



February 18, 2011

HOUSE BILL No. 1291

DIGEST OF HB 1291 (Updated February 16, 2011 5:19 pm - DI 118)

Citations Affected: IC 34-13; IC 36-9.

Synopsis: Storm water management. Provides that the municipality is not liable for the investigation, assessment, or opinion offered by the city board of works, town council, or designee in connection to storm water nuisances. Adds a process for dealing with storm water nuisance complaints. Provides that the person seeking the removal of a storm water nuisance may file a request with the county surveyor, city board of works, town council, or designee to investigate and make an assessment of the alleged problem. Allows a local unit to adopt an ordinance to charge a fee for the county surveyor, city board of works, town council, or designee's investigation. Requires that the county surveyor, city board of works, town council, or designee to provide an oral or written report pertaining to the assessment and alternative dispute resolution information. Make certain limitations in the applicability of the storm water nuisance investigation or assessment.

Effective: July 1, 2011.

Smith M, Cheatham

January 12, 2011, read first time and referred to Committee on Local Government.
February 17, 2011, amended, reported — Do Pass.

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February 18, 2011

First Regular Session 117th General Assembly (2011)

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 2010 Regular Session of the General Assembly.

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HOUSE BILL No. 1291



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:

- 1 SECTION 1. IC 34-13-3-3, AS AMENDED BY P.L.86-2010,
- 2 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 3 JULY 1, 2011]: Sec. 3. A governmental entity or an employee acting
- 4 within the scope of the employee's employment is not liable if a loss
- 5 results from the following:
- 6 (1) The natural condition of unimproved property.
- 7 (2) The condition of a reservoir, dam, canal, conduit, drain, or
- 8 similar structure when used by a person for a purpose that is not
- 9 foreseeable.
- 10 (3) The temporary condition of a public thoroughfare or extreme
- 11 sport area that results from weather.
- 12 (4) The condition of an unpaved road, trail, or footpath, the
- 13 purpose of which is to provide access to a recreation or scenic
- 14 area.
- 15 (5) The design, construction, control, operation, or normal
- 16 condition of an extreme sport area, if all entrances to the extreme
- 17 sport area are marked with:

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- 1 (A) a set of rules governing the use of the extreme sport area;
- 2 (B) a warning concerning the hazards and dangers associated
- 3 with the use of the extreme sport area; and
- 4 (C) a statement that the extreme sport area may be used only
- 5 by persons operating extreme sport equipment.
- 6 This subdivision shall not be construed to relieve a governmental
- 7 entity from liability for the continuing duty to maintain extreme
- 8 sports areas in a reasonably safe condition.
- 9 (6) The initiation of a judicial or an administrative proceeding.
- 10 (7) The performance of a discretionary function; however, the
- 11 provision of medical or optical care as provided in IC 34-6-2-38
- 12 shall be considered as a ministerial act.
- 13 (8) The adoption and enforcement of or failure to adopt or enforce
- 14 a law (including rules and regulations), unless the act of
- 15 enforcement constitutes false arrest or false imprisonment.
- 16 (9) An act or omission performed in good faith and without
- 17 malice under the apparent authority of a statute which is invalid
- 18 if the employee would not have been liable had the statute been
- 19 valid.
- 20 (10) The act or omission of anyone other than the governmental
- 21 entity or the governmental entity's employee.
- 22 (11) The issuance, denial, suspension, or revocation of, or failure
- 23 or refusal to issue, deny, suspend, or revoke any permit, license,
- 24 certificate, approval, order, or similar authorization, where the
- 25 authority is discretionary under the law.
- 26 (12) Failure to make an inspection, or making an inadequate or
- 27 negligent inspection, of any property, other than the property of
- 28 a governmental entity, to determine whether the property
- 29 complied with or violates any law or contains a hazard to health
- 30 or safety.
- 31 (13) Entry upon any property where the entry is expressly or
- 32 impliedly authorized by law.
- 33 (14) Misrepresentation if unintentional.
- 34 (15) Theft by another person of money in the employee's official
- 35 custody, unless the loss was sustained because of the employee's
- 36 own negligent or wrongful act or omission.
- 37 (16) Injury to the property of a person under the jurisdiction and
- 38 control of the department of correction if the person has not
- 39 exhausted the administrative remedies and procedures provided
- 40 by section 7 of this chapter.
- 41 (17) Injury to the person or property of a person under supervision
- 42 of a governmental entity and who is:

