

# COMMITTEE REPORT

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## MADAM PRESIDENT:

The Senate Committee on Tax and Fiscal Policy, 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:

- 1 Page 1, delete line 15, begin a new line block indented and insert:  
2 " **(2) limits, regulates, or prohibits any of the following with**  
3 **respect to groundwater:**  
4 **(A) Withdrawal.**  
5 **(B) Human consumption.**  
6 **(C) Any other use."**  
7 Page 2, delete lines 1 through 3.  
8 Page 9, between lines 11 and 12, begin a new paragraph and insert:  
9 "SECTION 8. IC 13-11-2-193.5, AS AMENDED BY P.L.18-2008,  
10 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
11 JULY 1, 2009]: Sec. 193.5. "Restrictive covenant" means, with respect  
12 to land, any deed restriction, restrictive covenant, environmental  
13 covenant, environmental notice, or other restriction or obligation that:  
14 (1) limits the use of the land or the activities that may be  
15 performed on or at the land or requires the maintenance of any  
16 engineering control on the land designed to protect human health  
17 or the environment;  
18 (2) by its terms is intended to run with the land and be binding on  
19 successors;  
20 (3) is recorded with the county recorder's office in the county in  
21 which the land is located; ~~and~~

- 1 (4) explains how it can be modified or terminated;
- 2 **(5) grants the department access to the land;**
- 3 **(6) requires notice to a transferee of:**
- 4 **(A) the land; or**
- 5 **(B) an interest in the land;**
- 6 **of the existence of the restrictive covenant; and**
- 7 **(7) identifies the environmental files at the department that**
- 8 **apply to the land."**
- 9 Page 10, line 41, delete "IC 13-19-6-1" and insert "IC 13-19-6".
- 10 Page 10, line 42, delete "NEW SECTION" and insert "NEW
- 11 CHAPTER".
- 12 Page 11, line 1, delete "Sec. 1. (a) The following are established:".
- 13 Page 11, between lines 1 and 2, begin a new paragraph and insert:
- 14 **"Chapter 19. Institutional Control Registry and Environmental**
- 15 **Trust Fund**
- 16 **Sec. 1. The following are established:".**
- 17 Page 11, delete lines 8 through 10, begin a new line block indented
- 18 and insert:
- 19 **"(2) may be used only for the purposes of this chapter; and".**
- 20 Page 11, delete lines 34 through 35.
- 21 Page 11, line 36, delete "1, 2009]: Sec. 2." and insert:
- 22 **"Sec. 2."**
- 23 Page 12, line 13, delete "Monitor" and insert **"Develop a program**
- 24 **to monitor"**.
- 25 Page 12, line 21, delete "(d)," and insert "(c)".
- 26 Page 12, delete lines 25 through 33, begin a new paragraph and
- 27 insert:
- 28 **"(c) The authority shall consider the following to establish a**
- 29 **schedule of graduated fees:**
- 30 **(1) The relative costs of monitoring compliance under**
- 31 **subsection (a)(5) among various tracts of real property**
- 32 **subject to restrictive covenants.**
- 33 **(2) Whether the tract owner is a governmental entity.**
- 34 **(3) Any other factor the authority considers relevant in setting**
- 35 **graduated fees.**
- 36 **The schedule of graduated fees established under this subsection**
- 37 **applies in lieu of the fee under subsection (b) to owners of real**
- 38 **property subject to restrictive covenants throughout Indiana that**
- 39 **are recorded as described in IC 13-11-2-193.5(3) after the effective**
- 40 **date of the schedule."**
- 41 Page 12, line 41, delete "void its" and insert **"withhold, until the fee**
- 42 **is paid, the department's"**.

1 Page 13, delete lines 19 through 20.

2 Page 13, line 21, delete "1, 2009]: Sec. 3." and insert:

3 "Sec. 3."

4 Page 15, between lines 31 and 32, begin a new paragraph and insert:

5 "SECTION 20. IC 13-25-5-8.5 IS AMENDED TO READ AS  
6 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 8.5. (a) A voluntary  
7 remediation work plan must specify the remediation objectives for the  
8 site.

9 (b) The remediation objectives for each hazardous substance and  
10 any petroleum on the site shall be based on:

11 (1) background levels of hazardous substances and petroleum that  
12 occur naturally on the site; or

13 (2) an assessment of the risks pursuant to subsection (d) posed by  
14 the hazardous substance or petroleum presently found on the site  
15 taking into consideration the following:

16 (A) Expected future use of the site.

