



February 10, 2009

SENATE BILL No. 460

DIGEST OF SB 460 (Updated February 9, 2009 12:22 pm - DI 52)

Citations Affected: IC 13-11; IC 13-12; IC 13-14; IC 13-19; IC 13-23; IC 13-25; IC 34-30; IC 36-1; IC 36-2; IC 36-3; IC 36-4; IC 36-5; noncode.

Synopsis: Environmental land use restrictions. Establishes the institutional control registry administered by the Indiana finance authority (IFA), and establishes the environmental trust fund to fund the registry. Establishes in the registry an inventory and computerized registry of restrictive covenants in Indiana and a computerized registry of environmental restrictive ordinances adopted by Indiana municipal corporations. Requires the IFA to monitor compliance with the covenants, report noncompliance to the department of environmental management (IDEM) and the attorney general, collect fees applied to owners of tracts subject to restrictive covenants, and deposit fee revenue in the environmental trust fund. Establishes consequences for failure to pay the fee. Provides that the state, the IFA, and their officers, agents, and employees are immune from liability for acts or omissions related to maintenance of the inventory and the registries. Provides no person may rely on the accuracy and completeness of information in the inventory and the registries. Requires the IFA to: (1) establish a future sliding fee scale based on the relative costs of monitoring compliance among various tracts of real property subject to restrictive covenants; (2) consider means of applying institutional control registry activities to privately established environmental restrictive covenants and those established before registry activities begin; and (3) consider the feasibility of incorporating notice of environmental restrictive
(Continued next page)

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Effective: July 1, 2009.

Gard, Bray, Tallian

January 14, 2009, read first time and referred to Committee on Energy and Environmental Affairs.

February 9, 2009, amended, reported favorably — Do Pass; reassigned to Committee on Tax and Fiscal Policy.

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Digest Continued

covenants and restrictive ordinances into the "One Call" system. Amends the definitions of "owner" and "operator" for purposes of exceptions to liability for releases from underground storage tanks (UST) and of "owner or operator" for purposes of exceptions to liability for releases of petroleum. Expands the application of remediation and closure goals, objectives, and standards. Eliminates the authority of IDEM to approve environmental restrictive covenants, delineates the authority of IDEM to enforce covenants, and eliminates IDEM authority to require compliance reports from property owners. Requires IDEM to review and act on activities and land use restrictions proposed as part of certain actions to be included in a restrictive covenant. Permits reimbursement from the underground petroleum storage tank excess liability trust fund of fees paid by the owner of a tract because the tract is subject to a restrictive covenant established to address issues related to a UST located on the tract. Provides that a covenant not to sue does not apply to future liability for a condition on property involved in a voluntary remediation work plan only if the condition was present on the property at the time IDEM issued the certificate of completion. Allows IDEM to include in a certificate of completion or a covenant not to sue conditions that must be performed or maintained after issuance of the certificate or covenant. With respect to local ordinances that establish certain land use restrictions: (1) requires that a municipal corporation give notice to IDEM not later than 60 days before amendment or repeal and to the IFA and IDEM not later than 30 days after passage, amendment, or repeal; (2) requires that the ordinance state those notice requirements; and (3) provides that the ordinance is considered adopted only if it states those notice requirements.

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February 10, 2009

First Regular Session 116th General Assembly (2009)

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 2008 Regular Session of the General Assembly.

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SENATE BILL No. 460

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 13-11-2-16, AS AMENDED BY P.L.235-2005,
2 SECTION 126, IS AMENDED TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2009]: Sec. 16. (a) "Authority", for purposes of
4 IC 13-22-10, refers to the Indiana hazardous waste facility site approval
5 authority.
6 (b) "Authority", for purposes of IC 13-18-13, IC 13-18-21, ~~and~~
7 IC 13-19-5, **and IC 13-19-6**, refers to the Indiana finance authority
8 created under IC 4-4-11.
9 SECTION 2. IC 13-11-2-71.2 IS ADDED TO THE INDIANA
10 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
11 [EFFECTIVE JULY 1, 2009]: **Sec. 71.2. "Environmental restrictive**
12 **ordinance" means, with respect to land, any ordinance that:**
13 (1) **is adopted by a municipal corporation (as defined in**
14 **IC 36-1-2-10); and**
15 (2) **limits the use of the land or the activities that may be**

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1 **performed on or at the land or requires the maintenance of**
 2 **any engineering control on the land designed to protect**
 3 **human health or the environment.**
 4 SECTION 3. IC 13-11-2-71.4 IS ADDED TO THE INDIANA
 5 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
 6 [EFFECTIVE JULY 1, 2009]: **Sec. 71.4. "Environmental trust**
 7 **fund", for purposes of IC 13-19-6, refers to the environmental trust**
 8 **fund established by IC 13-19-6-1.**
 9 SECTION 4. IC 13-11-2-110.2 IS ADDED TO THE INDIANA
 10 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
 11 [EFFECTIVE JULY 1, 2009]: **Sec. 110.2. "Institutional control**
 12 **registry", for purposes of IC 13-19-6, refers to the institutional**
 13 **control registry established by IC 13-19-6-1.**
 14 SECTION 5. IC 13-11-2-148, AS AMENDED BY P.L.221-2007,
 15 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 16 JULY 1, 2009]: Sec. 148. (a) "Operator", for purposes of IC 13-18-10,
 17 means the person in direct or responsible charge or control of one (1)
 18 or more confined feeding operations.
 19 (b) "Operator", for purposes of IC 13-18-11 and environmental
 20 management laws, means the person in direct or responsible charge and
 21 supervising the operation of:
 22 (1) a water treatment plant;
 23 (2) a wastewater treatment plant; or
 24 (3) a water distribution system.
 25 (c) "Operator", for purposes of IC 13-20-6, means a corporation, a
 26 limited liability company, a partnership, a business association, a unit,
 27 or an individual who is a sole proprietor that is one (1) of the following:
 28 (1) A broker.
 29 (2) A person who manages the activities of a transfer station that
 30 receives municipal waste.
 31 (3) A transporter.
 32 (d) "Operator", for purposes of IC 13-23, except as provided in
 33 ~~subsection~~ **subsections (e), (g), and (h)** means a person:
 34 (1) in control of; or
 35 (2) having responsibility for;
 36 the daily operation of an underground storage tank.
 37 (e) "Operator", for purposes of IC 13-23-13, does not include the
 38 following:
 39 (1) A person who:
 40 (A) does not participate in the management of an underground
 41 storage tank;
 42 (B) is otherwise not engaged in the:

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- 1 (i) production;
- 2 (ii) refining; and
- 3 (iii) marketing;
- 4 of regulated substances; and
- 5 (C) holds evidence of ownership, primarily to protect the
- 6 owner's security interest in the tank.
- 7 (2) A person who:
- 8 (A) does not own or lease, directly or indirectly, the facility or
- 9 business at which the underground storage tank is located;
- 10 (B) does not participate in the management of the facility or
- 11 business described in clause (A); and
- 12 (C) is engaged only in:
- 13 (i) filling;
- 14 (ii) gauging; or
- 15 (iii) filling and gauging;
- 16 the product level in the course of delivering fuel to an
- 17 underground storage tank.
- 18 (3) A political subdivision (as defined in IC 36-1-2-13) or unit of
- 19 federal or state government that:
- 20 (A) acquires ownership or control of an underground storage
- 21 tank on a brownfield because of:
- 22 (i) bankruptcy;
- 23 (ii) foreclosure;
- 24 (iii) tax delinquency, including an acquisition under
- 25 IC 6-1.1-24 or IC 6-1.1-25;
- 26 (iv) abandonment;
- 27 (v) the exercise of eminent domain, including any purchase
- 28 of property once an offer to purchase has been tendered
- 29 under IC 32-24-1-5;
- 30 (vi) receivership;
- 31 (vii) transfer from another political subdivision or unit of
- 32 federal or state government;
- 33 (viii) acquiring an area needing redevelopment (as defined
- 34 in IC 36-7-1-3) or conducting redevelopment activities,
- 35 specifically under IC 36-7-14-22.2, IC 36-7-14-22.5,
- 36 IC 36-7-15.1-15.1, IC 36-7-15.1-15.2, and
- 37 IC 36-7-15.1-15.5;
- 38 (ix) other circumstances in which the political subdivision
- 39 or unit of federal or state government involuntarily acquired
- 40 an interest in the property because of the political
- 41 subdivision's or unit's function as sovereign; or
- 42 (x) any other means to conduct remedial actions on a

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brownfield; and
(B) is engaged only in activities in conjunction with:
(i) investigation or remediation of hazardous substances, petroleum, and other pollutants associated with a brownfield, including complying with land use restrictions and institutional controls; or
(ii) monitoring or closure of an underground storage tank; unless existing contamination on the brownfield is exacerbated due to gross negligence or intentional misconduct by the political subdivision or unit of federal or state government.

(f) For purposes of subsection (e)(3)(B), reckless, willful, or wanton misconduct constitutes gross negligence.

(g) "Operator" does not include a person that after June 30, 2009, meets, for purposes of the determination under IC 13-23-13 of liability for a release from an underground storage tank, the exemption criteria under Section 107(q) of CERCLA (42 U.S.C. 9607(q)) that apply for purposes of the determination of liability for a release of a hazardous substance.

(h) "Operator" does not include a person that meets, for purposes of the determination under IC 13-23-13 of liability for a release from an underground storage tank, the exemption criteria under Section 107(r) of CERCLA (42 U.S.C. 9607(r)) that apply for purposes of the determination of liability for a release of a hazardous substance, except that the person acquires ownership of the facility after June 30, 2009.

