

SENATE MOTION

MADAM PRESIDENT:

I move that Senate Bill 282 be amended to read as follows:

- 1 Page 1, delete lines 1 through 17, begin a new paragraph and insert:
- 2 "SECTION 1. IC 36-9-27.4-0.3 IS ADDED TO THE INDIANA
- 3 CODE AS A NEW SECTION TO READ AS FOLLOWS
- 4 [EFFECTIVE JULY 1, 2010]: **Sec. 0.3. (a) As used in this chapter,**
- 5 **"artificial conveyance" means a manmade structure in or into**
- 6 **which stormwater runoff or floodwaters flow, either continuously**
- 7 **or intermittently.**
- 8 **(b) The term includes piping, ditches, swales, curbs, gutters,**
- 9 **catch basins, channels, storm drains, downspouts, roadways, and**
- 10 **any other similar method.**
- 11 SECTION 2. IC 36-9-27.4-0.5 IS ADDED TO THE INDIANA
- 12 CODE AS A NEW SECTION TO READ AS FOLLOWS
- 13 [EFFECTIVE JULY 1, 2010]: **Sec. 0.5. As used in this chapter,**
- 14 **"channel" means a part of a natural watercourse or artificial**
- 15 **conveyance that:**
- 16 **(1) periodically or continuously contains moving water; and**
- 17 **(2) has a defined bed and banks that serve to confine the**
- 18 **water."**
- 19 Page 2, delete lines 1 through 22.
- 20 Page 2, line 27, delete "storm" and insert "**stormwater**".
- 21 Page 2, line 28, delete "water".
- 22 Page 2, line 32, delete ""storm water" and insert ""**stormwater**".
- 23 Page 2, line 33, delete "storm water" and insert "**stormwater**".
- 24 Page 3, delete lines 3 through 42, begin a new paragraph and insert:
- 25 "SECTION 5. IC 36-9-27.4-7.6 IS ADDED TO THE INDIANA
- 26 CODE AS A NEW SECTION TO READ AS FOLLOWS
- 27 [EFFECTIVE JULY 1, 2010]: **Sec. 7.6. As used in this chapter,**
- 28 **"stormwater nuisance" means a condition:**
- 29 **(1) that arises out of or is related to stormwater that is**
- 30 **transferred through an artificial conveyance that:**

- 1 **(A) is directed to the property of another person;**
 2 **(B) discharges stormwater at or near the property line of**
 3 **another person; and**
 4 **(C) accelerates or increases the flow of stormwater onto**
 5 **another person's property; and**
 6 **(2) to which one (1) or both of the following apply:**
 7 **(A) The condition is injurious to health.**
 8 **(B) The condition substantially obstructs the free use of**
 9 **property.**

10 SECTION 6. IC 36-9-27.4-7.7 IS ADDED TO THE INDIANA
 11 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
 12 [EFFECTIVE JULY 1, 2010]: **Sec. 7.7. As used in this chapter,**
 13 **"swale" means an elongated depression in the land surface that:**

- 14 **(1) is at least seasonally wet;**
 15 **(2) is usually vegetated;**
 16 **(3) is a conduit for stormwater flow; and**
 17 **(4) conducts stormwater into primary drainage channels.**

18 SECTION 7. IC 36-9-27.4-9 IS AMENDED TO READ AS
 19 FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 9. If:**

- 20 (1) a person who owns a tract of land seeks the removal of:
 21 **(A) a stormwater nuisance; or**
 22 **(B) an obstruction from a drain or natural surface watercourse**
 23 **located outside the person's tract in order to promote better**
 24 **drainage of the person's tract; and**
 25 (2) the owner of the land on which the **stormwater nuisance or**
 26 **obstruction is located, upon request, does not remove the**
 27 **stormwater nuisance or** obstruction;

28 the person seeking the removal of the **stormwater nuisance or**
 29 **obstruction may file a petition under this chapter asking the drainage**
 30 **board in the county in which the stormwater nuisance or** obstruction
 31 is located to remove, or authorize or order the removal of, the
 32 **stormwater nuisance or** obstruction under this chapter.

