

## SENATE BILL No. 206

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### DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 13-13-5-1.5; IC 13-14-2-9; IC 13-15; IC 13-20-10.5-3.5; IC 13-21-5-2; IC 13-25-4; IC 13-26.

**Synopsis:** IDEM agency bill. Allows the department of environmental management (IDEM) to use electronic means to complete mail delivery communications, accept applications, post public notices, and provide access to documents for public comment. Requires existing easements to be identified in a corrective action plan before an environmental restrictive covenant is approved. Creates a cause of action for a responsible party to sue a property owner to receive access to a site to perform remediation activities. Requires the IDEM to make a determination, within 90 days, concerning prior approval for constructing or expanding a biomass anaerobic digestion facility or biomass gasification facility.

**Effective:** July 1, 2024.

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## Niemeyer

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January 9, 2024, read first time and referred to Committee on Environmental Affairs.

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Second Regular Session of the 123rd General Assembly (2024)

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 2023 Regular Session of the General Assembly.

# SENATE BILL No. 206

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 13-13-5-1.5 IS ADDED TO THE INDIANA CODE  
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 2024]: **Sec. 1.5. (a) Subject to subsection (b), the department, to**  
4 **increase efficiency and communication in carrying out the**  
5 **purposes of section 1 of this chapter, may determine as appropriate**  
6 **when to use electronic means to do the following:**  
7 (1) **Deliver mail communications required by rule.**  
8 (2) **Accept applications required by rule.**  
9 (3) **Post public notices required by rule.**  
10 (4) **Provide access to documents for public comment required**  
11 **by rule.**  
12 (5) **Store documents for future access required by rule.**  
13 (b) **The department shall comply with IC 13-14-13 when using**  
14 **electronic means for the purposes described in subsection (a).**  
15 SECTION 2. IC 13-14-2-9, AS ADDED BY P.L.220-2014,  
16 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
17 JULY 1, 2024]: **Sec. 9. (a) This section applies to a restrictive covenant**



1 created in connection with a remediation project conducted under:

- 2 (1) **IC 13-22;**  
 3 (2) IC 13-23;  
 4 ~~(3)~~ (3) IC 13-24;  
 5 ~~(4)~~ (4) IC 13-25-4; or  
 6 ~~(5)~~ (5) IC 13-25-5.

7 (b) **A restrictive covenant created in accordance with**  
 8 **IC 13-25-4-24 may be modified or removed if a change of**  
 9 **conditions or an advancement in science or technology permits any**  
 10 **of the following:**

11 ~~(1) a change of conditions or an advancement in science or~~  
 12 ~~technology permits a modification of the conditions and~~  
 13 ~~restrictions imposed by a restrictive covenant; and~~

14 ~~(2) the (1) A modification of the to a conditions and restrictions~~  
 15 ~~condition or restriction contained in a imposed by the~~  
 16 ~~restrictive covenant. would not increase the potential hazards to~~  
 17 ~~human health or the environment;~~

18 ~~(2) The termination of the restrictive covenant if the~~  
 19 ~~conditions for which the covenant was originally placed upon~~  
 20 ~~the property have been demonstrated to no longer exist by the~~  
 21 ~~person seeking termination of the restrictive covenant.~~

22 the commissioner may, under subsection (c), authorize the filing in the  
 23 office of the county recorder of a supplemental recording recognizing  
 24 the modification of the conditions and restrictions of the restrictive  
 25 covenant to reflect the change in conditions or advancement in science  
 26 or technology.

27 (c) The commissioner may **approve a modification or termination**  
 28 **under this section and** authorize the filing of a supplemental recording  
 29 **in the office of the county recorder under subsection (b) if:**

30 ~~(1) the commissioner determines that the proposed~~  
 31 ~~modification or termination would not increase the potential~~  
 32 ~~hazards to human health or the environment; and~~

33 ~~(2) the owner of the real property that is subject the person~~  
 34 ~~seeking a modification or termination of to the restrictive~~  
 35 ~~covenant submits to the department:~~

36 ~~(1) (A) a written request for the modification or termination~~  
 37 ~~of the covenant;~~

38 ~~(2) (B) a copy of the proposed modification or termination of~~  
 39 ~~the restrictive covenant; and~~

40 ~~(3) (C) information indicating why the covenant should be~~  
 41 ~~modified: sufficient data to demonstrate that the~~  
 42 ~~modification or termination will not result in unacceptable~~



**risk to human health and the environment.**

The information submitted under ~~subdivision (3)~~ **subdivision (2)(C)** must be sufficient to enable the department to determine whether the proposed modification of the restrictive covenant will increase the potential hazards to human health or the environment. The commissioner may request additional information ~~from the owner of the real property~~ if necessary to ~~the making of~~ **make** a determination under this subsection.

(d) The board shall adopt rules under IC 4-22-2 and IC 13-14-9 providing for the recovery of administrative and personnel expenses incurred by the state in evaluating proposed modifications of restrictive covenants under this section.