SECTION 6. IC 13-11-2-150, AS AMENDED BY P.L.221-2007, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 150. (a) "Owner", for purposes of IC 13-23 (except as provided in subsections (b), (c), ~~and (d)~~) (d), (e), and (f) means:

- (1) for an underground storage tank that:
 - (A) was:
 - (i) in use on November 8, 1984; or
 - (ii) brought into use after November 8, 1984;
 - for the storage, use, or dispensing of regulated substances, a person who owns the underground storage tank; or
 - (B) is:
 - (i) in use before November 8, 1984; but
 - (ii) no longer in use on November 8, 1984;
 - a person who owned the tank immediately before the discontinuation of the tank's use; or
- (2) a person who conveyed ownership or control of the

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1 underground storage tank to a political subdivision (as defined in
 2 IC 36-1-2-13) or unit of federal or state government because of:
 3 (A) bankruptcy;
 4 (B) foreclosure;
 5 (C) tax delinquency, including a conveyance under
 6 IC 6-1.1-24 or IC 6-1.1-25;
 7 (D) abandonment;
 8 (E) the exercise of eminent domain, including any purchase of
 9 property once an offer to purchase has been tendered under
 10 IC 32-24-1-5;
 11 (F) receivership;
 12 (G) acquiring an area needing redevelopment (as defined in
 13 IC 36-7-1-3) or conducting redevelopment activities,
 14 specifically under IC 36-7-14-22.2, IC 36-7-14-22.5,
 15 IC 36-7-15.1-15.1, IC 36-7-15.1-15.2, and IC 36-7-15.1-15.5;
 16 (H) other circumstances in which a political subdivision or
 17 unit of federal or state government involuntarily acquired
 18 ownership or control because of the political subdivision's or
 19 unit's function as sovereign; or
 20 (I) any other means to conduct remedial actions on a
 21 brownfield;
 22 if the person was a person described in subdivision (1)
 23 immediately before the person conveyed ownership or control of
 24 the underground storage tank.
 25 (b) "Owner", for purposes of IC 13-23-13, does not include a person
 26 who:
 27 (1) does not participate in the management of an underground
 28 storage tank;
 29 (2) is otherwise not engaged in the:
 30 (A) production;
 31 (B) refining; and
 32 (C) marketing;
 33 of regulated substances; and
 34 (3) holds indicia of ownership primarily to protect the owner's
 35 security interest in the tank.
 36 (c) "Owner", for purposes of IC 13-23, does not include a political
 37 subdivision (as defined in IC 36-1-2-13) or unit of federal or state
 38 government that acquired ownership or control of an underground
 39 storage tank because of:
 40 (1) bankruptcy;
 41 (2) foreclosure;
 42 (3) tax delinquency, including an acquisition under IC 6-1.1-24 or

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- 1 IC 6-1.1-25;
- 2 (4) abandonment;
- 3 (5) the exercise of eminent domain, including any purchase of
- 4 property once an offer to purchase has been tendered under
- 5 IC 32-24-1-5;
- 6 (6) receivership;
- 7 (7) transfer from another political subdivision or unit of federal or
- 8 state government;
- 9 (8) acquiring an area needing redevelopment (as defined in
- 10 IC 36-7-1-3) or conducting redevelopment activities, specifically
- 11 under IC 36-7-14-22.2, IC 36-7-14-22.5, IC 36-7-15.1-15.1,
- 12 IC 36-7-15.1-15.2, and IC 36-7-15.1-15.5;
- 13 (9) other circumstances in which the political subdivision or unit
- 14 of federal or state government involuntarily acquired ownership
- 15 or control because of the political subdivision's or unit's function
- 16 as sovereign; or
- 17 (10) any other means to conduct remedial actions on a
- 18 brownfield;

19 unless the political subdivision or unit of federal or state government
 20 causes or contributes to the release or threatened release of a regulated
 21 substance, in which case the political subdivision or unit of federal or
 22 state government is subject to IC 13-23 in the same manner and to the
 23 same extent as a nongovernmental entity under IC 13-23.

24 (d) "Owner", for purposes of IC 13-23, does not include a nonprofit
 25 corporation that acquired ownership or control of an underground
 26 storage tank to assist and support a political subdivision's revitalization
 27 and reuse of a brownfield for noncommercial purposes, including
 28 conservation, preservation, and recreation, unless the nonprofit
 29 corporation causes or contributes to the release or threatened release of
 30 a regulated substance, in which case the nonprofit corporation is
 31 subject to IC 13-23 in the same manner and to the same extent as any
 32 other nongovernmental entity under IC 13-23.

33 (e) "Owner" does not include a person that after June 30, 2009,
 34 meets, for purposes of the determination under IC 13-23-13 of
 35 liability for a release from an underground storage tank, the
 36 exemption criteria under Section 107(q) of CERCLA (42 U.S.C.
 37 9607(q)) that apply for purposes of the determination of liability
 38 for a release of a hazardous substance.

39 (f) "Owner" does not include a person that meets, for purposes
 40 of the determination under IC 13-23-13 of liability for a release
 41 from an underground storage tank, the exemption criteria under
 42 Section 107(r) of CERCLA (42 U.S.C. 9607(r)) that apply for

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1 **purposes of the determination of liability for a release of a**
 2 **hazardous substance, except that the person acquires ownership of**
 3 **the facility after June 30, 2009.**

4 SECTION 7. IC 13-11-2-151, AS AMENDED BY P.L.221-2007,
 5 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 6 JULY 1, 2009]: Sec. 151. (a) "Owner or operator", for purposes of
 7 IC 13-24-1, means the following:

8 (1) For a petroleum facility, a person who owns or operates the
 9 facility.

10 (2) For a petroleum facility where title or control has been
 11 conveyed because of:

12 (A) bankruptcy;

13 (B) foreclosure;

14 (C) tax delinquency, including a conveyance under
 15 IC 6-1.1-24 or IC 6-1.1-25;

16 (D) abandonment;

17 (E) the exercise of eminent domain, including any purchase of
 18 property once an offer to purchase has been tendered under
 19 IC 32-24-1-5;

20 (F) receivership;

21 (G) acquiring an area needing redevelopment (as defined in
 22 IC 36-7-1-3) or conducting redevelopment activities,
 23 specifically under IC 36-7-14-22.2, IC 36-7-14-22.5,
 24 IC 36-7-15.1-15.1, IC 36-7-15.1-15.2, and IC 36-7-15.1-15.5;

25 (H) other circumstances in which a political subdivision (as
 26 defined in IC 36-1-2-13) or unit of federal or state government
 27 involuntarily acquired title or control because of the political
 28 subdivision's or unit's function as sovereign; or

29 (I) any other means to conduct remedial actions on a
 30 brownfield;

31 to a political subdivision or unit of federal or state government, a
 32 person who owned, operated, or otherwise controlled the
 33 petroleum facility immediately before title or control was
 34 conveyed.

35 (b) Subject to subsection (c), the term does not include a political
 36 subdivision or unit of federal or state government that acquired
 37 ownership or control of the facility through:

38 (1) bankruptcy;

39 (2) foreclosure;

40 (3) tax delinquency, including an acquisition under IC 6-1.1-24 or
 41 IC 6-1.1-25;

42 (4) abandonment;

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1 (5) the exercise of eminent domain, including any purchase of
 2 property once an offer to purchase has been tendered under
 3 IC 32-24-1-5;
 4 (6) receivership;
 5 (7) transfer from another political subdivision or unit of federal or
 6 state government;
 7 (8) acquiring an area needing redevelopment (as defined in
 8 IC 36-7-1-3) or conducting redevelopment activities, specifically
 9 under IC 36-7-14-22.2, IC 36-7-14-22.5, IC 36-7-15.1-15.1,
 10 IC 36-7-15.1-15.2, and IC 36-7-15.1-15.5;
 11 (9) other circumstances in which the political subdivision or unit
 12 of federal or state government involuntarily acquired ownership
 13 or control because of the political subdivision's or unit's function
 14 as sovereign; or
 15 (10) any other means to conduct remedial actions on a brownfield.
 16 (c) The term includes a political subdivision or unit of federal or
 17 state government that causes or contributes to the release or threatened
 18 release of a regulated substance, in which case the political subdivision
 19 or unit of federal or state government is subject to IC 13-24-1:
 20 (1) in the same manner; and
 21 (2) to the same extent;
 22 as a nongovernmental entity under IC 13-24-1.
 23 (d) The term does not include a person who:
 24 (1) does not participate in the management of a petroleum facility;
 25 (2) is otherwise not engaged in the:
 26 (A) production;
 27 (B) refining; and
 28 (C) marketing;
 29 of petroleum; and
 30 (3) holds evidence of ownership in a petroleum facility, primarily
 31 to protect the owner's security interest in the petroleum facility.
 32 (e) The term does not include a nonprofit corporation that acquired
 33 ownership or control of a facility to assist and support a political
 34 subdivision's revitalization and reuse of a brownfield for
 35 noncommercial purposes, including conservation, preservation, and
 36 recreation, unless the nonprofit corporation causes or contributes to the
 37 release or threatened release of a regulated substance, in which case the
 38 nonprofit corporation is subject to IC 13-24-1 in the same manner and
 39 to the same extent as any other nongovernmental entity under
 40 IC 13-24-1.
 41 (f) **The term does not include a person that after June 30, 2009,**
 42 **meets, for purposes of the determination under IC 13-24-1 of**

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1 liability for a release of petroleum, the exemption criteria under
2 Section 107(q) of CERCLA (42 U.S.C. 9607(q)) that apply for
3 purposes of the determination of liability for a release of a
4 hazardous substance.

