

Second Regular Session of the 123rd General Assembly (2024)

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 2023 Regular Session of the General Assembly.

## HOUSE ENROLLED ACT No. 1338

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AN ACT to amend the Indiana Code concerning state and local administration.

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

SECTION 1. IC 5-14-1.5-2, AS AMENDED BY P.L.124-2022, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2024]: Sec. 2. For the purposes of this chapter:

(a) "Public agency", except as provided in section 2.1 of this chapter, means the following:

- (1) Any board, commission, department, agency, authority, or other entity, by whatever name designated, exercising a portion of the executive, administrative, or legislative power of the state.
- (2) Any county, township, school corporation, city, town, political subdivision, or other entity, by whatever name designated, exercising in a limited geographical area the executive, administrative, or legislative power of the state or a delegated local governmental power.
- (3) Any entity which is subject to either:
  - (A) budget review by either the department of local government finance or the governing body of a county, city, town, township, or school corporation; or
  - (B) audit by the state board of accounts that is required by statute, rule, or regulation.
- (4) Any building corporation of a political subdivision of the state of Indiana that issues bonds for the purpose of constructing public

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facilities.

(5) Any advisory commission, committee, or body created by statute, ordinance, or executive order to advise the governing body of a public agency, except medical staffs or the committees of any such staff.

(6) The Indiana gaming commission established by IC 4-33, including any department, division, or office of the commission.

(7) The Indiana horse racing commission established by IC 4-31, including any department, division, or office of the commission.

(b) "Governing body" means two (2) or more individuals who are any of the following:

(1) A public agency that:

(A) is a board, a commission, an authority, a council, a committee, a body, or other entity; and

(B) takes official action on public business.

(2) The board, commission, council, or other body of a public agency which takes official action upon public business.

(3) Any committee appointed directly by the governing body or its presiding officer to which authority to take official action upon public business has been delegated. **However, the following do not constitute a governing body for purposes of this chapter:**

(A) An agent or agents appointed by the governing body to conduct collective bargaining on behalf of the governing body. **does not constitute a governing body for purposes of this chapter.**

(B) **A committee appointed directly by the governing body or a designee of the governing body:**

(i) **for the sole purpose of receiving information, deliberating, or making recommendations to the governing body; and**

(ii) **that has not more than one (1) member of the governing body as a member.**

(c) "Meeting" means a gathering of a majority of the governing body of a public agency for the purpose of taking official action upon public business. It does not include any of the following:

(1) Any social or chance gathering not intended to avoid this chapter.

(2) Any on-site inspection of any:

(A) project;

(B) program; or

(C) facilities of applicants for incentives or assistance from the governing body.



(3) Traveling to and attending meetings of organizations devoted to betterment of government.

(4) A caucus.

(5) A gathering to discuss an industrial or a commercial prospect that does not include a conclusion as to recommendations, policy, decisions, or final action on the terms of a request or an offer of public financial resources.

(6) An orientation of members of the governing body on their role and responsibilities as public officials, but not for any other official action.

(7) A gathering for the sole purpose of administering an oath of office to an individual.

(8) Collective bargaining discussions that the governing body of a school corporation engages in directly with bargaining adversaries. This subdivision applies only to a governing body that has not appointed an agent or agents to conduct collective bargaining on behalf of the governing body as described in subsection (b)(3).

(d) "Official action" means to:

- (1) receive information;
- (2) deliberate;
- (3) make recommendations;
- (4) establish policy;
- (5) make decisions; or
- (6) take final action.

(e) "Public business" means any function upon which the public agency is empowered or authorized to take official action.

(f) "Executive session" means a meeting from which the public is excluded, except the governing body may admit those persons necessary to carry out its purpose. The governing body may also admit an individual who has been elected to the governing body but has not been sworn in as a member of the governing body.

(g) "Final action" means a vote by the governing body on any motion, proposal, resolution, rule, regulation, ordinance, or order.

(h) "Caucus" means a gathering of members of a political party or coalition which is held for purposes of planning political strategy and holding discussions designed to prepare the members for taking official action.

(i) "Deliberate" means a discussion which may reasonably be expected to result in official action (defined under subsection (d)(3), (d)(4), (d)(5), or (d)(6)).

(j) "News media" means all newspapers qualified to receive legal



advertisements under IC 5-3-1, all news services (as defined in IC 34-6-2-87), and all licensed commercial or public radio or television stations.

(k) "Person" means an individual, a corporation, a limited liability company, a partnership, an unincorporated association, or a governmental entity.

(l) "State educational institution" has the meaning set forth in IC 21-7-13-32.

(m) "Charter school" has the meaning set forth in IC 20-24-1-4). The term includes a virtual charter school (as defined in IC 20-24-1-10).

