HOUSE BILL No. 1270

DIGEST OF INTRODUCED BILL

Citations Affected: IC 14-8-2; IC 14-13-9; IC 14-28-1; IC 14-30-1.

Synopsis: Kankakee River basin development. Repeals the Kankakee River basin commission (KRBC). Establishes the Kankakee River basin development commission (commission) as a public body corporate and politic. Transfers, with modifications, provisions concerning the membership, duties, powers, and other matters concerning the KRBC to the commission.

Effective: July 1, 2019.

Gutwein

January 10, 2019, read first time and referred to Select Committee on Government Reduction.
HOUSE BILL No. 1270

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:

SECTION 1. IC 14-8-2-20, AS AMENDED BY P.L.4-2008, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 20. "Basin" has the following meaning:

(1) For purposes of IC 14-13-9, the meaning set forth in IC 14-13-9-1.

(2) For purposes of IC 14-25-1, the meaning set forth in section 1.2 of IC 14-25-15-1.

(3) For purposes of IC 14-30-1, the meaning set forth in IC 14-30-1-1.

(4) For purposes of IC 14-30-2, the meaning set forth in IC 14-30-2-1.

(5) For purposes of IC 14-30-3, the meaning set forth in IC 14-30-3-1.

(6) For purposes of IC 14-30-4, the meaning set forth in IC 14-30-4-1.

SECTION 2. IC 14-8-2-48, AS AMENDED BY P.L.189-2018, SECTION 129, IS AMENDED TO READ AS FOLLOWS
[EFFECTIVE JULY 1, 2019]: Sec. 48. (a) "Commission", except as
provided in this section, refers to the natural resources commission.
(b) "Commission", for purposes of IC 14-13-1, has the meaning set
forth in IC 14-13-1-1.
(c) "Commission", for purposes of IC 14-13-2, has the meaning set
forth in IC 14-13-2-2.
(d) "Commission", for purposes of IC 14-13-4, has the meaning set
forth in IC 14-13-4-1.
(e) "Commission", for purposes of IC 14-13-5, has the meaning set
forth in IC 14-13-5-1.
(f) "Commission", for purposes of IC 14-13-6, has the meaning set
forth in IC 14-13-6-2.
(g) "Commission", for purposes of IC 14-13-9, has the meaning
(h) "Commission", for purposes of IC 14-20-11, has the meaning
set forth in IC 14-20-11-1.
(i) "Commission", for purposes of IC 14-28-4, has the meaning
set forth in IC 14-28-4-1.
(j) "Commission", for purposes of IC 14-30-1, has the meaning set
forth in IC 14-30-1-2.
(k) "Commission", for purposes of IC 14-30-2, has the meaning set
forth in IC 14-30-2-2.
(l) "Commission", for purposes of IC 14-30-3, has the meaning set
forth in IC 14-30-3-2.
m) "Commission", for purposes of IC 14-30-4, has the meaning set
forth in IC 14-30-4-2.
(m) "Commission", for purposes of IC 14-33-20, has the meaning
set forth in IC 14-33-20-2.

SECTION 3. IC 14-8-2-136 IS AMENDED TO READ AS
FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 136. "Kankakee River
basin", for purposes of IC 14-30-1, as in effect June 30, 2019, has the meaning set
forth in IC 14-30-1-3.

SECTION 4. IC 14-13-9 IS ADDED TO THE INDIANA CODE AS
A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
1, 2019]:

Chapter 9. Kankakee River Basin Development Commission
Sec. 0.5. (a) The Kankakee River basin commission is abolished.
Notwithstanding IC 14-30-1, as in effect June 30, 2019, the term of
any member serving on the Kankakee River basin commission
expires July 1, 2019.
(b) The governor shall appoint the member described in section
9(a)(1) of this chapter before July 1, 2019.

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(c) The county executive of each county in the basin in Indiana shall appoint the member described in section 9(a)(2) of this chapter before July 1, 2019.

(d) The initial terms for a member of the commission appointed under subsections (b) and (c) begin July 1, 2019.

(e) On July 1, 2019, all powers, duties, agreements, and liabilities of the Kankakee River basin commission are transferred to the commission.