5 (g) The term does not include a person that meets, for purposes
6 of the determination under IC 13-24-1 of liability for a release of
7 petroleum, the exemption criteria under Section 107(r) of
8 CERCLA (42 U.S.C. 9607(r)) that apply for purposes of the
9 determination of liability for a release of a hazardous substance,
10 except that the person acquires ownership of the facility after June
11 30, 2009.

12 SECTION 8. IC 13-11-2-233.5 IS AMENDED TO READ AS
13 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 233.5. "Tract", for
14 purposes of this chapter and IC 13-19-6, means any area of land that
15 is under common ownership and is contained within a continuous
16 border.

17 SECTION 9. IC 13-12-3-2 IS AMENDED TO READ AS
18 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 2. (a) The remediation
19 and closure goals, objectives, and standards for activities all
20 remediation projects conducted under ~~IC 13-22~~ and ~~IC 13-23~~ this
21 title shall be consistent with the remediation objectives set forth in
22 IC 13-25-5-8.5.

23 (b) The groundwater quality standards adopted under IC 13-18-17-5
24 shall allow as appropriate, groundwater remediations to be consistent
25 with the remediation objectives set forth in IC 13-25-5-8.5.

26 SECTION 10. IC 13-14-2-6 IS AMENDED TO READ AS
27 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 6. Except as provided
28 in IC 13-14-6, the commissioner may proceed in court, by appropriate
29 action, to:

- 30 (1) enforce any final order of the commissioner or of one (1) of
- 31 the boards;
- 32 (2) collect any penalties or fees;
- 33 (3) procure or secure compliance with this title or any other law
- 34 that the department has the duty or power to enforce;
- 35 (4) procure compliance with any standard or rule of one (1) of the
- 36 boards; or
- 37 (5) enforce a restrictive covenant (as defined in IC 13-11-2-193.5)
- 38 in accordance with the terms of the covenant if the covenant
- 39 is:
 - 40 (A) executed before July 1, 2009;
 - 41 (B) approved by the commissioner; and
 - 42 (C) created in connection with any:

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- 1 (i) remediation;
- 2 (ii) closure;
- 3 (iii) cleanup; or
- 4 (iv) corrective action; or
- 5 (v) determination exercising enforcement discretion or
- 6 of no further action being required;
- 7 approved by the department under this title; in accordance
- 8 with the terms of the covenant; or
- 9 (6) enforce a restrictive covenant (as defined in
- 10 IC 13-11-2-193.5) in accordance with the terms of the
- 11 covenant if the covenant is:
- 12 (A) executed after June 30, 2009; and
- 13 (B) created in connection with any of the following
- 14 approved by the department under this title:
- 15 (i) A remediation.
- 16 (ii) A closure.
- 17 (iii) A cleanup.
- 18 (iv) A corrective action.
- 19 (v) A determination exercising enforcement discretion or
- 20 of no further action being required.

21 SECTION 11. IC 13-14-2-8 IS ADDED TO THE INDIANA CODE
 22 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 23 1, 2009]: **Sec. 8. (a) Subject to subsection (b), a restrictive covenant**
 24 **executed after June 30, 2009, is not subject to approval by the**
 25 **department.**

26 (b) The department shall:

- 27 (1) review; and
- 28 (2) approve, disapprove, or partially approve and partially
- 29 disapprove;

30 activities and land use restrictions described in IC 13-11-2-193.5(1)
 31 that are proposed as part of a remediation, closure, cleanup,
 32 corrective action, or determination exercising enforcement
 33 discretion or of no further action being required to be included in
 34 a restrictive covenant.

35 (c) After 2009 the department may not require the owner of a
 36 tract that has paid a fee under IC 13-19-6-2(b) or IC 13-19-6-2(c)
 37 with respect to the tract to report to the department the extent of
 38 compliance with a restrictive covenant that:

- 39 (1) applies to the tract; and
- 40 (2) is the basis of the imposition of the fee.

41 SECTION 12. IC 13-19-6-1 IS ADDED TO THE INDIANA CODE
 42 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY

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1 1, 2009]: **Sec. 1. (a) The following are established:**
 2 **(1) The institutional control registry.**
 3 **(2) The environmental trust fund.**
 4 **(b) The operations of the institutional control registry are**
 5 **funded solely from the environmental trust fund.**
 6 **(c) The environmental trust fund:**
 7 **(1) shall be administered, held, and managed by the authority;**
 8 **(2) may not be used for any purpose other than funding the**
 9 **operations of the authority related to the management of the**
 10 **institutional control registry; and**
 11 **(3) consists of:**
 12 **(A) fees deposited in the environmental trust fund under**
 13 **section 2 of this chapter;**
 14 **(B) appropriations to the environmental trust fund from**
 15 **the general assembly;**
 16 **(C) grants, gifts, and donations intended for deposit in the**
 17 **environmental trust fund; and**
 18 **(D) interest, premiums, gains, or other earnings that**
 19 **accrue from money in the environmental trust fund.**
 20 **(d) The expenses of administering the institutional control**
 21 **registry and the environmental trust fund shall be paid from**
 22 **money in the environmental trust fund. Subject to subsection (e),**
 23 **the authority shall invest the money in the environmental trust**
 24 **fund not needed to meet the current obligations related to the**
 25 **management of the institutional control registry in accordance**
 26 **with an investment policy adopted by the authority. Interest,**
 27 **premiums, gains, and other earnings from the investments shall be**
 28 **credited to the environmental trust fund. Money in the**
 29 **environmental trust fund at the end of a state fiscal year does not**
 30 **revert to the state general fund.**
 31 **(e) As an alternative to subsection (d), the authority may invest**
 32 **or cause to be invested all or a part of the environmental trust fund**
 33 **in a fiduciary account with a trustee that is a financial institution.**
 34 **SECTION 13. IC 13-19-6-2 IS ADDED TO THE INDIANA CODE**
 35 **AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY**
 36 **1, 2009]: Sec. 2. (a) The authority shall administer the institutional**
 37 **control registry by doing the following:**
 38 **(1) Inventory by tract restrictive covenants throughout**
 39 **Indiana that are:**
 40 **(A) recorded as described in IC 13-11-2-193.5(3) after**
 41 **2009; and**
 42 **(B) established as a part of a plan approved, determination**

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exercising enforcement discretion made, or determination of no further action being required made by either or both of the following:

- (i) The department.
- (ii) The United States Environmental Protection Agency.

- (2) Create a computerized registry by tract of restrictive covenants referred to in subdivision (1) that is accessible to the public.
- (3) Create a computerized registry of environmental restrictive ordinances throughout Indiana.
- (4) Give notice reasonably calculated to inform the public of the registries referred to in subdivisions (2) and (3).
- (5) Monitor compliance throughout Indiana with restrictive covenants referred to in subdivision (1).
- (6) Report to the department and the attorney general noncompliance with restrictive covenants referred to in subdivision (1).
- (7) Collect fees under subsection (d).
- (8) Deposit fees collected under subdivision (7) in the environmental trust fund.

(b) Except as provided in subsection (d), the owner of a tract subject to one (1) or more restrictive covenants referred to in subsection (a)(1) is liable for a fee in the amount of five thousand dollars (\$5,000).

(c) The authority shall establish a schedule of graduated fees based on the relative costs of monitoring compliance under subsection (a)(5) among various tracts of real property subject to restrictive covenants. The schedule of graduated fees under this subsection applies in lieu of the fee under subsection (b) to owners of real property subject to restrictive covenants throughout Indiana that are recorded as described in IC 13-11-2-193.5(3) after the effective date of the schedule of graduated fees established by the authority.

(d) A fee imposed under subsection (b) or (c) is payable to the authority for deposit into the environmental trust fund not later than thirty (30) days after the recording of the restrictive covenant. If the fee is not paid by that deadline:

- (1) the authority shall provide to the attorney general the information necessary for commencement of a collection action; and
- (2) the department may void its approval of the:
 - (A) remediation;

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- 1 **(B) closure;**
- 2 **(C) cleanup;**
- 3 **(D) corrective action; or**
- 4 **(E) determination exercising enforcement discretion or of**
- 5 **no further action being required;**
- 6 **under which the restrictive covenant was executed.**

7 **(e) The following are immune from civil or criminal liability for**
 8 **any act or omission related to the performance of duties under**
 9 **subsection (a)(1) through (a)(3):**

- 10 **(1) The state and the authority.**
- 11 **(2) Officers, agents, and employees of the state and the**
- 12 **authority, either personally or in their official capacities.**

13 **(f) No person, including the state, the authority, the institutional**
 14 **control registry, a political subdivision (as defined in IC 36-1-2-13),**
 15 **or a private person, may rely on the accuracy and completeness of**
 16 **information in the following:**

- 17 **(1) An inventory under subsection (a)(1).**
- 18 **(2) A registry under subsection (a)(2) or (a)(3).**

19 SECTION 14. IC 13-19-6-3 IS ADDED TO THE INDIANA CODE
 20 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 21 1, 2009]: **Sec. 3. (a) The authority may do the following:**

- 22 **(1) Employ:**
- 23 **(A) fiscal consultants;**
- 24 **(B) engineers;**
- 25 **(C) special counsel;**
- 26 **(D) accountants; and**
- 27 **(E) any other consultants, employees, and agents;**
- 28 **that the authority considers necessary to carry out the**
 29 **purposes of this chapter.**
- 30 **(2) Fix and pay the compensation of persons employed under**
 31 **subdivision (1) from money available in the environmental**
 32 **trust fund.**

33 **(b) Notwithstanding any other law, no direction given by the**
 34 **authority to a political subdivision under this chapter, service**
 35 **provided by the authority to a political subdivision under this**
 36 **chapter, or other action allowed or taken by the authority under**
 37 **this chapter is a defense for or otherwise excuses:**

- 38 **(1) any act of a political subdivision that violates the law; or**
- 39 **(2) any failure by a political subdivision to act as required by**
 40 **law.**

41 SECTION 15. IC 13-23-8-1 IS AMENDED TO READ AS
 42 FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 1. The department,**

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1 under rules adopted by the underground storage tank financial
 2 assurance board under IC 4-22-2, shall use money in the excess
 3 liability trust fund, to the extent that money is available in the excess
 4 liability trust fund, to pay claims submitted to the department for the
 5 following:

6 (1) The payment of the costs allowed under IC 13-23-9-2,
 7 excluding:

8 (A) liabilities to third parties; and

9 (B) the costs of repairing or replacing an underground storage
 10 tank;

11 arising out of releases of petroleum.

