CONFERENCE COMMITTEE REPORT
DIGEST FOR EHB 1291

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

Synopsis: Storm water management. Establishes an alterative dispute 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 a designated unit of government to investigate and make an assessment of the alleged problem. Allows a local unit to adopt an ordinance to charge a fee to recover the costs associated with the process. Requires the unit of government designee to provide an oral or written report pertaining to the assessment and alternative dispute resolution information. Establishes certain limitations in the applicability of the storm water nuisance investigation or assessment. Adds "runoff" to the applicability limitations of certain provisions related to construction and operation in compliance with a permit issued by a political subdivision. 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. **(This conference committee report adds, for purposes of a drainage plan submitted to a county drainage board, a "development" does not include utility infrastructure owned, controlled, installed, or constructed by a public or municipally owned utility.)**

Effective: July 1, 2011.

CONFERENCE COMMITTEE REPORT

MADAM PRESIDENT:

Your Conference Committee appointed to confer with a like committee from the House upon Engrossed Senate Amendments to Engrossed House Bill No. 1291 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the House recede from its dissent from all Senate amendments and that the House now concur in all Senate amendments to the bill and that the bill be further amended as follows:

Delete everything after the enacting clause and insert the following:

SECTION 1. IC 34-13-3-3, AS AMENDED BY P.L.86-2010, SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 3. A governmental entity or an employee acting within the scope of the employee's employment is not liable if a loss results from the following:

(1) The natural condition of unimproved property.

(2) The condition of a reservoir, dam, canal, conduit, drain, or similar structure when used by a person for a purpose that is not foreseeable.

(3) The temporary condition of a public thoroughfare or extreme sport area that results from weather.

(4) The condition of an unpaved road, trail, or footpath, the purpose of which is to provide access to a recreation or scenic area.

(5) The design, construction, control, operation, or normal condition of an extreme sport area, if all entrances to the extreme sport area are marked with:

(A) a set of rules governing the use of the extreme sport area;

(B) a warning concerning the hazards and dangers associated with the use of the extreme sport area; and

(C) a statement that the extreme sport area may be used only

by persons operating extreme sport equipment.

This subdivision shall not be construed to relieve a governmental entity from liability for the continuing duty to maintain extreme sports areas in a reasonably safe condition.

(6) The initiation of a judicial or an administrative proceeding.

(7) The performance of a discretionary function; however, the provision of medical or optical care as provided in IC 34-6-2-38 shall be considered as a ministerial act.

(8) The adoption and enforcement of or failure to adopt or enforce a law (including rules and regulations), unless the act of enforcement constitutes false arrest or false imprisonment.

(9) An act or omission performed in good faith and without malice under the apparent authority of a statute which is invalid if the employee would not have been liable had the statute been valid.

(10) The act or omission of anyone other than the governmental entity or the governmental entity's employee.

(11) The issuance, denial, suspension, or revocation of, or failure or refusal to issue, deny, suspend, or revoke any permit, license, certificate, approval, order, or similar authorization, where the authority is discretionary under the law.

(12) Failure to make an inspection, or making an inadequate or negligent inspection, of any property, other than the property of a governmental entity, to determine whether the property complied with or violates any law or contains a hazard to health or safety.

(13) Entry upon any property where the entry is expressly or impliedly authorized by law.

(14) Misrepresentation if unintentional.

(15) Theft by another person of money in the employee's official custody, unless the loss was sustained because of the employee's own negligent or wrongful act or omission.

(16) Injury to the property of a person under the jurisdiction and control of the department of correction if the person has not exhausted the administrative remedies and procedures provided by section 7 of this chapter.

(17) Injury to the person or property of a person under supervision of a governmental entity and who is:

(A) on probation; or

(B) assigned to an alcohol and drug services program under IC 12-23, a minimum security release program under IC 11-10-8, a pretrial conditional release program under IC 35-33-8, or a community corrections program under IC 11-12.

(18) Design of a highway (as defined in IC 9-13-2-73), toll road project (as defined in IC 8-15-2-4(4)), tollway (as defined in IC 8-15-3-7), or project (as defined in IC 8-15.7-2-14) if the claimed loss occurs at least twenty (20) years after the public highway, toll road project, tollway, or project was designed or substantially redesigned; except that this subdivision shall not be construed to relieve a responsible governmental entity from the

continuing duty to provide and maintain public highways in a reasonably safe condition.

