CONFERENCE COMMITTEE REPORT
DIGEST FOR ESB 400

Citations Affected: IC 9-13-2-60; IC 14-8-2; IC 14-16-1; IC 15-12-3-2; IC 34-13-3-3.

Synopsis: Natural and cultural resources and civil law. Conference committee report for ESB 400. Defines "all-terrain vehicle" (ATV) and "recreational off-highway vehicle" (ROV). Amends the definition of "off-road vehicle" for purposes of regulation of land recreation to specifically include ATVs and ROVs. Prohibits: (1) a county, city, or town from adopting an ordinance; and (2) the department of natural resources from adopting a rule, regulation, or guideline; that imposes on off-road vehicles a dry weight limitation of less than 2,000 pounds. Cross-references the new ATV definition for purposes of excluding ATVs from requirements concerning the repurchase of farm or industrial machinery. Provides that a governmental entity or an employee acting within the scope of the employee's employment is not liable if a loss results from the operation of an off-road vehicle by a non-governmental employee, or by a governmental employee not acting within the scope of the employment of the employee, on a public highway in a county road system outside the corporate limits of a city or town, unless the loss is the result of an act or omission amounting to gross negligence, willful or wanton misconduct, or intentional misconduct, with certain exceptions. Requires a collector snowmobile to be registered with the department of natural resources in order to be operated on public property. Adds a 3, 4, or 6 wheeled construction related motor vehicle that is: (1) capable of cross-country travel without the benefit of a road and on or immediately over land, water, snow, ice, marsh, swampland, or other natural terrain; and (2) used primarily for construction related purposes; to the definition of "farm wagon" for purposes of the operation of the motor vehicle on highways. **(This conference committee report removes language: (1) revising provisions governing the use of golf carts on certain county roads; (2) providing that an ordinance authorizing the use of golf carts on county roads must require that: (A) an individual who operates a golf cart on a county road hold a driver's license; and (B) a fine assessed for a violation of the ordinance be deposited in the general fund of the county; and (3) specifying that the violation of an ordinance governing the use of a golf cart on a state highway in the county is considered an ordinance violation (instead of a Class C infraction).**

Effective: July 1, 2010.

Adopted	Rejected

CONFERENCE COMMITTEE REPORT

MR. SPEAKER:

Your Conference Committee appointed to confer with a like committee from the Senate upon Engrossed House Amendments to Engrossed Senate Bill No. 400 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

Delete the title and insert the following:

A BILL FOR AN ACT to amend the Indiana code concerning motorized vehicles and civil law.

Delete everything after the enacting clause and insert the following:

SECTION 1. IC 9-13-2-60, AS AMENDED BY P.L.150-2009, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 60. (a) "Farm wagon" means ~~either~~ **any** of the following:

(1) A wagon, other than an implement of agriculture, that is used primarily for transporting farm products and farm supplies in connection with a farming operation.

(2) A three (3), four (4), or six (6) wheeled motor vehicle with a folding hitch on the front of the motor vehicle, manufactured with seating for not more than four (4) individuals, that is used primarily:

(A) to transport an individual from one (1) farm field to another, whether or not the motor vehicle is operated on a highway in order to reach the other farm field;

(B) for the transportation of an individual upon farm premises; or

(C) for both purposes set forth in clauses (A) and (B).

(3) A three (3), four (4), or six (6) wheeled construction

related motor vehicle, capable of cross-country travel:

(A) without the benefit of a road; and

(B) on or immediately over land, water, snow, ice, marsh, swampland, or other natural terrain;

that is used primarily for construction related purposes, including hauling building materials.

(b) The term includes a motor vehicle described in subsection (a)(2) that is used for the incidental transportation of farm supplies or farm implements at the same time it is used for the transportation of an individual.

SECTION 2. IC 14-8-2-5.7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 5.7. "All-terrain vehicle", for purposes of IC 14-8-2-185, means a motorized, off-highway vehicle that:**

(1) is fifty (50) inches or less in width;

(2) has a dry weight of twelve hundred (1,200) pounds or less;

(3) is designed for travel on at least three (3) nonhighway or off-highway tires;

(4) is designed for recreational use by one (1) or more individuals;

(5) has a seat or saddle designed to be straddled by the operator; and

(6) has handlebars for steering control.

The term includes parts, equipment, or attachments sold with the vehicle.

SECTION 3. IC 14-8-2-185, AS AMENDED BY P.L.150-2009, SECTION 21, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 185. (a) "Off-road vehicle", for purposes of IC 14-16-1 and IC 14-19-1-0.5, means a motor driven vehicle capable of cross-country travel:

(1) without benefit of a road; and

(2) on or immediately over land, water, snow, ice, marsh, swampland, or other natural terrain.

