

PREVAILED

Roll Call No. _____

FAILED

Ayes _____

WITHDRAWN

Noes _____

RULED OUT OF ORDER

HOUSE MOTION _____

MR. SPEAKER:

I move that Engrossed Senate Bill 343 be amended to read as follows:

- 1 Page 10, between lines 7 and 8, begin a new paragraph and insert:
2 "SECTION 14. IC 34-13-3-3, AS AMENDED BY P.L.250-2001,
3 SECTION 6, AND AS AMENDED BY P.L.280-2001, SECTION 42,
4 IS AMENDED AND CORRECTED TO READ AS FOLLOWS
5 [EFFECTIVE JULY 1, 2002]: Sec. 3. A governmental entity or an
6 employee acting within the scope of the employee's employment is not
7 liable if a loss results from *the following*:
8 (1) The natural condition of unimproved property.
9 (2) The condition of a reservoir, dam, canal, conduit, drain, or
10 similar structure when used by a person for a purpose that is not
11 foreseeable.
12 (3) The temporary condition of a public thoroughfare *or extreme*
13 *sport area* that results from weather.
14 (4) The condition of an unpaved road, trail, or footpath, the
15 purpose of which is to provide access to a recreation or scenic
16 area.
17 (5) *The design, construction, control, operation, or normal*
18 *condition of an extreme sport area, if all entrances to the extreme*
19 *sport area are marked with*:
20 (A) *a set of rules governing the use of the extreme sport area;*
21 (B) *a warning concerning the hazards and dangers associated*
22 *with the use of the extreme sport area; and*
23 (C) *a statement that the extreme sport area may be used only*
24 *by persons operating extreme sport equipment.*

- 1 *This subdivision shall not be construed to relieve a governmental*
2 *entity from liability for the continuing duty to maintain extreme*
3 *sports areas in a reasonably safe condition.*
4 (6) The initiation of a judicial or an administrative proceeding.
5 ~~(6)~~ (7) The performance of a discretionary function; however, the
6 provision of medical or optical care as provided in IC 34-6-2-38
7 shall be considered as a ministerial act.
8 ~~(7)~~ (8) The adoption and enforcement of or failure to adopt or
9 enforce a law (including rules and regulations), unless the act of
10 enforcement constitutes false arrest or false imprisonment.
11 ~~(8)~~ (9) An act or omission performed in good faith and without
12 malice under the apparent authority of a statute which is invalid
13 if the employee would not have been liable had the statute been
14 valid.
15 ~~(9)~~ (10) The act or omission of anyone other than the
16 governmental entity or the governmental entity's employee.
17 ~~(10)~~ (11) The issuance, denial, suspension, or revocation of, or
18 failure or refusal to issue, deny, suspend, or revoke, any permit,
19 license, certificate, approval, order, or similar authorization,
20 where the authority is discretionary under the law.
21 ~~(11)~~ (12) Failure to make an inspection, or making an inadequate
22 or negligent inspection, of any property, other than the property
23 of a governmental entity, to determine whether the property
24 complied with or violates any law or contains a hazard to health
25 or safety.
26 ~~(12)~~ (13) Entry upon any property where the entry is expressly or
27 impliedly authorized by law.
28 ~~(13)~~ (14) Misrepresentation if unintentional.
29 ~~(14)~~ (15) Theft by another person of money in the employee's
30 official custody, unless the loss was sustained because of the
31 employee's own negligent or wrongful act or omission.
32 ~~(15)~~ (16) Injury to the property of a person under the jurisdiction
33 and control of the department of correction if the person has not
34 exhausted the administrative remedies and procedures provided
35 by section 7 of this chapter.
36 ~~(16)~~ (17) Injury to the person or property of a person under
37 supervision of a governmental entity and who is:
38 (A) on probation; or
39 (B) assigned to an alcohol and drug services program under
40 IC 12-23, a minimum security release program under
41 IC 11-10-8, **a pretrial release program under IC 35-33-8**, or
42 a community corrections program under IC 11-12.
43 ~~(17)~~ (18) Design of a highway (as defined in IC 9-13-2-73) if the
44 claimed loss occurs at least twenty (20) years after the public
45 highway was designed or substantially redesigned; except that
46 this subdivision shall not be construed to relieve a responsible

1 governmental entity from the continuing duty to provide and
 2 maintain public highways in a reasonably safe condition.
 3 ~~(18)~~ (19) Development, adoption, implementation, operation,
 4 maintenance, or use of an enhanced emergency communication
 5 system.
 6 ~~(19)~~ (20) Injury to a student or a student's property by an
 7 employee of a school corporation if the employee is acting
 8 reasonably under a discipline policy adopted under
 9 IC 20-8.1-5.1-7(b). ~~or~~
 10 ~~(20)~~ (21) An error resulting from or caused by a failure to
 11 recognize the year 1999, 2000, or a subsequent year, including an
 12 incorrect date or incorrect mechanical or electronic interpretation
 13 of a date, that is produced, calculated, or generated by:
 14 (A) a computer;
 15 (B) an information system; or
 16 (C) equipment using microchips;
 17 that is owned or operated by a governmental entity. However, this
 18 subdivision does not apply to acts or omissions amounting to
 19 gross negligence, willful or wanton misconduct, or intentional
 20 misconduct. For purposes of this subdivision, evidence of gross
 21 negligence may be established by a party by showing failure of a
 22 governmental entity to undertake an effort to review, analyze,
 23 remediate, and test its electronic information systems or by
 24 showing failure of a governmental entity to abate, upon notice, an
 25 electronic information system error that caused damage or loss.
 26 However, *this* subdivision ~~(20)~~ expires ~~on~~ June 30, 2003; *or*
 27 ~~(21)~~ (22) *an act or omission performed in good faith under the*
 28 *apparent authority of a court order described in IC 35-46-1-15.1*
 29 *that is invalid, including an arrest or imprisonment related to the*
 30 *enforcement of the court order, if the governmental entity or*
 31 *employee would not have been liable had the court order been*
 32 *valid.*
 33 Renumber all SECTIONS consecutively.
 (Reference is to ESB 343 as printed February 15, 2002.)

Representative Mahern