SECTION 3. IC 13-15-4-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2024]: Sec. 7. (a) For purposes of calculating a period under sections 1 through 6 of this chapter, the period:

(1) begins on the earlier of the date:

(A) an application and any required fee is received and stamped received by the department; ~~or~~

(B) marked by the department on a certified mail return receipt accompanying an application and any required fee; ~~and or~~

**(C) notice sent by the department to the applicant confirming that the department has received an application and any required fees; and**

(2) ends on the date a decision is issued to approve or deny the application under IC 4-21.5-3-4 or IC 4-21.5-3-5.

(b) If an applicant pays an application fee with a check that is not covered with sufficient funds, a period described under sections 1 through 6 of this chapter is suspended until the applicant pays the permit application fee.

SECTION 4. IC 13-15-4-10, AS AMENDED BY P.L.140-2013, SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2024]: Sec. 10. The commissioner may suspend the processing of an application, and the period described under sections 1 through 6 of this chapter is suspended, if one (1) of the following occurs:

(1) The department determines that the application is incomplete and has mailed ~~or electronically sent~~ a notice of deficiency to the applicant that specifies the parts of the application that:

(A) do not contain adequate information for the department to process the application; or

(B) are not consistent with applicable law.



1 The period described under sections 1 through 6 of this chapter  
 2 shall be suspended during the first two (2) notices of deficiency  
 3 sent to an applicant under this subdivision. If more than two (2)  
 4 notices of deficiency are issued on an application, the period may  
 5 not be suspended unless the applicant agrees in writing to defer  
 6 processing of the application pending the applicant's response to  
 7 the notice of deficiency. A notice of deficiency may include a  
 8 request for the applicant to conduct tests or sampling to provide  
 9 information necessary for the department to process the  
 10 application. If an applicant's response does not contain complete  
 11 information to satisfy all deficiencies described in a notice of  
 12 deficiency, the department shall notify the applicant not later than  
 13 thirty (30) working days after receiving the response. The  
 14 commissioner shall resume processing the application, and the  
 15 period described under sections 1 through 6 of this chapter  
 16 resumes on the earlier of the date the department receives and  
 17 stamps as received the applicant's complete information, or the  
 18 date marked by the department on a certified mail return receipt  
 19 accompanying the applicant's complete information, **or a notice**  
 20 **sent by the department to the applicant confirming that the**  
 21 **department has received the applicant's complete**  
 22 **information.**

23 (2) The commissioner receives a written request from an  
 24 applicant to:

25 (A) withdraw; or

26 (B) defer processing of;

27 the application for the purposes of resolving an issue related to a  
 28 permit or to provide additional information concerning the  
 29 application.

30 (3) The department is required by federal law or by an agreement  
 31 with the United States Environmental Protection Agency for a  
 32 federal permit program to transmit a copy of the proposed permit  
 33 to the administrator of the United States Environmental Protection  
 34 Agency for review and possible objections before the permit may  
 35 be issued. The period described under sections 1 through 6 of this  
 36 chapter shall be suspended from the time the department submits  
 37 the proposed permit to the administrator for review until:

38 (A) the department receives the administrator's concurrence or  
 39 objection to the issuance of the proposed permit; or

40 (B) the period established in federal law by which the  
 41 administrator is required to make objections expires without  
 42 the administrator having filed an objection.



- 1 (4) A board initiates emergency rulemaking under section 3(b) of  
 2 this chapter to revise the period described under sections 1  
 3 through 6 of this chapter.
- 4 SECTION 5. IC 13-15-5-3 IS AMENDED TO READ AS  
 5 FOLLOWS [EFFECTIVE JULY 1, 2024]: Sec. 3. (a) Except as  
 6 provided in section 2 of this chapter:
- 7 (1) after the comment period; or  
 8 (2) if a public hearing is held, after the public hearing;  
 9 the commissioner shall issue the permit or deny the permit application.
- 10 (b) Unless the commissioner states otherwise in writing, the  
 11 commissioner's action under this section is effective immediately.
- 12 (c) Notice of the commissioner's action shall be served upon the  
 13 following:
- 14 (1) The permit applicant.  
 15 (2) Each person who submitted written comments under section  
 16 1 of this chapter.  
 17 (3) Each person who requests notice of the permit determination.  
 18 (4) The Administrator of the United States Environmental  
 19 Protection Agency if service is required under the applicable  
 20 federal law.
- 21 (d) If the commissioner's action is likely to have a significant impact  
 22 upon persons who are not readily identifiable, the commissioner may  
 23 publish notice of the action on the permit application in a newspaper  
 24 of general circulation in the county affected by the proposed permit **or**  
 25 **the commissioner may use electronic means to publish notice.**
- 26 SECTION 6. IC 13-15-6-7 IS AMENDED TO READ AS  
 27 FOLLOWS [EFFECTIVE JULY 1, 2024]: Sec. 7. (a) In computing a  
 28 period of time under this chapter, the day of the act, event, or default  
 29 from which the designated period of time begins to run is not included.  
 30 The last day of the computed period is to be included unless it is a:
- 31 (1) Saturday;  
 32 (2) Sunday;  
 33 (3) legal holiday under a state statute; or  
 34 (4) day that the office in which the act is to be done is closed  
 35 during regular business hours.
- 36 (b) A period runs until the end of the next day after a day described  
 37 in subsections (a)(1) through (a)(4).
- 38 (c) A period of time under this chapter that commences when a  
 39 person is served with a paper **or electronic notice** commences with  
 40 respect to a particular person on the earlier of the date that:
- 41 (1) the person is personally served with the notice; **or**  
 42 (2) a notice for the person is deposited in the United States mail;



1           **or**

2           **(3) a notice for the person is electronically delivered.**

3           (d) If a notice is served through the United States mail **or**  
4 **electronically**, three (3) days must be added to a period that  
5 commences upon service of that notice.