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- 1 (A) on probation; or
- 2 (B) assigned to an alcohol and drug services program under
- 3 IC 12-23, a minimum security release program under
- 4 IC 11-10-8, a pretrial conditional release program under
- 5 IC 35-33-8, or a community corrections program under
- 6 IC 11-12.
- 7 (18) Design of a highway (as defined in IC 9-13-2-73), toll road
- 8 project (as defined in IC 8-15-2-4(4)), tollway (as defined in
- 9 IC 8-15-3-7), or project (as defined in IC 8-15.7-2-14) if the
- 10 claimed loss occurs at least twenty (20) years after the public
- 11 highway, toll road project, tollway, or project was designed or
- 12 substantially redesigned; except that this subdivision shall not be
- 13 construed to relieve a responsible governmental entity from the
- 14 continuing duty to provide and maintain public highways in a
- 15 reasonably safe condition.
- 16 (19) Development, adoption, implementation, operation,
- 17 maintenance, or use of an enhanced emergency communication
- 18 system.
- 19 (20) Injury to a student or a student's property by an employee of
- 20 a school corporation if the employee is acting reasonably under a
- 21 discipline policy adopted under IC 20-33-8-12.
- 22 (21) An act or omission performed in good faith under the
- 23 apparent authority of a court order described in IC 35-46-1-15.1
- 24 that is invalid, including an arrest or imprisonment related to the
- 25 enforcement of the court order, if the governmental entity or
- 26 employee would not have been liable had the court order been
- 27 valid.
- 28 (22) An act taken to investigate or remediate hazardous
- 29 substances, petroleum, or other pollutants associated with a
- 30 brownfield (as defined in IC 13-11-2-19.3) unless:
- 31 (A) the loss is a result of reckless conduct; or
- 32 (B) the governmental entity was responsible for the initial
- 33 placement of the hazardous substances, petroleum, or other
- 34 pollutants on the brownfield.
- 35 (23) The operation of an off-road vehicle (as defined in
- 36 IC 14-8-2-185) by a nongovernmental employee, or by a
- 37 governmental employee not acting within the scope of the
- 38 employment of the employee, on a public highway in a county
- 39 road system outside the corporate limits of a city or town, unless
- 40 the loss is the result of an act or omission amounting to:
- 41 (A) gross negligence;
- 42 (B) willful or wanton misconduct; or

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(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.

(24) Any act or omission rendered in connection with a request, investigation, assessment, or opinion provided under IC 36-9-28.7.

SECTION 2. IC 36-9-28.7 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]:

Chapter 28.7. Storm Water Nuisances

Sec. 1. (a) As used in this chapter, "artificial conveyance" means a manmade structure in or into which storm water runoff or floodwaters flow, either continuously or intermittently.

(b) The term includes piping, ditches, swales, curbs, gutters, catch basins, channels, storm drains, downspouts, roadways, and any other structure using a similar method.

Sec. 2. As used in this chapter, "channel" means a part of a natural watercourse or artificial conveyance that:

- (1) periodically or continuously contains moving water; and**
- (2) has a defined bed and banks that serve to confine the water.**

Sec. 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.

Sec. 4. 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.**
- (9) Roadways.**
- (10) Pumping stations.**

Sec. 5. As used in this chapter, "storm water nuisance" means

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a condition:

- (1) that arises out of or is related to storm water that is transferred through runoff or an artificial conveyance that:**
 - (A) is directed to the property of another person;**
 - (B) discharges storm water at or near the property line of another person; or**
 - (C) accelerates or increases the flow of storm water onto another person's property; and**
- (2) to which one (1) or both of the following apply:**
 - (A) The condition is injurious to health.**
 - (B) The condition substantially obstructs the free use of property.**

Sec. 6. As used in this chapter, "swale" means an elongated depression in the land surface that:

- (1) is at least seasonally wet;**
- (2) is usually vegetated;**
- (3) is a conduit for storm water flow; and**
- (4) conducts storm water into primary drainage channels.**

Sec. 7. (a) If:

- (1) a person who owns a tract of land seeks the removal of a storm water nuisance; and**
- (2) the owner of the land on which the storm water nuisance is located does not remove the storm water nuisance upon request;**

the person seeking the removal may file a request under this chapter asking the county surveyor, city board of works, or town council of the city or town in which the alleged storm water nuisance is located, or designee of the county surveyor, city board of works, or town council, to investigate the storm water nuisance.