12 (2) Providing payment of part of the liability of owners and
 13 operators of underground petroleum storage tanks:

14 (A) to third parties under IC 13-23-9-3; or

15 (B) for reasonable attorney's fees incurred in defense of a third
 16 party liability claim.

17 **(3) Reimbursement of a fee that is:**

18 **(A) paid by the owner of a tract under IC 13-19-6-2(b) or**
 19 **IC 13-19-6-2(c); and**

20 **(B) payable because the tract is subject to one (1) or more**
 21 **restrictive covenants established to address issues related**
 22 **to an underground storage tank located on the tract.**

23 SECTION 16. IC 13-23-9-1 IS AMENDED TO READ AS
 24 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 1. The administrator of
 25 the excess liability trust fund shall process, approve, and deny requests
 26 made for payments from the excess liability trust fund under sections
 27 2, ~~and 3~~, and 3.5 of this chapter.

28 SECTION 17. IC 13-23-9-3.5 IS ADDED TO THE INDIANA
 29 CODE AS A NEW SECTION TO READ AS FOLLOWS
 30 [EFFECTIVE JULY 1, 2009]: Sec. 3.5. (a) **To receive money from**
 31 **the excess liability trust fund under IC 13-23-8-1(3), a claimant**
 32 **must submit to the administrator of the excess liability trust fund**
 33 **for the administrator's approval a copy of a receipt from the**
 34 **authority for payment of a fee referred to in IC 13-23-8-1(3).**

35 **(b) If, after receiving a receipt submitted under subsection (a),**
 36 **the administrator determines that the receipt is valid, the**
 37 **administrator shall approve the request for money to be paid from**
 38 **the excess liability trust fund for reimbursement of the fee.**

39 **(c) The administrator shall notify the claimant of an approval**
 40 **or a denial of a claim made under subsection (a) not later than**
 41 **sixty (60) days after receiving the request. Except as provided in**
 42 **subsection (f), the administrator shall notify the claimant of all**

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reasons for a denial or partial denial.

(d) Not later than seven (7) days after a request is approved by the administrator under subsection (b), the administrator shall forward a copy of a request approved under this section to the auditor of state.

(e) Not later than thirty (30) days after receiving an approved request under this section, the auditor of state shall pay to the claimant that submitted the approved receipt the approved amount from money available in the excess liability trust fund.

(f) If the administrator denies a claim made under subsection (a), the administrator shall notify the claimant in writing not later than sixty (60) days after receiving the request. The claimant has thirty (30) days after the receipt of the denial to notify the administrator of the claimant's intention to appeal the denial. If the claimant does not notify the administrator of an intention to appeal in the time provided, further review of the application is not required. If an intention to appeal is submitted within the time provided, the administrator has thirty (30) days after the receipt of the notice of the intention to appeal to provide the claimant with all additional reasons for the denial or partial denial of the request or to specify that all reasons have been provided. The claimant has thirty (30) days after receiving notification from the administrator of all additional reasons for the denial or partial denial or notice specifying that all reasons have been provided to file a petition for review of the denial or partial denial.

SECTION 18. IC 13-23-9-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 4. If the administrator denies a request made under section 2, ~~or 3~~, or 3.5 of this chapter, the owner or operator who made the request may appeal the denial under IC 4-21.5 to the office of environmental adjudication under IC 4-21.5-7.

SECTION 19. IC 13-25-5-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 18. (a) If the commissioner issues a certificate to a person under section 16 of this chapter, the governor shall also provide the person with a covenant not to sue for any liability, including future liability, or a claim resulting from or based upon the release or threatened release of a hazardous substance or petroleum that is addressed by an approved voluntary remediation work plan under this chapter.

- (b) A covenant not to sue issued under this section bars suit against:
 - (1) a person who received the certificate of completion under section 16 of this chapter; or

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1 (2) any other person who receives the certificate of completion:
 2 (A) through a legal transfer of the certificate of completion; or
 3 (B) by acquiring property to which the certificate of
 4 completion applies;
 5 from all public or private claims arising under this title or rules adopted
 6 under this title in connection with the release or threatened release of
 7 a hazardous substance or petroleum that was the subject of the
 8 approved voluntary remediation work plan, except as provided in
 9 subsection (c).
 10 (c) A covenant not to sue issued under this section may not apply to
 11 future liability for a condition or the extent of a condition that:
 12 (1) was present:
 13 (A) on property that was involved in an approved and
 14 completed voluntary remediation work plan; and
 15 (B) **at the time the commissioner issued the certificate of**
 16 **completion under section 16 of this chapter; and**
 17 (2) was not known to the commissioner at the time the
 18 commissioner issued the certificate of completion under section
 19 16 of this chapter.
 20 **(d) The commissioner may include in a certificate of completion**
 21 **issued under section 16 of this chapter conditions that must be**
 22 **performed or maintained after issuance of the certificate.**
 23 **(e) The commissioner may include in a covenant not to sue**
 24 **issued under this section conditions that must be performed or**
 25 **maintained after issuance of the covenant.**
 26 ~~(d)~~ **(f)** Except as:
 27 (1) provided under federal law; or
 28 (2) agreed to by a federal governmental entity;
 29 a covenant not to sue issued under this section may not release a person
 30 from liability to the federal government for claims based on federal
 31 law.
 32 ~~(e)~~ **(g)** After an applicant and the department have signed a
 33 voluntary remediation agreement, a person may not bring an action,
 34 including an administrative action, against the applicant or any other
 35 person proceeding under this chapter on behalf of the applicant for any
 36 cause of action arising under this title or rules adopted under this title
 37 and relating to the release or threatened release of a hazardous
 38 substance or petroleum that is the subject of the agreement. However,
 39 this section does not apply if:
 40 (1) the applicant fails to file a proposed voluntary remediation
 41 work plan within the time period established in section 8(a)(8) of
 42 this chapter;

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- 1 (2) the commissioner rejects a proposed voluntary remediation
- 2 work plan submitted in good faith and the rejection is upheld in
- 3 any appeal brought under section 12 of this chapter;
- 4 (3) the applicant or another person proceeding under this chapter
- 5 on behalf of the applicant fails to complete a voluntary
- 6 remediation in accordance with an approved voluntary
- 7 remediation work plan; or
- 8 (4) the commissioner withdraws the commissioner's approval of
- 9 the voluntary remediation work plan and the withdrawal is upheld
- 10 in any appeal under section 19 of this chapter.

11 However, if the commissioner withdraws approval of the plan under
 12 section 19(a)(2) of this chapter, the commissioner may bring an action,
 13 including an administrative action, against the applicant.

14 ~~(f)~~ **(h)** A person who purchases property that is the subject of a
 15 voluntary remediation agreement at the time the property is purchased
 16 may not be subject to an enforcement action to the same extent as an
 17 applicant under subsection ~~(e)~~: **(g)**.

18 SECTION 20. IC 34-30-2-51.5 IS ADDED TO THE INDIANA
 19 CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JULY 1, 2009]: **Sec. 51.5. IC 13-19-6-2(e) (Concerning**
 20 **actions relating to the institutional control registry).**

21 SECTION 21. IC 36-1-2-4.7 IS ADDED TO THE INDIANA CODE
 22 AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JULY
 23 1, 2009]: **Sec. 4.7. "Environmental restrictive ordinance" means,**
 24 **with respect to land, any ordinance that:**

- 25 **(1) is adopted by a municipal corporation; and**
- 26 **(2) limits the use of the land or the activities that may be**
- 27 **performed on or at the land or requires the maintenance of**
- 28 **any engineering control on the land designed to protect**
- 29 **human health or the environment.**

30 SECTION 22. IC 36-1-6-11 IS ADDED TO THE INDIANA CODE
 31 AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JULY
 32 1, 2009]: **Sec. 11. (a) The legislative body of a municipal**
 33 **corporation shall:**

- 34 **(1) give written notice to the department of environmental**
- 35 **management not later than sixty (60) days before amendment**
- 36 **or repeal of an environmental restrictive ordinance; and**
- 37 **(2) give written notice to the Indiana finance authority and**
- 38 **the department of environmental management not later than**
- 39 **thirty (30) days after passage, amendment, or repeal of an**
- 40 **environmental restrictive ordinance.**
- 41 **(b) An environmental restrictive ordinance passed or amended**
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after 2009 by the legislative body of a municipal corporation:

- (1) must state the notice requirements of subsection (a); and**
- (2) is considered adopted only if the subdivision (1) requirement is met.**

SECTION 23. IC 36-2-4-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 8. (a) **Subject to subsection (c)(3)**, an ordinance, order, or resolution is considered adopted when it is signed by the presiding officer. If required, an adopted ordinance, order, or resolution must be promulgated or published according to statute before it takes effect.