(f) On July 1, 2019, all records and property, including appropriations and other funds, under the control of the Kankakee River basin commission are transferred to the commission.

(g) Employees of the Kankakee River basin commission on June 30, 2019, become employees of the commission on July 1, 2019, without change in compensation, seniority, or benefits and are entitled to have their service under the commission included for purposes of computing any applicable employment and retirement benefits.

(h) After June 30, 2019, a reference to the Kankakee River basin commission in any statute, rule, or other document is considered a reference to the commission.

(i) This section expires July 1, 2024.
purposes of this chapter.

(4) Create a commission capable of entering into and fulfilling the requirements of a nonfederal interest (as defined by 42 U.S.C. 1962d-5b).

Sec. 5. The Kankakee River basin development commission is established as a public body corporate and politic.

Sec. 6. The exercise of the powers granted by this chapter is for the benefit of the people of Indiana and for the increase of their commerce, health, enjoyment, and prosperity. The operation, creation, development, and maintenance of the projects by the commission constitutes the performance of essential governmental functions.

Sec. 7. The commission is responsible for the safekeeping and deposit of money the commission receives under this chapter. The state board of accounts shall:

(1) prescribe the methods and forms for the keeping of; and
(2) audit;

the accounts, records, and books of the commission and fund.

Sec. 8. The commission shall limit the commission's activities to the Kankakee River basin.

Sec. 9. (a) The commission consists of the following individuals:

(1) One (1) representative appointed by the governor, who is a voting member.
(2) One (1) representative appointed by the county executive of each county in the basin in Indiana, who is a voting member.

(b) A member appointed under subsection (a)(2) must reside in the Indiana county within the basin for which the member is appointed.

Sec. 10. (a) The commission may invite the executives of the counties located in the basin in Illinois to appoint one (1) member who meets the qualifications described in section 11 of this chapter to the commission.

(b) If a member is appointed under this section, the member serves as a nonvoting advisory member of the commission.

(c) If a member is appointed under this section, the member:

(1) is not entitled to reimbursement for traveling expenses or a salary per diem as provided in section 17 of this chapter; and
(2) may not be elected as an officer of the commission as provided in section 14 of this chapter.

Sec. 11. Each member of the commission appointed under
section 9(a) of this chapter must have a background in:

(1) construction;
(2) project management;
(3) flood control; or
(4) another similar professional background.

Sec. 12. The term of office of a member of the commission is four (4) years and continues until a successor is appointed.

Sec. 13. (a) An individual who is appointed to the commission is eligible for reappointment.

(b) If a vacancy occurs in the position of a member of the commission, the authority that appointed the member shall appoint a new member to fill the vacancy in the same way that the member to be replaced was appointed.

(c) If an appointee is appointed to serve an unexpired term, the appointee serves only until the end of the unexpired term.

Sec. 14. (a) This section does not apply to a member appointed under section 10 of this chapter.

(b) The commission shall elect the following officers:

(1) A chairman.
(2) A vice chairman.
(3) A secretary.
(4) A treasurer.

(c) The:

(1) terms of the officers elected under subsection (b) may not exceed one (1) year; and
(2) officers are eligible for reelection.

(d) The commission may establish and fill other offices the commission considers necessary.

(e) Each officer of the commission shall perform the duties usually pertaining to the office.

Sec. 15. The commission shall meet:

(1) at least four (4) times per calendar year; and
(2) on the call of any of the following:

(A) The chairman.
(B) The executive director.
(C) A quorum of the members of the commission.

Sec. 16. (a) The following rules apply to proceedings of the commission:

(1) Five (5) voting members constitute a quorum.
(2) At least five (5) affirmative votes are required for the commission to take action.
(3) The commission shall keep a record of the commission's
resolutions, transactions, and findings. This record is a public record.

(b) The commission may adopt additional rules for the transaction of business.

Sec. 17. (a) This section does not apply to a member appointed under section 10 of this chapter.

(b) Each commission member is entitled to reimbursement for traveling and other expenses as provided in the state travel policies and procedures established by the Indiana department of administration and approved by the budget agency.

