

# HOUSE BILL No. 1089

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 14-8-2; IC 14-30.

**Synopsis:** St. Joseph River basin commission. Amends the law concerning the St. Joseph River basin commission (commission). Adds the county surveyor of each participating county to the membership of the commission. Authorizes a political subdivision in a participating county to enter into a cooperative agreement with the commission and at least one other legal entity to authorize the commission to develop a plan to control flooding. Authorizes the commission: (1) to enter into contracts to implement a cooperative agreement; (2) to adopt rules under which the commission may require that increased water runoff resulting from new construction be impounded on the construction site; (3) to acquire and dispose of conservation easements and real or personal property; and (4) to adopt rules restricting construction within the 100 year flood plains of the basin. Provides that the commission, the commission's executive board, or employees or authorized representatives of the commission may enter land within the 100 year flood plain of any watercourse in the basin to investigate suspected violations of the flood control laws. Requires written notice to an owner of the affected land 21 days before an entry on the land and requires the commission to hold a hearing on the necessity of the entry if an owner of the affected land appeals to the commission.

**Effective:** July 1, 2018.

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January 3, 2018, read first time and referred to Committee on Natural Resources.

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**AMENDMENTS REQUESTED BY THE  
ST. JOSEPH RIVER BASIN COMMISSION**

*Requested amendments are **highlighted**.*

*Notes are provided on final page.*

*Submitted: January 6th 2018*



Second Regular Session of the 120th General Assembly (2018)

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 2017 Regular Session of the General Assembly.

## HOUSE BILL No. 1089

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

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

1 SECTION 1. IC 14-8-2-208, AS AMENDED BY P.L.106-2012,  
2 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2018]: Sec. 208. "Political subdivision" has the following  
4 meaning:

- 5 (1) For purposes of IC 14-12-1, the meaning set forth in  
6 IC 14-12-1-2.  
7 (2) For purposes of IC 14-13-2 **and IC 14-30-3**, the meaning set  
8 forth in IC 36-1-2-13.  
9 (3) For purposes of IC 14-32-8, the meaning set forth in  
10 IC 14-32-8-2.

11 SECTION 2. IC 14-8-2-304 IS AMENDED TO READ AS  
12 FOLLOWS [EFFECTIVE JULY 1, 2018]: Sec. 304. (a) "Watercourse",  
13 for purposes of IC 14-25 through ~~IC 14-29~~, **IC 14-30**, means a channel  
14 that:

- 15 (1) has defined banks;  
16 (2) is cut by erosion of running water through turf, soil, rock, or  
17 other material; and



- 1 (3) has a bottom over which water flows for substantial periods of  
 2 the year.
- 3 (b) The term includes the following:
- 4 (1) The upstream and downstream parts of a watercourse that is  
 5 lost in a swamp or a lake if the watercourse emerges from the  
 6 swamp or lake in a well defined channel.
- 7 (2) A watercourse that has been improved by confining the  
 8 watercourse in an artificial channel.
- 9 SECTION 3. IC 14-30-3-3.5 IS ADDED TO THE INDIANA CODE  
 10 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 11 1, 2018]: **Sec. 3.5. As used in this chapter, "plan" refers to a plan**  
 12 **control flooding that is described in section 26(1) of this chapter.**
- 13 SECTION 4. IC 14-30-3-8 IS AMENDED TO READ AS  
 14 FOLLOWS [EFFECTIVE JULY 1, 2018]: Sec. 8. The commission  
 15 consists of the following individuals:
- 16 (1) From each participating county the following:
- 17 (A) The executive of each second class city or the executive's  
 18 designee.
- 19 (B) If the county does not have a second class city, the  
 20 executive of the municipality with the largest population or the  
 21 executive's designee.
- 22 (2) A member of the county executive or the county executive's  
 23 designee from each participating county.
- 24 (3) The county health officer or the health officer's designee from  
 25 each participating county.
- 26 (4) An individual appointed by the governor who is a member of  
 27 the board of supervisors of a soil and water conservation district  
 28 that contains a part of the basin within all or part of the district's  
 29 boundaries.
- 30 (5) The director or the director's designee.
- 31 **The county surveyor of each participating county.**
- 32 SECTION 5. IC 14-30-3-19 IS AMENDED TO READ AS  
 33 FOLLOWS [EFFECTIVE JULY 1, 2018]: Sec. 19. The commission  
 34 may do the following:
- 35 (1) Provide a forum for the discussion, study, and evaluation of  
 36 water resource issues of common concern in the basin.
- 37 (2) Facilitate and foster cooperative planning and coordinated  
 38 management of the basin's water and related land resources.
- 39 (3) Develop positions on major water resource issues and serve  
 40 as an advocate of the basin's interests before Congress and  
 41 federal, state, and local governmental agencies.
- 42 **(4) Develop plans and tools to improve water quality or**  
**mitigate flooding in the basin.**