(b) The term includes the following:

(1) A multiwheel drive or low pressure tire vehicle.

(2) An amphibious machine.

(3) A ground effect air cushion vehicle.

(4) An all-terrain vehicle (as defined in section 5.7 of this chapter).

(5) A recreational off-highway vehicle (as defined in section 233.5 of this chapter).

~~(4)~~ **(6)** Other means of transportation deriving motive power from a source other than muscle or wind.

(c) The term does not include the following:

(1) A farm vehicle being used for farming, including, but not limited to, a farm wagon (as defined in IC 9-13-2-60(a)(2)).

(2) A vehicle used for military or law enforcement purposes.

(3) A construction, mining, or other industrial related vehicle used in performance of the vehicle's common function, **including, but not limited to, a farm wagon (as defined in IC 9-13-2-60(a)(3)).**

(4) A snowmobile (as defined by section 261 of this chapter).
(5) A registered aircraft.
(6) Any other vehicle properly registered by the bureau of motor vehicles.
(7) Any watercraft that is registered under Indiana statutes.
(8) A golf cart vehicle.

SECTION 4. IC 14-8-2-233.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 233.5. "Recreational off-road vehicle", for purposes of IC 14-8-2-185, means a motorized, off-highway vehicle that:**

(1) is sixty-four (64) inches or less in width;
(2) has a dry weight of two thousand (2,000) pounds or less;
(3) is designed for travel on at least four (4) nonhighway or off-highway tires;
(4) is designed for recreational use by one (1) or more individuals;
(5) has a nonstraddle seat or saddle; and
(6) has a steering wheel for steering control.

SECTION 5. IC 14-16-1-1.8 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 1.8. As used in this chapter, "collector snowmobile" means a snowmobile that is:**

(1) at least twenty-five (25) years old; and
(2) owned and operated as a collector snowmobile for participation in special events of limited duration, including races, parades, and other group events.

SECTION 6. IC 14-16-1-8, AS AMENDED BY P.L.225-2005, SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 8. (a) Except as otherwise provided, the following may not be operated on public property unless registered:

(1) An off-road vehicle.
(2) A snowmobile **(including a collector snowmobile).**

(b) Except as provided under subsection (c), ~~a vehicle that is purchased after December 31, 2003,~~ **the following** must be registered under this chapter:

(1) A vehicle that is purchased after December 31, 2003.
(2) A collector snowmobile.

(c) Registration is not required for the following vehicles:

(1) ~~A~~ **An off-road** vehicle that is exclusively operated in a special event of limited duration that is conducted according to a prearranged schedule under a permit from the governmental unit having jurisdiction.
(2) A vehicle being operated by a nonresident of Indiana as authorized under section 19 of this chapter.
(3) A vehicle being operated for purposes of testing or demonstration with temporary placement of numbers as set forth in section 16 of this chapter.
(4) A vehicle the operator of which has in the operator's possession a bill of sale from a dealer or private individual that includes the following:

(A) The purchaser's name and address.

(B) A date of purchase that is not more than thirty-one (31) days preceding the date that the operator is required to show the bill of sale.

(C) The make, model, and vehicle number of the vehicle provided by the manufacturer as required by section 13 of this chapter.

SECTION 7. IC 14-16-1-22 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 22. A county, city, or town may pass an ordinance regulating the operation of vehicles if the ordinance meets substantially the minimum requirements of this chapter. However, a county, city, or town may not adopt an ordinance that does any of the following:

(1) Imposes a fee for a license.

(2) Specifies accessory equipment to be carried on the vehicles.

(3) Requires a vehicle operator to possess a driver's license issued under IC 9-24-11 while operating an off-road vehicle or snowmobile.

(4) Imposes a dry weight limitation of less than two thousand (2,000) pounds.

SECTION 8. IC 14-16-1-31 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 31. The department may not adopt a rule, regulation, or guideline that, with respect to an off-road vehicle, imposes a dry weight limitation of less than two thousand (2,000) pounds.**

SECTION 9. IC 15-12-3-2, AS ADDED BY P.L.2-2008, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 2. As used in this chapter, "all terrain vehicle" ~~means a motorized, off-highway vehicle that:~~

~~(1) is fifty (50) inches or less in width;~~

~~(2) has a dry weight of six hundred (600) pounds or less;~~

~~(3) is designed for travel on at least three (3) low pressure tires;~~

~~(4) is designed for operator use only with no passengers;~~

~~(5) has a seat or saddle designed to be straddled by the operator; and~~

~~(6) has handlebars for steering control.~~

~~The term includes parts, equipment, or attachments sold with the vehicle.~~ **has the meaning set forth in IC 14-8-2-5.7.**

SECTION 10. IC 34-13-3-3, AS AMENDED BY P.L.121-2009, SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 3. A governmental entity or an employee acting within the scope of the employee's employment is not liable if a loss results from the following:

(1) The natural condition of unimproved property.