(c) Each appointed commission member is entitled to the minimum salary per diem as provided in IC 4-10-11-2.1(b).

Sec. 18. (a) The commission may acquire, by purchase or by lease:

(1) any land, property, rights, rights-of-way, franchises, easements, and other interests in real property, including land under water and riparian rights; and

(2) any existing facilities, betterments, and improvements;

that the commission considers necessary or convenient for the establishment, development, construction, improvement, or operation of any projects.

(b) The commission may also acquire land and other interests in real property by:

(1) gift; or

(2) bequest.

(c) The commission shall take and hold title to land and other interests in the name of the state of Indiana.

(d) When acquiring land under this section, the commission shall follow the procedures for the acquisition of land by the Indiana department of transportation.

Sec. 19. The commission may acquire by appropriation under Indiana eminent domain law:

(1) any land, property, rights, rights-of-way, franchises, easements, or other interests in real property, including land under water and riparian rights; or

(2) any existing facilities, betterments, and improvements, or other property;

necessary and proper for the creation, development, establishment, maintenance, or operation of a project or any part of a project.

Sec. 20. Each:

(1) county, city, town, township, and other political subdivision of the state; and
(2) public agency, department, and commission;
may, upon the terms and conditions that the proper authorities of
the entity and the commission consider reasonable and
appropriate, lease, lend, grant, or convey to the commission, at the
commission's request, real or personal property, including an
interest in the property, owned by the entity that is necessary or
convenient to achieving the purposes of this chapter.

Sec. 21. In establishing and developing projects, the commission
may:
(1) construct, reconstruct, establish, build, repair, remodel,
enlarge, extend, or add to facilities, betterments, and
improvements; and
(2) clear and prepare any site for construction;
that the commission considers appropriate in furtherance of the
purposes of this chapter.

Sec. 22. (a) The commission may sell, transfer, or convey to:
(1) a political subdivision of the state; or
(2) a public agency, department, or agency;
for the consideration and upon the terms that the commission
considers appropriate real property, including a facility, a
betterment, or an improvement, within the projects or acquired
under this chapter, if the sale, transfer, or conveyance and
ownership by the transferee furthers the purposes of this chapter.
(b) Transfer is subject to the restrictions that the commission
considers appropriate in furtherance of the purposes of this
chapter.

Sec. 23. (a) The commission may provide for the construction,
improvement, development, operation, and management of
projects, including any facilities, betterments, and improvements
that are a part of projects, in the manner that the commission
considers appropriate in furtherance of the purposes of this
chapter.
(b) The commission may enter into:
(1) a lease agreement as lessor or sublessor; or
(2) an operation or a license agreement;
with respect to all or part of a site, a facility, a betterment, or an
improvement that is a part of projects with at least one (1) public
or private person or entity, including political subdivisions of the
state and public agencies, departments, and agencies, on the terms
and conditions that the commission considers appropriate in
furtherance of the purposes of this chapter.
(c) The commission shall provide for the training and
instruction of persons who are responsible for maintaining any
levees or other improvements related to flood control under this
article. The training and instruction must be sufficient to enable
those persons to properly maintain the levees or other
improvements related to flood control.

Sec. 24. The commission may do the following:

(1) Adopt bylaws for the regulation of the commission's
affairs and the conduct of the commission's business.

(2) Adopt an official seal, which may not be the seal of the
state.

(3) Maintain a principal office and other offices that the
commission designates.

(4) Sue and be sued in the name and style of "Kankakee River
Basin Development Commission", with service of process
being made upon the chairman of the commission by leaving
a copy at the principal office of the commission.

(5) Acquire by grant, purchase, gift, devise, lease, eminent
domain, or otherwise and hold, use, sell, lease, or dispose of:

(A) real and personal property of every kind and nature;

and

(B) any right and interest;

necessary for the full exercise or convenient or useful for the
carrying on of any of the commission's powers under this
chapter.

(6) Exercise within Indiana and in the name of the state of
Indiana the power of eminent domain under Indiana law
governing the exercise of the power of eminent domain for
any public purposes.