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- (5) Publicize, advertise, and distribute reports on the commission's purposes, objectives, studies, and findings.
- (6) When requested, make recommendations in matters related to the commission's functions and objectives to political subdivisions in the basin and to other public and private agencies.
- (7) When requested, act as a coordinating agency for programs and activities of other public and private agencies that are related to the commission's objectives.

(8) **Employ staff.**  
 Enter into contracts to implement a cooperative agreement described in section 26 for the purposes of this chapter.

(10) Exercise the powers of a political subdivision specified in a cooperative agreement described in section 26 of this chapter.

SECTION 6. IC 14-30-3-26 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2018]: **Sec. 26. A political subdivision in a participating county may under IC 36-1-7 enter into a cooperative agreement with the commission and at least one (1) other legal entity to authorize the commission to:**

- (1) develop a plan to improve water quality or control flooding in the part of the basin that is described in the cooperative agreement;
- (2) exercise any of the other powers of the political subdivision to regulate watercourses in the basin; or
- (3) develop and promote good soil and water conservation practices and procedures.

SECTION 7. IC 14-30-3-27 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2018]: **Sec. 27. In developing a plan to improve water quality or control flooding in the part of the basin described in a cooperative agreement entered into under section 26 of this chapter, the commission shall determine the best method and manner of establishing flood control, giving consideration to the following:**

- (1) The reservoir increase infiltration method.
- (2) The channel improvement method.
- (3) The wetland restoration method.
- (4) Flood plain regulation.
- (5) All nonstructural methods.

SECTION 8. IC 14-30-3-28 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2018]: **Sec. 28. The commission shall give the public an opportunity to participate in the development of a plan.**

SECTION 9. IC 14-30-3-29 IS ADDED TO THE INDIANA CODE



1 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
2 1, 2018]: **Sec. 29. Before a plan is implemented by a political  
3 subdivision, the plan must be approved by the state in accordance  
4 with IC 14-25 through IC 14-29.**

5 SECTION 10. IC 14-30-3-30 IS ADDED TO THE INDIANA  
6 CODE AS A NEW SECTION TO READ AS FOLLOWS  
7 [EFFECTIVE JULY 1, 2018]: **Sec. 30. The commission may adopt  
8 rules to do the following:**

9 (1) **Require that increased water runoff resulting from new  
10 construction be impounded on the construction site.**

11 (2) **Permit the requirement of onsite water impoundment  
12 under subdivision (1) to be waived upon payment of a  
13 reasonable fee by the developer of the new construction.**

14 SECTION 11. IC 14-30-3-31 IS ADDED TO THE INDIANA  
15 CODE AS A NEW SECTION TO READ AS FOLLOWS  
16 [EFFECTIVE JULY 1, 2018]: **Sec. 31. (a) For the purposes of this  
17 chapter, the commission may do the following:**

18 (1) **Acquire by grant, gift, purchase, or devise, and dispose of,  
19 conservation easements under IC 32-23-5 in land within the  
20 one hundred (100) year flood plains and the wetlands in the  
21 basin.**

22 (2) **Acquire, by grant, gift, purchase, or devise, improvements  
23 within the one hundred (100) year flood plains of the basin for  
24 the purpose of removing those improvements.**

25 (3) **Adopt rules that restrict construction within the one  
26 hundred (100) year flood plains of the basin.**