(b) An ordinance prescribing a penalty or forfeiture for a violation must, before it takes effect, be published once each week for two (2) consecutive weeks, according to IC 5-3-1. However, if such an ordinance is adopted by the legislative body of a county subject to IC 36-2-3.5 and there is an urgent necessity requiring its immediate effectiveness, it need not be published if:

- (1) the county executive proclaims the urgent necessity; and
- (2) copies of the ordinance are posted in three (3) public places in each of the districts of the county before it takes effect.

(c) **The following apply** in addition to the other requirements of this section:

- (1) An ordinance or resolution passed by the legislative body of a county subject to IC 36-2-3.5 is considered adopted only if it is:**
 - ~~(1)~~ **(A) approved by signature of a majority of the county executive;**
 - ~~(2)~~ **(B) neither approved nor vetoed by a majority of the executive, within ten (10) days after passage by the legislative body; or**
 - ~~(3)~~ **(C) passed over the veto of the executive by a two-thirds (2/3) vote of the legislative body, within sixty (60) days after presentation of the ordinance or resolution to the executive.**
- (2) The legislative body of a county shall:**
 - (A) give written notice to the department of environmental management not later than sixty (60) days before amendment or repeal of an environmental restrictive ordinance; and**
 - (B) give written notice to the Indiana finance authority and the department of environmental management not later than thirty (30) days after passage, amendment, or repeal of an environmental restrictive ordinance.**
- (3) An environmental restrictive ordinance passed or amended after 2009 by the legislative body of a county:**

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(A) must state the notice requirements of subdivision (2); and (B) is considered adopted only if the clause (A) requirement is met.

(d) After an ordinance or resolution passed by the legislative body of a county subject to IC 36-2-3.5 has been signed by the presiding officer, the county auditor shall present it to the county executive, and record the time of the presentation. Within ten (10) days after an ordinance or resolution is presented to it, the executive shall:

- (1) approve the ordinance or resolution, by signature of a majority of the executive, and send the legislative body a message announcing its approval; or
- (2) veto the ordinance or resolution, by returning it to the legislative body with a message announcing its veto and stating its reasons for the veto.

(e) This section does not apply to a zoning ordinance or amendment to a zoning ordinance, or a resolution approving a comprehensive plan, that is adopted under IC 36-7.

(f) An ordinance increasing a building permit fee on new development must:

- (1) be published:
 - (A) one (1) time in accordance with IC 5-3-1; and
 - (B) not later than thirty (30) days after the ordinance is adopted by the legislative body in accordance with IC 5-3-1; and
- (2) delay the implementation of the fee increase for ninety (90) days after the date the ordinance is published under subdivision (1).

SECTION 24. IC 36-3-4-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 14. (a) **Subject to subsection (h)**, an ordinance or resolution passed by a legislative body is considered adopted when it is:

- (1) signed by the presiding officer; and
- (2) if subject to veto, either approved by the executive or passed over ~~his~~ **the executive's** veto by the legislative body, under section 16 of this chapter.

(b) All ordinances and resolutions of a legislative body are subject to veto, except the following:

- (1) An ordinance or resolution, or part of either, providing for the budget or appropriating money for an office or officer of the county provided for by the Constitution of Indiana or for a judicial office or officer.

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- 1 (2) An ordinance or resolution approving or modifying the budget
- 2 of a political subdivision that the legislative body is permitted by
- 3 statute to review.
- 4 (3) A resolution making an appointment that the legislative body
- 5 is authorized to make.
- 6 (4) A resolution selecting officers or employees of the legislative
- 7 body.
- 8 (5) A resolution prescribing rules for the internal management of
- 9 the legislative body.
- 10 (6) A zoning ordinance or amendment to a zoning ordinance, or
- 11 a resolution approving a comprehensive plan, that is adopted
- 12 under IC 36-7.
- 13 (c) An ordinance prescribing a penalty or forfeiture for a violation
- 14 must, before it takes effect, be published in the manner prescribed by
- 15 IC 5-3-1, unless:
- 16 (1) it is published under subsection (d); or
- 17 (2) there is an urgent necessity requiring its immediate
- 18 effectiveness, the executive proclaims the urgent necessity, and
- 19 copies of the ordinance are posted in three (3) public places in the
- 20 county.
- 21 (d) If a legislative body publishes any of its ordinances in book or
- 22 pamphlet form, no other publication is required. If an ordinance
- 23 prescribing a penalty or forfeiture for a violation is published under this
- 24 subsection, it takes effect two (2) weeks after the publication of the
- 25 book or pamphlet. Publication under this subsection, if authorized by
- 26 the legislative body, constitutes presumptive evidence:
- 27 (1) of the ordinances in the book or pamphlet;
- 28 (2) of the date of adoption of the ordinances; and
- 29 (3) that the ordinances have been properly signed, attested,
- 30 recorded, and approved.
- 31 (e) Unless a legislative body provides in an ordinance or resolution
- 32 for a later effective date, the ordinance or resolution takes effect when
- 33 it is adopted, subject to subsections (c) and (d).
- 34 (f) Subsections (a), (c), (d), and (e) do not apply to zoning
- 35 ordinances or amendments to zoning ordinances, or resolutions
- 36 approving comprehensive plans, that are adopted under IC 36-7.
- 37 (g) **The legislative body shall:**
- 38 (1) **give written notice to the department of environmental**
- 39 **management not later than sixty (60) days before amendment**
- 40 **or repeal of an environmental restrictive ordinance; and**
- 41 (2) **give written notice to the Indiana finance authority and**
- 42 **the department of environmental management not later than**

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1 **thirty (30) days after passage, amendment, or repeal of an**
2 **environmental restrictive ordinance.**

3 **(h) An environmental restrictive ordinance passed or amended**
4 **after 2009 by the legislative body of a county:**

- 5 **(1) must state the notice requirements of subsection (g); and**
- 6 **(2) is considered adopted only if the subdivision (1)**
- 7 **requirement is met.**

8 SECTION 25. IC 36-4-6-14 IS AMENDED TO READ AS
9 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 14. (a) **Subject to**
10 **subsection (g)**, an ordinance, order, or resolution passed by the
11 legislative body is considered adopted when it is:

- 12 (1) signed by the presiding officer; and
- 13 (2) either approved by the city executive or passed over ~~his~~ **the**
- 14 **executive's** veto by the legislative body, under section 16 of this
- 15 chapter.

16 If required by statute, an adopted ordinance, order, or resolution must
17 be promulgated or published before it takes effect.

18 (b) An ordinance prescribing a penalty or forfeiture for a violation
19 must, before it takes effect, be published in the manner prescribed by
20 IC 5-3-1, unless:

- 21 (1) it is published under subsection (c); or
- 22 (2) there is an urgent necessity requiring its immediate
- 23 effectiveness, the city executive proclaims the urgent necessity,
- 24 and copies of the ordinance are posted in three (3) public places
- 25 in each of the districts from which members are elected to the
- 26 legislative body.

27 (c) Except as provided in subsection (e), if a city publishes any of
28 its ordinances in book or pamphlet form, no other publication is
29 required. If an ordinance prescribing a penalty or forfeiture for a
30 violation is published under this subsection, it takes effect two (2)
31 weeks after the publication of the book or pamphlet. Publication under
32 this subsection, if authorized by the legislative body, constitutes
33 presumptive evidence:

- 34 (1) of the ordinances in the book or pamphlet;
- 35 (2) of the date of adoption of the ordinances; and
- 36 (3) that the ordinances have been properly signed, attested,
- 37 recorded, and approved.

38 (d) This section does not apply to a zoning ordinance or amendment
39 to a zoning ordinance, or a resolution approving a comprehensive plan,
40 that is adopted under IC 36-7.

41 (e) An ordinance increasing a building permit fee on new
42 development must:

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- 1 (1) be published:
- 2 (A) one (1) time in accordance with IC 5-3-1; and
- 3 (B) not later than thirty (30) days after the ordinance is
- 4 adopted by the legislative body in accordance with IC 5-3-1;
- 5 and
- 6 (2) delay the implementation of the fee increase for ninety (90)
- 7 days after the date the ordinance is published under subdivision
- 8 (1).

9 **(f) The legislative body shall:**

- 10 (1) give written notice to the department of environmental
- 11 management not later than sixty (60) days before amendment
- 12 or repeal of an environmental restrictive ordinance; and
- 13 (2) give written notice to the Indiana finance authority and
- 14 the department of environmental management not later than
- 15 thirty (30) days after passage, amendment, or repeal of an
- 16 environmental restrictive ordinance.

17 **(g) An environmental restrictive ordinance passed or amended**
18 **after 2009 by the legislative body of a county:**

- 19 (1) must state the notice requirements of subsection (f); and
- 20 (2) is considered adopted only if the subdivision (1)
- 21 requirement is met.

