
SENATE BILL No. 258

DIGEST OF INTRODUCED BILL

Citations Affected: IC 14-21-1; IC 23-14-57-1; IC 34-30-2-55.5.

Synopsis: Historic preservation. Enables the department of natural resources (DNR) division of historic preservation and archeology (DHPA) to take immediate action to protect state owned historic properties affected by disaster and to make recommendations to the historic preservation review board on applications to change state owned historic properties. Requires the DHPA to survey and rate state owned historic properties and provide an educational program concerning these properties. Requires each state entity having historic property to have a historic preservation officer. Gives the Historic Landmarks Foundation standing to take court action to enforce the historic preservation law. Requires a person who wishes to obtain a court order to remove a deceased human being from a cemetery to demonstrate that the removal complies with an archeological plan or a development plan approved by the DNR.

Effective: July 1, 2003.

Merritt

January 9, 2003, read first time and referred to Committee on Natural Resources.

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First Regular Session 113th General Assembly (2003)

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 2002 Regular or Special Session of the General Assembly.

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SENATE BILL No. 258



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 14-21-1-18 IS AMENDED TO READ AS
- 2 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 18. (a) A:
- 3 (1) historic ~~site or historic structure~~ **property** owned by the state;
- 4 or
- 5 (2) historic site or historic structure listed on the state or national
- 6 register;
- 7 may not be altered, demolished, or removed by a project funded, in
- 8 whole or in part, by the state unless the review board has granted a
- 9 certificate of approval.
- 10 (b) **Notwithstanding subsection (a) and if the division finds that**
- 11 **an emergency exists in order to protect a historic property owned**
- 12 **by the state that has been damaged by fire or a natural disaster in**
- 13 **the interim between meetings of the review board, the division may**
- 14 **approve routine maintenance, rebuilding, or reconstruction of the**
- 15 **historic property without requiring a certificate of approval from**
- 16 **the review board.**
- 17 (c) An application for a certificate of approval:



1 (1) must be filed with the division; and

2 (2) shall be granted or rejected by the review board after a public
3 hearing.

4 **The division may make a recommendation to the review board**
5 **concerning any application for a certificate of approval that is filed**
6 **under this section concerning a historic property owned by the**
7 **state.**

8 ~~(c)~~ (d) Subsections (a) ~~and (b)~~ through (c) do not apply to real
9 property that is owned by a state educational institution (as defined in
10 IC 20-12-0.5-1).

11 ~~(d)~~ (e) The commission for higher education and each state
12 educational institution, in cooperation with the division of historic
13 preservation and archeology, shall develop and continually maintain a
14 survey of historic sites and historic structures owned by the state
15 educational institution. Historic sites and historic structures include
16 buildings, structures, outdoor sculpture, designed landscapes, gardens,
17 archeological sites, cemeteries, campus plans, and historic districts. A
18 survey developed under this subsection must conform with the Indiana
19 Historic Sites and Structures Survey Manual.

20 ~~(e)~~ (f) The state historic preservation officer no later than one (1)
21 year after receipt of a ten (10) year capital plan under IC 14-21-1-18.5
22 shall:

23 (1) review a proposed state college or university project that
24 involves a historic site or historic structure owned by a state
25 educational institution; and

26 (2) submit an advisory report to the commission for higher
27 education, the state educational institution, and the general
28 assembly.

29 ~~(f)~~ (g) Not more than thirty (30) days after a state college or
30 university, under section 18.6 of this chapter, submits to the division a
31 description of a proposed project that involves the substantial
32 alteration, demolition, or removal of a historic site or historic structure,
33 the state historic preservation officer shall:

34 (1) review the description of the proposed project; and

35 (2) submit to the state college or university an advisory report
36 concerning the proposed project.

37 The state college or university shall review and consider the advisory
38 report before proceeding with the substantial alteration, demolition, or
39 removal of a historic site or historic structure.

40 SECTION 2. IC 14-21-1-18.7 IS ADDED TO THE INDIANA
41 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
42 [EFFECTIVE JULY 1, 2003]: **Sec. 18.7. (a) This section applies to**

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1 historic property owned by the state other than property that is
 2 owned by a state educational institution (as defined in
 3 IC 20-12-0.5-1).

