
HOUSE BILL No. 1291

DIGEST OF INTRODUCED BILL

Citations Affected: IC 34-13-3-3; IC 36-9-27.4.

Synopsis: Storm water management. Provides that a governmental entity that issues a building permit is not liable for damage caused by water runoff from the structure for which the building permit was issued. Grants authority to the drainage board to receive complaints concerning, investigate, and order the removal of certain storm water related nuisances caused by artificial conveyances directed at or near the property line. Provides that, regarding removal of storm water nuisances and right of entry, the county drainage board and the county surveyor have similar authority as with respect to obstruction of mutual drains and natural surface watercourses. Prohibits construction of the law as authorizing a person to engage in activity requiring a permit from a state or federal agency before the person obtains the permit. (The introduced version of this bill was prepared by the water resources study committee.)

Effective: July 1, 2011.

Smith M, Cheatham

January 12, 2011, read first time and referred to Committee on Local Government.

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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:



- 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) Damage to a person's property caused by runoff (as defined in IC 36-9-27.4-7.3) from property of another person who:

- (A) has constructed or modified a structure for which a building permit was issued by a governmental entity; and**
- (B) is not the governmental entity that issued the building permit.**

SECTION 2. IC 36-9-27.4-0.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 0.3. (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.

SECTION 3. IC 36-9-27.4-0.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 0.5. 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.**

SECTION 4. IC 36-9-27.4-7.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **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 5. IC 36-9-27.4-7.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: **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:**

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- 1 **(1) Conduits and appurtenant features.**
- 2 **(2) Canals.**
- 3 **(3) Channels.**
- 4 **(4) Ditches.**
- 5 **(5) Storage facilities.**
- 6 **(6) Swales.**
- 7 **(7) Streams.**
- 8 **(8) Culverts.**
- 9 **(9) Roadways.**
- 10 **(10) Pumping stations.**

11 SECTION 6. IC 36-9-27.4-7.6 IS ADDED TO THE INDIANA
 12 CODE AS A NEW SECTION TO READ AS FOLLOWS
 13 [EFFECTIVE JULY 1, 2011]: **Sec. 7.6. As used in this chapter,**
 14 **"storm water nuisance" means a condition:**

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

26 SECTION 7. IC 36-9-27.4-7.7 IS ADDED TO THE INDIANA
 27 CODE AS A NEW SECTION TO READ AS FOLLOWS
 28 [EFFECTIVE JULY 1, 2011]: **Sec. 7.7. As used in this chapter,**
 29 **"swale" means an elongated depression in the land surface that:**

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

34 SECTION 8. IC 36-9-27.4-9 IS AMENDED TO READ AS
 35 FOLLOWS [EFFECTIVE JULY 1, 2011]: **Sec. 9. If:**

- 36 **(1) a person who owns a tract of land seeks the removal of:**
 - 37 **(A) a storm water nuisance; or**
 - 38 **(B) an obstruction from a drain or natural surface watercourse**
 39 **located outside the person's tract in order to promote better**
 40 **drainage of the person's tract; and**
- 41 **(2) the owner of the land on which the storm water nuisance or**
 42 **obstruction is located, upon request, does not remove the storm**

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1 **water nuisance or** obstruction;
2 the person seeking the removal of the **storm water nuisance or**
3 obstruction may file a petition under this chapter asking the drainage
4 board in the county in which the **storm water nuisance or** obstruction
5 is located to remove, or authorize or order the removal of, the **storm**
6 **water nuisance or** obstruction under this chapter.

7 SECTION 9. IC 36-9-27.4-10 IS AMENDED TO READ AS
8 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 10. A petition filed by
9 a person described in section 9(1) of this chapter must include the
10 following:

- 11 (1) A general description of the tract of land owned by the
12 petitioner.
- 13 (2) A general explanation of the need for the removal of the
14 **storm water nuisance or** obstruction.
- 15 (3) A general description of the site of the **storm water nuisance**
16 **or** obstruction.

17 SECTION 10. IC 36-9-27.4-12 IS AMENDED TO READ AS
18 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 12. (a) If a petition filed
19 under this chapter alleges a **storm water nuisance or** the obstruction
20 of:

- 21 (1) a drain; or
 - 22 (2) a natural surface watercourse;
- 23 the county surveyor of the county in which the **storm water nuisance**
24 **or** obstruction is alleged to exist shall promptly investigate whether the
25 **storm water nuisance or** obstruction exists.