22 SECTION 26. IC 36-5-2-10 IS AMENDED TO READ AS
23 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 10. (a) **Subject to**
24 **subsection (f)**, an ordinance, order, or resolution passed by the
25 legislative body is considered adopted when it is signed by the
26 executive. If required by statute, an adopted ordinance, order, or
27 resolution must be promulgated or published before it takes effect.

28 (b) An ordinance prescribing a penalty for a violation must, before
29 it takes effect, be published in the manner prescribed by IC 5-3-1,
30 unless:

- 31 (1) it is published under IC 36-1-5; or
- 32 (2) it declares an emergency requiring its immediate effectiveness
- 33 and is posted in:
- 34 (A) one (1) public place in each district in the town; or
- 35 (B) a number of public places in the town equal to the number
- 36 of town legislative body members, if the town has abolished
- 37 legislative body districts under section 4.1 of this chapter.

38 (c) This section does not apply to a zoning ordinance or amendment
39 to a zoning ordinance, or a resolution approving a comprehensive plan,
40 that is adopted under IC 36-7.

41 (d) An ordinance increasing a building permit fee on new
42 development must:

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- 1 (1) be published:
- 2 (A) one (1) time in accordance with IC 5-3-1; and
- 3 (B) not later than thirty (30) days after the ordinance is
- 4 adopted by the legislative body in accordance with IC 5-3-1;
- 5 and
- 6 (2) delay the implementation of the fee increase for ninety (90)
- 7 days after the date the ordinance is published under subdivision
- 8 (1).
- 9 **(e) The legislative body shall:**
- 10 (1) give written notice to the department of environmental
- 11 management not later than sixty (60) days before amendment
- 12 or repeal of an environmental restrictive ordinance; and
- 13 (2) give written notice to the Indiana finance authority and
- 14 the department of environmental management not later than
- 15 thirty (30) days after passage, amendment, or repeal of an
- 16 environmental restrictive ordinance.
- 17 **(f) An environmental restrictive ordinance passed or amended**
- 18 **after 2009 by the legislative body of a county:**
- 19 (1) must state the notice requirements of subsection (e); and
- 20 (2) is considered adopted only if the subdivision (1)
- 21 requirement is met.
- 22 **SECTION 27. [EFFECTIVE JULY 1, 2009] (a) The Indiana**
- 23 **finance authority shall do the following:**
- 24 (1) Conduct a study to develop recommendations for policies
- 25 and legislation necessary to implement the institutional
- 26 control registry established by IC 13-19-6-1, as added by this
- 27 act, to inventory, monitor compliance, report noncompliance,
- 28 and impose fees as described in IC 13-19-6-2, as added by this
- 29 act, with respect to:
- 30 (A) real property covenants that meet the description of a
- 31 restrictive covenant under IC 13-11-2-193.5, except that
- 32 they were recorded before 2010; and
- 33 (B) real property covenants that meet the description of a
- 34 restrictive covenant under IC 13-11-2-193.5, except that
- 35 they are not imposed as a part of a plan, or a
- 36 determination exercising enforcement discretion or of no
- 37 further action being required, approved by either or both
- 38 of the following:
- 39 (i) The department of environmental management.
- 40 (ii) The United States Environmental Protection Agency.
- 41 (2) Conduct a study and develop recommendations
- 42 concerning the feasibility of incorporating notice of:

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1 **(A) restrictive covenants (as defined in IC 13-11-2-193.5);**
2 **and**
3 **(B) environmental restrictive ordinances (as defined in**
4 **IC 36-1-2-4.7, as added by this act);**
5 **into the "One Call" system managed by the Indiana**
6 **Underground Plant Protection Service under IC 8-1-26.**
7 **(3) Before September 1, 2010, report the results of the studies**
8 **under subdivisions (1) and (2) to the environmental quality**
9 **service council.**
10 **(b) This SECTION expires January 1, 2011.**

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COMMITTEE REPORT

Madam President: The Senate Committee on Energy and Environmental Affairs, to which was referred Senate Bill No. 460, 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:

Page 1, delete lines 1 through 15.

Delete pages 2 through 4.

Page 5, delete lines 1 through 31 begin a new paragraph and insert:

"SECTION 1. IC 13-11-2-16, AS AMENDED BY P.L.235-2005, SECTION 126, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 16. (a) "Authority", for purposes of IC 13-22-10, refers to the Indiana hazardous waste facility site approval authority.

(b) "Authority", for purposes of IC 13-18-13, IC 13-18-21, ~~and~~ IC 13-19-5, **and IC 13-19-6**, refers to the Indiana finance authority created under IC 4-4-11.

SECTION 2. IC 13-11-2-71.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 71.2. "Environmental restrictive ordinance" means, with respect to land, any ordinance that:**

- (1) is adopted by a municipal corporation (as defined in IC 36-1-2-10); and**
- (2) limits the use of the land or the activities that may be performed on or at the land or requires the maintenance of any engineering control on the land designed to protect human health or the environment.**

SECTION 3. IC 13-11-2-71.4 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 71.4. "Environmental trust fund", for purposes of IC 13-19-6, refers to the environmental trust fund established by IC 13-19-6-1.**

SECTION 4. IC 13-11-2-110.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 110.2. "Institutional control registry", for purposes of IC 13-19-6, refers to the institutional control registry established by IC 13-19-6-1.**

SECTION 5. IC 13-11-2-148, AS AMENDED BY P.L.221-2007, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 148. (a) "Operator", for purposes of IC 13-18-10, means the person in direct or responsible charge or control of one (1) or more confined feeding operations.

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(b) "Operator", for purposes of IC 13-18-11 and environmental management laws, means the person in direct or responsible charge and supervising the operation of:

- (1) a water treatment plant;
- (2) a wastewater treatment plant; or
- (3) a water distribution system.

(c) "Operator", for purposes of IC 13-20-6, means a corporation, a limited liability company, a partnership, a business association, a unit, or an individual who is a sole proprietor that is one (1) of the following:

- (1) A broker.
- (2) A person who manages the activities of a transfer station that receives municipal waste.
- (3) A transporter.

(d) "Operator", for purposes of IC 13-23, except as provided in ~~subsection~~ **subsections (e), (g), and (h)** means a person:

- (1) in control of; or
 - (2) having responsibility for;
- the daily operation of an underground storage tank.

(e) "Operator", for purposes of IC 13-23-13, does not include the following:

- (1) A person who:
 - (A) does not participate in the management of an underground storage tank;
 - (B) is otherwise not engaged in the:
 - (i) production;
 - (ii) refining; and
 - (iii) marketing;
 of regulated substances; and
 - (C) holds evidence of ownership, primarily to protect the owner's security interest in the tank.
- (2) A person who:
 - (A) does not own or lease, directly or indirectly, the facility or business at which the underground storage tank is located;
 - (B) does not participate in the management of the facility or business described in clause (A); and
 - (C) is engaged only in:
 - (i) filling;
 - (ii) gauging; or
 - (iii) filling and gauging;
 the product level in the course of delivering fuel to an underground storage tank.
- (3) A political subdivision (as defined in IC 36-1-2-13) or unit of

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federal or state government that:

(A) acquires ownership or control of an underground storage tank on a brownfield because of:

- (i) bankruptcy;
- (ii) foreclosure;
- (iii) tax delinquency, including an acquisition under IC 6-1.1-24 or IC 6-1.1-25;
- (iv) abandonment;
- (v) the exercise of eminent domain, including any purchase of property once an offer to purchase has been tendered under IC 32-24-1-5;
- (vi) receivership;
- (vii) transfer from another political subdivision or unit of federal or state government;
- (viii) acquiring an area needing redevelopment (as defined in IC 36-7-1-3) or conducting redevelopment activities, specifically under IC 36-7-14-22.2, IC 36-7-14-22.5, IC 36-7-15.1-15.1, IC 36-7-15.1-15.2, and IC 36-7-15.1-15.5;
- (ix) other circumstances in which the political subdivision or unit of federal or state government involuntarily acquired an interest in the property because of the political subdivision's or unit's function as sovereign; or
- (x) any other means to conduct remedial actions on a brownfield; and

(B) is engaged only in activities in conjunction with:

- (i) investigation or remediation of hazardous substances, petroleum, and other pollutants associated with a brownfield, including complying with land use restrictions and institutional controls; or
- (ii) monitoring or closure of an underground storage tank; unless existing contamination on the brownfield is exacerbated due to gross negligence or intentional misconduct by the political subdivision or unit of federal or state government.

(f) For purposes of subsection (e)(3)(B), reckless, willful, or wanton misconduct constitutes gross negligence.

(g) "Operator" does not include a person that after June 30, 2009, meets, for purposes of the determination under IC 13-23-13 of liability for a release from an underground storage tank, the exemption criteria under Section 107(q) of CERCLA (42 U.S.C. 9607(q)) that apply for purposes of the determination of liability for a release of a hazardous substance.

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(h) "Operator" does not include a person that meets, for purposes of the determination under IC 13-23-13 of liability for a release from an underground storage tank, the exemption criteria under Section 107(r) of CERCLA (42 U.S.C. 9607(r)) that apply for purposes of the determination of liability for a release of a hazardous substance, except that the person acquires ownership of the facility after June 30, 2009.