6           SECTION 7. IC 13-20-10.5-3.5 IS ADDED TO THE INDIANA  
7 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
8 [EFFECTIVE JULY 1, 2024]: **Sec. 3.5. (a) The department shall**  
9 **make a determination under section 1 of this chapter concerning**  
10 **prior approval for the construction or expansion of a biomass**  
11 **anaerobic digestion facility or biomass gasification facility for**  
12 **which the only input is biomass not later than ninety (90) days**  
13 **after the date on which the department receives the completed**  
14 **application for prior approval, including all required supplemental**  
15 **information, unless the department and the applicant agree to a**  
16 **longer time.**

17           **(b) Subject to subsection (a), the department may conduct any**  
18 **inquiry or investigation that:**

19           **(1) is consistent with the department's duties under this**  
20 **chapter; and**

21           **(2) the department considers necessary;**

22 **before making a determination under section 1 of this chapter.**

23           **(c) If the department fails to make a determination within the**  
24 **time frame provided in subsection (a), the applicant may request**  
25 **and receive a refund of the fee paid by the applicant when the**  
26 **application for prior approval was submitted. The department**  
27 **shall continue to review the application and approve or deny the**  
28 **application as soon as practicable.**

29           SECTION 8. IC 13-21-5-2 IS AMENDED TO READ AS  
30 FOLLOWS [EFFECTIVE JULY 1, 2024]: **Sec. 2. (a) A district must**  
31 **conduct at least one (1) regularly scheduled public meeting each month**  
32 **before the creation, amendment, or alteration of the district solid waste**  
33 **management plan. The board shall give notice of each public meeting**  
34 **in accordance with IC 5-14-1.5. In addition, a copy of the schedule of**  
35 **regularly scheduled monthly meetings shall annually be submitted for**  
36 **publication to a newspaper of general circulation in each county of the**  
37 **district, and the board may use electronic means to post public**  
38 **notice.** The notice:

39           **(1) must be at least two (2) columns wide by five (5) inches long;**  
40 **and**

41           **(2) may not be placed in the part of the newspaper where legal**  
42 **notices and classified advertisements appear.**



1 (b) Public comments shall be taken at each board meeting.

2 SECTION 9. IC 13-25-4-9 IS AMENDED TO READ AS  
3 FOLLOWS [EFFECTIVE JULY 1, 2024]: Sec. 9. (a) The  
4 commissioner may proceed in court, by appropriate action, to:

5 (1) compel a responsible person to undertake a removal or  
6 remedial action with respect to a release or threatened release of  
7 a hazardous substance from a facility or site in Indiana; or

8 (2) obtain an order to enter upon private or public property to  
9 carry out an appropriate response under the environmental  
10 management laws if the commissioner cannot identify or locate  
11 another person responsible for carrying out the response who:

12 (A) is willing to carry out the response and capable of doing  
13 so; or

14 (B) can be compelled to carry out the response under  
15 subdivision (1).

16 (b) The commissioner may issue an administrative order for the  
17 purpose set forth in subsection (a)(1).

18 (c) **Any person:**

19 (1) **potentially liable under section 8 of this chapter; or**

20 (2) **participating in voluntary remediation under IC 13-25-5;**  
21 **that is conducting a removal of suspected or actual contamination**  
22 **or remedial action under oversight by the department of suspected**  
23 **or actual contamination, and who requires access to conduct the**  
24 **remediation on real or personal property that is not owned by the**  
25 **person, may enter upon the property to conduct any activity**  
26 **necessary to further or complete the remedial action, remediation,**  
27 **removal, or response activity if there is a written agreement**  
28 **between the person conducting the remediation and the owner of**  
29 **the property authorizing the entry onto the property.**

30 (d) **If, after good faith efforts, the person undertaking the**  
31 **remediation and the property owner fail to reach an agreement**  
32 **concerning access to the property, the person undertaking the**  
33 **remediation shall seek an order from the court of the county where**  
34 **the real or personal property is located directing the property**  
35 **owner to grant reasonable access to the property. The court may**  
36 **proceed in the action in a summary manner.**

37 (e) **The court may, on its own or by motion of either party,**  
38 **bifurcate the proceedings to expeditiously dispose of the claim for**  
39 **access and resolve claims for damages at a subsequent hearing.**

40 (f) **Relief may include, individually or in combination, the**  
41 **following:**

42 (1) **A temporary or permanent injunction, including a**





1 temporary or permanent injunction preventing the property  
 2 owner from interfering with any remediation on the property.