17 (B) Measurable risks to human health, natural resources, or the  
18 environment based on the:

19 (i) activities that take place; and

20 (ii) environmental impact;

21 on the site.

22 (c) If the:

23 (1) nature and extent of the hazardous substance or petroleum is  
24 adequately characterized under the voluntary remediation work  
25 plan; and

26 (2) the level of the hazardous substance or petroleum is  
27 demonstrated to be below:

28 (A) background levels of the hazardous substances and  
29 petroleum that occur naturally on the site; or

30 (B) the risk based levels developed under subsection (d);

31 additional action is not necessary to protect human health or the  
32 environment.

33 (d) Risk based remediation objectives shall be based on one (1) of  
34 the following:

35 (1) Levels of hazardous substances and petroleum calculated by  
36 the department using standard equations and default values for  
37 particular hazardous substances or petroleum.

38 (2) Levels of hazardous substances and petroleum calculated  
39 using site specific data for the default values in the department's  
40 standard equations.

41 (3) Levels of hazardous substances and petroleum developed  
42 based on site specific risk assessments that take into account site

1 specific factors.

2 **(e) The department shall consider and give effect to**  
 3 **environmental restrictive ordinances in evaluating risk based**  
 4 **remediation proposals."**

5 Page 16, line 20, delete "The commissioner may include in a" and  
 6 insert "A".

7 Page 16, line 21, after "chapter" insert "**may include**".

8 Page 17, delete lines 27 through 42, begin a new line block indented  
 9 and insert:

10 **"(2) limits, regulates, or prohibits one (1) or more of the**  
 11 **following with respect to groundwater:**

12 **(A) Withdrawal.**

13 **(B) Human consumption.**

14 **(C) Any other use.**

15 SECTION 24. IC 36-1-6-11 IS ADDED TO THE INDIANA CODE  
 16 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 17 1, 2009]: **Sec. 11. (a) The legislative body of a municipal**  
 18 **corporation shall:**

19 **(1) subject to subsection (b), give written notice to the**  
 20 **department of environmental management not later than**  
 21 **sixty (60) days before amendment or repeal of an**  
 22 **environmental restrictive ordinance; and**

23 **(2) give written notice to the Indiana finance authority and**  
 24 **the department of environmental management not later than**  
 25 **thirty (30) days after passage, amendment, or repeal of an**  
 26 **environmental restrictive ordinance.**

27 **(b) Upon written request by the legislative body, the department**  
 28 **of environmental management may waive the notice requirement**  
 29 **of subsection (a)(1).**

30 **(c) An environmental restrictive ordinance passed or amended**  
 31 **after 2009 by the legislative body must state the notice**  
 32 **requirements of subsection (a).**

33 **(d) The failure of an environmental restrictive ordinance to**  
 34 **comply with subsection (c) does not void the ordinance.**

35 SECTION 25. IC 36-2-4-8 IS AMENDED TO READ AS  
 36 FOLLOWS [EFFECTIVE JULY 1, 2009]: **Sec. 8. (a) An ordinance,**  
 37 **order, or resolution is considered adopted when it is signed by the**  
 38 **presiding officer. If required, an adopted ordinance, order, or resolution**  
 39 **must be promulgated or published according to statute before it takes**  
 40 **effect.**

41 **(b) An ordinance prescribing a penalty or forfeiture for a violation**  
 42 **must, before it takes effect, be published once each week for two (2)**

1 consecutive weeks, according to IC 5-3-1. However, if such an  
 2 ordinance is adopted by the legislative body of a county subject to  
 3 IC 36-2-3.5 and there is an urgent necessity requiring its immediate  
 4 effectiveness, it need not be published if:

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

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

10 **(1)** An ordinance or resolution passed by the legislative body of  
 11 a county subject to IC 36-2-3.5 is considered adopted only if it is:

12 ~~(1)~~ **(A)** approved by signature of a majority of the county  
 13 executive;

14 ~~(2)~~ **(B)** neither approved nor vetoed by a majority of the  
 15 executive, within ten (10) days after passage by the legislative  
 16 body; or

17 ~~(3)~~ **(C)** passed over the veto of the executive by a two-thirds  
 18 (2/3) vote of the legislative body, within sixty (60) days after  
 19 presentation of the ordinance or resolution to the executive.

