

# HOUSE BILL No. 1189

---

## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 8-10-1-31; IC 8-10-5.

**Synopsis:** Ports of Indiana. Provides that a person that seeks to establish additional commercial ports on Lake Michigan or the Ohio River must submit to the commission of the ports of Indiana (ports commission) a market study concerning the economic costs and benefits of additional commercial ports. Provides that, before a local port authority may construct or operate a port or other facility on navigable waters: (1) the local port authority must submit a report to the ports commission and to the governor; (2) the ports commission must respond to the report; and (3) the governor must approve the report. Provides that, after June 30, 2014, a local port authority: (1) may not be created; or (2) may not expand its jurisdiction; to include navigable waterways. Makes a technical correction.

**Effective:** Upon passage; July 1, 2014.

---

---

## Soliday

---

---

January 14, 2014, read first time and referred to Committee on Roads and Transportation.

---

---



Second Regular Session 118th General Assembly (2014)

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 2013 Regular Session and 2013 First Regular Technical Session of the General Assembly.

# HOUSE BILL No. 1189

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

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

1 SECTION 1. IC 8-10-1-31 IS ADDED TO THE INDIANA CODE  
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE  
3 UPON PASSAGE]: **Sec. 31. (a) A person that seeks to establish**  
4 **additional commercial ports on:**  
5 (1) **Lake Michigan, including channels that are ordinarily**  
6 **navigable to Lake Michigan; or**  
7 (2) **the Ohio River, including channels that are ordinarily**  
8 **navigable to the Ohio River;**  
9 **must submit to the Indiana port commission a market study**  
10 **concerning the long and short term potential economic**  
11 **opportunities and consequences of establishing the additional**  
12 **commercial ports.**  
13 (b) **A study described in subsection (a) must include the**  
14 **following:**  
15 (1) **Current data and statistics on Great Lakes shipping**  
16 **trends.**



1           **(2) An analysis of the federal permitting process administered**  
 2           **by the United States Army Corps of Engineers.**

3           SECTION 2. IC 8-10-5-1 IS AMENDED TO READ AS FOLLOWS  
 4           [EFFECTIVE JULY 1, 2014]: Sec. 1. As used in this chapter:

5           (1) "Port authority" means a port authority created pursuant to  
 6           authority of this chapter.

7           (2) The terms "port" or "harbor" may be used interchangeably and  
 8           when used in this chapter shall mean any area used for servicing,  
 9           storing, protecting, mooring, loading or unloading, or repairing  
 10          any watercraft, on or adjacent to any body of water which may be  
 11          wholly or partially within or wholly or partially adjacent to the  
 12          state of Indiana. The terms include a breakwater area.

13          (3) The term "watercraft" shall mean any vessel, barge, boat, ship,  
 14          tug, sailingcraft, skiff, raft, inboard or outboard propelled boat, or  
 15          any contrivance known on March 13, 1959, or invented after  
 16          March 13, 1959, used or designed for navigation of or use upon  
 17          water, including a vessel permanently anchored in a port.

18          (4) "Publication" means publication once a week for two (2)  
 19          consecutive weeks in a newspaper of general circulation in the  
 20          city, county, or counties wherein such publication is required to  
 21          be made.

22          (5) The term "governing body" shall mean the legislative  
 23          authority of the governmental unit or units establishing or having  
 24          established a port authority under the provisions of this chapter.

25          **(6) "Navigable waters" means navigable waters of the United**  
 26          **States (as defined in 33 CFR 329).**

27          **(7) "Ports commission" refers to the commission of the ports**  
 28          **of Indiana created by IC 8-10-1-3(b).**

29          SECTION 3. IC 8-10-5-5.5 IS AMENDED TO READ AS  
 30          FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 5.5. **(a) Except as**  
 31          **provided in subsection (b),** any port authority that is created under this  
 32          chapter may expand its jurisdiction to include any other unit (as  
 33          defined in IC 36-1-2-23) that desires to join the expanded authority.  
 34          The legislative body (as defined in IC 36-1-2-9) of each unit that is in  
 35          the authority shall by ordinance determine the number of directors on  
 36          the board of the expanded authority and any other terms of the  
 37          expansion that it considers appropriate. The legislative body of each  
 38          unit that desires to join the authority shall by ordinance agree to join  
 39          the authority and to accept the terms of the ordinance that provides for  
 40          the expansion.

