



March 20, 2013

ENGROSSED HOUSE BILL No. 1289

DIGEST OF HB 1289 (Updated March 18, 2013 11:34 am - DI 109)

Citations Affected: IC 14-27; IC 14-28; noncode.

Synopsis: Levee repair and reimbursement. Requires a committee in charge of a levee to perform the maintenance of and repairs to the levee that are necessary to maintain federal certification of the levee. Provides that the maintenance costs shall be apportioned and assessed in the same manner as repair costs and expenses to a levee. Provides for notice to be given within 10 days to the county executive when a levee is no longer in compliance with federal certification requirements. Requires a committee in charge of a levee to apportion and assess costs of levee repairs not more than 90 days after the statement of costs and expenses for repairs is filed with the county auditor. Requires that if a committee in charge of a levee: (1) has filed the statement of costs and expenses for repairs; and (2) has not reimbursed the county for the costs and expenses for repairs to the levee or apportioned and assessed the costs; the committee shall apportion and assess the costs upon the land and corporations benefitted by the repairs before September 29, 2013. Allows the county council and county executive to appoint a voting member to a levee committee. Provides that certain laws regarding structures in floodways do not apply to certain property that is to be rehabilitated and reused as an abode or residence if certain conditions apply. Urges the legislative council to assign to a study committee the topic of levee governance.

Effective: July 1, 2013.

Messmer, Ubelhor, Kersey, Battles

(SENATE SPONSORS — YODER, HUME)

January 14, 2013, read first time and referred to Committee on Natural Resources.
January 29, 2013, amended, reported — Do Pass.
January 31, 2013, read second time, ordered engrossed. Engrossed.
February 4, 2013, read third time, passed. Yeas 96, nays 0.

SENATE ACTION

February 25, 2013, read first time and referred to Committee on Agriculture and Natural Resources.
March 19, 2013, amended, reported favorably — Do Pass.

EH 1289—LS 7217/DI 77+



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March 20, 2013

First Regular Session 118th General Assembly (2013)

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 2012 Regular Session of the General Assembly.

ENGROSSED HOUSE BILL No. 1289

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

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

- 1 SECTION 1. IC 14-27-3-7 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 7. (a) The committee
3 placed in charge of the levee may **perform maintenance and** make all
4 necessary repairs to the levee that are necessary to keep the levee in
5 original condition. **However, the committee shall perform the**
6 **maintenance of and repairs to the levee that are necessary to**
7 **maintain federal certification of the levee. The committee shall**
8 **notify the county executive not later than ten (10) days after a**
9 **change in the status of a levee that no longer meets the**
10 **requirements necessary to maintain federal certification.** If it
11 becomes necessary for the safety of the levee to change the line and
12 location of the levee at any point in making the repairs, the committee
13 may make the change. However, the committee may not change or
14 relocate the general line or location of the levee.
15 (b) The committee shall do the following:
16 (1) Keep a record of the committee's proceedings.
17 (2) Note in the record all expenses incurred in making the repairs.

EH 1289—LS 7217/DI 77+



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1 (3) File with the county auditor a statement showing the cost and
2 expenses of making the repairs, specifying the amounts due each
3 person.

4 (c) The auditor shall draw a warrant on the county treasurer in favor
5 of each person for the amount due the person. The amounts shall be
6 paid out of the county revenue but reimbursed to the county.

7 **(d) Notwithstanding any other law, the cost and expenses of**
8 **performing maintenance on a levee under subsection (a) shall be**
9 **apportioned and assessed in the same manner as repair costs and**
10 **expenses to a levee.**

11 SECTION 2. IC 14-27-3-8 IS AMENDED TO READ AS
12 FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 8. **(a)** To raise the
13 necessary money to reimburse the county, the committee **in charge of**
14 **a levee** shall apportion and assess the costs upon the land and
15 corporations to be benefited by the repairs in proportion to the benefits
16 **not more than ninety (90) days after filing the statement of costs**
17 **and expenses for repairs under section 7(b)(3) of this chapter.** The
18 costs may not exceed the benefits. However, if the repairs have been
19 made necessary by the act or negligence of:

- 20 (1) the owner or occupant of land; or
21 (2) an employee or agent of the owner or occupant;
22 the cost of the repairs shall be assessed against that land alone.