SECTION 6. IC 13-11-2-150, AS AMENDED BY P.L.221-2007, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 150. (a) "Owner", for purposes of IC 13-23 (except as provided in subsections (b), (c), ~~and (d)~~ (d), (e), and (f)) means:

- (1) for an underground storage tank that:
 - (A) was:
 - (i) in use on November 8, 1984; or
 - (ii) brought into use after November 8, 1984;
 for the storage, use, or dispensing of regulated substances, a person who owns the underground storage tank; or
 - (B) is:
 - (i) in use before November 8, 1984; but
 - (ii) no longer in use on November 8, 1984;
 a person who owned the tank immediately before the discontinuation of the tank's use; or
- (2) a person who conveyed ownership or control of the underground storage tank to a political subdivision (as defined in IC 36-1-2-13) or unit of federal or state government because of:
 - (A) bankruptcy;
 - (B) foreclosure;
 - (C) tax delinquency, including a conveyance under IC 6-1.1-24 or IC 6-1.1-25;
 - (D) abandonment;
 - (E) the exercise of eminent domain, including any purchase of property once an offer to purchase has been tendered under IC 32-24-1-5;
 - (F) receivership;
 - (G) acquiring an area needing redevelopment (as defined in IC 36-7-1-3) or conducting redevelopment activities, specifically under IC 36-7-14-22.2, IC 36-7-14-22.5, IC 36-7-15.1-15.1, IC 36-7-15.1-15.2, and IC 36-7-15.1-15.5;
 - (H) other circumstances in which a political subdivision or unit of federal or state government involuntarily acquired ownership or control because of the political subdivision's or

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unit's function as sovereign; or

(I) any other means to conduct remedial actions on a brownfield;

if the person was a person described in subdivision (1) immediately before the person conveyed ownership or control of the underground storage tank.

(b) "Owner", for purposes of IC 13-23-13, does not include a person who:

(1) does not participate in the management of an underground storage tank;

(2) is otherwise not engaged in the:

(A) production;

(B) refining; and

(C) marketing;

of regulated substances; and

(3) holds indicia of ownership primarily to protect the owner's security interest in the tank.

(c) "Owner", for purposes of IC 13-23, does not include a political subdivision (as defined in IC 36-1-2-13) or unit of federal or state government that acquired ownership or control of an underground storage tank because of:

(1) bankruptcy;

(2) foreclosure;

(3) tax delinquency, including an acquisition under IC 6-1.1-24 or IC 6-1.1-25;

(4) abandonment;

(5) the exercise of eminent domain, including any purchase of property once an offer to purchase has been tendered under IC 32-24-1-5;

(6) receivership;

(7) transfer from another political subdivision or unit of federal or state government;

(8) acquiring an area needing redevelopment (as defined in IC 36-7-1-3) or conducting redevelopment activities, specifically under IC 36-7-14-22.2, IC 36-7-14-22.5, IC 36-7-15.1-15.1, IC 36-7-15.1-15.2, and IC 36-7-15.1-15.5;

(9) other circumstances in which the political subdivision or unit of federal or state government involuntarily acquired ownership or control because of the political subdivision's or unit's function as sovereign; or

(10) any other means to conduct remedial actions on a brownfield;

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unless the political subdivision or unit of federal or state government causes or contributes to the release or threatened release of a regulated substance, in which case the political subdivision or unit of federal or state government is subject to IC 13-23 in the same manner and to the same extent as a nongovernmental entity under IC 13-23.

(d) "Owner", for purposes of IC 13-23, does not include a nonprofit corporation that acquired ownership or control of an underground storage tank to assist and support a political subdivision's revitalization and reuse of a brownfield for noncommercial purposes, including conservation, preservation, and recreation, unless the nonprofit corporation causes or contributes to the release or threatened release of a regulated substance, in which case the nonprofit corporation is subject to IC 13-23 in the same manner and to the same extent as any other nongovernmental entity under IC 13-23.

(e) "Owner" does not include a person that after June 30, 2009, meets, for purposes of the determination under IC 13-23-13 of liability for a release from an underground storage tank, the exemption criteria under Section 107(q) of CERCLA (42 U.S.C. 9607(q)) that apply for purposes of the determination of liability for a release of a hazardous substance.

(f) "Owner" does not include a person that meets, for purposes of the determination under IC 13-23-13 of liability for a release from an underground storage tank, the exemption criteria under Section 107(r) of CERCLA (42 U.S.C. 9607(r)) that apply for purposes of the determination of liability for a release of a hazardous substance, except that the person acquires ownership of the facility after June 30, 2009.

SECTION 7. IC 13-11-2-151, AS AMENDED BY P.L.221-2007, SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 151. (a) "Owner or operator", for purposes of IC 13-24-1, means the following:

- (1) For a petroleum facility, a person who owns or operates the facility.
- (2) For a petroleum facility where title or control has been conveyed because of:
 - (A) bankruptcy;
 - (B) foreclosure;
 - (C) tax delinquency, including a conveyance under IC 6-1.1-24 or IC 6-1.1-25;
 - (D) abandonment;
 - (E) the exercise of eminent domain, including any purchase of property once an offer to purchase has been tendered under

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IC 32-24-1-5;

(F) receivership;

(G) acquiring an area needing redevelopment (as defined in IC 36-7-1-3) or conducting redevelopment activities, specifically under IC 36-7-14-22.2, IC 36-7-14-22.5, IC 36-7-15.1-15.1, IC 36-7-15.1-15.2, and IC 36-7-15.1-15.5;

(H) other circumstances in which a political subdivision (as defined in IC 36-1-2-13) or unit of federal or state government involuntarily acquired title or control because of the political subdivision's or unit's function as sovereign; or

(I) any other means to conduct remedial actions on a brownfield;

to a political subdivision or unit of federal or state government, a person who owned, operated, or otherwise controlled the petroleum facility immediately before title or control was conveyed.

(b) Subject to subsection (c), the term does not include a political subdivision or unit of federal or state government that acquired ownership or control of the facility through:

(1) bankruptcy;

(2) foreclosure;

(3) tax delinquency, including an acquisition under IC 6-1.1-24 or IC 6-1.1-25;

(4) abandonment;

(5) the exercise of eminent domain, including any purchase of property once an offer to purchase has been tendered under IC 32-24-1-5;

(6) receivership;

(7) transfer from another political subdivision or unit of federal or state government;

(8) acquiring an area needing redevelopment (as defined in IC 36-7-1-3) or conducting redevelopment activities, specifically under IC 36-7-14-22.2, IC 36-7-14-22.5, IC 36-7-15.1-15.1, IC 36-7-15.1-15.2, and IC 36-7-15.1-15.5;

(9) other circumstances in which the political subdivision or unit of federal or state government involuntarily acquired ownership or control because of the political subdivision's or unit's function as sovereign; or

(10) any other means to conduct remedial actions on a brownfield.

(c) The term includes a political subdivision or unit of federal or state government that causes or contributes to the release or threatened release of a regulated substance, in which case the political subdivision

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or unit of federal or state government is subject to IC 13-24-1:

- (1) in the same manner; and
- (2) to the same extent;

as a nongovernmental entity under IC 13-24-1.

(d) The term does not include a person who:

- (1) does not participate in the management of a petroleum facility;
- (2) is otherwise not engaged in the:
 - (A) production;
 - (B) refining; and
 - (C) marketing;
 of petroleum; and
- (3) holds evidence of ownership in a petroleum facility, primarily to protect the owner's security interest in the petroleum facility.

(e) The term does not include a nonprofit corporation that acquired ownership or control of a facility to assist and support a political subdivision's revitalization and reuse of a brownfield for noncommercial purposes, including conservation, preservation, and recreation, unless the nonprofit corporation causes or contributes to the release or threatened release of a regulated substance, in which case the nonprofit corporation is subject to IC 13-24-1 in the same manner and to the same extent as any other nongovernmental entity under IC 13-24-1.

(f) The term does not include a person that after June 30, 2009, meets, for purposes of the determination under IC 13-24-1 of liability for a release of petroleum, the exemption criteria under Section 107(q) of CERCLA (42 U.S.C. 9607(q)) that apply for purposes of the determination of liability for a release of a hazardous substance.

(g) The term does not include a person that meets, for purposes of the determination under IC 13-24-1 of liability for a release of petroleum, the exemption criteria under Section 107(r) of CERCLA (42 U.S.C. 9607(r)) that apply for purposes of the determination of liability for a release of a hazardous substance, except that the person acquires ownership of the facility after June 30, 2009.

SECTION 8. IC 13-11-2-233.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 233.5. "Tract", for purposes of this chapter **and IC 13-19-6**, means any area of land that is under common ownership and is contained within a continuous border."

Page 5, delete lines 41 through 42, begin a new paragraph and insert:



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"SECTION 10. IC 13-14-2-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 6. Except as provided in IC 13-14-6, the commissioner may proceed in court, by appropriate action, to:

- (1) enforce any final order of the commissioner or of one (1) of the boards;
- (2) collect any penalties or fees;
- (3) procure or secure compliance with this title or any other law that the department has the duty or power to enforce;
- (4) procure compliance with any standard or rule of one (1) of the boards; or
- (5) enforce a restrictive covenant (as defined in IC 13-11-2-193.5) **in accordance with the terms of the covenant if the covenant is:**

- (A) executed before July 1, 2009;
- (B) approved by the commissioner; and
- (C) created in connection with any:
 - (i) remediation;
 - (ii) closure;
 - (iii) cleanup; or
 - (iv) corrective action; or
 - (v) **determination exercising enforcement discretion or of no further action being required;** approved by the department under this title; in accordance with the terms of the covenant; or

(6) enforce a restrictive covenant (as defined in IC 13-11-2-193.5) in accordance with the terms of the covenant if the covenant is:

- (A) executed after June 30, 2009; and
- (B) created in connection with any of the following approved by the department under this title:
 - (i) A remediation.
 - (ii) A closure.
 - (iii) A cleanup.
 - (iv) A corrective action.
 - (v) A **determination exercising enforcement discretion or of no further action being required.**

Page 6, delete lines 1 through 27.

