

Adopted	Rejected
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COMMITTEE REPORT

YES:	11
NO:	0

MR. SPEAKER:

*Your Committee on Roads and Transportation, to which was referred Senate Bill 400, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill **be amended** as follows:*

- 1 Delete the title and insert the following:
- 2 A BILL FOR AN ACT to amend the Indiana Code concerning
- 3 natural and cultural resources and civil law.
- 4 Page 3, after line 30, begin a new paragraph and insert:
- 5 "SECTION 7. IC 34-13-3-3, AS AMENDED BY P.L.121-2009,
- 6 SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 7 JULY 1, 2010]: Sec. 3. A governmental entity or an employee acting
- 8 within the scope of the employee's employment is not liable if a loss
- 9 results from the following:
- 10 (1) The natural condition of unimproved property.
- 11 (2) The condition of a reservoir, dam, canal, conduit, drain, or
- 12 similar structure when used by a person for a purpose that is not
- 13 foreseeable.
- 14 (3) The temporary condition of a public thoroughfare or extreme

- 1 sport area that results from weather.
- 2 (4) The condition of an unpaved road, trail, or footpath, the
- 3 purpose of which is to provide access to a recreation or scenic
- 4 area.
- 5 (5) The design, construction, control, operation, or normal
- 6 condition of an extreme sport area, if all entrances to the extreme
- 7 sport area are marked with:
 - 8 (A) a set of rules governing the use of the extreme sport area;
 - 9 (B) a warning concerning the hazards and dangers associated
 - 10 with the use of the extreme sport area; and
 - 11 (C) a statement that the extreme sport area may be used only
 - 12 by persons operating extreme sport equipment.
- 13 This subdivision shall not be construed to relieve a governmental
- 14 entity from liability for the continuing duty to maintain extreme
- 15 sports areas in a reasonably safe condition.
- 16 (6) The initiation of a judicial or an administrative proceeding.
- 17 (7) The performance of a discretionary function; however, the
- 18 provision of medical or optical care as provided in IC 34-6-2-38
- 19 shall be considered as a ministerial act.
- 20 (8) The adoption and enforcement of or failure to adopt or enforce
- 21 a law (including rules and regulations), unless the act of
- 22 enforcement constitutes false arrest or false imprisonment.
- 23 (9) An act or omission performed in good faith and without
- 24 malice under the apparent authority of a statute which is invalid
- 25 if the employee would not have been liable had the statute been
- 26 valid.
- 27 (10) The act or omission of anyone other than the governmental
- 28 entity or the governmental entity's employee.
- 29 (11) The issuance, denial, suspension, or revocation of, or failure
- 30 or refusal to issue, deny, suspend, or revoke any permit, license,
- 31 certificate, approval, order, or similar authorization, where the
- 32 authority is discretionary under the law.
- 33 (12) Failure to make an inspection, or making an inadequate or
- 34 negligent inspection, of any property, other than the property of
- 35 a governmental entity, to determine whether the property
- 36 complied with or violates any law or contains a hazard to health
- 37 or safety.
- 38 (13) Entry upon any property where the entry is expressly or

- 1 impliedly authorized by law.
- 2 (14) Misrepresentation if unintentional.
- 3 (15) Theft by another person of money in the employee's official
4 custody, unless the loss was sustained because of the employee's
5 own negligent or wrongful act or omission.
- 6 (16) Injury to the property of a person under the jurisdiction and
7 control of the department of correction if the person has not
8 exhausted the administrative remedies and procedures provided
9 by section 7 of this chapter.
- 10 (17) Injury to the person or property of a person under supervision
11 of a governmental entity and who is:
- 12 (A) on probation; or
- 13 (B) assigned to an alcohol and drug services program under
14 IC 12-23, a minimum security release program under
15 IC 11-10-8, a pretrial conditional release program under
16 IC 35-33-8, or a community corrections program under
17 IC 11-12.
- 18 (18) Design of a highway (as defined in IC 9-13-2-73), toll road
19 project (as defined in IC 8-15-2-4(4)), tollway (as defined in
20 IC 8-15-3-7), or project (as defined in IC 8-15.7-2-14) if the
21 claimed loss occurs at least twenty (20) years after the public
22 highway, toll road project, tollway, or project was designed or
23 substantially redesigned; except that this subdivision shall not be
24 construed to relieve a responsible governmental entity from the
25 continuing duty to provide and maintain public highways in a
26 reasonably safe condition.
- 27 (19) Development, adoption, implementation, operation,
28 maintenance, or use of an enhanced emergency communication
29 system.
- 30 (20) Injury to a student or a student's property by an employee of
31 a school corporation if the employee is acting reasonably under a
32 discipline policy adopted under IC 20-33-8-12.
- 33 (21) An act or omission performed in good faith under the
34 apparent authority of a court order described in IC 35-46-1-15.1
35 that is invalid, including an arrest or imprisonment related to the
36 enforcement of the court order, if the governmental entity or
37 employee would not have been liable had the court order been
38 valid.

1 (22) An act taken to investigate or remediate hazardous
2 substances, petroleum, or other pollutants associated with a
3 brownfield (as defined in IC 13-11-2-19.3) unless:
4 (A) the loss is a result of reckless conduct; or
5 (B) the governmental entity was responsible for the initial
6 placement of the hazardous substances, petroleum, or other
7 pollutants on the brownfield.
8 **(23) The operation of an off-road vehicle (as defined in**
9 **IC 14-8-2-185) by a nongovernmental employee, or by a**
10 **governmental employee not acting within the scope of the**
11 **employment of the employee, on a public highway in a county**
12 **road system outside the corporate limits of a city or town,**
13 **unless the loss is the result of an act or omission amounting to:**
14 **(A) gross negligence;**
15 **(B) willful or wanton misconduct; or**
16 **(C) intentional misconduct.**
17 **This subdivision shall not be construed to relieve a**
18 **governmental entity from liability for the continuing duty to**
19 **maintain highways in a reasonably safe condition."**
(Reference is to SB 400 as printed January 29, 2010.)

and when so amended that said bill do pass.

Representative Austin