(2) The condition of a reservoir, dam, canal, conduit, drain, or similar structure when used by a person for a purpose that is not foreseeable.

(3) The temporary condition of a public thoroughfare or extreme sport area that results from weather.

(4) The condition of an unpaved road, trail, or footpath, the purpose of which is to provide access to a recreation or scenic

area.

(5) The design, construction, control, operation, or normal condition of an extreme sport area, if all entrances to the extreme sport area are marked with:

(A) a set of rules governing the use of the extreme sport area;

(B) a warning concerning the hazards and dangers associated with the use of the extreme sport area; and

(C) a statement that the extreme sport area may be used only by persons operating extreme sport equipment.

This subdivision shall not be construed to relieve a governmental entity from liability for the continuing duty to maintain extreme sports areas in a reasonably safe condition.

(6) The initiation of a judicial or an administrative proceeding.

(7) The performance of a discretionary function; however, the provision of medical or optical care as provided in IC 34-6-2-38 shall be considered as a ministerial act.

(8) The adoption and enforcement of or failure to adopt or enforce a law (including rules and regulations), unless the act of enforcement constitutes false arrest or false imprisonment.

(9) An act or omission performed in good faith and without malice under the apparent authority of a statute which is invalid if the employee would not have been liable had the statute been valid.

(10) The act or omission of anyone other than the governmental entity or the governmental entity's employee.

(11) The issuance, denial, suspension, or revocation of, or failure or refusal to issue, deny, suspend, or revoke any permit, license, certificate, approval, order, or similar authorization, where the authority is discretionary under the law.

(12) Failure to make an inspection, or making an inadequate or negligent inspection, of any property, other than the property of a governmental entity, to determine whether the property complied with or violates any law or contains a hazard to health or safety.

(13) Entry upon any property where the entry is expressly or impliedly authorized by law.

(14) Misrepresentation if unintentional.

(15) Theft by another person of money in the employee's official custody, unless the loss was sustained because of the employee's own negligent or wrongful act or omission.

(16) Injury to the property of a person under the jurisdiction and control of the department of correction if the person has not exhausted the administrative remedies and procedures provided by section 7 of this chapter.

(17) Injury to the person or property of a person under supervision of a governmental entity and who is:

(A) on probation; or

(B) assigned to an alcohol and drug services program under IC 12-23, a minimum security release program under IC 11-10-8, a pretrial conditional release program under IC 35-33-8, or a community corrections program under

IC 11-12.

(18) Design of a highway (as defined in IC 9-13-2-73), toll road project (as defined in IC 8-15-2-4(4)), tollway (as defined in IC 8-15-3-7), or project (as defined in IC 8-15.7-2-14) if the claimed loss occurs at least twenty (20) years after the public highway, toll road project, tollway, or project was designed or substantially redesigned; except that this subdivision shall not be construed to relieve a responsible governmental entity from the continuing duty to provide and maintain public highways in a reasonably safe condition.

(19) Development, adoption, implementation, operation, maintenance, or use of an enhanced emergency communication system.

(20) Injury to a student or a student's property by an employee of a school corporation if the employee is acting reasonably under a discipline policy adopted under IC 20-33-8-12.

(21) An act or omission performed in good faith under the apparent authority of a court order described in IC 35-46-1-15.1 that is invalid, including an arrest or imprisonment related to the enforcement of the court order, if the governmental entity or employee would not have been liable had the court order been valid.

(22) An act taken to investigate or remediate hazardous substances, petroleum, or other pollutants associated with a brownfield (as defined in IC 13-11-2-19.3) unless:

(A) the loss is a result of reckless conduct; or

(B) the governmental entity was responsible for the initial placement of the hazardous substances, petroleum, or other pollutants on the brownfield.

(23) The operation of an off-road vehicle (as defined in IC 14-8-2-185) by a nongovernmental employee, or by a governmental employee not acting within the scope of the employment of the employee, on a public highway in a county road system outside the corporate limits of a city or town, unless the loss is the result of an act or omission amounting to:

(A) gross negligence;

(B) willful or wanton misconduct; or

(C) intentional misconduct.

This subdivision shall not be construed to relieve a governmental entity from liability for the continuing duty to maintain highways in a reasonably safe condition for the operation of motor vehicles licensed by the bureau of motor vehicles for operation on public highways.

(Reference is to ESB 400 as reprinted February 23, 2010.)

Conference Committee Report
on
Engrossed Senate Bill 400

Signed by:

Senator Yoder Chairperson	Representative Austin
Senator Lewis	Representative Wolkins
Senate Conferees	**House Conferees**