26 (b) If the county surveyor, upon investigation, finds an existing:
27 (1) **storm water nuisance; or**
28 (2) obstruction in a drain or natural surface watercourse;
29 in the location alleged in the petition, the county surveyor shall report
30 the existence of the **storm water nuisance or** obstruction to the
31 drainage board.

32 (c) Upon receiving a report from the county surveyor under
33 subsection (b), the drainage board shall:
34 (1) set a date for a hearing on the petition; and
35 (2) serve notice of the hearing on each owner of the land on which
36 the **storm water nuisance or** obstruction exists who can be
37 identified in the records of the county. ~~recorder.~~

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

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

42 SECTION 11. IC 36-9-27.4-14 IS AMENDED TO READ AS

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1 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 14. (a) If, after a
 2 hearing held under this chapter **with respect to an obstruction**, the
 3 drainage board finds that:

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

6 (2) the removal of the obstruction will:

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

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

10 the drainage board shall find for the petitioner.

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

14 SECTION 12. IC 36-9-27.4-14.5 IS ADDED TO THE INDIANA
 15 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
 16 [EFFECTIVE JULY 1, 2011]: **Sec. 14.5. (a) If, after a hearing held**
 17 **under this chapter with respect to a storm water nuisance, the**
 18 **drainage board finds that:**

19 (1) **the storm water nuisance that is alleged in the petition**
 20 **exists; and**

21 (2) **the removal of the storm water nuisance will:**

22 (A) **remove the negative effect of the storm water nuisance**
 23 **from the petitioner's land; and**

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

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

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

30 SECTION 13. IC 36-9-27.4-15 IS AMENDED TO READ AS
 31 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 15. If the drainage
 32 board finds for the petitioner under section 14(a) **or 14.5(a)** of this
 33 chapter, the board shall determine, based upon a preponderance of the
 34 evidence, whether the:

35 (1) **storm water nuisance; or**

36 (2) obstruction of the drain or natural surface watercourse;
 37 was created intentionally by any of the respondents.

38 SECTION 14. IC 36-9-27.4-16 IS AMENDED TO READ AS
 39 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 16. (a) If the drainage
 40 board finds:

41 (1) for the petitioner under section 14(a) **or 14.5(a)** of this
 42 chapter; and

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1 (2) under section 15 of this chapter that the:
 2 (A) **storm water nuisance; or**
 3 (B) obstruction of the drain or natural surface watercourse;
 4 was created intentionally by at least one (1) of the respondents;
 5 the drainage board shall enter an order directing the respondents to
 6 remove the **storm water nuisance or** obstruction at their own expense,
 7 or directing the county surveyor to remove the **storm water nuisance**
 8 **or** obstruction at the expense of the respondents.

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

13 SECTION 15. IC 36-9-27.4-17 IS AMENDED TO READ AS
 14 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 17. If the drainage
 15 board:

16 (1) finds for the petitioner under section 14(a) **or 14.5(a)** of this
 17 chapter; and

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

19 (A) **storm water nuisance; or**

20 (B) obstruction of the drain or a natural surface watercourse;
 21 was created intentionally by any of the respondents;
 22 the drainage board shall enter an order under section 18 or 19 of this
 23 chapter concerning the removal of the **storm water nuisance or**
 24 obstruction.

25 SECTION 16. IC 36-9-27.4-19 IS AMENDED TO READ AS
 26 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 19. (a) If:

27 (1) a petition filed under this chapter concerns a drain **or the**
 28 **removal of a storm water nuisance; and**

29 (2) the drainage board:

30 (A) finds for the petitioner under section 14(a) **or 14.5(a)** of
 31 this chapter; but

32 (B) does not find under section 15 of this chapter that **the**
 33 **storm water nuisance or** the obstruction of the drain was
 34 created intentionally by any of the respondents;

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

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

38 (1) authorizing the petitioner to remove the **storm water**
 39 **nuisance or** obstruction;

40 (2) authorizing the respondents to remove the **storm water**
 41 **nuisance or** obstruction;

