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# HOUSE BILL No. 1582

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 32-30-6.

**Synopsis:** Nuisance actions. Amends the definitions of "agricultural operation" and "locality" for purposes of the laws governing nuisance actions. Provides that if a plaintiff has already prevailed in a nuisance action against a defendant and the plaintiff prevails in a subsequent nuisance action against the defendant, the court must enter a finding of a permanent nuisance. Provides that in a successful nuisance case against an agricultural operation, the court may not order the agricultural operation to mitigate the effects of the nuisance if the mitigation would substantially and adversely affect the economic viability of the agricultural operation, unless the agricultural operation's nuisance is creating a substantial threat to the public health or safety. Provides that the damages awarded for a nuisance action are limited to the decrease in the fair market value of the plaintiff's property caused by the nuisance. Removes certain policy statement provisions concerning agricultural operations and nuisance suits. Provides that an agricultural or industrial operation or any of its appurtenances is not and does not become a nuisance if the operation has been continuous for more than one year and there is no significant change in the type of operation. (Current law requires that the operation has been continuously on the locality for more than one year if there is no significant change in the type of operation.) Removes a provision that provides that an agricultural or industrial operation or any of its appurtenances is not and does not become a nuisance if the operation would not have been a nuisance at the time the agricultural or industrial operation began on that locality.

**Effective:** July 1, 2013.

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## Baird, Gutwein, Lehe

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January 22, 2013, read first time and referred to Committee on Judiciary.

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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.

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## HOUSE BILL No. 1582



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

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

- 1 SECTION 1. IC 32-30-6-1 IS AMENDED TO READ AS
- 2 FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 1. As used in this
- 3 chapter, "agricultural operation" includes any facility **or land used or**
- 4 **zoned** for the production of crops, livestock, poultry, **aquaculture,**
- 5 livestock products, poultry products, or horticultural products or for
- 6 growing timber.
- 7 SECTION 2. IC 32-30-6-3, AS AMENDED BY P.L.82-2005,
- 8 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 9 JULY 1, 2013]: Sec. 3. As used in this chapter, "locality" means the
- 10 following:
- 11 (1) For purposes of section 9 of this chapter, the **specific area of**
- 12 **land upon which an:**
- 13 (A) agricultural operation; or
- 14 (B) industrial operation;
- 15 **is conducted or expanded.**
- 16 (2) For purposes of section 10 of this chapter, the following:
- 17 (A) The specific area of land upon which a public use airport



1 operation is conducted.

2 (B) The airport imaginary surfaces as described in  
3 IC 8-21-10-8.

4 (3) For purposes of section 11 of this chapter, the specific area of  
5 land upon which a forestry operation is conducted.

6 SECTION 3. IC 32-30-6-8 IS AMENDED TO READ AS  
7 FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 8. (a) If a proper case  
8 is made, the nuisance may be enjoined or abated and damages  
9 recovered for the nuisance.

10 (b) **Any injunction or abatement granted or damages awarded**  
11 **under subsection (a) are subject to the following:**

12 (1) **If:**

13 (A) **the court has previously made a final judgment in the**  
14 **plaintiff's favor against a defendant in a nuisance action;**  
15 **and**

16 (B) **the plaintiff successfully brings a subsequent nuisance**  
17 **action against the defendant or the defendant's successor**  
18 **to the operation for the same nuisance;**

19 **then the court shall enter a final judgment against the**  
20 **defendant finding that a permanent nuisance exists and the**  
21 **defendant shall be bound by the remedies available for a**  
22 **permanent nuisance.**

23 (2) **If the court orders a defendant to take an action to**  
24 **mitigate the effects of an agricultural operation adjudged to**  
25 **be a nuisance, the court may not order the defendant to take**  
26 **a mitigation action that substantially and adversely affects the**  
27 **economic viability of the agricultural operation, unless the**  
28 **agricultural operation's nuisance is creating a substantial**  
29 **threat to the public health or safety.**

30 (3) **The damages awarded for a nuisance action are limited to**  
31 **the decrease in the fair market value of the plaintiff's**  
32 **property caused by the nuisance.**

33 SECTION 4. IC 32-30-6-9, AS AMENDED BY P.L.23-2005,  
34 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
35 JULY 1, 2013]: Sec. 9. (a) This section does not apply if a nuisance  
36 results from the negligent operation of an agricultural or industrial  
37 operation or its appurtenances.

38 (b) The general assembly declares that it is the policy of the state to  
39 conserve, protect, and encourage the development and improvement of  
40 its agricultural land for the production of food and other agricultural  
41 products. ~~The general assembly finds that when nonagricultural land~~  
42 ~~uses extend into agricultural areas, agricultural operations often~~

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1 become the subject of nuisance suits. As a result, agricultural  
 2 operations are sometimes forced to cease operations, and many persons  
 3 may be discouraged from making investments in farm improvements.  
 4 It is the purpose of this section to reduce the loss to the state of its  
 5 agricultural resources by limiting the circumstances under which  
 6 agricultural operations may be deemed to be a nuisance.

7 (c) For purposes of this section, the continuity of an agricultural or  
 8 industrial operation shall be considered to have been interrupted when  
 9 the operation has been discontinued for more than one (1) year.

10 (d) An agricultural or industrial operation or any of its  
 11 appurtenances is not and does not become a nuisance, private or public,  
 12 by any ~~changed conditions in the vicinity of the locality after the~~  
 13 ~~agricultural or industrial operation, as the case may be, has been in~~  
 14 ~~operation continuously on the locality if the operation has been~~  
 15 **continuous** for more than one (1) year **and if the following conditions**  
 16 **exist:** ~~(1)~~ there is no significant change in the type of operation. A  
 17 significant change in the type of agricultural operation does not include  
 18 the following:

19 ~~(A)~~ **(1)** The conversion from one type of agricultural operation to  
 20 another type of agricultural operation.

21 ~~(B)~~ **(2)** A change in the ownership or size of the agricultural  
 22 operation.

23 ~~(C)~~ **(3)** The:

24 ~~(i)~~ **(A)** enrollment; or

25 ~~(ii)~~ **(B)** reduction or cessation of participation;

26 of the agricultural operation in a government program.

27 ~~(D)~~ **(4)** Adoption of new technology by the agricultural operation.

28 ~~(2)~~ The operation would not have been a nuisance at the time the  
 29 agricultural or industrial operation began on that locality.

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