41          **(b) After June 30, 2014, a port authority may not expand its**  
 42          **jurisdiction to include navigable waters.**



1 SECTION 4. IC 8-10-5-7 IS AMENDED TO READ AS FOLLOWS  
 2 [EFFECTIVE JULY 1, 2014]: Sec. 7. **(a) Subject to subsections (b)**  
 3 **and (c),** the area of jurisdiction of a port authority ~~shall include:~~  
 4 **includes:**

5 (1) all of the territory of the political subdivision or subdivisions  
 6 creating it; and

7 (2) a facility that is owned or operated by the port authority,  
 8 whether or not the facility is within the boundaries of the political  
 9 subdivision or subdivisions that created the port authority.

10 ~~however,~~ **(b)** The same area may not be included in the jurisdiction  
 11 of more than one (1) port authority.

12 **(c) The jurisdiction of a port authority created under this**  
 13 **chapter after June 30, 2014, does not include navigable waters or**  
 14 **a facility that is located on or adjacent to navigable waters.**

15 SECTION 5. IC 8-10-5-8, AS AMENDED BY P.L.229-2011,  
 16 SECTION 100, IS AMENDED TO READ AS FOLLOWS  
 17 [EFFECTIVE JULY 1, 2014]: Sec. 8. (a) A port authority is an  
 18 instrumentality of the state and, **subject to section 8.2 of this chapter,**  
 19 shall have full power and authority independent of any political  
 20 subdivision to do the following:

21 (1) Purchase, construct, sell, lease, and operate docks, wharves,  
 22 warehouses, piers, and other port, terminal, or transportation  
 23 facilities within its jurisdiction consistent with the purposes of the  
 24 port authority and make charges for the use thereof.

25 (2) Straighten, deepen, and improve any canal, channel, river,  
 26 stream, or other water course or way which may be necessary or  
 27 proper in the development of the facilities of such port.

28 (3) Establish dock lines, piers, and other facilities necessary to the  
 29 conduct of pleasure boating within the territory under the  
 30 jurisdiction of the port authority.

31 (4) Regulate and enforce the regulation of all uses and activities  
 32 related to the port in the area under the jurisdiction of the port  
 33 authority and determine the use of land adjacent to waters under  
 34 the jurisdiction of the port authority within a reasonable distance  
 35 from the shore lines of such waters. However, this subdivision  
 36 does not:

37 (A) affect the requirement that special standards for the safe  
 38 operation of watercraft on public waters must be adopted by  
 39 rule by the department of natural resources under  
 40 IC 14-15-7-3; or

41 (B) authorize the assessment by the port authority of a charge  
 42 or fee for the passage of a watercraft through the navigable



1           waters of the state.  
2           (5) Acquire, own, hold, sell, lease, or operate real or personal  
3           property for the authorized purposes of the port authority.  
4           (6) Apply to the proper authorities of the United States pursuant  
5           to appropriate law for the right to establish, operate, and maintain  
6           foreign trade zones within the limits of the port authority and  
7           establish, operate, and maintain such foreign trade zones.  
8           (7) Exercise the right of eminent domain to appropriate any land,  
9           rights, rights-of-way, franchises, easements, or other property  
10          necessary or proper for the construction or the efficient operation  
11          of any facility of the port authority, award damages to landowners  
12          for real estate and property rights appropriated and taken or  
13          injuriously affected, and in case the board of directors of the port  
14          authority cannot agree with the owners, lessees, or occupants of  
15          any real estate selected by them for the purposes herein set forth,  
16          proceed to procure the condemnation of the same as hereinafter  
17          provided, and in addition thereto, when not in conflict or  
18          inconsistent with the express provisions of this chapter, proceed  
19          under the general laws of the state of Indiana governing the  
20          condemnation of lands and the rights-of-way for other public  
21          purposes which may be in force at the time, and the provisions of  
22          such laws are hereby extended to ports and harbors and to the  
23          properties of port authorities as provided for herein so far as the  
24          same are not in conflict or inconsistent with the terms of this  
25          chapter. In any such proceeding prosecuted by the board of  
26          directors of a port authority to condemn or appropriate any land  
27          or the use thereof or any right therein for purposes permitted by  
28          this chapter, the board and all owners and holders of property or  
29          rights therein sought to be taken shall be governed by and have  
30          the same rights as to procedure, notices, hearings, assessments of  
31          benefits and awards, and payments thereof as are now or may  
32          hereafter be prescribed by law for the appropriation and  
33          condemnation of real estate, and such property owners shall have  
34          like powers and rights as to remonstrance and of appeals to the  
35          circuit or superior courts in the county in which such property  
36          sought to be appropriated is located. However, the payment of all  
37          damages awarded for all lands and property or interests or rights  
38          therein appropriated under the provisions of this chapter shall be  
39          paid entirely out of funds under the control of such port authority,  
40          except for the following:  
41                (A) Upon written application of any property owner affected,  
42                any municipal corporation, or, as to areas outside the