33 SECTION 8. IC 36-9-27.4-10 IS AMENDED TO READ AS
 34 FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 10. A petition filed by**
 35 **a person described in section 9(1) of this chapter must include the**
 36 **following:**

- 37 (1) A general description of the tract of land owned by the
 38 petitioner.
 39 (2) A general explanation of the need for the removal of the
 40 **stormwater nuisance or** obstruction.
 41 (3) A general description of the site of the **stormwater nuisance**
 42 **or** obstruction.

43 SECTION 9. IC 36-9-27.4-12 IS AMENDED TO READ AS
 44 FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 12. (a) If a petition filed**
 45 **under this chapter alleges a stormwater nuisance or** the obstruction
 46 of:

- 47 (1) a drain; or

1 (2) a natural surface watercourse;
 2 the county surveyor of the county in which the **stormwater nuisance**
 3 **or** obstruction is alleged to exist shall promptly investigate whether the
 4 **stormwater nuisance or** obstruction exists.

5 (b) If the county surveyor, upon investigation, finds an existing:

6 (A) **stormwater nuisance; or**

7 (B) obstruction in a drain or natural surface watercourse;
 8 in the location alleged in the petition, the county surveyor shall report
 9 the existence of the **stormwater nuisance or** obstruction to the
 10 drainage board.

11 (c) Upon receiving a report from the county surveyor under
 12 subsection (b), the drainage board shall:

13 (1) set a date for a hearing on the petition; and

14 (2) serve notice of the hearing on each owner of the land on which
 15 the **stormwater nuisance or** obstruction exists who can be
 16 identified in the records of the county. ~~recorder.~~

17 (d) The hearing must be held at least thirty (30) days but less than
 18 ninety (90) days after the date of the filing of the petition.

19 (e) Notice of a hearing must be mailed to each respondent with
 20 return receipt requested.

21 SECTION 10. IC 36-9-27.4-14 IS AMENDED TO READ AS
 22 FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 14. (a) If, after a
 23 hearing held under this chapter **with respect to an obstruction**, the
 24 drainage board finds that:

25 (1) the obstruction of a drain or a natural surface watercourse
 26 that is alleged in the petition exists; and

27 (2) the removal of the obstruction will:

28 (A) promote better drainage of the petitioner's land; and

29 (B) not cause unreasonable damage to the land of the
 30 respondents;

31 the drainage board shall find for the petitioner.

32 (b) If, after a hearing held under this chapter, the drainage board is
 33 unable to make the findings described in subsection (a), the drainage
 34 board shall deny the petition.

35 SECTION 11. IC 36-9-27.4-14.5 IS ADDED TO THE INDIANA
 36 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
 37 [EFFECTIVE JULY 1, 2010]: **Sec. 14.5. (a) If, after a hearing held**
 38 **under this chapter with respect to a stormwater nuisance, the**
 39 **drainage board finds that:**

40 (1) **the stormwater nuisance that is alleged in the petition**
 41 **exists; and**

42 (2) **the removal of the stormwater nuisance will:**

43 (A) **remove the negative impact from the petitioner's land;**
 44 **and**

45 (B) **not cause unreasonable damage to the land of the**
 46 **respondents;**

47 **the drainage board shall find for the petitioner.**

1 **(b) If, after a hearing held under this chapter, the drainage**
 2 **board is unable to make the findings described in subsection (a),**
 3 **the drainage board shall deny the petition.**

4 SECTION 12. IC 36-9-27.4-15 IS AMENDED TO READ AS
 5 FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 15. If the drainage
 6 board finds for the petitioner under section 14(a) of this chapter, the
 7 board shall determine, based upon a preponderance of the evidence,
 8 whether the:

9 **(1) stormwater nuisance; or**

10 **(2) obstruction of the drain or natural surface watercourse;**
 11 was created intentionally by any of the respondents.

