January 22, 2010

SENATE BILL No. 282

DIGEST OF SB 282 (Updated January 19, 2010 5:18 pm - DI 52)

Citations Affected: IC 36-9.

Synopsis: Storm water management. Grants authority to the drainage board to receive complaints concerning, investigate, and order the removal of certain storm water related nuisances. Provides that, regarding removal of nuisances and obstructions and right of entry, the county drainage board and the county surveyor have the same authority with respect to artificial watercourses as with respect to drains and natural watercourses. Provides that a county's policy for the management of storm water runoff from developed real property must designate the county surveyor's office as the office to which storm water issues are initially directed.

Effective: July 1, 2010.

Charbonneau, Gard, Randolph

January 11, 2010, read first time and referred to Committee on Energy and Environmental Affairs.
January 21, 2010, reported favorably — Do Pass.

C o p y

January 22, 2010

Second Regular Session 116th General Assembly (2010)

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 2009 Regular and Special Sessions of the General Assembly.

C o p y

SENATE BILL No. 282

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

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

SECTION 1. IC 36-9-27.4-0.3 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 0.3. As used in this chapter, "artificial watercourse" means a manmade drainageway in or into which storm water runoff or floodwaters flow, either continuously or intermittently.**

SECTION 2. IC 36-9-27.4-0.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 0.5. As used in this chapter, "channel" means a part of a natural or artificial watercourse that:**

(1) periodically or continuously contains moving water or forms a connecting link between two (2) bodies of water; and

(2) has a defined bed and banks that serve to confine the water.

SECTION 3. IC 36-9-27.4-0.7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 0.7. As used in this chapter,**

"conveyance" refers to a structural method for transferring storm water between at least two (2) points. The term includes piping, ditches, swales, curbs, gutters, catch basins, channels, storm drains, roadways, and any other method.

SECTION 4. IC 36-9-27.4-3.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 3.5. (a) As used in this chapter, "nuisance" means a condition arising out of or related to storm water that:**

(1) is injurious to health; or

(2) is an obstruction to the free use of property;

that interferes with the comfortable enjoyment of life or property.

(b) The term includes the following conditions:

(1) The existence of a downspout that:

(A) is directed to the property of another person;

(B) discharges storm water at or near the property line of another person; and

(C) accelerates or increases the flow of storm water onto another person's property.

(2) The accumulation and subsequent release of storm water onto adjacent property that accelerates or increases the flow of storm water onto the adjacent property.

SECTION 5. IC 36-9-27.4-7.3 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 7.3. As used in this chapter, "runoff" means the part of precipitation that flows from a drainage area on the land surface, in open channels, or in storm water conveyance systems.**

SECTION 6. IC 36-9-27.4-7.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 7.5. As used in this chapter, "storm water conveyance system" means all methods, natural or manmade, used for conducting storm water to, through, or from a drainage area to any of the following:**

(1) Conduits and appurtenant features.

(2) Canals.

(3) Channels.

(4) Ditches.

(5) Storage facilities.

(6) Swales.

(7) Streams.

(8) Culverts.

C o p y

(9) Roadways.

(10) Pumping stations.

SECTION 7. IC 36-9-27.4-7.7 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: **Sec. 7.7. As used in this chapter, "swale" means an elongated depression in the land surface:**

(1) that:

(A) is at least seasonally wet;

(B) is usually heavily vegetated; and

(C) is normally without flowing water;

(2) that conducts storm water into primary drainage channels; and

(3) that may provide ground water recharge.

SECTION 8. IC 36-9-27.4-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 9. If:

(1) a person who owns a tract of land seeks the removal of:

(A) a nuisance; or

(B) an obstruction from a drain, **artificial watercourse,** or natural surface watercourse located outside the person's tract in order to promote better drainage of the person's tract; and

(2) the owner of the land on which the **nuisance or** obstruction is located, upon request, does not remove the **nuisance or** obstruction;

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

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

(1) A general description of the tract of land owned by the petitioner.