4 (b) The division shall periodically conduct a survey using the
 5 most current standard procedures for the survey of historic
 6 property. The survey includes the following:

7 (1) A determination of the:

8 (A) existence;

9 (B) description;

10 (C) location; and

11 (D) managing authority;

12 of each historic property owned by the state.

13 (2) The assignment of a historic rating to each historic
 14 structure owned by the state using the most current standard
 15 procedures for the assignment of these ratings.

16 (c) The chief executive officer of each managing authority
 17 identified under subsection (b) shall designate a historic
 18 preservation liaison officer to do the following:

19 (1) Be responsible for communication among:

20 (A) the managing authority;

21 (B) the division; and

22 (C) other historic preservation organizations or interests.

23 (2) Notify the division when the managing authority receives
 24 approval from the budget committee to make changes to a
 25 state owned historic property.

26 (d) The division shall biannually conduct an education program
 27 for:

28 (1) managing authorities; and

29 (2) historic preservation liaison officers;

30 of historic property owned by the state. The education program
 31 must provide information concerning the managing authority's
 32 and liaison officer's responsibilities under this chapter.

33 SECTION 3. IC 14-21-1-24 IS AMENDED TO READ AS
 34 FOLLOWS [EFFECTIVE JULY 1, 2003]: Sec. 24. (a) As used in this
 35 section, "agricultural purpose" includes farming, dairying, pasturage,
 36 agriculture, horticulture, floriculture, viticulture, ornamental
 37 horticulture, olericulture, pomiculture, animal husbandry, and poultry
 38 husbandry.

39 (b) Sections 25, 26, 28, and 29 of this chapter do not apply to the
 40 following:

41 (1) Surface coal mining regulated under IC 14-34.

42 (2) Except as provided in IC 23-14-57-1 for the removal of a

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1 **human body from a cemetery under a court order**, cemeteries
2 and human remains subject to IC 23-14.

3 (3) Disturbing the earth for an agricultural purpose.

4 (4) Collecting any object other than human remains that is visible
5 in whole or in part on the surface of the ground, regardless of the
6 time the object was made or shaped.

7 SECTION 4. IC 14-21-1-32 IS ADDED TO THE INDIANA CODE
8 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
9 1, 2003]: **Sec. 32. (a) The Historic Landmarks Foundation of
10 Indiana, Inc., or any of its successors, has a private right of action
11 to enforce and prevent violation of this chapter and has the right
12 to restrain, enjoin, or enforce by restraining order or injunction,
13 temporarily or permanently, any person from violating this
14 chapter.**

15 **(b) The Historic Landmarks Foundation of Indiana, Inc., or any
16 of its successors, does not have to allege or prove irreparable harm
17 or injury to any person or property to obtain relief under this
18 section.**

19 **(c) The Historic Landmarks Foundation of Indiana, Inc., or any
20 of its successors, when bringing an action under this section does
21 not have to post a bond unless the court, after a hearing,
22 determines that a bond should be required in the interest of justice.**

23 **(d) The Historic Landmarks Foundation of Indiana, Inc., or any
24 of its successors, when bringing an action under this section is not
25 liable to any person for damages resulting from bringing or
26 prosecuting the action unless the action was brought without good
27 faith or without a reasonable belief that a provision of this chapter
28 had been or was about to be violated or breached.**

29 **(e) If the Historic Landmarks Foundation of Indiana, Inc., or
30 any of its successors, obtains a favorable judgment in an action
31 under this section, the organization may recover reasonable
32 attorney's fees and court costs from the person against whom
33 judgment was rendered.**

34 **(f) The remedy provided in this section is in addition to any
35 other legal remedy that may be available.**

36 SECTION 5. IC 23-14-57-1, AS AMENDED BY P.L.155-2002,
37 SECTION 11, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
38 JULY 1, 2003]: **Sec. 1. (a) As used in this section, "removed" refers to
39 the disinterment, disentombment, or disinurnment of the remains of a
40 deceased human.**

41 **(b) Except as provided in subsection (e), the remains, either
42 cremated or uncremated, of a deceased human shall not be removed**

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1 from a cemetery without **one (1) of the following authorizing the**
 2 **disinterment, disentombment, or disinurnment:**

- 3 (1) A written order issued by the state department of health.
 4 (2) The written consent of:
 5 (A) the owner of the cemetery; or
 6 (B) the owner's representative. ~~and~~
 7 (3) The written consent of:
 8 (A) the spouse of the deceased; or
 9 (B) the parents of the deceased in the case of a deceased minor
 10 child.