(7) Acquire by fee or by lease, obtain option on, hold, and
dispose of real and personal property reasonably necessary
and proper to the exercise of the commission's powers and the
performance of the commission's duties under this chapter.

(8) Make and enter into all contracts, undertakings, and
agreements necessary or incidental to the performance of the
commission's duties and the execution of the commission's
powers under this chapter, including agreements with the
state of Illinois or a political subdivision (or its equivalent) of
the state of Illinois to administer projects within the basin in
Illinois.

(9) Employ and fix the compensation of an executive director
or manager, consulting engineers, superintendents, and other
engineers, construction and accounting experts, attorneys,
and other employees and agents necessary in the commission's judgment.

(10) Conduct studies of the financial feasibility of the flood control projects and facilities, betterments, and improvements within those projects.

(11) Avail itself of the services of professional and other personnel employed by an agency, a department, or a commission of the state for purposes of studying the feasibility of or designing, constructing, or maintaining the projects or a facility within those projects.

(12) Receive and accept:
   (A) from the federal government, or a federal agency or department, grants for or in aid of the acquisition, construction, improvement, or development of any part of the projects of the commission; and
   (B) aid or contributions from any source of money, property, labor, or other things of value; to be held, used, and applied only for the purposes, consistent with the purposes of this chapter, for which the grants and contributions may be made.

(13) Hold, use, administer, and expend money that is appropriated or transferred to the commission.

(14) Assist or cooperate with a political subdivision or public agency, department, or commission, including the payment of money or the transfer of property to the political subdivision or public agency, department, or commission by the commission if the commission considers the assistance or cooperation appropriate in furtherance of the purposes of this chapter.

(15) Accept assistance and cooperation from a political subdivision or public agency, department, or commission, including the acceptance of money or property by the commission from the political subdivision or public agency, department, or commission, if the commission considers the assistance or cooperation appropriate in furtherance of the purposes of this chapter.

(16) Do all acts and things necessary or proper to carry out the powers expressly granted in this chapter.

(17) Enter into and carry out the terms of a nonfederal interest (as defined by 42 U.S.C. 1962d-5b).

(18) Make contracts and leases for facilities and services.

(19) Appoint the administrative officers and employees
necessary to carry out the work of the commission, fix their
duties and compensation, and delegate authority to perform
ministerial acts in all cases except where final action of the
commission is necessary.

(20) Engage in self-supporting activities.

(21) Contract for special and temporary services and for
professional assistance.

(22) Invoke any legal, equitable, or special remedy for the
enforcement of this chapter.

Sec. 25. The commission is not required to pay any taxes or
assessments upon any of the following:

(1) A project of the commission.

(2) A facility, a betterment, or an improvement within a
project.

(3) Property acquired or used by the commission under this
chapter.

(4) The income or revenue from the property.

Sec. 26. (a) Before November 1 of each year, the commission
shall make a report of the commission's activities to the following:

(1) The governor.

(2) The legislative council.

(3) The county executive of each county in the basin in
Indiana.

(b) A report made to the legislative council under this section
must be in an electronic format under IC 5-14-6.

SECTION 5. IC 14-28-1-22, AS AMENDED BY P.L.195-2017,
SECTION 45, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
JULY 1, 2019]: Sec. 22. (a) As used in subsection (b)(1) with respect
to a stream, "total length" means the length of the stream, expressed in
miles, from the confluence of the stream with the receiving stream to
the upstream or headward extremity of the stream, as indicated by the
solid or dashed, blue or purple line depicting the stream on the most
current edition of the seven and one-half (7 1/2) minute topographic
quadrangle map published by the United States Geological Survey,
measured along the meanders of the stream as depicted on the map.

(b) This section does not apply to the following:

(1) A reconstruction or maintenance project (as defined in
IC 36-9-27) on a stream or an open regulated drain if the total
length of the stream or open drain is not more than ten (10) miles.

(2) A construction or reconstruction project on a state or county
highway bridge in a rural area that crosses a stream having an
upstream drainage area of not more than fifty (50) square miles
and the relocation of utility lines associated with the construction or reconstruction project if confined to an area not more than one hundred (100) feet from the limits of the highway construction right-of-way.