(b) The request must be filed on a form published by the county surveyor, city board of works, or town council, or designee of the county surveyor, city board of works, or town council, that includes:

- (1) a general description of the tract of land owned by the person making the request;**
- (2) a general description of the site of the nuisance; and**
- (3) a general explanation of the need for the removal of the nuisance.**

Sec. 8. (a) An ordinance may be adopted to allow for the payment of a fee to the county surveyor, city board of works, or town council, or designee of the county surveyor, city board of works, or town council, as a condition of filing a request under this

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1 chapter. The fee shall not be an amount greater than is reasonably
2 necessary to defray the expenses incurred in processing the
3 request, conducting the investigation, and completing the
4 assessment under this section.

5 (b) The county surveyor, city board of works, or town council,
6 or designee of the county surveyor, city board of works, or town
7 council, of the city or town in which the storm water nuisance is
8 alleged to exist shall investigate and make a visual assessment
9 limited to the following:

- 10 (1) Determine whether the storm water nuisance exists.
- 11 (2) Assess whether the removal of the storm water nuisance
12 will:
 - 13 (A) remove the negative effect of the storm water nuisance
14 from the land of a person making the request; and
 - 15 (B) cause unreasonable damage to the land on which the
16 storm water nuisance is located.
- 17 (3) Make any other observations that may be useful in solving
18 an alleged storm water nuisance problem.

19 (c) The county surveyor, city board of works, or town council,
20 or designee of the county surveyor, city board of works, or town
21 council, upon making the assessment under subsection (b), shall
22 provide the following to a person that filed the request under
23 section 7 of this chapter:

- 24 (1) An oral or written report that may include:
 - 25 (A) a general description of the investigation and its
26 findings;
 - 27 (B) whether the storm water nuisance exists;
 - 28 (C) the need for the removal of the storm water nuisance;
 - 29 (D) whether the removal of the storm water nuisance will:
 - 30 (i) remove the negative effect of the storm water
31 nuisance from the land of a person that filed the request
32 under section 7 of this chapter; and
 - 33 (ii) cause unreasonable damage to the land on which the
34 storm water nuisance is located; and
 - 35 (E) any other considerations that may be useful in solving
36 the storm water nuisance.
- 37 (2) Information concerning alternative dispute resolution
38 options.

39 (d) The county surveyor, city board of works, or town council,
40 or designee of the county surveyor, city board of works, or town
41 council, is not required to use funds to meet the requirements
42 under this chapter.

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1 (e) Except under subpoena, the county surveyor, city board of
2 works, or town council, or designee of the county surveyor, city
3 board of works, or town council, shall not be compelled to testify
4 in a legal proceeding related to its functions under this chapter.
5 (f) For purposes of this chapter, the county surveyor, city board
6 of works, or town council, or designee of the county surveyor, city
7 board of works, or town council, has a right of entry as provided
8 by IC 36-9-27.4-25.
9 (g) An artificial conveyance that was constructed and that
10 operates in compliance with a permit issued by a political
11 subdivision is not subject to the provisions of this chapter.

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Natural Resources, to which was referred House Bill 1291, 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:

Page 4, between lines 6 and 7, begin a new line block indented and insert:

"(24) Any act or omission rendered in connection with a request, investigation, assessment, or opinion provided under IC 36-9-28.7.

SECTION 2. IC 36-9-28.7 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]:

Chapter 28.7. Storm Water Nuisances

Sec. 1. (a) As used in this chapter, "artificial conveyance" means a manmade structure in or into which storm water runoff or floodwaters flow, either continuously or intermittently.

(b) The term includes piping, ditches, swales, curbs, gutters, catch basins, channels, storm drains, downspouts, roadways, and any other structure using a similar method.

Sec. 2. As used in this chapter, "channel" means a part of a natural watercourse or artificial conveyance that:

- (1) periodically or continuously contains moving water; and**
- (2) has a defined bed and banks that serve to confine the water.**

Sec. 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.