12 SECTION 13. IC 36-9-27.4-16 IS AMENDED TO READ AS
 13 FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 16. (a) If the drainage
 14 board finds:

15 (1) for the petitioner under section 14(a) of this chapter; and

16 (2) under section 15 of this chapter that the:

17 **(A) stormwater nuisance; or**

18 **(B) obstruction of the drain or natural surface watercourse;**

19 was created intentionally by at least one (1) of the respondents;
 20 the drainage board shall enter an order directing the respondents to
 21 remove the **stormwater nuisance or** obstruction at their own expense,
 22 or directing the county surveyor to remove the **stormwater nuisance**
 23 **or** obstruction at the expense of the respondents.

24 (b) A respondent against whom an order is entered under subsection
 25 (a) is subject to an action under section 22 of this chapter if the
 26 respondent fails to pay the amount for which the respondent is
 27 responsible under the order.

28 SECTION 14. IC 36-9-27.4-17 IS AMENDED TO READ AS
 29 FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 17. If the drainage
 30 board:

31 (1) finds for the petitioner under section 14(a) of this chapter; and

32 (2) does not find under section 15 of this chapter that the:

33 **(A) stormwater nuisance; or**

34 **(B) obstruction of the drain or a natural surface watercourse;**

35 was created intentionally by any of the respondents;
 36 the drainage board shall enter an order under section 18 or 19 of this
 37 chapter concerning the removal of the **stormwater nuisance or**
 38 obstruction.

39 SECTION 15. IC 36-9-27.4-19 IS AMENDED TO READ AS
 40 FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 19. (a) If:

41 (1) a petition filed under this chapter concerns a drain **or the**
 42 **removal of a stormwater nuisance; and**

43 (2) the drainage board:

44 (A) finds for the petitioner under section 14(a) of this chapter;
 45 but

46 (B) does not find under section 15 of this chapter that **the**
 47 **stormwater nuisance or** the obstruction of the drain was

1 created intentionally by any of the respondents;
2 the drainage board shall enter an order under subsection (b).

3 (b) Upon a determination made under subsection (a), the drainage
4 board shall enter an order:

5 (1) authorizing the petitioner to remove the **stormwater nuisance**
6 **or** obstruction;

7 (2) authorizing the respondents to remove the **stormwater**
8 **nuisance or** obstruction;

9 (3) directing the county surveyor to remove the **stormwater**
10 **nuisance or** obstruction; or

11 (4) directing that the **stormwater nuisance or** obstruction be
12 removed through the joint efforts of at least two (2) of the persons
13 referred to in this subsection.

14 (c) If an order is issued under subsection (b), the costs of removing
15 the obstruction must be borne by the owners of all the tracts of land
16 that are benefited by the drain. The order of the board must do the
17 following:

18 (1) Identify all tracts of land that are benefited by the drain **or the**
19 **removal of the stormwater nuisance.**

20 (2) Identify the owners of the tracts of land referred to in
21 subdivision (1):

22 (A) who are known to the drainage board; or

23 (B) whose identity can be determined through the records of
24 the county. ~~auditor.~~

25 (3) Apportion the costs of removing the obstruction among the
26 tracts of land that are benefited by the drain **or the removal of**
27 **the stormwater nuisance**, assigning to each tract a certain
28 percentage of the total costs.

29 (4) Order the owners of each tract of land referred to in
30 subdivision (1) to pay an amount equal to the product of the total
31 costs of removing the obstruction multiplied by the percentage
32 assigned to the tract under subdivision (3).

33 (d) The percentage of the total costs assigned to a tract under
34 subsection (c)(3) must correspond to the ratio of the total length of the
35 drain to the length of the particular segment of the drain that benefits
36 the tract.