SECTION 2. IC 5-14-1.5-3.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2024]: **Sec. 3.3. (a) This section applies only to a meeting of the governing body of an entity described in section 2(a)(2) or 2(a)(3) of this chapter.**

**(b) This section does not apply to a meeting of the governing body of a school corporation or charter school.**

**(c) As used in this section, "attendee" means a member of the public who is physically present at a meeting of a governing body.**

**(d) If a governing body allows attendees to speak on a topic at a meeting, the governing body may designate:**

**(1) a period for taking public testimony that is:**

**(A) before or during the governing body's discussion or consideration of the topic; and**

**(B) before the governing body takes final action on the topic; and**

**(2) the amount of time allotted for attendees to speak on the topic.**

**(e) A governing body may adopt reasonable rules or policies governing the conduct of a meeting, including any of the following:**

**(1) Reasonable restrictions on the time allotted for attendees to speak on a topic.**

**(2) Reasonable steps to maintain order during a meeting with respect to attendees and the elected officials of the governing body.**

**(3) A procedure for the presiding member of the governing body to issue warnings to attendees who disrupt a meeting. Subject to subsection (g), the procedure may provide that if an attendee receives three (3) warnings, the presiding member of the governing body may upon issuing the third warning, direct:**



- (A) the attendee to leave the meeting; and
- (B) a law enforcement officer to remove the attendee from the meeting, if the attendee refuses to leave when directed by the presiding member for a violation of the rules or policies governing the conduct of the meeting as adopted by the governing body.

(f) The governing body must notify attendees of any rules or policies that are adopted under this section by:

- (1) posting the rules or policies in a visible area at the entrance to the meeting location; or
- (2) making an announcement of the rules or policies at the meeting before taking oral public comment.

(g) Nothing in this section may be construed to prohibit a law enforcement officer from immediately removing an attendee from a meeting if:

- (1) removal of the attendee is necessary to maintain order or ensure the safety of another person;
- (2) the attendee commits a criminal offense; or
- (3) the attendee violates the rules or policies governing the conduct of the meeting as adopted by the governing body.

(h) IC 34-13-3-3(a)(8) applies to this section.

SECTION 3. IC 5-14-4-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2024]: Sec. 6. The governor shall appoint a public access counselor for a term of four (4) years at a salary to be fixed by the governor. **The public access counselor shall serve at the pleasure of the governor.**

SECTION 4. IC 5-14-4-7 IS REPEALED [EFFECTIVE JULY 1, 2024]. Sec. 7: ~~The governor may remove the counselor for cause.~~

SECTION 5. IC 5-14-4-10.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2024]: **Sec. 10.5. When issuing an advisory opinion, the public access counselor shall consider only:**

- (1) the public access laws, as plainly written; and
- (2) valid opinions of Indiana courts.

SECTION 6. IC 35-43-2-2, AS AMENDED BY P.L.79-2023, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2024]: Sec. 2. (a) As used in this section, "authorized person" means a person authorized by an agricultural operation or a scientific research facility to act on behalf of the agricultural operation or the scientific research facility.

(b) A person who:

- (1) not having a contractual interest in the property, knowingly or



intentionally enters the real property of another person after having been denied entry by the other person or that person's agent;

(2) not having a contractual interest in the property, knowingly or intentionally refuses to leave the real property of another person after having been asked to leave by the other person or that person's agent;

(3) accompanies another person in a vehicle, with knowledge that the other person knowingly or intentionally is exerting unauthorized control over the vehicle;

(4) knowingly or intentionally interferes with the possession or use of the property of another person without the person's consent;

(5) not having a contractual interest in the property, knowingly or intentionally enters the:

(A) property of an agricultural operation that is used for the production, processing, propagation, packaging, cultivation, harvesting, care, management, or storage of an animal, plant, or other agricultural product, including any pasturage or land used for timber management, without the consent of the owner of the agricultural operation or an authorized person; or

(B) dwelling of another person without the person's consent;

(6) knowingly or intentionally:

(A) travels by train without lawful authority or the railroad carrier's consent; and

(B) rides on the outside of a train or inside a passenger car, locomotive, or freight car, including a boxcar, flatbed, or container without lawful authority or the railroad carrier's consent;

(7) not having a contractual interest in the property, knowingly or intentionally enters or refuses to leave the property of another person after having been prohibited from entering or asked to leave the property by a law enforcement officer when the property is:

(A) vacant real property (as defined in IC 36-7-36-5) or a vacant structure (as defined in IC 36-7-36-6); or

(B) designated by a municipality or county enforcement authority to be:

(i) abandoned property or an abandoned structure (as defined in IC 36-7-36-1); or

(ii) an unsafe building or an unsafe premises (as described in IC 36-7-9);

(8) not having a contractual interest in the property, knowingly or



intentionally enters the real property of an agricultural operation (as defined in IC 32-30-6-1) without the permission of the owner of the agricultural operation or an authorized person, and knowingly or intentionally engages in conduct that causes property damage to:

- (A) the owner of or a person having a contractual interest in the agricultural operation;
- (B) the operator of the agricultural operation; or
- (C) a person having personal property located on the property of the agricultural operation;

(9) not having a contractual interest in the property, knowingly or intentionally enters the real property of a scientific research facility (as defined in IC 35-31.5-2-287) without the permission of, or with permission which was fraudulently obtained from, the owner of the scientific research facility or an authorized person, and knowingly or intentionally engages in conduct that causes property damage to:

- (A) the owner of or a person having a contractual interest in the scientific research facility;
- (B) the operator of the scientific research facility; or
- (C) a person having personal property located on the property of the scientific research facility;

(10) knowingly or intentionally enters the property of another person after being denied entry by a court order that has been issued to the person or issued to the general public by conspicuous posting on or around the premises in areas where a person can observe the order when the property has been designated by a municipality or county enforcement authority to be:

- (A) a vacant property;
- (B) an abandoned property;
- (C) an abandoned structure (as defined in IC 36-7-36-1); or
- (D) an unsafe building or an unsafe premises (as described in IC 36-7-9); **or**

(11) knowingly or intentionally enters or refuses to leave the polls (as defined in IC 3-5-2-39) or chute (as defined in IC 3-5-2-10) after having been prohibited from entering or asked to leave the polls or chute by a precinct election officer (as defined in IC 3-5-2-40.1) or a law enforcement officer acting on behalf of a precinct election officer; **or**

**(12) knowingly or intentionally:**

- (A) without permission or prior authorization, enters an**



**area of property that is locked; or**  
**(B) refuses to leave an area of a property that is otherwise not accessible to the public, after being asked to leave the area of a property by a law enforcement officer or an employee or agent of the owner or operator of the property;**

commits criminal trespass, a Class A misdemeanor. However, the offense is a Level 6 felony if it is committed on a scientific research facility, on a facility belonging to a public utility (as defined in IC 32-24-1-5.9(a)), on school property, or on a school bus or the person has a prior unrelated conviction for an offense under this section concerning the same property. The offense is a Level 6 felony, for purposes of subdivision (8), if the property damage is more than seven hundred fifty dollars (\$750) and less than fifty thousand dollars (\$50,000). The offense is a Level 5 felony, for purposes of subdivisions (8) and (9), if the property damage is at least fifty thousand dollars (\$50,000).

(c) A person has been denied entry under subsection (b)(1) when the person has been denied entry by means of:

- (1) personal communication, oral or written;
- (2) posting or exhibiting a notice at the main entrance in a manner that is either prescribed by law or likely to come to the attention of the public;
- (3) a hearing authority or court order under IC 32-30-6, IC 32-30-7, IC 32-30-8, IC 36-7-9, or IC 36-7-36; or
- (4) posting the property by placing identifying purple marks on trees or posts around the area where entry is denied.

(d) For the purposes of subsection (c)(4):

- (1) each purple mark must be readily visible to any person approaching the property and must be placed:
  - (A) on a tree:
    - (i) as a vertical line of at least eight (8) inches in length and with the bottom of the mark at least three (3) feet and not more than five (5) feet from the ground; and
    - (ii) not more than one hundred (100) feet from the nearest other marked tree; or
  - (B) on a post:
    - (i) with the mark covering at least the top two (2) inches of the post, and with the bottom of the mark at least three (3) feet and not more than five (5) feet six (6) inches from the ground; and
    - (ii) not more than thirty-six (36) feet from the nearest other





marked post; and

(2) before a purple mark that would be visible from both sides of a fence shared by different property owners or lessees may be applied, all of the owners or lessees of the properties must agree to post the properties with purple marks under subsection (c)(4).

(e) A law enforcement officer may not deny entry to property or ask a person to leave a property under subsection (b)(7) unless there is reasonable suspicion that criminal activity has occurred or is occurring.

(f) A person described in subsection (b)(7) or (b)(10) violates subsection (b)(7) or (b)(10), as applicable, unless the person has the written permission of the owner, the owner's agent, an enforcement authority, or a court to come onto the property for purposes of performing maintenance, repair, or demolition.

(g) A person described in subsection (b)(10) violates subsection (b)(10) unless the court that issued the order denying the person entry grants permission for the person to come onto the property.

(h) Subsections (b), (c), and (g) do not apply to the following:

(1) A passenger on a train.

(2) An employee of a railroad carrier while engaged in the performance of official duties.

(3) A law enforcement officer, firefighter, or emergency response personnel while engaged in the performance of official duties.

(4) A person going on railroad property in an emergency to rescue a person or animal from harm's way or to remove an object that the person reasonably believes poses an imminent threat to life or limb.

(5) A person on the station grounds or in the depot of a railroad carrier:

(A) as a passenger; or

(B) for the purpose of transacting lawful business.

(6) A:

(A) person; or

(B) person's:

(i) family member;

(ii) invitee;

(iii) employee;

(iv) agent; or

(v) independent contractor;

going on a railroad's right-of-way for the purpose of crossing at a private crossing site approved by the railroad carrier to obtain access to land that the person owns, leases, or operates.

(7) A person having written permission from the railroad carrier



to go on specified railroad property.

(8) A representative of the Indiana department of transportation while engaged in the performance of official duties.

(9) A representative of the federal Railroad Administration while engaged in the performance of official duties.

(10) A representative of the National Transportation Safety Board while engaged in the performance of official duties.



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Speaker of the House of Representatives

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President of the Senate

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President Pro Tempore

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Governor of the State of Indiana

Date: \_\_\_\_\_ Time: \_\_\_\_\_

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