20 **(2) The legislative body of a county shall:**

21 **(A) subject to subdivision (3), give written notice to the**  
 22 **department of environmental management not later than**  
 23 **sixty (60) days before amendment or repeal of an**  
 24 **environmental restrictive ordinance; and**

25 **(B) give written notice to the Indiana finance authority and**  
 26 **the department of environmental management not later**  
 27 **than thirty (30) days after passage, amendment, or repeal**  
 28 **of an environmental restrictive ordinance.**

29 **(3) Upon written request by the legislative body, the**  
 30 **department of environmental management may waive the**  
 31 **notice requirement of subdivision (2)(A).**

32 **(4) An environmental restrictive ordinance passed or**  
 33 **amended after 2009 by the legislative body must state the**  
 34 **notice requirements of subdivision (2).**

35 **(5) The failure of an environmental restrictive ordinance to**  
 36 **comply with subdivision (4) does not void the ordinance.**

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

- 42 (1) approve the ordinance or resolution, by signature of a majority

1 of the executive, and send the legislative body a message  
2 announcing its approval; or

3 (2) veto the ordinance or resolution, by returning it to the  
4 legislative body with a message announcing its veto and stating  
5 its reasons for the veto.

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

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

11 (1) be published:

12 (A) one (1) time in accordance with IC 5-3-1; and

13 (B) not later than thirty (30) days after the ordinance is  
14 adopted by the legislative body in accordance with IC 5-3-1;  
15 and

16 (2) delay the implementation of the fee increase for ninety (90)  
17 days after the date the ordinance is published under subdivision

18 (1).

19 SECTION 26. IC 36-3-4-14 IS AMENDED TO READ AS  
20 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 14. (a) An ordinance  
21 or resolution passed by a legislative body is considered adopted when  
22 it is:

23 (1) signed by the presiding officer; and

24 (2) if subject to veto, either approved by the executive or passed  
25 over ~~his~~ **the executive's** veto by the legislative body, under  
26 section 16 of this chapter.

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

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

33 (2) An ordinance or resolution approving or modifying the budget  
34 of a political subdivision that the legislative body is permitted by  
35 statute to review.

36 (3) A resolution making an appointment that the legislative body  
37 is authorized to make.

38 (4) A resolution selecting officers or employees of the legislative  
39 body.

40 (5) A resolution prescribing rules for the internal management of  
41 the legislative body.

42 (6) A zoning ordinance or amendment to a zoning ordinance, or

1 a resolution approving a comprehensive plan, that is adopted  
2 under IC 36-7.

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

- 6 (1) it is published under subsection (d); or  
7 (2) there is an urgent necessity requiring its immediate  
8 effectiveness, the executive proclaims the urgent necessity, and  
9 copies of the ordinance are posted in three (3) public places in the  
10 county.

11 (d) If a legislative body publishes any of its ordinances in book or  
12 pamphlet form, no other publication is required. If an ordinance  
13 prescribing a penalty or forfeiture for a violation is published under this  
14 subsection, it takes effect two (2) weeks after the publication of the  
15 book or pamphlet. Publication under this subsection, if authorized by  
16 the legislative body, constitutes presumptive evidence:

- 17 (1) of the ordinances in the book or pamphlet;  
18 (2) of the date of adoption of the ordinances; and  
19 (3) that the ordinances have been properly signed, attested,  
20 recorded, and approved.

21 (e) Unless a legislative body provides in an ordinance or resolution  
22 for a later effective date, the ordinance or resolution takes effect when  
23 it is adopted, subject to subsections (c) and (d).

24 (f) Subsections (a), (c), (d), and (e) do not apply to zoning  
25 ordinances or amendments to zoning ordinances, or resolutions  
26 approving comprehensive plans, that are adopted under IC 36-7.