3 **(2) Assessment of the person undertaking the remediation for**  
 4 **reasonable costs associated with any disruption in operations**  
 5 **on the property.**

6 **(3) Assessment of the person undertaking the remediation for**  
 7 **any costs to return the property to its condition before the**  
 8 **commencement of the remediation.**

9 **(4) Requiring a person undertaking the remediation to take all**  
 10 **reasonable measures to:**

11 **(A) minimize disruption to the property;**

12 **(B) minimize activities conducted on the property; and**

13 **(C) return the property to its condition;**

14 **before the commencement of remediation.**

15 **(5) A requirement that the person undertaking the**  
 16 **remediation indemnify the owner of the property for any:**

17 **(A) damages;**

18 **(B) penalties; or**

19 **(C) liabilities;**

20 **resulting from the remediation.**

21 **(6) A requirement that the person undertaking the**  
 22 **remediation indemnify the owner of the property for any**  
 23 **liability resulting from the entry of persons onto the property**  
 24 **to perform the remediation.**

25 **(7) Award court costs and reasonable attorney's fees for the**  
 26 **party undertaking the remediation in the event the property**  
 27 **owner:**

28 **(A) breaches a prior access agreement; or**

29 **(B) unreasonably revokes a prior access agreement.**

30 **(8) Award court costs and reasonable attorney's fees if the**  
 31 **party undertaking the remediation pursues a claim for access**  
 32 **to the property under this section and the court issues an**  
 33 **order granting access to the property.**

34 **(9) Punitive damages against the property owner if the party**  
 35 **undertaking the remediation establishes by a preponderance**  
 36 **of the evidence that the property owner's:**

37 **(A) refusal to enter into an access agreement;**

38 **(B) breach of an access agreement; or**

39 **(C) revocation of an access agreement was in bad faith.**

40 **(g) The court shall promptly issue any access order sought**  
 41 **under this section upon a showing that:**

42 **(1) a reasonable possibility exists that contamination from**



1 another site has migrated onto the owner's property; or  
 2 (2) access to the property is reasonable and necessary to  
 3 remediate contamination.

4 **The presence of an applicable department oversight document or**  
 5 **a remediation obligation under law involving the property for**  
 6 **which access is sought shall constitute prima facie evidence**  
 7 **sufficient to support the issuance of an order.**

8 (h) **Unless the court otherwise orders for notice and for good**  
 9 **cause shown, an action for an access order shall not be joined with**  
 10 **nongermane issues against the owner of the property for which**  
 11 **access is sought or another person who may be liable for the**  
 12 **contamination. Nongermane issues shall include:**

- 13 (1) **issues concerning contribution;**  
 14 (2) **treble damages; or**  
 15 (3) **other damages involving either the contamination or the**  
 16 **remediation.**

17 (i) **The department may not impose or seek to impose any civil**  
 18 **or civil administrative penalties upon any person for failure to**  
 19 **perform a remediation on property not owned by the person within**  
 20 **the time schedule required by regulation or agreement if:**

- 21 (1) **the failure to perform the remediation was the result of an**  
 22 **inability of the person to enter upon real or personal property**  
 23 **owned by another person; and**  
 24 (2) **the person took all appropriate action under this section to**  
 25 **obtain access to the property.**

26 (j) **Nothing shall be construed as limiting the rights of the owner**  
 27 **of the property against which the access order is issued to initiate**  
 28 **a civil action to seek any damages available under law.**

29 (k) **Nothing shall be construed as limiting the rights of the**  
 30 **person conducting the remediation from initiating any subsequent**  
 31 **civil action against the owner of the property upon which access**  
 32 **was ordered.**

33 SECTION 10. IC 13-25-4-24, AS AMENDED BY P.L.220-2014,  
 34 SECTION 34, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 35 JULY 1, 2024]: Sec. 24. (a) ~~This section applies to real~~ **Subject to the**  
 36 **requirements of this section, an environmental restrictive covenant**  
 37 **shall be required for** property that is:

- 38 (1) **the site of an existing or former hazardous waste facility that**  
 39 **is or was subject to regulation under:**  
 40 (A) **IC 13-22-2 through IC 13-22-8 and IC 13-22-13 through**  
 41 **IC 13-22-14; or**  
 42 (B) **Subchapter III of the federal Solid Waste Disposal Act (42**



- 1 U.S.C. 6921 through 6939e); or  
 2 (2) a site  
 3 (A) on which a hazardous substance has been:  
 4 (i) deposited;  
 5 (ii) stored; or  
 6 (iii) disposed of; and  
 7 (B) that is or was listed on the Comprehensive Environmental  
 8 Response, Compensation, and Liability Information System  
 9 (CERCLIS) in accordance with Section 116 of CERCLA (42  
 10 U.S.C. 9616);  
 11 if more than an insignificantly small amount of a hazardous substance  
 12 remains on or beneath the surface of that property after the partial or  
 13 final closure of a hazardous waste facility located on the property or the  
 14 completion of a remedial action on the property under CERCLA or this  
 15 chapter: on which a hazardous substance or petroleum has been:  
 16 (A) deposited;  
 17 (B) stored; or  
 18 (C) disposed of;  
 19 if the property still retains an amount of a hazardous substance or  
 20 petroleum constituent above remediation standards consistent with  
 21 the current or intended use of the property after the partial or final  
 22 closure of the hazardous waste facility, the completion of any  
 23 response required under CERCLA or this chapter, or the  
 24 completion of any response required under IC 13-23 or IC 13-24.  
 25 (b) The owner or party responsible for the corrective action or  
 26 response at of real property described in subsection (a) shall **do the**  
 27 **following:** execute and record, in the office of the county recorder of  
 28 the county in which the property is located, a restrictive covenant  
 29 applying to the property if the commissioner determines that a  
 30 restrictive covenant meeting the requirements set forth in subsection  
 31 (c) is necessary to protect the public health or welfare or the  
 32 environment from unreasonable risk of future exposure to a hazardous  
 33 substance:  
 34 (1) Investigate the real property records for the site to  
 35 determine if the site has preexisting encumbrances as  
 36 described in subsection (f) that may affect the feasibility of the  
 37 use of a restrictive covenant as part of a response or  
 38 corrective action plan for the site.  
 39 (2) Provide the results of the encumbrance investigation to the  
 40 commissioner as part of the proposed response or corrective  
 41 action plan.  
 42 (c) The commissioner shall approve the use of a restrictive



