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Indiana Perspective

Environmental Law Newsletter Special Legislative Edition

SUMMARY OF 2007 ENVIRONMENTAL LEGISLATION

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with
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LAWS AFFECTING THE INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT LEGISLATION

BROWNFIELD FUNDS

The expansive "Brownfield Bill," which took effect on July 1, 2007, provides local governments and nonprofit organizations supporting political subdivisions with legal and financial tools to remediate and redevelop abandoned contaminated properties. To make more funding available, changes made this year broaden permissible uses of the environmental remediation revolving loan fund, and increase from 10% to 50% the amount of money available in the fund that may be loaned by the Indiana Finance Authority ("IFA") to any one political subdivision in a state fiscal year. The amended law also allows the IFA to (1) undertake activities to make private environmental insurance products available to encourage and facilitate the cleanup and redevelopment of brownfield properties; (2) enter into agreements with political subdivisions for various purposes related to environmental investigation and remediation; and (3) provide services to and collect fees from any person in connection with financial assistance, liability clarification, and technical assistance. Under this new law, the IFA has governmental immunity with respect to investigation and remediation of Brownfield under agreements with political subdivisions. In addition redevelopment commissions are allowed to enter into agreements with the IFA and to carry out environmental investigation and remediation. No activity of a political subdivision related to investigation or remediation on a brownfield site will be considered to contribute to the contamination at the site, unless caused by gross negligence or willful misconduct.

HEA 1192, P.L. No. 221-2007, SECTIONS 1-12, 15, 17, 24-47, Ind. Code 13-11-2, 13-19-5, 13-23-16, 36-1-7, 36-7-1, 36-7-14, effective July 1, 2007.

ENVIRONMENTAL CRIMES

After many years of effort, Senator Luke Kenley (R-Noblesville) was successful this year in convincing the legislature to revise the environmental crimes provisions of IDEM's law. Last year the Environmental Crimes Task Force was created to study this issue. Sue Shadley was appointed as one member of that Task Force. After one year of study, the Environmental Crimes Task Force approved legislation to be introduced by Senator Kenley. Prior law made any intentional, knowing or reckless violation of an environmental law, a rule adopted by one of the boards, a determination, a permit condition, or an order issued by IDEM's commissioner a class D felony. An Indiana

Supreme Court decision had made clear that such overly broad criminal penalty laws were unconstitutionally vague and unenforceable. To address this constitutional problem, new specific criminal penalties for environmental violations took effect on July 1, 2007. A new chapter, Indiana Code 13-30-10, has been added to IDEM's law. In general, as opposed to the violation of any law or rule or permit condition, the law now requires three elements before it is an environmental crime. There must be a knowing, intentional or reckless violation of an environmental law or permit condition (no longer a rule). The violation must result in a discharge of contaminates. And the discharge must result in substantial risk of serious bodily injury, serious bodily injury to an individual, the death of a vertebrate animal or damage to the environment that render the environment unfit for human or vertebrate animal life or causes damage to an endangered, at risk or threatened species. In addition, falsification of records is also prosecutable as an environmental crime. Specifically, the environmental crimes now subject to prosecution include:

(1) A person who knowingly or intentionally makes a material misstatement in connection with an application for a permit submitted to IDEM commits a Class D felony.

(2) A person who knowingly or intentionally destroys, alters, conceals or falsely certifies a record that is required to be maintained under the terms of a permit or that is used to determine compliance commits a Class D Felony.

(3) A person who knowingly or intentionally renders inaccurate or inoperative a recording device or a monitoring device required to be maintained by a permit commits a Class D felony.

(4) A person who knowingly or intentionally falsifies testing or monitoring data required by a permit commits a Class D felony.

(5) A person who, with intent to defraud, knowingly or intentionally makes a material misstatement in connection with an application for a loan or other financial assistance commits a Class D felony.

(6) A person who knowingly, intentionally, or recklessly violates the terms of a permit related to air pollution control or an air pollution control law, and discharges a contaminate into the air, if the air discharge results in a substantial risk of serious bodily injury, serious bodily injury to an individual, the death of a vertebrate animal or damage to the environment that render the environment unfit for human or vertebrate animal life, or causes damage to an endangered, an at risk, or a threatened species commits a Class D felony. Such violation is a Class C felony if it results in the death of a person.