(2) A general explanation of the need for the removal of the **nuisance or** obstruction.

(3) A general description of the site of the **nuisance or** obstruction.

SECTION 10. IC 36-9-27.4-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 12. (a) If a petition filed under this chapter alleges **a nuisance or** the obstruction of:

(1) a drain; ~~or~~

(2) an artificial watercourse; or

Copy

~~(2)~~ **(3)** a natural surface watercourse;

the county surveyor of the county in which the **nuisance or** obstruction is alleged to exist shall promptly investigate whether the **nuisance or** obstruction exists.

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

(A) nuisance; or

(B) obstruction in a drain, **artificial watercourse,** or natural surface watercourse;

in the location alleged in the petition, the county surveyor shall report the existence of the **nuisance or** obstruction to the drainage board.

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

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

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

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

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

SECTION 11. IC 36-9-27.4-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 14. (a) If, after a hearing held under this chapter, the drainage board finds that:

(1) the:

(A) nuisance; or

(B) obstruction of a drain, **artificial watercourse,** or ~~a~~ natural surface watercourse;

that is alleged in the petition exists; and

(2) the removal of the **nuisance or** obstruction will:

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

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

the drainage board shall find for the petitioner.

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

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

(1) nuisance; or

C o p y

(2) obstruction of the drain, **artificial watercourse,** or natural surface watercourse;

was created intentionally by any of the respondents.

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

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

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

(A) nuisance; or

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

was created intentionally by at least one (1) of the respondents;

the drainage board shall enter an order directing the respondents to remove the **nuisance or** obstruction at their own expense, or directing the county surveyor to remove the **nuisance or** obstruction at the expense of the respondents.

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

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

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

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

(A) nuisance; or

(B) obstruction of the drain, **artificial watercourse,** or ~~a~~ natural surface watercourse;

was created intentionally by any of the respondents;

the drainage board shall enter an order under section 18 or 19 of this chapter concerning the removal of the **nuisance or** obstruction.

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

(1) a petition filed under this chapter concerns a drain **or artificial watercourse;** and

(2) the drainage board:

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

(B) does not find under section 15 of this chapter that **the nuisance or** the obstruction of the drain **or artificial watercourse** was created intentionally by any of the respondents;

Copy

the drainage board shall enter an order under subsection (b).

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

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

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

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

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

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

(1) Identify all tracts of land that are benefited by the drain **or artificial watercourse.**

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

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

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

(3) Apportion the costs of removing the obstruction among the tracts of land that are benefited by the drain **or artificial watercourse,** assigning to each tract a certain percentage of the total costs.

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

(d) The percentage of the total costs assigned to a tract under subsection (c)(3) must correspond to the ratio of the total length of the drain **or artificial watercourse** to the length of the particular segment of the drain **or artificial watercourse** that benefits the tract.

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

(b) An action filed under subsection (a) must be based on at least

C o p y

one (1) of the following assertions by the respondent:

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

(2) The drainage board erred in making the findings described in section 14(a) of this chapter.

(3) The respondent should have been awarded compensation for harm and inconvenience, or the amount awarded to the respondent for harm and inconvenience is insufficient.

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

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

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

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

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

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

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

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

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

(1) a county surveyor;

(2) a member of a drainage board; or

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

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

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

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

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

(3) the edge of any **artificial or** natural surface watercourse **or of**

C o p y

the alleged cause of the nuisance;

as determined by the county surveyor.

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

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

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

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

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

SECTION 19. IC 36-9-28.5-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2010]: Sec. 4. **(a)** The policy may, but is not required to, provide for the actual management of storm water runoff from developed real property.

(b) If a unit establishing a policy under this chapter is a county, the policy must designate the county surveyor as the office to which all issues involving storm water are initially directed.

C o p y

COMMITTEE REPORT

Madam President: The Senate Committee on Energy and Environmental Affairs, to which was referred Senate Bill No. 282, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to Senate Bill 282 as introduced.)

GARD, Chairperson

Committee Vote: Yeas 11, Nays 0.

C o p y