Page 6, line 33, delete "may:" and insert "**shall:**".

Page 6, line 38, delete "or".

Page 6, line 39, after "action" insert "**, or determination exercising enforcement discretion or of no further action being required**".

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Page 6, line 41, delete "IC 4-4-11-46(d) or IC 4-4-11-46(e)" and insert "**IC 13-19-6-2(b) or IC 13-19-6-2(c)**".

Page 7, between lines 3 and 4, begin a new paragraph and insert:

"SECTION 12. IC 13-19-6-1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 1. (a) The following are established:**

(1) The institutional control registry.

(2) The environmental trust fund.

(b) The operations of the institutional control registry are funded solely from the environmental trust fund.

(c) The environmental trust fund:

(1) shall be administered, held, and managed by the authority;

(2) may not be used for any purpose other than funding the operations of the authority related to the management of the institutional control registry; and

(3) consists of:

(A) fees deposited in the environmental trust fund under section 2 of this chapter;

(B) appropriations to the environmental trust fund from the general assembly;

(C) grants, gifts, and donations intended for deposit in the environmental trust fund; and

(D) interest, premiums, gains, or other earnings that accrue from money in the environmental trust fund.

(d) The expenses of administering the institutional control registry and the environmental trust fund shall be paid from money in the environmental trust fund. Subject to subsection (e), the authority shall invest the money in the environmental trust fund not needed to meet the current obligations related to the management of the institutional control registry in accordance with an investment policy adopted by the authority. Interest, premiums, gains, and other earnings from the investments shall be credited to the environmental trust fund. Money in the environmental trust fund at the end of a state fiscal year does not revert to the state general fund.

(e) As an alternative to subsection (d), the authority may invest or cause to be invested all or a part of the environmental trust fund in a fiduciary account with a trustee that is a financial institution.

SECTION 13. IC 13-19-6-2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 2. (a) The authority shall administer the institutional control registry by doing the following:**

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(1) Inventory by tract restrictive covenants throughout Indiana that are:

(A) recorded as described in IC 13-11-2-193.5(3) after 2009; and

(B) established as a part of a plan approved, determination exercising enforcement discretion made, or determination of no further action being required made by either or both of the following:

(i) The department.

(ii) The United States Environmental Protection Agency.

(2) Create a computerized registry by tract of restrictive covenants referred to in subdivision (1) that is accessible to the public.

(3) Create a computerized registry of environmental restrictive ordinances throughout Indiana.

(4) Give notice reasonably calculated to inform the public of the registries referred to in subdivisions (2) and (3).

(5) Monitor compliance throughout Indiana with restrictive covenants referred to in subdivision (1).

(6) Report to the department and the attorney general noncompliance with restrictive covenants referred to in subdivision (1).

(7) Collect fees under subsection (d).

(8) Deposit fees collected under subdivision (7) in the environmental trust fund.

(b) Except as provided in subsection (d), the owner of a tract subject to one (1) or more restrictive covenants referred to in subsection (a)(1) is liable for a fee in the amount of five thousand dollars (\$5,000).

(c) The authority shall establish a schedule of graduated fees based on the relative costs of monitoring compliance under subsection (a)(5) among various tracts of real property subject to restrictive covenants. The schedule of graduated fees under this subsection applies in lieu of the fee under subsection (b) to owners of real property subject to restrictive covenants throughout Indiana that are recorded as described in IC 13-11-2-193.5(3) after the effective date of the schedule of graduated fees established by the authority.

(d) A fee imposed under subsection (b) or (c) is payable to the authority for deposit into the environmental trust fund not later than thirty (30) days after the recording of the restrictive covenant. If the fee is not paid by that deadline:

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(1) the authority shall provide to the attorney general the information necessary for commencement of a collection action; and

(2) the department may void its approval of the:

- (A) remediation;
- (B) closure;
- (C) cleanup;
- (D) corrective action; or
- (E) determination exercising enforcement discretion or of no further action being required;

under which the restrictive covenant was executed.

(e) The following are immune from civil or criminal liability for any act or omission related to the performance of duties under subsection (a)(1) through (a)(3):

- (1) The state and the authority.
- (2) Officers, agents, and employees of the state and the authority, either personally or in their official capacities.

(f) No person, including the state, the authority, the institutional control registry, a political subdivision (as defined in IC 36-1-2-13), or a private person, may rely on the accuracy and completeness of information in the following:

- (1) An inventory under subsection (a)(1).
- (2) A registry under subsection (a)(2) or (a)(3).

SECTION 14. IC 13-19-6-3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 3. (a) The authority may do the following:

- (1) Employ:
 - (A) fiscal consultants;
 - (B) engineers;
 - (C) special counsel;
 - (D) accountants; and
 - (E) any other consultants, employees, and agents;that the authority considers necessary to carry out the purposes of this chapter.

(2) Fix and pay the compensation of persons employed under subdivision (1) from money available in the environmental trust fund.

(b) Notwithstanding any other law, no direction given by the authority to a political subdivision under this chapter, service provided by the authority to a political subdivision under this chapter, or other action allowed or taken by the authority under this chapter is a defense for or otherwise excuses:

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- (1) any act of a political subdivision that violates the law; or
 (2) any failure by a political subdivision to act as required by law."

Page 7, line 23, delete "IC 4-4-11-46(d) or" and insert "**IC 13-19-6-2(b) or IC 13-19-6-2(c)**";

Page 7, line 24, delete "IC 4-4-11-46(e)";

Page 7, line 39, delete "environmental trust" and insert "**authority**".

Page 8, line 39, delete "[EFFECTIVE UPON PASSAGE]" and insert "[EFFECTIVE JULY 1, 2009]".

Page 10, delete lines 24 through 42 begin a new paragraph and insert:

"SECTION 20. IC 34-30-2-51.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 51.5. IC 13-19-6-2(e) (Concerning actions relating to the institutional control registry)**."

Page 11, delete lines 1 through 6.

Page 11, line 7, delete "IC 36-1-2-15.7" and insert "**IC 36-1-2-4.7**".

Page 11, line 9, delete "Sec. 15.7. "Restrictive" and insert "**Sec. 4.7. "Environmental restrictive"**".

Page 11, line 22, delete "a" and insert "**an environmental**".

Page 11, line 23, delete "environmental trust" and insert "**Indiana finance authority and the department of environmental management**".

Page 11, line 25, delete "a" and insert "**an environmental**".

Page 11, line 26, delete "A" and insert "**An environmental**".

Page 12, line 19, delete "a" and insert "**an environmental**".

Page 12, line 20, delete "environmental trust" and insert "**Indiana finance authority and the department of environmental management**".

Page 12, line 22, delete "a" and insert "**an environmental**".

Page 12, line 23, delete "A" and insert "**An environmental**".

Page 14, line 22, delete "a" and insert "**an environmental**".

Page 14, line 23, delete "environmental trust" and insert "**Indiana finance authority and the department of environmental management**".

Page 14, line 25, delete "a" and insert "**an environmental**".

Page 14, line 26, delete "A" and insert "**An environmental**".

Page 15, line 35, delete "a" and insert "**an environmental**".

Page 15, line 36, delete "environmental trust" and insert "**Indiana finance authority and the department of environmental management**".

Page 15, line 38, delete "a" and insert "**an environmental**".

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Page 15, line 39, delete "A" and insert "**An environmental**".

Page 16, line 34, delete "a" and insert "**an environmental**".

Page 16, line 35, delete "environmental trust" and insert "**Indiana finance authority and the department of environmental management**".

Page 16, line 37, delete "a" and insert "**an environmental**".

Page 16, line 38, delete "A" and insert "**An environmental**".

Delete page 17.

Page 18, delete lines 1 through 38, begin a new paragraph and insert:

"SECTION 27. [EFFECTIVE JULY 1, 2009] (a) **The Indiana finance authority shall do the following:**

(1) **Conduct a study to develop recommendations for policies and legislation necessary to implement the institutional control registry established by IC 13-19-6-1, as added by this act, to inventory, monitor compliance, report noncompliance, and impose fees as described in IC 13-19-6-2, as added by this act, with respect to:**

(A) **real property covenants that meet the description of a restrictive covenant under IC 13-11-2-193.5, except that they were recorded before 2010; and**

(B) **real property covenants that meet the description of a restrictive covenant under IC 13-11-2-193.5, except that they are not imposed as a part of a plan, or a determination exercising enforcement discretion or of no further action being required, approved by either or both of the following:**

(i) **The department of environmental management.**

(ii) **The United States Environmental Protection Agency.**

(2) **Conduct a study and develop recommendations concerning the feasibility of incorporating notice of:**

(A) **restrictive covenants (as defined in IC 13-11-2-193.5); and**

(B) **environmental restrictive ordinances (as defined in IC 36-1-2-4.7, as added by this act);**

into the "One Call" system managed by the Indiana Underground Plant Protection Service under IC 8-1-26.

(3) **Before September 1, 2010, report the results of the studies under subdivisions (1) and (2) to the environmental quality service council.**

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(b) This SECTION expires January 1, 2011."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass and be reassigned to the Senate Committee on Tax and Fiscal Policy.

(Reference is to SB 460 as introduced.)

GARD, Chairperson

Committee Vote: Yeas 8, Nays 0.

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