(7) A person who knowingly, intentionally, or recklessly violates the terms of a permit related to water pollution control or a water pollution control law and discharges any substance into waters or into a public sewer, if the discharge results in a substantial risk of serious bodily injury, serious bodily injury to an individual, the death of a vertebrate animal or damage to the environment that render the environment unfit for human or vertebrate animal life, or causes damage to an endangered, an at risk, or a threatened species commits a Class D felony. Such violation is a Class C felony if it results in the death of a person.

(8) A person who knowingly, intentionally, or recklessly violates the terms of a permit that relates to solid or hazardous waste or a solid or hazardous waste law and discharges a contaminate into the environment, if the discharge results in a substantial risk of serious bodily injury, serious bodily injury to an individual, the death of a vertebrate animal or damage to the environment that render the environment unfit for human or vertebrate animal life, or causes damage to an endangered, an at risk, or a threatened species commits a Class D felony. Such violation is a Class C felony if it results in the death of a person.

(9) A person who operates an underground storage tank and knowingly, intentionally, or

recklessly violates the terms of a permit that relates to the operation of the underground storage tank or a law that relates to the operation of an underground storage tank, and discharges a contaminate into the environment, if the discharge results in a substantial risk of serious bodily injury, serious bodily injury to an individual, the death of a vertebrate animal or damage to the environment that render the environment unfit for human or vertebrate animal life, or causes damage to an endangered, an at risk, or a threatened species commits a Class D felony. Such violation is a Class C felony if it results in the death of a person.

(10) A person who knowingly, or intentionally violates the terms of a permit under Ind. Code 13-18-22 that relates to state-regulated wetlands or a law that relates to state-regulated wetlands, and causes substantial harm to a state-regulated wetland commits a Class D felony.

It is a defense to prosecution of the crimes described in numbers 6, 7, 8, and 9 if the person did not know and could not reasonably have been expected to know that the contaminate released was capable of causing the prohibited results. It is a defense to prosecution of a water permit or law violation if the discharge was the result of a combined sewer overflow and the person notified IDEM in a timely manner.

In addition to the penalties associated with a Class D felony or Class C felony, for violations described in numbers 6, 7, 8, 9, and 10, the court may order a per-son convicted to pay a fine of at least $5,000 and not more than $50,000 for each day of violation, or if the person has a prior unrelated conviction for an offense under the environmental laws that may be punished as a felony, a fine of not more than $100,000 for each day of violation. The court is to consider any improper economic benefit, including unjust enrichment received by the defendant as a result of the violation, in determining the amount of monetary penalty.

SEA 286, P.L. 137-2007, SECTIONS 14, 15, 16, 18, 22, 25, 26, and 31; Ind. Code 13-18-13-31, Ind. Code 13-18-21-31, Ind. Code 13-19-5-17, Ind. Code 13-20-13-17, Ind. Code 13-20-22-21, Ind. Code 13-23-7-9, Ind. Code 13-23-9-6, and Ind. Code 13-30-10, effective July 1, 2007.

Responsible Corporate Officers who knowingly, intentionally or recklessly aid, induce, or cause another person to commit an offense under the environmental laws continue, as under the prior law, to be liable for that crime. That liability exists, even if the other person has not been prosecuted for the offense, not been convicted of the offense, or has been acquitted of the offense.

SEA 286, P.L. 137-2007; Ind. Code 13-12-6-1, effective July 1, 2007.

A prosecuting attorney may, with the consent of the attorney general, appoint the attorney general or a deputy attorney general licensed to practice law in Indiana as a special deputy prosecuting attorney to assist in any criminal proceeding involving environmental laws.

SEA 286, P.L. 137-2007, SECTION 33, Ind. Code 33-39-2-6, effective July 1, 2007.

ENVIRONMENTAL LEGAL ACTION CLARIFICATION

As a result of confusion that had arisen over the use of an undefined term "private" person" in one section but not another section of the Environmental Legal Action ("ELA") statute, the legislature agreed this year to clarify its intent that municipalities are entities eligible to sue under this statute. Before HEA 1192 passed this year, the section of the ELA titled "Application of Chapter" provided that the ELA applies to actions brought by the state or a "private" person. However, the more specific section of the ELA titled "Person Who May Bring Action" provided that a person may bring an ELA, without any reference to a private person. In a case involving the City of South Bend an argument had been made that a city could not bring the action under the ELA because a city was not a private person. Judge Michael Keele of the Marion County Environmental Court had rejected that argument. To eliminate any future confusion, the legislature this year removed the use of the term private person from Section 1 of the ELA, thus removing any argument or doubt that cities should not be allowed to bring an ELA.

