

---

---

# SENATE BILL No. 46

---

## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 13-11-2-193.5; IC 32-20-3-2.

**Synopsis:** Environmental restrictive covenants. Provides that marketable record title to real property is subject to all interests of the department of environmental management arising from the recording of a restrictive covenant under the environmental laws.

**Effective:** July 1, 2008.

---

---

### Gard

---

---

January 8, 2008, read first time and referred to Committee on Corrections, Criminal, and Civil Matters.

---

---

C  
O  
P  
Y



Second Regular Session 115th General Assembly (2008)

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 2007 Regular Session of the General Assembly.

C  
O  
P  
Y

## SENATE BILL No. 46



A BILL FOR AN ACT to amend the Indiana Code concerning environmental law.

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

1 SECTION 1. IC 13-11-2-193.5 IS AMENDED TO READ AS  
2 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 193.5. "Restrictive  
3 covenant" for purposes of IC ~~13-14-2-6~~; means, with respect to land,  
4 any deed restriction, restrictive covenant, environmental covenant,  
5 environmental notice, or other restriction or obligation that:

- 6 (1) limits the use of the land or the activities that may be
- 7 performed on or at the land or requires the maintenance of any
- 8 engineering control on the land designed to protect human health
- 9 or the environment;
- 10 (2) by its terms is intended to run with the land and be binding on
- 11 successors;
- 12 (3) is recorded with the county recorder's office in the county in
- 13 which the land is located; and
- 14 (4) explains how it can be modified or terminated.

15 SECTION 2. IC 32-20-3-2 IS AMENDED TO READ AS  
16 FOLLOWS [EFFECTIVE JULY 1, 2008]: Sec. 2. Marketable record  
17 title is subject to the following:



1 (1) All interests and defects that are inherent in the muniments of  
 2 which the chain of record title is formed. However, a general  
 3 reference in the muniments, or any one (1) of them, to:

4 (A) easements;

5 (B) use restrictions; or

6 (C) other interests created before the root of title;

7 is not sufficient to preserve them, unless specific identification is  
 8 made in the muniments of a recorded title transaction that creates  
 9 the easement, use restriction, or other interest.

10 (2) All interests preserved by:

11 (A) the filing of proper notice; or

12 (B) possession by the same owner continuously for at least  
 13 fifty (50) years, in accordance with IC 32-20-4-1.

14 (3) The rights of any person arising from adverse possession or  
 15 adverse user, if the period of adverse possession or adverse user  
 16 was wholly or partly subsequent to the effective date of the root  
 17 of title.

18 (4) Any interest arising out of a title transaction recorded after the  
 19 effective date of the root of title from which the unbroken chain  
 20 of title of record is started. However, the recording shall not  
 21 revive or give validity to any interest that has been extinguished  
 22 before the time of the recording by the operation of section 3 of  
 23 this chapter.

24 (5) The exceptions stated in IC 32-20-4-3 concerning:

25 (A) rights of reversioners in leases;

26 (B) rights of any lessee in and to any lease; and

27 (C) easements and interests in the nature of easements.

28 (6) All interests of the department of environmental management  
 29 ~~in land used for the disposal of hazardous wastes~~ arising from the  
 30 recording of a restrictive covenant under ~~IC 13-22-3-3~~ IC 13.

31 SECTION 3. [EFFECTIVE JULY 1, 2008] (a) **IC 32-20-3-2, as**  
 32 **amended by this act, applies only to determinations of marketable**  
 33 **record title (as defined in IC 32-20-2-2) after June 30, 2008.**

34 (b) **Under IC 32-20-3-2, as amended by this act, marketable**  
 35 **record title (as defined in IC 32-20-2-2) is subject to all interests of**  
 36 **the department of environmental management arising from the**  
 37 **recording of a restrictive covenant under IC 13, regardless of**  
 38 **whether the recording occurred before July 1, 2008.**

C  
o  
p  
y