(19) Development, adoption, implementation, operation, maintenance, or use of an enhanced emergency communication system.

(20) Injury to a student or a student's property by an employee of a school corporation if the employee is acting reasonably under a discipline policy adopted under IC 20-33-8-12.

(21) An act or omission performed in good faith under the apparent authority of a court order described in IC 35-46-1-15.1 that is invalid, including an arrest or imprisonment related to the enforcement of the court order, if the governmental entity or employee would not have been liable had the court order been valid.

(22) An act taken to investigate or remediate hazardous substances, petroleum, or other pollutants associated with a brownfield (as defined in IC 13-11-2-19.3) unless:

(A) the loss is a result of reckless conduct; or

(B) the governmental entity was responsible for the initial placement of the hazardous substances, petroleum, or other pollutants on the brownfield.

(23) The operation of an off-road vehicle (as defined in IC 14-8-2-185) by a nongovernmental employee, or by a governmental employee not acting within the scope of the employment of the employee, on a public highway in a county road system outside the corporate limits of a city or town, unless the loss is the result of an act or omission amounting to:

(A) gross negligence;

(B) willful or wanton misconduct; or

(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 36-9-27-69.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 69.5. (a) **As used in this section, "development" does not include utility infrastructure owned, controlled, installed, or constructed by a public or municipally owned utility.**

(b) Unless otherwise required by an ordinance of the county, a person who lays out a:

(1) subdivision of lots or lands; **or**

(2) commercial, industrial, or other land development;

outside the corporate boundaries of any municipality must submit plans and specifications for the drainage of the subdivision **or other development** in accordance with this section. The county drainage board must approve the drainage plan before the person may proceed

with ~~development of~~ the subdivision **or other development.**

~~(b)~~ **(c)** A drainage plan and specifications submitted under subsection ~~(a)~~ **(b)** to the county drainage board must comply with this chapter. Except as provided in subsection ~~(c),~~ **(d),** the plan must comply with the following standards:

(1) The plan must maintain the amount of drainage through the tract that existed when the tract was created. If any tiles are cut, broken down, or rendered useless during the construction activity on the tract, the landowner ~~will be~~ **is** responsible for the repair, replacement, or relocation of the tile.

(2) The plan may not change the locations where surface water enters the tract and exits the tract from the locations that existed when the tract was created.

(3) Water ~~which~~ **that** sheds off of a new structure, especially when the new structure is elevated or near a property line, or both, must exit the tract in the same location where it did when the tract was created.

~~(c)~~ **(d)** The county drainage board may approve an alternate plan that does not comply with the standard set forth in subsection ~~(b)(2).~~ **(c)(2).**

SECTION 3. 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 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. As used in this chapter, "unit of government" means:

(1) the town council or its designee if the storm water nuisance is located within the boundaries of a town;

(2) the city board of works or its designee if the storm water nuisance is located within the boundaries of a city; or

(3) the county surveyor or its designee if the storm water nuisance is located within the boundaries of an unincorporated part of a county.

Sec. 8. (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 unit of government to investigate the storm water nuisance.

(b) The request must be filed on a form published by the unit of government 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. 9. (a) An ordinance may be adopted to allow for the payment of a fee to the unit of government as a condition of filing a request under this chapter. The fee may 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) A unit of government 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) A unit of government, upon making the assessment under subsection (b), shall provide the following to a person that filed the request under section 8 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 8 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) A unit of government is not required to use funds to meet the requirements under this chapter.

(e) Except under subpoena, a unit of government may not be compelled to testify in a legal proceeding related to its functions under this chapter.

(f) For purposes of this chapter, the unit of government has a right of entry as provided by IC 36-9-27.4-25.

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

(Reference is to EHB 1291 as printed April 8, 2011.)

Conference Committee Report
on
Engrossed House Bill 1291

Signed by:

_____	_____
Representative Smith M Chairperson	Senator Gard
_____	_____
Representative Cheatham	Senator Young R
House Conferees	**Senate Conferees**