Sec. 4. 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.**
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- (7) Streams.**
- (8) Culverts.**
- (9) Roadways.**
- (10) Pumping stations.**

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Sec. 5. As used in this chapter, "storm water nuisance" means a condition:

- (1) that arises out of or is related to storm water that is transferred through runoff or an artificial conveyance that:**
 - (A) is directed to the property of another person;**
 - (B) discharges storm water at or near the property line of another person; or**
 - (C) accelerates or increases the flow of storm water onto another person's property; and**
- (2) to which one (1) or both of the following apply:**
 - (A) The condition is injurious to health.**
 - (B) The condition substantially obstructs the free use of property.**

Sec. 6. As used in this chapter, "swale" means an elongated depression in the land surface that:

- (1) is at least seasonally wet;**
- (2) is usually vegetated;**
- (3) is a conduit for storm water flow; and**
- (4) conducts storm water into primary drainage channels.**

Sec. 7. (a) If:

- (1) a person who owns a tract of land seeks the removal of a storm water nuisance; and**
- (2) the owner of the land on which the storm water nuisance is located does not remove the storm water nuisance upon request;**

the person seeking the removal may file a request under this chapter asking the county surveyor, city board of works, or town council of the city or town in which the alleged storm water nuisance is located, or designee of the county surveyor, city board of works, or town council, to investigate the storm water nuisance.

(b) The request must be filed on a form published by the county surveyor, city board of works, or town council, or designee of the county surveyor, city board of works, or town council, that includes:

- (1) a general description of the tract of land owned by the person making the request;**
- (2) a general description of the site of the nuisance; and**
- (3) a general explanation of the need for the removal of the nuisance.**

Sec. 8. (a) An ordinance may be adopted to allow for the payment of a fee to the county surveyor, city board of works, or town council, or designee of the county surveyor, city board of

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works, or town council, as a condition of filing a request under this chapter. The fee shall not be an amount greater than is reasonably necessary to defray the expenses incurred in processing the request, conducting the investigation, and completing the assessment under this section.

(b) The county surveyor, city board of works, or town council, or designee of the county surveyor, city board of works, or town council, of the city or town in which the storm water nuisance is alleged to exist shall investigate and make a visual assessment limited to the following:

- (1) Determine whether the storm water nuisance exists.
- (2) Assess whether the removal of the storm water nuisance will:
 - (A) remove the negative effect of the storm water nuisance from the land of a person making the request; and
 - (B) cause unreasonable damage to the land on which the storm water nuisance is located.
- (3) Make any other observations that may be useful in solving an alleged storm water nuisance problem.

(c) The county surveyor, city board of works, or town council, or designee of the county surveyor, city board of works, or town council, upon making the assessment under subsection (b), shall provide the following to a person that filed the request under section 7 of this chapter:

- (1) An oral or written report that may include:
 - (A) a general description of the investigation and its findings;
 - (B) whether the storm water nuisance exists;
 - (C) the need for the removal of the storm water nuisance;
 - (D) whether the removal of the storm water nuisance will:
 - (i) remove the negative effect of the storm water nuisance from the land of a person that filed the request under section 7 of this chapter; and
 - (ii) cause unreasonable damage to the land on which the storm water nuisance is located; and
 - (E) any other considerations that may be useful in solving the storm water nuisance.
- (2) Information concerning alternative dispute resolution options.

(d) The county surveyor, city board of works, or town council, or designee of the county surveyor, city board of works, or town council, is not required to use funds to meet the requirements

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under this chapter.

(e) Except under subpoena, the county surveyor, city board of works, or town council, or designee of the county surveyor, city board of works, or town council, shall not be compelled to testify in a legal proceeding related to its functions under this chapter.

(f) For purposes of this chapter, the county surveyor, city board of works, or town council, or designee of the county surveyor, city board of works, or town council, has a right of entry as provided by IC 36-9-27.4-25.

(g) An artificial conveyance that was constructed and that operates in compliance with a permit issued by a political subdivision is not subject to the provisions of this chapter."

Page 4, delete lines 7 through 42.

Delete pages 5 through 11.

Re-number all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1291 as introduced.)

EBERHART, Chair

Committee Vote: yeas 11, nays 0.

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