1 covenant if the covenant is determined to be necessary to protect  
 2 human health or the environment from an unreasonable risk of  
 3 future exposure to a hazardous substance or petroleum constituent,  
 4 and has been evaluated and determined to meet the requirements  
 5 of this section and IC 13-25-5-8.5.

6 (d) Upon approval of the restrictive covenant, the owner or  
 7 party responsible described in subsection (b) shall execute and  
 8 record, in the office of the county recorder of the county in which  
 9 the property is located, a restrictive covenant applying to the  
 10 property.

11 (e) A restrictive covenant ~~required~~ **proposed** under this section  
 12 must:

13 (1) to the **maximum** extent feasible, describe:

14 (A) the identity, quantity, and location of every hazardous  
 15 substance **or petroleum constituent**:

- 16 (i) deposited;
- 17 (ii) stored;
- 18 (iii) disposed of; or
- 19 (iv) placed;

20 on the property; and

21 (B) the extent to which each hazardous substance **or**  
 22 **petroleum constituent** remains on the property; and

23 (2) incorporate the conditions and restrictions that the  
 24 commissioner considers necessary to assure that the future use of  
 25 the property will not disturb the final cover, any liners, or any  
 26 components of the hazardous substance **or petroleum**  
 27 containment system on the property, or disturb the function of the  
 28 monitoring system on the property, unless the commissioner finds  
 29 that the disturbance:

30 (A) is necessary to the proposed use of the property and will  
 31 not increase the potential hazards to human health or to the  
 32 environment; or

33 (B) is necessary to mitigate a threat to human health or to the  
 34 environment.

35 (f) **A restrictive covenant may not be used as a means of**  
 36 **response or corrective action on real property that has preexisting**  
 37 **easements or encumbrances that may allow disturbance of the site,**  
 38 **unless any such encumbrance or easement is made subordinate to**  
 39 **the restrictive covenant, requiring notification to the department**  
 40 **before disturbing the site. Any such encumbrances or easements**  
 41 **shall be identified in the proposed restrictive covenant and the**  
 42 **covenant shall include the requirement of subordination and**



1 **notification prior to disturbance to the site subject to the covenant.**  
 2 **Encumbrances subject to this subsection include easements and**  
 3 **rights-of-way for the following:**

- 4 (1) **Sewer lines.**
- 5 (2) **Water distribution systems.**
- 6 (3) **Underground infrastructure systems.**
- 7 (4) **Oil and gas pipelines.**

8 ~~(d)~~ (g) A restrictive covenant required by this section is subject to  
 9 modification under IC 13-14-2-9.

10 SECTION 11. IC 13-26-2-6, AS AMENDED BY P.L.152-2021,  
 11 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 12 JULY 1, 2024]: Sec. 6. (a) Except as provided in section 9 of this  
 13 chapter, the hearing officer shall fix a time and place inside or within  
 14 ten (10) miles of the proposed district for the hearing on any matter for  
 15 which a hearing is authorized under this chapter.

16 (b) The hearing officer shall make a reasonable effort to provide  
 17 notice of the hearing as follows:

18 (1) By publication of notice two (2) times each week for two (2)  
 19 consecutive weeks:

20 (A) with each notice:

21 (i) published in at least two (2) newspapers of general  
 22 circulation in each of the counties, in whole or in part, in the  
 23 district; ~~and~~

24 (ii) at a minimum, including a legal notice and a  
 25 prominently displayed three (3) inches by five (5) inches  
 26 advertisement; ~~or~~ **and**

27 **(iii) published through electronic means in a manner that**  
 28 **maximizes notice of the hearing; or**

29 (B) with the first publication of notice in the newspapers  
 30 described in clause (A) and all subsequent publications of  
 31 notice:

32 (i) in accordance with IC 5-3-5 and

33 ~~(ii)~~ on the official ~~web site~~ **website** of each of the counties,  
 34 in whole or in part, in the district; **or**

35 **(ii) in an electronic manner that maximizes notice of the**  
 36 **hearing to the impacted individuals.**

37 (2) By United States mail **or electronically** sent at least two (2)  
 38 weeks before the hearing to the following:

39 (A) The fiscal and executive bodies of each county with  
 40 territory in the proposed district.