11 ~~authorizing the disinterment, disentombment, or disinurnment:~~

- 12 **(4) A court order. However, a court may not issue an order**
 13 **unless the person requesting the court order demonstrates to**
 14 **the court that the removal complies with a plan approved by**
 15 **the department of natural resources under IC 14-21-1-25.**

16 (c) Before issuing a written authorization under subsection (b), the
 17 state department of health shall do the following:

- 18 (1) Obtain written evidence of the legal ownership of the property
 19 from which the remains will be removed.
 20 (2) Send written notice to the department of natural resources,
 21 division of historic preservation and archeology, of the time, date,
 22 and place from which the remains will be removed.
 23 (3) Obtain written evidence that a licensed funeral director has
 24 agreed to:
 25 (A) be present at the removal and at the reinterment,
 26 reentombment, or reinurnment of the remains; and
 27 (B) cause the completed order of the state department of health
 28 to be recorded in the office of the county recorder of the
 29 county where the removal occurred.
 30 (4) Obtain written evidence that a notice of the proposed removal
 31 has been published at least five (5) days before a written order is
 32 issued by the state department of health in a newspaper of general
 33 circulation in the county where the removal will occur.
 34 (5) Obtain a copy of:
 35 (A) the written consent required under subsection (b)(3); or
 36 (B) a court order obtained by a person under subsection (d).

37 (d) If the written consent of:

- 38 (1) the spouse of the deceased; or
 39 (2) the parents of the deceased in the case of a deceased minor;
 40 is not available, a person who has made a request under this section to
 41 the state department of health may petition a court to determine
 42 whether to waive the consent requirement of subsection (b)(3). In

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1 determining whether to waive the requirement, the court shall consider
 2 the viewpoint of any issue (as defined in IC 29-1-1-3) of the deceased.
 3 In a proceeding under this subsection, the court may not order the
 4 disinterment, disentombment, or disinurnment of the remains of a
 5 deceased human.

6 (e) This subsection applies only if the human remains are on
 7 property owned or leased by a coal company. The remains, either
 8 cremated or uncremated, of a deceased human may be removed from
 9 a cemetery by a coal company if the coal company obtains a court order
 10 authorizing the disinterment, disentombment, or disinurnment. Before
 11 issuing a court order under this subsection, a court must conduct a
 12 hearing and be satisfied as to the following:

- 13 (1) That the property is owned or leased by the coal company.
 14 (2) That the coal company has obtained the written consent of:
 15 (A) the spouse of the deceased; or
 16 (B) the parents of the deceased in the case of a deceased minor
 17 child;
 18 authorizing the disinterment, disentombment, or disinurnment. If
 19 the consent is not available, the court may waive the requirement
 20 after considering the viewpoint of any issue (as defined in
 21 IC 29-1-1-3) of the deceased.
 22 (3) That the department of natural resources, division of historic
 23 preservation and archeology, has received at least five (5) days
 24 written notice of the time, date, and place of any hearing under
 25 this subsection. The notice must describe the proposed place from
 26 which the remains will be removed.
 27 (4) That a licensed funeral director has agreed to:
 28 (A) be present at the removal and at the reinterment,
 29 reentombment, or reinurnment of the remains; and
 30 (B) cause the completed order of the state department of health
 31 to be recorded in the office of the county recorder of the
 32 county where the removal occurred.
 33 (5) That the coal company has caused a notice of the proposed
 34 removal to be published at least five (5) days before the hearing
 35 in a newspaper of general circulation in the county where the
 36 removal will occur.
 37 (6) That the coal company will notify the department of natural
 38 resources, division of historic preservation and archeology, after
 39 the hearing of the proposed time and date when the remains will
 40 be removed.

41 (f) The state department of health may adopt rules under IC 4-22-2
 42 to implement this section.

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1 SECTION 6. IC 34-30-2-55.5 IS ADDED TO THE INDIANA
2 CODE AS A NEW SECTION TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2003]: **Sec. 55.5. IC 14-21-1-32 (Concerning**
4 **actions brought by The Historic Landmarks Foundation of**
5 **Indiana, Inc. or its successors).**

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