23 **(b) If a committee in charge of a levee:**

- 24 **(1) before July 1, 2013, has filed the statement of costs and**
25 **expenses for repairs under section 7(b)(3) of this chapter; and**
26 **(2) has not:**

27 **(A) reimbursed the county for the costs and expenses for**
28 **repairs to the levee; or**

29 **(B) apportioned and assessed the costs upon the land and**
30 **corporations benefited by the repairs as required in**
31 **subsection (a);**

32 **the committee in charge of a levee shall, before September 29,**
33 **2013, apportion and assess the costs upon the land and**
34 **corporations benefited by the repairs as required by subsection (a).**

35 SECTION 3. IC 14-27-3-8.5 IS ADDED TO THE INDIANA CODE
36 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
37 1, 2013]: Sec. 8.5. **(a) The county council and county executive shall**
38 **each appoint an individual to serve as a voting member of the**
39 **committee in charge of a levee.**

40 **(b) A member of a committee in charge of a levee appointed**
41 **under this section serves at the pleasure of the appointing**
42 **authority.**

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1 SECTION 4. IC 14-28-1-19 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 19. Sections 20, 21, 22,
3 23, 24, and 25 of this chapter do not apply to any of the following:

4 (1) An abode or a residence constructed on land that meets the
5 following conditions:

6 (A) Is between the 791.0 mile marker and the 791.5 mile
7 marker on the Ohio River.

8 (B) Is adjacent to a recreational area.

9 (C) Has been or may be filled to or above an elevation of three
10 hundred seventy-eight (378) feet above sea level.

11 (D) Is properly protected by riprap in a manner that minimizes
12 the possibility of erosion by river currents.

13 (2) An abode or a residence if the following conditions are met:

14 (A) The abode or residence is rebuilt upon the area of the
15 original foundation and is substantially the same configuration
16 as the former abode or residence.

17 (B) The abode or residence was unintentionally destroyed by
18 a means other than floodwater.

19 (C) The rebuilding of the abode or residence is begun within
20 one (1) year and completed within two (2) years after the
21 destruction of the former abode or residence.

22 (D) The abode or residence is located in the floodway of a
23 stream having a watershed upstream from the abode or
24 residence of less than fifteen (15) square miles in area.

25 (E) The lowest floor of the rebuilt abode or residence,
26 including the basement, is at or above the one hundred (100)
27 year frequency flood elevation if the abode or residence was
28 totally destroyed.

29 (F) A variance is obtained from the county or municipality for
30 the lowest floor of the abode or residence to be below the one
31 hundred (100) year frequency flood elevation if the damage to
32 the former abode or residence is less than one hundred percent
33 (100%).

34 (G) An ordinance allowing the rebuilding of an abode or a
35 residence is adopted by any of the following:

36 (i) The legislative body of the city or town in which the
37 abode or residence is located.

38 (ii) The legislative body of the county in which the abode or
39 residence is located if the abode or residence is not located
40 in a city or town.

41 **(3) A property that is to be rehabilitated and reused as an**
42 **abode or residence if the following conditions are met:**

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- 1 **(A) The property is located between the South Newton**
- 2 **Bridge (Veterans Memorial Bridge) located at 85.30 miles**
- 3 **from the mouth of the Patoka River and the bridge that is**
- 4 **part of State Road 164 located at 85.90 miles from the**
- 5 **mouth of the Patoka River.**
- 6 **(B) The property is a former industrial site.**
- 7 **(C) The property is adjacent to a navigable waterway.**
- 8 **(D) The property is located adjacent to a riverwalk.**
- 9 **(E) The property is a property in need of revitalization.**
- 10 **(F) The property is vacant or in danger of becoming**
- 11 **vacant.**
- 12 SECTION 5. [EFFECTIVE JULY 1, 2013] **(a) As used in this**
- 13 **SECTION, "legislative council" refers to the legislative council**
- 14 **established by IC 2-5-1.1-1.**
- 15 **(b) As used in this SECTION, "study committee" means either**
- 16 **of the following:**
- 17 **(1) A statutory committee established under IC 2-5.**
- 18 **(2) An interim study committee.**
- 19 **(c) The legislative council is urged to assign the topic of levee**
- 20 **governance to a study committee during the 2013 legislative**
- 21 **interim.**
- 22 **(d) If the topic described in subsection (c) is assigned to a study**
- 23 **committee, the study committee shall issue a final report to the**
- 24 **legislative council containing the study committee's findings and**
- 25 **recommendations, including any recommended legislation**
- 26 **concerning the topic, in an electronic format under IC 5-14-6 not**
- 27 **later than November 1, 2013.**
- 28 **(e) This SECTION expires December 31, 2013.**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Natural Resources, to which was referred House Bill 1289, 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, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 14-27-3-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 7. (a) The committee placed in charge of the levee may **perform maintenance and** make all necessary repairs to the levee that are necessary to keep the levee in original condition. **However, the committee shall perform the maintenance of and repairs to the levee that are necessary to maintain federal certification of the levee.** If it becomes necessary for the safety of the levee to change the line and location of the levee at any point in making the repairs, the committee may make the change. However, the committee may not change or relocate the general line or location of the levee.

(b) The committee shall do the following:

- (1) Keep a record of the committee's proceedings.
- (2) Note in the record all expenses incurred in making the repairs.
- (3) File with the county auditor a statement showing the cost and expenses of making the repairs, specifying the amounts due each person.

(c) The auditor shall draw a warrant on the county treasurer in favor of each person for the amount due the person. The amounts shall be paid out of the county revenue but reimbursed to the county.