27 (4) **Acquire, dispose of, hold, use, improve, maintain, operate,  
28 own, manage, or lease real or personal property by grant, gift,  
29 purchase, or devise.**

30 (b) **The commission may exercise the powers granted by this  
31 section as follows:**

32 (1) **For purposes of IC 32-23-5.**

33 (2) **To contribute to the following:**

34 (A) **Flood control.**

35 (B) **Flood damage reduction.**

36 (C) **Improvements in water quality.**

37 (D) **Soil conservation.**

38 SECTION 12. IC 14-30-3-32 IS ADDED TO THE INDIANA  
39 CODE AS A NEW SECTION TO READ AS FOLLOWS  
40 [EFFECTIVE JULY 1, 2018]: **Sec. 32. (a) The commission, the  
41 executive board, or employees or authorized representatives of the  
42 commission acting under this chapter may:**



- 1           (1) enter the land lying within the one hundred (100) year  
 2 flood plain of any watercourse in the basin; and  
 3           (2) enter land lying outside the one hundred (100) year flood  
 4 plain to gain access to land lying within the one hundred (100)  
 5 year flood plain in the basin;  
 6 if necessary to investigate, examine, or survey the land or  
 7 investigate suspected violations of the Indiana flood control laws.  
 8       (b) The commission must give twenty-one (21) days written  
 9 notice to:  
 10           (1) an owner of the affected land;  
 11           (2) a contract purchaser of the affected land; or  
 12           (3) if the land is municipal property (as described in  
 13 IC 6-1.1-10-5(a)), the executive of the municipality;  
 14 before exercising the right to enter land under this section. The  
 15 notice must state the purpose of the entry and that there is a right  
 16 of appeal under this section.  
 17       (c) A person described in subsection (b)(1) through (b)(3) may,  
 18 within the twenty-one (21) day notice period required by  
 19 subsection (b), appeal the proposed entry under subsection (a) to  
 20 the commission on the grounds that the proposed entry is not  
 21 necessary. If a person appeals under this subsection, the  
 22 commission shall hold a hearing on the necessity of the entry before  
 23 the right of entry is exercised.  
 24       (d) A person entering land under this section must use due care  
 25 to avoid damage to crops or to fences, buildings, and other  
 26 structures.  
 27       (e) Neither the commission, the executive board, nor employees  
 28 or authorized representatives of the commission acting under this  
 29 chapter commits criminal trespass under IC 35-43-2-2 by entering  
 30 land described in subsection (a) for a purpose set forth in  
 31 subsection (a).



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## *AMENDMENT NOTES*

### BILL SECTION 3:

- The definition of “plan” must include water quality plans. The power to develop plans to improve water quality is already provided in Sec. 19(4) of the existing statute. This is one of the most important functions of the St. Joseph River Basin Commission (SJRBC).

### BILL SECTION 4:

- The SJRBC already includes at least 3 members from every county. We have strong working relationships with all of the County Surveyors in the basin under Sec. 13 of the existing statute. Half of them have called to express concerns about being added to the SJRBC as members.

### BILL SECTION 5:

- Expanding the existing power in Sec. 19(4) with the words “tools” and “mitigate flooding” addresses the intention of this bill. There was strong support for this change at the 12/7/2017 meeting of the SJRBC.
- Employing staff is a power provided to the Maumee River Basin Commission in subsection (4) of IC 14-30-2-13. This could be necessary if the scope of the SJRBC is expanded.
- The power to enter into contracts with political subdivisions is needed for more than planning purposes. The SJRBC already enters into contracts with political subdivisions for other aspects of its operation.

### BILL SECTION 6:

- The ability to enter into cooperative agreements with political subdivisions for planning purposes must include water quality in addition to flood control. The SJRBC frequently enters into cooperative agreements with political subdivisions to develop water quality plans.

### BILL SECTION 7:

- Methods considered in developing plans must address water quality and flood control. The levee and reservoir methods would have negative impacts on water quality and are not supported locally. Wetland restoration and increased infiltration are proven methods to improve water quality and control flooding.

Submitted on January 6<sup>th</sup> 2018 by:

Matt Meersman, Director  
St. Joseph River Basin Commission