(3) The performance of an activity described in subsection (c)(1) or (c)(2) by a surface coal mining operation that is operated under a permit issued under IC 14-34.

(4) Any other activity that is determined by the commission, according to rules adopted under IC 4-22-2, to pose not more than a minimal threat to floodway areas.

(5) An activity in a boundary river floodway to which section 26.5 of this chapter applies.

(6) The removal of a logjam or mass of wood debris that has accumulated in a river or stream, subject to the following conditions:

(A) Work must not be within a salmonid stream designated under 327 IAC 2-1.5-5 without the prior written approval of the department's division of fish and wildlife.

(B) Work must not be within a natural, scenic, or recreational river or stream designated under 312 IAC 7-2.

(C) Except as otherwise provided in Indiana law, free logs or affixed logs that are crossways in the channel must be cut, relocated, and removed from the floodplain. Logs may be maintained in the floodplain if properly anchored or otherwise secured so as to resist flotation or dislodging by the flow of water and placement in an area that is not a wetland. Logs must be removed and secured with a minimum of damage to vegetation.

(D) Isolated or single logs that are embedded, lodged, or rooted in the channel, and that do not span the channel or cause flow problems, must not be removed unless the logs are either of the following:

   (i) Associated with or in close proximity to larger obstructions.

   (ii) Posing a hazard to navigation.

(E) A leaning or severely damaged tree that is in immediate danger of falling into the waterway may be cut and removed if the tree is associated with or in close proximity to an obstruction. The root system and stump of the tree must be left in place.

(F) To the extent practicable, the construction of access roads must be minimized, and should not result in the elevation of
the floodplain.

(G) To the extent practicable, work should be performed exclusively from one (1) side of a waterway. Crossing the bed of a waterway is prohibited.

(H) To prevent the flow of sediment laden water back into the waterway, appropriate sediment control measures must be installed.

(I) Within fifteen (15) days, all bare and disturbed areas must be revegetated with a mixture of grasses and legumes. Tall fescue must not be used under this subdivision, except that low endophyte tall fescue may be used in the bottom of the waterway and on side slopes.

(c) A person who desires to:

(1) erect, make, use, or maintain a structure, an obstruction, a deposit, or an excavation; or

(2) suffer or permit a structure, an obstruction, a deposit, or an excavation to be erected, made, used, or maintained;

in or on a floodway must file with the director a verified written application for a permit accompanied by a nonrefundable minimum fee of two hundred dollars ($200).

(d) The application for a permit must set forth the material facts together with plans and specifications for the structure, obstruction, deposit, or excavation.

(e) An applicant must receive a permit from the director for the work before beginning construction. The director shall issue a permit only if in the opinion of the director the applicant has clearly proven that the structure, obstruction, deposit, or excavation will not do any of the following:

(1) Adversely affect the efficiency of or unduly restrict the capacity of the floodway.

(2) Constitute an unreasonable hazard to the safety of life or property.

(3) Result in unreasonably detrimental effects upon fish, wildlife, or botanical resources.

(f) In deciding whether to issue a permit under this section, the director shall consider the cumulative effects of the structure, obstruction, deposit, or excavation. The director may incorporate in and make a part of an order of authorization conditions and restrictions that the director considers necessary for the purposes of this chapter.

(g) A permit issued under this section:

(1) is valid for two (2) years after the issuance of the permit; and

(2) to:
(A) the Indiana department of transportation or a county
highway department if there is any federal funding for the
project; or
(B) an electric utility for the construction of a power
generating facility;
is valid for five (5) years from the date of issuance.
A permit that is active and was issued under subdivision (1) before July
1, 2014, is valid for two (2) years beginning July 2014, and a permit
that is active and was issued under subdivision (2) before July 1, 2014,
is valid for five (5) years beginning July 2014.
(h) A permit issued under:
(1) subsection (g)(1) may be renewed one (1) time for a period not
to exceed two (2) additional years; and
(2) subsection (g)(2) may be renewed one (1) time for a period not
to exceed five (5) additional years.
(i) The director shall send a copy of each permit issued under this
section to each river basin commission organized under:
(1) IC 14-29-7 or IC 13-2-27 (before its repeal); or
(2) IC 14-13-19, IC 14-30-1 (before its repeal), or IC 36-7-6
that is affected.
(j) The permit holder shall post and maintain a permit issued under
this section at the authorized site.
(k) For the purposes of this chapter, the lowest floor of a building,
including a residence or abode, that is to be constructed or
reconstructed in the one hundred (100) year floodplain of an area
protected by a levee that is:
(1) inspected; and
(2) found to be in good or excellent condition;
by the United States Army Corps of Engineers shall not be lower than
the one hundred (100) year frequency flood elevation plus one (1) foot.
SECTION 6. IC 14-28-1-24, AS AMENDED BY P.L.195-2017,
SECTION 46, IS AMENDED TO READ AS FOLLOWS
[[EFFECTIVE JULY 1, 2019]: Sec. 24. (a) This section does not apply
to the reconstruction of a residence located in a boundary river
floodway.
(b) A person may not begin the reconstruction of an abode or a
residence that is located in a floodway and is substantially damaged (as
defined in 44 CFR 59.1, as in effect on January 1, 1993) unless the
person has:
(1) obtained a permit under this section or section 26.5 of this
chapter; or
(2) demonstrated to the department through the submission of material facts, plans, and specifications that the material used to elevate the reconstructed abode or residence:

(A) does not extend beyond the original foundation of the abode or residence; and

(B) meets the criteria set forth in subsection (d)(2) through (d)(7).

(c) A person who desires to reconstruct an abode or a residence that does not meet the requirements under subsection (b)(2) must file with the director a verified written application for a permit accompanied by a nonrefundable minimum fee of fifty dollars ($50). An application submitted under this section must do the following:

(1) Set forth the material facts concerning the proposed reconstruction.

(2) Include the plans and specifications for the reconstruction.

(d) The director may issue a permit to an applicant under this section only if the applicant has clearly proven all of the following:

(1) The abode or residence will be reconstructed:

(A) in the area of the original foundation and in substantially the same configuration as the former abode or residence; or

(B) in a location that is, as determined by the director, safer than the location of the original foundation.

(2) The lowest floor elevation of the abode or residence as reconstructed, including the basement, will be at least two (2) feet above the one hundred (100) year flood elevation.

(3) The abode or residence will be designed or modified and adequately anchored to prevent flotation, collapse, or lateral movement of the structure resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy.

(4) The abode or residence will be reconstructed with materials resistant to flood damage.

(5) The abode or residence will be reconstructed by methods and practices that minimize flood damages.

(6) The abode or residence will be reconstructed with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed and located to prevent water from entering or accumulating within the components during conditions of flooding.

(7) The abode or residence, as reconstructed, will comply with the minimum requirements for floodplain management set forth in 44 CFR Part 60, as in effect on January 1, 1993.

(e) When granting a permit under this section, the director may
establish and incorporate into the permit certain conditions and
restrictions that the director considers necessary for the purposes of this
chapter.

(f) A permit issued by the director under this section is void if the
reconstruction authorized by the permit is not commenced within two
(2) years after the permit is issued.

(g) The director shall send a copy of each permit issued under this
section to each river basin commission organized under:

(1) IC 14-29-7 or IC 13-2-27 (before its repeal); or

(2) IC 14-13-9, IC 14-30-1 (before its repeal), or IC 36-7-6
(before its repeal);

that is affected by the permit.

(h) The person to whom a permit is issued under this section shall
post and maintain the permit at the site of the reconstruction authorized
by the permit.

(i) A person who knowingly:

(1) begins the reconstruction of an abode or a residence in
violation of subsection (b);

(2) violates a condition or restriction of a permit issued under this
section; or

(3) fails to post and maintain a permit at a reconstruction site in
violation of subsection (h);

commits a Class B infraction. Each day that the person is in violation
of subsection (b), the permit, or subsection (h) constitutes a separate
infraction.

SECTION 7. IC 14-30-1 IS REPEALED [EFFECTIVE JULY 1,
2019]. (Kankakee River Basin Commission).