (i) The blighting influence of vacant, deteriorated structures
 2 adversely affects the tax revenues of local government.
 3 (j) The general assembly finds that vacant, deteriorated structures
 4 create a serious and substantial problem in urban areas and are ~~public~~
 5 nuisances.
 6 (k) In recognition of the problems created in a community by vacant
 7 structures, the general assembly finds that vigorous and disciplined
 8 action should be taken to ensure the proper maintenance and repair of
 9 vacant structures and encourages local governmental bodies to adopt
 10 maintenance and repair standards appropriate for the community in
 11 accordance with this chapter and other statutes.
 12 SECTION 14. IC 36-7-9-17, AS AMENDED BY P.L.88-2009,
 13 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 14 JULY 1, 2010]: Sec. 17. (a) The department, acting through its
 15 enforcement authority, a person designated by the enforcement
 16 authority, or a community organization may bring a civil action
 17 regarding unsafe premises in the circuit, superior, or municipal court
 18 of the county. The department is not liable for the costs of such an
 19 action. The court may grant:
 20 (1) one (1) or more of the kinds of relief authorized by sections 18
 21 through 22 of this chapter; **or**
 22 (2) **any other relief considered appropriate by the court.**
 23 ~~(b) A civil action may not be initiated under this section before the~~
 24 ~~final date of an order or an extension of an order under section 5(c) of~~
 25 ~~this chapter requiring:~~
 26 ~~(1) the completion; or~~
 27 ~~(2) a substantial beginning toward accomplishing the completion;~~
 28 ~~of the required remedial action.~~
 29 ~~(c) (b) A community organization may not initiate a civil action~~
 30 ~~under this section if (1) the enforcement authority or a person~~
 31 ~~designated by the enforcement authority has filed a civil action under~~
 32 ~~this section regarding the unsafe premises; or (2) the enforcement~~
 33 ~~authority has issued a final order that the required remedial action has~~
 34 ~~been satisfactorily completed. **However, this subsection does not**~~
 35 ~~**prohibit a community organization from initiating a civil action**~~
 36 ~~**under this section concerning any condition of the unsafe premises**~~
 37 ~~**not covered by the final order.**~~
 38 ~~(d) (c) A community organization may not initiate a civil action~~
 39 ~~under this section if the real property that is the subject of the civil~~
 40 ~~action is located outside the specific geographic boundaries of the area~~
 41 ~~defined in the bylaws or articles of incorporation of the community~~
 42 ~~organization.~~

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1 ~~(c)~~ **(d)** At least ~~sixty (60)~~ **thirty (30)** days before commencing a
2 civil action under this section, a community organization must issue a
3 notice by certified mail, return receipt requested, that:
4 (1) specifies:
5 (A) the nature of the alleged nuisance;
6 (B) the date the nuisance was first discovered;
7 (C) the location on the property where the nuisance is
8 allegedly occurring;
9 (D) the intent of the community organization to bring a civil
10 action under this section; and
11 (E) the relief sought in the action; and
12 (2) is provided to:
13 (A) the owner of record of the premises;
14 (B) tenants located on the premises; **and**
15 ~~(C) the enforcement authority; and~~
16 ~~(D)~~ **(C)** any person that possesses an interest of record.
17 ~~(f)~~ **(e)** In any action filed by a community organization under this
18 section, a court may award reasonable attorney's fees, court costs, and
19 other reasonable expenses of litigation to the prevailing party.
20 ~~(g)~~ **(f)** If a second or subsequent civil judgment is entered under this
21 section:
22 (1) against an owner of a known or recorded fee interest, life
23 estate, or equitable interest as a contract purchaser of property;
24 and
25 (2) during any two (2) year period;
26 a court may order the owner to pay treble damages based on the costs
27 of the ordered action. The second or subsequent civil judgment may
28 relate to the same property or a different property held by the owner.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred House Bill 1118, 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 1, line 16, delete "council" and insert "**counsel**".

and when so amended that said bill do pass.

(Reference is to HB 1118 as introduced.)

PIERCE, Chair

Committee Vote: yeas 9, nays 3.

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HOUSE MOTION

Mr. Speaker: I move that House Bill 1118 be amended to read as follows:

Page 2, between lines 4 and 5, begin a new line blocked left and insert:

"However, a community organization may not interfere with the right of a private individual to bring an action to abate or enjoin a private nuisance."

(Reference is to HB 1118 as printed January 19, 2010.)

FOLEY

HOUSE MOTION

Mr. Speaker: I move that House Bill 1118 be amended to read as follows:

Page 7, line 32, strike "~~public~~".

Page 8, line 9, strike "~~public~~".

Renumber all SECTIONS consecutively.

(Reference is to HB 1118 as printed January 19, 2010.)

FOLEY