37 SECTION 16. IC 36-9-27.4-23 IS AMENDED TO READ AS
38 FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 23. (a) ~~If the drainage~~
39 ~~board finds for a petitioner after a hearing held under this chapter;~~
40 **Either a petitioner or** a respondent may file an action in the circuit or
41 superior court of the county in which the alleged **stormwater nuisance**
42 **or** obstruction exists seeking to have the order entered by the drainage
43 board vacated.

44 (b) An action filed under subsection (a) must be based on at least
45 one (1) of the following assertions: ~~by the respondent:~~

46 (1) The drainage board lacked authority to act under this chapter.

47 (2) The drainage board erred in making the findings described in

1 section 14(a) of this chapter.

2 (3) ~~The respondent~~ **Compensation** should have been awarded
3 ~~compensation~~ for harm and inconvenience, or the amount
4 awarded ~~to the respondent~~ for harm and inconvenience is
5 insufficient.

6 (4) The drainage board did not follow the procedure required by
7 this chapter.

8 SECTION 17. IC 36-9-27.4-24 IS AMENDED TO READ AS
9 FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 24. (a) In an action
10 filed under section 23 of this chapter, the court:

11 (1) shall enter an order vacating the order of the drainage board
12 directing the county surveyor to remove the **stormwater**
13 **nuisance or** obstruction; and

14 (2) may issue an injunction against the removal of the
15 **stormwater nuisance or** obstruction;

16 if the court makes a finding under subsection (b).

17 (b) The court is required or authorized to act under subsection (a)
18 if the court finds that the drainage board:

19 (1) was clearly in error in making its findings under section 14(a)
20 of this chapter with respect to the alleged **stormwater nuisance**
21 **or** obstruction; or

22 (2) exceeded its authority or discretion under the law in
23 authorizing the removal of the **stormwater nuisance or**
24 obstruction.

25 SECTION 18. IC 36-9-27.4-25 IS AMENDED TO READ AS
26 FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 25. (a) For the purposes
27 of this chapter:

28 (1) a county surveyor;

29 (2) a member of a drainage board; or

30 (3) an authorized representative of a county surveyor or drainage
31 board;

32 has a right of entry over and upon a tract of land containing a drain,
33 **artificial conveyance, or** natural surface watercourse, **or stormwater**
34 **nuisance** that is the subject of a petition filed under this chapter.

35 (b) The right of entry granted by this section is limited to the land
36 lying within seventy-five (75) feet of the drain, **artificial conveyance,**
37 **or** natural surface watercourse, **or alleged cause of the stormwater**
38 **nuisance.** The seventy-five (75) feet must be measured at right angles
39 to:

40 (1) the center line of any tiled drain; ~~and~~

41 (2) the top edge of each bank of an open drain; and

42 (3) the edge of any **artificial conveyance or** natural surface
43 watercourse **or of the alleged cause of the stormwater**
44 **nuisance;**

45 as determined by the county surveyor.

46 (c) A person exercising a right of entry under this section shall, to
47 the extent possible, use due care to avoid damage to:

1 (1) crops, fences, buildings, and other structures located outside
2 the right-of-way; and

3 (2) crops and approved structures located inside the right-of-way.

4 (d) Before exercising a right of entry under this section, a
5 individual must give oral or written notice of the entry on the land to
6 the property owner of record. The notice must state the purpose for the
7 entry.

8 (e) A right of entry under this section is not criminal trespass under
9 IC 35-43-2-2, and an individual exercising a right of entry under this
10 section may not be arrested or prosecuted for criminal trespass under
11 IC 35-43-2-2.

12 SECTION 19. IC 36-9-27.4-26 IS ADDED TO THE INDIANA
13 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
14 [EFFECTIVE JULY 1, 2010]: **Sec. 26. Nothing in this chapter may**
15 **be construed as authorizing a person to engage in activity**
16 **requiring a permit from a state or federal agency before the person**
17 **obtains the permit."**

18 Delete pages 4 through 8.

19 Renumber all SECTIONS consecutively.

(Reference is to SB 282 as printed January 22, 2010.)

Senator CHARBONNEAU