27 **(g) The legislative body shall:**

- 28 **(1) subject to subsection (h), give written notice to the**  
29 **department of environmental management not later than**  
30 **sixty (60) days before amendment or repeal of an**  
31 **environmental restrictive ordinance; and**  
32 **(2) give written notice to the Indiana finance authority and**  
33 **the department of environmental management not later than**  
34 **thirty (30) days after passage, amendment, or repeal of an**  
35 **environmental restrictive ordinance.**

36 **(h) Upon written request by the legislative body, the department**  
37 **of environmental management may waive the notice requirement**  
38 **of subsection (g)(1).**

39 **(i) An environmental restrictive ordinance passed or amended**  
40 **after 2009 by the legislative body must state the notice**  
41 **requirements of subsection (g).**

42 **(j) The failure of an environmental restrictive ordinance to**

1 **comply with subsection (i) does not void the ordinance.**

2 SECTION 27. IC 36-4-6-14 IS AMENDED TO READ AS  
3 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 14. (a) An ordinance,  
4 order, or resolution passed by the legislative body is considered  
5 adopted when it is:

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

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

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

- 15 (1) it is published under subsection (c); or  
16 (2) there is an urgent necessity requiring its immediate  
17 effectiveness, the city executive proclaims the urgent necessity,  
18 and copies of the ordinance are posted in three (3) public places  
19 in each of the districts from which members are elected to the  
20 legislative body.

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

- 28 (1) of the ordinances in the book or pamphlet;  
29 (2) of the date of adoption of the ordinances; and  
30 (3) that the ordinances have been properly signed, attested,  
31 recorded, and approved.

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

35 (e) An ordinance increasing a building permit fee on new  
36 development must:

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



1 days after the date the ordinance is published under subdivision  
2 (1).

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

- 4 **(1) subject to subsection (g), give written notice to the**  
5 **department of environmental management not later than**  
6 **sixty (60) days before amendment or repeal of an**  
7 **environmental restrictive ordinance; and**  
8 **(2) give written notice to the Indiana finance authority and**  
9 **the department of environmental management not later than**  
10 **thirty (30) days after passage, amendment, or repeal of an**  
11 **environmental restrictive ordinance.**

12 **(g) Upon written request by the legislative body, the department**  
13 **of environmental management may waive the notice requirement**  
14 **of subsection (f)(1).**

15 **(h) An environmental restrictive ordinance passed or amended**  
16 **after 2009 by the legislative body must state the notice**  
17 **requirements of subsection (f).**

18 **(i) The failure of an environmental restrictive ordinance to**  
19 **comply with subsection (h) does not void the ordinance.**

20 SECTION 28. IC 36-5-2-10 IS AMENDED TO READ AS  
21 FOLLOWS [EFFECTIVE JULY 1, 2009]: Sec. 10. (a) An ordinance,  
22 order, or resolution passed by the legislative body is considered  
23 adopted when it is signed by the executive. If required by statute, an  
24 adopted ordinance, order, or resolution must be promulgated or  
25 published before it takes effect.

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

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

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

39 (d) An ordinance increasing a building permit fee on new  
40 development must:

- 41 (1) be published:  
42 (A) one (1) time in accordance with IC 5-3-1; and

1 (B) not later than thirty (30) days after the ordinance is  
2 adopted by the legislative body in accordance with IC 5-3-1;  
3 and

4 (2) delay the implementation of the fee increase for ninety (90)  
5 days after the date the ordinance is published under subdivision  
6 (1).

7 **(e) The legislative body shall:**

8 **(1) subject to subsection (f), give written notice to the**  
9 **department of environmental management not later than**  
10 **sixty (60) days before amendment or repeal of an**  
11 **environmental restrictive ordinance; and**

12 **(2) give written notice to the Indiana finance authority and**  
13 **the department of environmental management not later than**  
14 **thirty (30) days after passage, amendment, or repeal of an**  
15 **environmental restrictive ordinance.**

16 **(f) Upon written request by the legislative body, the department**  
17 **of environmental management may waive the notice requirement**  
18 **of subsection (e)(1).**

19 **(g) An environmental restrictive ordinance passed or amended**  
20 **after 2009 by the legislative body must state the notice**  
21 **requirements of subsection (e).**

22 **(h) The failure of an environmental restrictive ordinance to**  
23 **comply with subsection (g) does not void the ordinance."**

24 Delete pages 18 through 22.

25 Page 23, delete lines 1 through 21.

26 Renumber all SECTIONS consecutively.

(Reference is to SB 460 as printed February 10, 2009.)

**and when so amended that said bill do pass .**

Committee Vote: Yeas 9, Nays 1.

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**Senator Hershman, Chairperson**