January 9, 2015

SENATE BILL No. 100

DIGEST OF SB 100 (Updated January 8, 2015 8:22 am - DI ck)

Citations Affected: IC 10-19.

Synopsis: Homeland security cease and desist orders. Authorizes the executive director of the department of homeland security to issue a cease and desist order when a political subdivision is taking an action that: (1) constitutes a violation of any state or federal statute or local ordinance, any state administrative rule or federal regulation, or any contract provision or condition of the receipt of any form of federal governmental assistance; and (2) creates an immediate risk that the state will lose grant funds under the FEMA (Federal Emergency Management Agency) mitigation grant program or that property owners in any part of Indiana will become ineligible to purchase insurance through the federal flood insurance program. Allows the order to be issued on an expedited basis. Provides that the order may be issued against and be binding upon the political subdivision, the executive of the political subdivision, the members of the executive, and a contractor or subcontractor. Provides that the attorney general may enforce the order by bringing an action in circuit or superior court. Provides for the imposition of a monetary penalty against a political subdivision that violates an order, and makes a violation of the order by an executive of a political subdivision or a contractor or subcontractor a Class A infraction.

Effective: Upon passage.

Long

January 6, 2015, read first time and referred to Committee on Rules & Legislative Procedure.
January 8, 2015, amended, reported favorably — Do Pass; reassigned to Committee on Environmental Affairs.

January 9, 2015

First Regular Session 119th General Assembly (2015)

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 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

SENATE BILL No. 100

A BILL FOR AN ACT to amend the Indiana Code concerning public safety.

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

SECTION 1. IC 10-19-12 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

Chapter 12. Cease and Desist Orders

Sec. 1. As used in this chapter, "executive" has the meaning set forth in IC 36-1-2-5.

Sec. 2. As used in this chapter, "federal flood insurance program" means the program operated under 42 U.S.C 4001 et seq. under which coverage for property damage caused by flooding is provided by the federal government and the private insurance industry.

Sec. 3. As used in this chapter, "FEMA mitigation grant program" means a program administered by the Federal Emergency Management Agency under 42 U.S.C 5170c under which the state, as applicant, selects and prioritizes applications developed and submitted by political subdivisions for grant funds

to finance mitigation measures, including the acquisition and relocation of structures from hazard prone areas, after a disaster.

Sec. 4. As used in this chapter, "intentionally" has the meaning set forth in IC 35-41-2-2(a).

Sec. 5. As used in this chapter, "knowingly" has the meaning set forth in IC 35-41-2-2(b).

Sec. 6. As used in this chapter, "political subdivision" has the meaning set forth in IC 36-1-2-13.

Sec. 7. (a) Notwithstanding any other law, if the executive director of the department of homeland security determines that an action of a political subdivision:

(1) constitutes a violation of:

(A) any state or federal statute or local ordinance;

(B) any state administrative rule or federal regulation; or

(C) any contract provision, including a contract provision that the state is required to enforce, or condition of the receipt of any form of federal governmental assistance; and

(2) creates an immediate risk that:

(A) the state will lose grant funds under the FEMA mitigation grant program; or

(B) property owners in any part of Indiana will become ineligible to purchase insurance through the federal flood insurance program;

the executive director shall issue a cease and desist order demanding that the political subdivision immediately stop the action.

(b) A proceeding resulting in the issuance of a cease and desist order under subsection (a) may be conducted under IC 4-21.5-3 or IC 4-21.5-4. If the proceeding is conducted under IC 4-21.5-4, a cease and desist order may be issued under subsection (a):

(1) by the executive director under IC 4-21.5-4-2(a)(1), without notice or an evidentiary proceeding; or

(2) under IC 4-21.5-4-2(a)(2), after a hearing conducted by an administrative law judge.

(c) If a cease and desist order is issued under subsection (b)(1), the political subdivision may request a hearing on the order under IC 4-21.5-4-4.

(d) A cease and desist order issued in a proceeding conducted under IC 4-21.5-4:

(1) remains in effect until:

(A) the expiration date set in the order; or

(B) if earlier, the ninety-first day after the order is issued; as provided in IC 4-21.5-4-5(a); and

(2) may be renewed under 4-21.5-4-5(b).

Sec. 8. A cease and desist order issued under section 7 of this chapter may be issued against and be binding upon:

(1) the political subdivision taking the action described in section 7(a) of this chapter;

(2) the:

(A) executive; or

(B) members of the executive;

of the political subdivision taking the action described in section 7(a) of this chapter;

(3) any contractor participating in the action of the political subdivision described in section 7(a) of this chapter; and

(4) any subcontractor of a contractor described in subdivision (3).

Sec. 9. A cease and desist order issued under section 7 of this chapter is enforceable in circuit or superior court. The attorney general may bring an action in the circuit or superior court of:

(1) Marion County; or

(2) the county in which the political subdivision is located;

to enforce the order. In an action brought under this section, the attorney general may petition the court for a permanent injunction against the action of the political subdivision described in section 7(a) of this chapter.

Sec. 10. (a) A political subdivision that:

(1) is subject to a cease and desist order issued under section 7 of this chapter; and

(2) violates the order;

is subject to a civil penalty of ten thousand dollars ($10,000) per day until the political subdivision complies with the cease and desist order.

(b) If a civil penalty imposed under subsection (a) is not paid by the political subdivision within a reasonable time, the amount of the civil penalty may be:

(1) withheld by the auditor of state from moneys payable to the political subdivision; or

(2) recovered in a suit brought in the circuit or superior court of:

(A) Marion County; or

(B) the county in which the political subdivision is located;

by the state in an action brought by the attorney general.

Sec. 11. The issuance of a cease and desist order under this chapter does not relieve any political subdivision or any officer of a political subdivision from prosecution or adverse legal consequences under any other law.

Sec. 12. An individual described in section 8(2), 8(3), or 8(4) of this chapter:

(1) against whom a cease and desist order is issued under section 7 of this chapter; and

(2) who knowingly or intentionally violates the cease and desist order;

commits a Class A infraction.

SECTION 2. **An emergency is declared for this act.**

COMMITTEE REPORT

Madam President: The Senate Committee on Rules and Legislative Procedure, to which was referred Senate Bill No. 100, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Delete the title and insert the following:

A BILL FOR AN ACT to amend the Indiana Code concerning public safety.

Delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

and when so amended that said bill be reassigned to the Senate Committee on Environmental Affairs.

(Reference is to SB 100 as introduced.)

LONG, Chairperson