(d) Notwithstanding any other law, the cost and expenses of performing maintenance on a levee under subsection (a) shall be apportioned and assessed in the same manner as repair costs and expenses to a levee."

Page 1, line 2, after "Sec. 8." insert "(a)".

Page 1, between lines 12 and 13, begin a new paragraph and insert:

"(b) If a committee in charge of a levee:

- (1) before July 1, 2013, has filed the statement of costs and expenses for repairs under section 7(b)(3) of this chapter; and**
- (2) has not:**
 - (A) reimbursed the county for the costs and expenses for repairs to the levee; or**
 - (B) apportioned and assessed the costs upon the land and corporations benefited by the repairs as required in subsection (a);**

EH 1289—LS 7217/DI 77+



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the committee in charge of a levee shall, before September 29, 2013, apportion and assess the costs upon the land and corporations benefited by the repairs as required by subsection (a)."

Page 2, line 5, delete "may" and insert "**and county executive may each**".

Page 2, line 8, delete "county council." and insert "**appointing authority**".

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1289 as introduced.)

EBERHART, Chair

Committee Vote: yeas 9, nays 0.

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COMMITTEE REPORT

Madam President: The Senate Committee on Agriculture and Natural Resources, to which was referred House Bill No. 1289, 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 1, line 7, after "levee." insert "**The committee shall notify the county executive not later than ten (10) days after a change in the status of a levee that no longer meets the requirements necessary to maintain federal certification.**".

Page 2, line 34, delete "Notwithstanding any other law, during the" and insert "**The county council and county executive shall each appoint an individual to serve as a voting member of the committee in charge of a levee.**

(b) A member of a committee in charge of a levee appointed under this section serves at the pleasure of the appointing authority.

SECTION 4. IC 14-28-1-19 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 19. Sections 20, 21, 22, 23, 24, and 25 of this chapter do not apply to any of the following:

(1) An abode or a residence constructed on land that meets the following conditions:

(A) Is between the 791.0 mile marker and the 791.5 mile marker on the Ohio River.

EH 1289—LS 7217/DI 77+



- (B) Is adjacent to a recreational area.
 - (C) Has been or may be filled to or above an elevation of three hundred seventy-eight (378) feet above sea level.
 - (D) Is properly protected by riprap in a manner that minimizes the possibility of erosion by river currents.
- (2) An abode or a residence if the following conditions are met:
- (A) The abode or residence is rebuilt upon the area of the original foundation and is substantially the same configuration as the former abode or residence.
 - (B) The abode or residence was unintentionally destroyed by a means other than floodwater.
 - (C) The rebuilding of the abode or residence is begun within one (1) year and completed within two (2) years after the destruction of the former abode or residence.
 - (D) The abode or residence is located in the floodway of a stream having a watershed upstream from the abode or residence of less than fifteen (15) square miles in area.
 - (E) The lowest floor of the rebuilt abode or residence, including the basement, is at or above the one hundred (100) year frequency flood elevation if the abode or residence was totally destroyed.
 - (F) A variance is obtained from the county or municipality for the lowest floor of the abode or residence to be below the one hundred (100) year frequency flood elevation if the damage to the former abode or residence is less than one hundred percent (100%).
 - (G) An ordinance allowing the rebuilding of an abode or a residence is adopted by any of the following:
 - (i) The legislative body of the city or town in which the abode or residence is located.
 - (ii) The legislative body of the county in which the abode or residence is located if the abode or residence is not located in a city or town.
- (3) A property that is to be rehabilitated and reused as an abode or residence if the following conditions are met:**
- (A) The property is located between the South Newton Bridge (Veterans Memorial Bridge) located at 85.30 miles from the mouth of the Patoka River and the bridge that is part of State Road 164 located at 85.90 miles from the mouth of the Patoka River.**
 - (B) The property is a former industrial site.**
 - (C) The property is adjacent to a navigable waterway.**

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- (D) The property is located adjacent to a riverwalk.**
- (E) The property is a property in need of revitalization.**
- (F) The property is vacant or in danger of becoming vacant.**

SECTION 5. [EFFECTIVE JULY 1, 2013] (a) As used in this SECTION, "legislative council" refers to the legislative council established by IC 2-5-1.1-1.

(b) As used in this SECTION, "study committee" means either of the following:

- (1) A statutory committee established under IC 2-5.**
- (2) An interim study committee.**

(c) The legislative council is urged to assign the topic of levee governance to a study committee during the 2013 legislative interim.

(d) If the topic described in subsection (c) is assigned to a study committee, the study committee shall issue a final report to the legislative council containing the study committee's findings and recommendations, including any recommended legislation concerning the topic, in an electronic format under IC 5-14-6 not later than November 1, 2013.

(e) This SECTION expires December 31, 2013."

Page 2, delete lines 35 through 42.

Delete page 3.

and when so amended that said bill do pass.

(Reference is to HB 1289 as printed January 29, 2013.)

YODER, Chairperson

Committee Vote: Yeas 6, Nays 0.

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