41 (B) The executive of all other eligible entities with territory in  
 42 the proposed district, including the executive of a city or town



- 1 that has:
- 2 (i) a municipal sewage works under IC 36-9-23; or
- 3 (ii) a public sanitation department under IC 36-9-25;
- 4 having extraterritorial jurisdiction within the boundaries of the
- 5 area to be included in the proposed district.
- 6 (C) The state and any of its agencies owning, controlling, or
- 7 leasing land within the proposed district, excluding highways
- 8 and public thoroughfares owned or controlled by the Indiana
- 9 department of transportation.
- 10 (D) Each sewage disposal company holding a certificate of
- 11 territorial authority under IC 8-1-2-89 respecting territory in
- 12 the proposed district.
- 13 (3) By making a reasonable effort to provide notice of the hearing
- 14 by regular United States mail, postage prepaid, mailed at least two
- 15 (2) weeks before the hearing to each freeholder within the
- 16 proposed district **or electronically at least two (2) weeks before**
- 17 **the hearing to each freeholder within the proposed district.**
- 18 (4) By including the date on which the hearing is to be held and
- 19 a brief description of:
  - 20 (A) the subject of the petition, including a description of the
  - 21 general boundaries of the area to be included in the proposed
  - 22 district; and
  - 23 (B) the locations where copies of the petition are available for
  - 24 viewing.
- 25 SECTION 12. IC 13-26-5-6.5, AS AMENDED BY P.L.152-2021,
- 26 SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 27 JULY 1, 2024]: Sec. 6.5. A district that intends to extend service within
- 28 its territory shall provide notice to all owners of property to be served
- 29 by the proposed extension of service in the following manner not later
- 30 than sixty (60) days from the date of the decision to extend service:
  - 31 (1) By publication one (1) time each week for three (3)
  - 32 consecutive weeks:
    - 33 (A) with each publication of notice:
      - 34 (i) in at least two (2) newspapers of general circulation in
      - 35 each of the counties, in whole or in part, of the district
      - 36 affected by the proposed extension of service; ~~or~~
      - 37 (ii) if there is only one (1) newspaper of general circulation
      - 38 in a county, a single publication satisfies the requirement of
      - 39 this subdivision; or
      - 40 **(iii) published through electronic means in a manner that**
      - 41 **maximizes notice of the hearing; or**
      - 42 (B) with the first publication of notice made in a newspaper or



1 newspapers described in clause (A) and the two (2) subsequent  
2 publications of notice:

- 3 (i) in accordance with IC 5-3-5 and
- 4 ~~(ii)~~ on the official ~~web site~~ **website** of the district; **or**
- 5 **(ii) in an electronic manner that maximizes notice of the**
- 6 **hearing to the impacted individuals.**

7 (2) By United States mail, postage prepaid, mailed to each  
8 freeholder within the territory to which the district proposes to  
9 extend service **or electronically at least two (2) weeks before**  
10 **the hearing to each freeholder within the proposed district.**

11 SECTION 13. IC 13-26-11-12, AS AMENDED BY P.L.152-2021,  
12 SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
13 JULY 1, 2024]: Sec. 12. After introduction of the ordinance initially  
14 fixing rates or charges but before the ordinance is finally adopted,  
15 notice of the hearing setting forth the proposed schedule of the rates or  
16 charges must be given **electronically or** by publication one (1) time  
17 each week for two (2) weeks:

- 18 (1) with each publication of notice:
- 19 (A) in a newspaper of general circulation in each of the
- 20 counties with territory in the district; or
- 21 **(B) published through electronic means in a manner that**
- 22 **maximizes notice of the hearing; or**

23 (2) with the first publication of notice in a newspaper **or**  
24 **electronically** described in subdivision (1) and the second  
25 publication of notice:

- 26 (A) in accordance with IC 5-3-5; ~~and~~
- 27 (B) on the official ~~web site~~ **website** of the district; **and**
- 28 **(C) in an electronic manner that maximizes notice of the**
- 29 **hearing to the impacted individuals.**

30 The last publication **or electronic notice** must be at least seven (7)  
31 days before the date fixed in the notice for the hearing. The hearing  
32 may be adjourned as necessary.

33 SECTION 14. IC 13-26-11-13, AS AMENDED BY P.L.84-2016,  
34 SECTION 67, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
35 JULY 1, 2024]: Sec. 13. (a) The ordinance establishing the initial rates  
36 or charges, either as:

- 37 (1) originally introduced; or
  - 38 (2) modified and amended;
- 39 shall be passed and put into effect after the hearing.