- 1 boundaries of a municipal corporation, any county,  
 2 participating in the creation of a port authority, after ten (10)  
 3 days written notice to the port authority and public hearing had  
 4 thereon, may revoke the right of eminent domain to be  
 5 exercised by the port authority as to any parcel or parcels of  
 6 land inside its borders within sixty (60) days after the port  
 7 authority has by resolution announced the lands, rights,  
 8 rights-of-way, franchises, easements, or other property to be  
 9 taken.
- 10 (B) Nothing herein contained shall authorize a port authority  
 11 to take or disturb property or facilities belonging to any public  
 12 corporation, public utility, or common carrier, which property  
 13 or facilities are necessary and convenient in the operation of  
 14 such public corporation, public utility, or common carrier,  
 15 unless provision is made for the restoration, relocating, or  
 16 duplication of such property or facilities, or upon the election  
 17 of such public corporation, public utility, or common carrier,  
 18 for the payment of compensation, if any at the sole cost of the  
 19 port authority, subject to the following:
- 20 (i) If any restoration or duplication proposed to be made  
 21 hereunder shall involve a relocation of such property or  
 22 facilities, the new facilities and location shall be of at least  
 23 comparable utilitarian value and effectiveness and such  
 24 relocation shall not impair the ability of the public utility or  
 25 common carrier to compete in its original area of operation.
- 26 (ii) Provisions for restoration or duplication shall be  
 27 described in detail in the resolution for appropriation passed  
 28 by the port authority.
- 29 (8) Accept, receive, and receipt for federal moneys, and other  
 30 moneys, either public or private, for the acquisition, construction,  
 31 enlargement, improvement, maintenance, equipment, or operation  
 32 of a port or harbor or other navigation facilities, and sites therefor  
 33 and comply with the provisions of the laws of the United States  
 34 and any rules and regulations made thereunder for the expenditure  
 35 of federal moneys upon such ports and other navigation facilities.
- 36 (9) Maintain such funds as it deems necessary.
- 37 (10) Direct its agents or employees, when properly identified in  
 38 writing, and after at least five (5) days written notice, to enter  
 39 upon lands within the confines of its jurisdiction in order to make  
 40 surveys and examinations preliminary to location and  
 41 construction of works for the purposes of the port authority,  
 42 without liability of the port authority or its agents or employees



1 except for actual damage done.

2 (11) Sell or lease real and personal property not needed for the  
3 operation of the port authority and grant easements or  
4 rights-of-way over property of the port authority.

5 (12) Promote, advertise, and publicize the port and its facilities,  
6 provide traffic information and rate information to shippers and  
7 shipping interests, and appear before rate making authorities to  
8 represent and promote the interests of the port.

9 (13) Borrow money and secure the borrowing by a pledge of the  
10 following:

11 (A) Accounts receivable.

12 (B) A security interest in capital equipment for which the  
13 proceeds of the loan are used.

14 (C) Other security, including the excess of unobligated  
15 revenues over operating expenses.

16 (b) The term of a loan authorized by subsection (a)(13) may not  
17 exceed:

18 (1) thirty-five (35) years, in the case of a loan made before July 1,  
19 2011; or

20 (2) twenty-five (25) years, in the case of a loan made after June  
21 30, 2011.