42 (3) directing the county surveyor to remove the **storm water**

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1 **nuisance or** obstruction; or
2 (4) directing that the **storm water nuisance or** obstruction be
3 removed through the joint efforts of at least two (2) of the persons
4 referred to in this subsection.
5 (c) If an order is issued under subsection (b), the costs of removing
6 the obstruction **or the storm water nuisance** must be borne by the
7 owners of all the tracts of land that are benefited by the drain **or that**
8 **would be benefited by the removal of the storm water nuisance.**
9 The order of the board must do the following:
10 (1) Identify all tracts of land that are benefited by the drain **or**
11 **would be benefited by the removal of the storm water**
12 **nuisance.**
13 (2) Identify the owners of the tracts of land referred to in
14 subdivision (1):
15 (A) who are known to the drainage board; or
16 (B) whose identity can be determined through the records of
17 the county. ~~auditor.~~
18 (3) Apportion the costs of removing the obstruction among the
19 tracts of land that are benefited by the drain **or would be**
20 **benefited by the removal of the storm water nuisance,**
21 assigning to each tract a certain percentage of the total costs.
22 (4) Order the owners of each tract of land referred to in
23 subdivision (1) to pay an amount equal to the product of the total
24 costs of removing the obstruction multiplied by the percentage
25 assigned to the tract under subdivision (3).
26 (d) The percentage of the total costs assigned to a tract under
27 subsection (c)(3) must correspond to the ratio of the total length of the
28 drain to the length of the particular segment of the drain that benefits
29 the tract.
30 SECTION 17. IC 36-9-27.4-23 IS AMENDED TO READ AS
31 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 23. (a) ~~If the drainage~~
32 ~~board finds for a petitioner after a hearing held under this chapter,~~
33 **Either a petitioner or** a respondent may file an action in the circuit or
34 superior court of the county in which the alleged **storm water**
35 **nuisance or** obstruction exists, seeking to have the order entered by the
36 drainage board vacated.
37 (b) An action filed under subsection (a) must be based on at least
38 one (1) of the following assertions: ~~by the respondent:~~
39 (1) The drainage board lacked authority to act under this chapter.
40 (2) The drainage board erred in making the findings described in
41 section 14(a) of this chapter.
42 (3) ~~The respondent~~ **Compensation** should have been awarded

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1 ~~compensation~~ for harm and inconvenience, or the amount
2 awarded to the respondent for harm and inconvenience is
3 insufficient.

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

6 SECTION 18. IC 36-9-27.4-24 IS AMENDED TO READ AS
7 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 24. (a) In an action
8 filed under section 23 of this chapter, the court:

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

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

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

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

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

20 (2) exceeded its authority or discretion under the law in
21 authorizing the removal of the **storm water nuisance or**
22 obstruction.

23 SECTION 19. IC 36-9-27.4-25 IS AMENDED TO READ AS
24 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 25. (a) For the purposes
25 of this chapter:

- 26 (1) a county surveyor;
- 27 (2) a member of a drainage board; or
- 28 (3) an authorized representative of a county surveyor or drainage
29 board;

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

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

- 38 (1) the center line of any tiled drain; ~~and~~
- 39 (2) the top edge of each bank of an open drain; and
- 40 (3) the edge of any **artificial conveyance or** natural surface
41 watercourse **or of the alleged cause of the storm water**
42 **nuisance;**

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1 as determined by the county surveyor.

2 (c) A person exercising a right of entry under this section shall, to

3 the extent possible, use due care to avoid damage to:

4 (1) crops, fences, buildings, and other structures located outside

5 the right-of-way; and

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

7 (d) Before exercising a right of entry under this section, an

8 individual must give oral or written notice of the entry on the land to

9 the property owner of record. The notice must state the purpose for the

10 entry.

11 (e) A right of entry under this section is not criminal trespass under

12 IC 35-43-2-2, and an individual exercising a right of entry under this

13 section may not be arrested or prosecuted for criminal trespass under

14 IC 35-43-2-2.

15 SECTION 20. IC 36-9-27.4-26 IS ADDED TO THE INDIANA

16 CODE AS A NEW SECTION TO READ AS FOLLOWS

17 [EFFECTIVE JULY 1, 2011]: **Sec. 26. This chapter may not be**

18 **construed as authorizing a person to engage in activity requiring**

19 **a permit from a state or federal agency before the person obtains**

20 **the permit.**

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