40 (b) A copy of the schedule of the rates and charges established must  
41 be:

- 42 (1) kept on file in the office of the district; and



- 1 (2) open to public inspection.
- 2 (c) Whenever the board acts under section 8(b) of this chapter, to  
 3 change or readjust the rates and charges, the board shall mail **or**  
 4 **electronically share**, either separately or along with a periodic billing  
 5 statement, a notice of the new rates and charges to each user affected  
 6 by the change or readjustment. In the case of a sewage district, if the  
 7 change or readjustment increases the rates and charges by the amount  
 8 specified in section 15(c) of this chapter, the notice required by this  
 9 subsection:
- 10 (1) must include a statement of a ratepayer's rights under section  
 11 15 of this chapter; and
- 12 (2) shall be mailed **or electronically shared** within the time  
 13 specified in section 15(c) of this chapter.
- 14 (d) Following the passage of an ordinance under subsection (a), the  
 15 lesser of fifty (50) or ten percent (10%) of the ratepayers of the district  
 16 may file a written petition objecting to the initial rates and charges of  
 17 the district. A petition filed under this subsection must:
- 18 (1) contain the name and address of each petitioner;  
 19 (2) be filed with a member of the district authority, in the county  
 20 where at least one (1) petitioner resides, not later than thirty (30)  
 21 days after the district adopts the ordinance; and  
 22 (3) set forth the grounds for the ratepayers' objection.
- 23 (e) The district authority shall set the matter for public hearing not  
 24 less than ten (10) business days but not later than twenty (20) business  
 25 days after the petition has been filed. The district authority shall:
- 26 (1) send notice of the hearing:
- 27 (A) by certified mail; **or**  
 28 (B) **electronically**;  
 29 to the district and the first listed petitioner; and
- 30 (2) publish the notice of the hearing:
- 31 (A) in a newspaper of general circulation in each county in the  
 32 district; **or**  
 33 (B) **in an electronic manner that maximizes notice of the**  
 34 **hearing to the impacted individuals.**
- 35 (f) Upon the date fixed in the notice, the district authority shall hear  
 36 the evidence produced and determine the following:
- 37 (1) Whether the board of trustees of the district, in adopting the  
 38 ordinance establishing sewer rates and charges, followed the  
 39 procedure required by this chapter.
- 40 (2) Whether the sewer rates and charges established by the board  
 41 by ordinance are just and equitable rates and charges, according  
 42 to the standards set forth in section 9 of this chapter.





1 (g) After the district authority hears the evidence produced and  
 2 makes the determinations set forth in subsection (f), the district  
 3 authority, by a majority vote, shall:

- 4 (1) sustain the ordinance establishing the rates and charges;  
 5 (2) sustain the petition; or  
 6 (3) make any other ruling appropriate in the matter, subject to the  
 7 standards set forth in section 9 of this chapter.

8 (h) The order of the district authority may be appealed by the district  
 9 or a petitioner to the circuit court, superior court, or probate court of  
 10 the county in which the district is located. The court shall try the appeal  
 11 without a jury and shall determine one (1) or both of the following:

- 12 (1) Whether the board of trustees of the district, in adopting the  
 13 ordinance establishing sewer rates and charges, followed the  
 14 procedure required by this chapter.  
 15 (2) Whether the sewer rates and charges established by the board  
 16 by ordinance are just and equitable rates and charges, according  
 17 to the standards set forth in section 9 of this chapter.

18 Either party may appeal the circuit court's, superior court's, or probate  
 19 court's decision in the same manner that other civil cases may be  
 20 appealed.

21 SECTION 15. IC 13-26-11-15, AS AMENDED BY P.L.84-2016,  
 22 SECTION 68, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 23 JULY 1, 2024]: Sec. 15. (a) A district authority is established in each  
 24 regional sewage district established under this article. A district  
 25 authority:

- 26 (1) must consist of an odd number of members;  
 27 (2) must consist of at least three (3) members; and  
 28 (3) may not include as a member any person who serves on the  
 29 board of trustees of the district.

30 (b) The district authority of a regional sewage district consists of the  
 31 following members:

- 32 (1) In the case of a regional sewage district located in one (1)  
 33 county, the following members:  
 34 (A) If no members of the county executive are trustees of the  
 35 regional sewage district, the county executive of the county.  
 36 (B) If:  
 37 (i) one (1) or more members of the county executive are  
 38 trustees of the regional sewage district; and  
 39 (ii) no members of the county fiscal body are trustees of the  
 40 regional sewage district;  
 41 the members of the county fiscal body.  
 42 (C) If the regional sewage district's board of trustees consists



1 of one (1) or more members of the county executive and one  
 2 (1) or more members of the county fiscal body, three (3)  
 3 members appointed as follows:

4 (i) Two (2) members appointed by the county executive. If  
 5 not all of the members of the county executive are trustees  
 6 of the district, the county executive may appoint either or  
 7 both of the two (2) members required by this item from  
 8 among the county executive's own membership, subject to  
 9 subsection (a)(3).

10 (ii) One (1) member appointed by the county fiscal body. If  
 11 not all of the members of the county fiscal body are trustees  
 12 of the district, the county fiscal body may appoint the  
 13 member required by this item from among the county fiscal  
 14 body's own membership, subject to subsection (a)(3).

15 (2) In the case of a regional sewage district located in more than  
 16 one (1) county, the following members:

17 (A) If:

18 (i) an odd number of counties are part of the regional sewage  
 19 district; and

20 (ii) each county in the district has at least one (1) county  
 21 executive member who is not a trustee of the regional  
 22 sewage district;

23 one (1) county executive member, appointed by that member's  
 24 county executive, from each county in which the district is  
 25 located, subject to subsection (a)(3).