22 SECTION 6. IC 8-10-5-8.2 IS ADDED TO THE INDIANA CODE  
23 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
24 1, 2014]: **Sec. 8.2. (a) Before a port authority may exercise a power  
25 set forth in section 8 to develop, construct, finance, own, or operate  
26 a port or other facility on or adjacent to navigable waters, the port  
27 authority shall submit a report to the ports commission and the  
28 governor. The report must include the following information:**

29 (1) **A description of the location of the port or other facility.**

30 (2) **A business plan for the port or other facility, including:**

31 (A) **financing mechanisms;**

32 (B) **planned commercial operations and activities;**

33 (C) **types, volumes, and modes of delivery of inbound and  
34 outbound cargoes; and**

35 (D) **anticipated dates of commencement of construction  
36 and operation.**

37 (3) **An analysis of the economic impact the port or other  
38 facility will have on ports or projects of the ports of Indiana  
39 under IC 8-10-1.**

40 (4) **A market study of the port or other facility that satisfies  
41 applicable standards of the United States Army Corps of  
42 Engineers. A market study conducted under IC 8-10-1-31**



- 1           satisfies this requirement.
- 2           **(b) Within ninety (90) days after receiving a report under**
- 3 **subsection (a), the ports commission shall review and respond to**
- 4 **the report and submit its response to the governor. Upon receipt of**
- 5 **the response, the governor shall review the report and response**
- 6 **and may:**
- 7           **(1) approve;**
- 8           **(2) disapprove; or**
- 9           **(3) request additional information or analysis concerning;**
- 10 **the port or other facility that is the subject of the report and**
- 11 **response.**
- 12           **(c) A port authority may not develop, construct, finance, own,**
- 13 **or operate a port or other facility that is the subject of a report**
- 14 **under subsection (a) until the governor approves the report under**
- 15 **subsection (b).**
- 16           SECTION 7. IC 8-10-5-9 IS AMENDED TO READ AS FOLLOWS
- 17 [EFFECTIVE JULY 1, 2014]: Sec. 9. **(a)** The board of directors of a
- 18 port authority shall prepare or cause to be prepared a plan for the future
- 19 development, construction, and improvement of the port and its
- 20 facilities, including such maps, profiles, and other data and descriptions
- 21 as may be necessary to set forth the location and character of the work
- 22 to be undertaken by the port authority. Upon the completion of such
- 23 plan, the board of directors shall cause notice by publication as
- 24 provided in section 1 of this chapter, to be given in each county in
- 25 which there is a political subdivision participating in the creation of the
- 26 port authority, and shall likewise cause notice to be served upon the
- 27 owners of the uplands contiguous to any submerged lands affected by
- 28 such plan in the manner provided by law for service of notice in the
- 29 levy of special assessments by municipal corporations, and shall permit
- 30 the inspection thereof at their office by all persons interested. Said
- 31 notice shall fix the time and place for the hearing of all objections to
- 32 said plan which time shall be not less than ten (10) nor more than thirty
- 33 (30) days from the date of last publication of said notice. Any
- 34 interested person may file written objections to such plan, provided
- 35 such objections are filed with the secretary of the board of directors at
- 36 **his the secretary's** office not less than five (5) days prior to the date
- 37 fixed for said hearing. After ~~said~~ **the hearing, and subject to**
- 38 **subsection (b)**, the board of directors may adopt such plan with any
- 39 modifications or amendments thereto as the official plan of the port
- 40 authority.
- 41           **(b) If a plan prepared under subsection (a) includes work**
- 42 **located on or adjacent to navigable waters, the plan is subject to**





1 **review and approval under section 8.2 of this chapter. The board**  
2 **of directors may not adopt a plan described in this subsection until**  
3 **the governor approves the plan.**

4 SECTION 8. IC 8-10-5-14 IS AMENDED TO READ AS  
5 FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 14. Nothing contained  
6 in this chapter shall:

7 (1) impair the provisions of law or ordinance directing the  
8 payment of revenues derived from public property into sinking  
9 funds or dedicating such revenues to specific purposes;

10 (2) impair the powers of any county, township, or municipal  
11 corporation to develop or improve port and terminal facilities **that**  
12 **are not located on or adjacent to navigable waters;** or

13 (3) impair or interfere with the exercise of any permit for the  
14 removal of sand or gravel, or other similar permits issued by this  
15 state or the United States.

16 SECTION 9. **An emergency is declared for this act.**