26 (B) If an even number of counties are part of the regional  
 27 sewage district, the following members:

28 (i) Two (2) county executive members, appointed by those  
 29 members' county executive, from the county that has the  
 30 largest number of customers served by the district's sewer  
 31 system. However, if the county that has the largest number  
 32 of customers served by the district's sewer system does not  
 33 have at least two (2) members of its executive who are not  
 34 also trustees of the district, the county executive of that  
 35 county may appoint one (1) or more of the members  
 36 required by this item from outside the county executive's  
 37 own membership in order to comply with subsection (a)(3).

38 (ii) One (1) county executive member, appointed by that  
 39 member's county executive, from each county, other than the  
 40 county described in item (i), in which the district is located.  
 41 However, if a county described in this item does not have at  
 42 least one (1) member of its executive who is not also a



1 trustee of the district, the county executive of that county  
 2 may appoint the member required by this item from outside  
 3 the county executive's own membership in order to comply  
 4 with subsection (a)(3).

5 (C) If an odd number of counties are part of the regional  
 6 sewage district and an odd number of those counties in the  
 7 district do not have at least one (1) county executive member  
 8 who is not also a trustee of the district, the following members:

9 (i) One (1) county executive member, appointed by that  
 10 member's county executive, from each county that has at  
 11 least one (1) county executive member who is not also a  
 12 trustee of the district, subject to subsection (a)(3).

13 (ii) One (1) member appointed by the county executive of  
 14 each county that does not have at least one (1) county  
 15 executive member who is not also a trustee of the district. A  
 16 member appointed under this item must be appointed from  
 17 outside the appointing county executive's own membership,  
 18 subject to subsection (a)(3).

19 (c) If a district adopts an ordinance increasing sewer rates and  
 20 charges at a rate that is greater than five percent (5%) per year, as  
 21 calculated from the rates and charges in effect from the date of the  
 22 district's last rate increase, the district shall mail **or electronically**  
 23 **share**, either separately or along with a periodic billing statement, a  
 24 notice of the new rates and charges to each user of the sewer system  
 25 who is affected by the increase. The notice:

26 (1) shall be mailed **or electronically shared** not later than seven  
 27 (7) days after the district adopts the ordinance increasing the rates  
 28 and charges; and

29 (2) must include a statement of a ratepayer's rights under this  
 30 section.

31 (d) If subsection (c) applies, fifty (50) ratepayers of the district or  
 32 ten percent (10%) of the district's ratepayers, whichever is fewer, may  
 33 file a written petition objecting to the rates and charges of the district.  
 34 A petition filed under this subsection must:

35 (1) contain the name and address of each petitioner;

36 (2) be filed with a member of the district authority, in the county  
 37 where at least one (1) petitioner resides, not later than thirty (30)  
 38 days after the district adopts the ordinance establishing the rates  
 39 and charges; and

40 (3) set forth the grounds for the ratepayers' objection.

41 If a petition meeting the requirements of this subsection is filed, the  
 42 district authority shall investigate and conduct a public hearing on the



1 petition. If more than one (1) petition concerning a particular increase  
 2 in rates and charges is filed, the district authority shall consider the  
 3 objections set forth in all the petitions at the same public hearing.

4 (e) The district authority shall set the matter for public hearing not  
 5 less than ten (10) business days but not later than twenty (20) business  
 6 days after the petition has been filed. The district authority shall:

7 (1) send notice of the hearing:

8 (A) by certified mail; or

9 (B) **electronically;**

10 to the district and the first listed petitioner; and

11 (2) publish the notice of the hearing:

12 (A) in a newspaper of general circulation in each county in the  
 13 district; or

14 (B) **in an electronic manner that maximizes notice of the**  
 15 **hearing to the impacted individuals.**

16 (f) Upon the date fixed in the notice, the district authority shall hear  
 17 the evidence produced and determine the following:

18 (1) Whether the board of trustees of the district, in adopting the  
 19 ordinance increasing sewer rates and charges, followed the  
 20 procedure required by this chapter.

21 (2) Whether the increased sewer rates and charges established by  
 22 the board by ordinance are just and equitable rates and charges,  
 23 according to the standards set forth in section 9 of this chapter.

24 (g) After the district authority hears the evidence produced and  
 25 makes the determinations set forth in subsection (f), the district  
 26 authority, by a majority vote, shall:

27 (1) sustain the ordinance establishing the rates and charges;

28 (2) sustain the petition; or

29 (3) make any other ruling appropriate in the matter, subject to the  
 30 standards set forth in section 9 of this chapter.

31 (h) The order of the district authority may be appealed by the district  
 32 or a petitioner to the circuit court, superior court, or probate court of  
 33 the county in which the district is located. The court shall try the appeal  
 34 without a jury and shall determine one (1) or both of the following:

35 (1) Whether the board of trustees of the district, in adopting the  
 36 ordinance increasing sewer rates and charges, followed the  
 37 procedure required by this chapter.

38 (2) Whether the increased sewer rates and charges established by  
 39 the board by ordinance are just and equitable rates and charges,  
 40 according to the standards set forth in section 9 of this chapter.

41 Either party may appeal the circuit court's, superior court's, or probate  
 42 court's decision in the same manner that other civil cases may be



1      appealed.