HEA 1192, P.L. No. 221-2007, SECTIONS 22-23, Ind. Code 13-30-9-1, 13-30-9-2, effective May 11, 2007.

SOLID WASTE ISSUES

INDIANA RECYCLING MARKET DEVELOPMENT BOARD

The Indiana Recycling and Energy Development Board has been renamed the Indiana Recycling Market Development Board ("Board"). The Board, formerly administered by the lieutenant governor, will now be administered by the Division of Pollution Prevention of IDEM. The number of members of the board has been reduced from 13 to nine. One member will still be appointed by the lieutenant governor, while eight will be appointed by the governor for four-year terms. Removed from the governor's appointees to reduce the membership to nine are members related to the coal industry, energy-related industries, Indiana universities and colleges with expertise in energy research and development, agriculture, and labor, and private citizens with special interest in energy resources development. New to the Board will be representatives of the waste management and recycling industries. With this new law, the eight governor-appointed board members shall be chosen from representatives of

(1) the waste management industry,
(2) the recycling industry,
(3) Indiana universities and colleges with expertise in recycling research and development,
(4) industrial and commercial consumers of recycled feedstock,
(5) environmental groups, and
(6) private citizens with a special interest in recycling.

As before, the governor must appoint members from both political parties – now no more than four (rather than six as before) appointees may be from the same political party. In order to deal with the new, smaller Board, a quorum will now consist of five members. The focus of the Board has been shifted from research and development of energy projects, to refocusing on recycling. More information about the Board, including information about recycling promotion assistance loans and innovation grants can be found at http://www.in.gov/recycle/funding/rmdp.html.

SEA 154, P.L. 204-2007, SECTIONS 1, 3-10, Ind. Code 4-4-2.4-2, 4-23-5.5-1 et seq., effective July 1, 2007.

The former board members of the Indiana Recycling and Energy Development Board were terminated on June 30, 2007. The governor was charged with appointing all new board members for the new Indiana Recycling Market Development Board before July 1, 2007.

SOLID WASTE LANDFILL CONSTRUCTION PERMITS

The solid waste law was amended this year to add a provision relating to construction permits for solid waste landfills. This new section applies to facilities which hold a valid construction permit for a solid waste landfill that has not been substantially developed, who do not commence construction within five years after the permit was issued. Those solid waste landfills are now required to apply for a new construction permit and must meet the environmental law requirements in place at the time of the later permit application. This law also applies to persons holding a construction permit at an operating landfill, who have not yet begun construction within five years of the date of the permit. Those persons also must meet the requirements of the environmental laws in place when construction is commenced. This bill was supported by environmental groups and IDEM as a means to protect communities from landfill operations that try to avoid setback requirements by obtaining a landfill permit, but not commencing construction for many years while communities develop around the proposed landfill site. The real reason for this law appears to have been yet another effort to hinder the continued development of the Mallard Lake Landfill located in Madison County. This landfill has been successfully defending against resistance from local groups since 1982 and has been the target of many previous statutory amendments. The law specifically tolls the five-year timeframe for the period during which there is either an administrative appeal or judicial review, the very thing that has delayed the operation of the Mallard Lake Landfill. By compromising with those who testified against this bill, it is unclear how this law will actually work. IDEM no longer issues separate construction and operating permits for a solid waste landfill. Instead it issues one solid waste

facility permit, which contains the construction requirements and serves as the operating permit. Since there is no such thing as a construction permit, it is unclear if this law will have any effect.

SEA 205, P.L. No. 205-2007; Ind. Code 13-20-2-9, effective July 1, 2007.

WASTE TIRE MANAGEMENT FUND

The Waste Tire Management Fund ("Fund") was statutorily created in 1990 and set up in 1991 to help Indiana organizations undertake research, development, demonstration, and/or commercial manufacturing projects that develop markets for use of scrap tires. This year, Ind. Code 13-20-13-8 was amended to specify that no more than 35% of the money deposited into the Fund may be used each year for the removal and disposal of waste tires from sites in which they have been improperly disposed and to operate the waste tire education program. Previously, the Fund was required to use 35% for these programs in addition to the administration of the waste tire education program. The remaining deposits in the Fund are to provide grants and loans to entities involved in waste tire management activities as well as administering the various programs under the Fund. The law was also amended to specify that IDEM alone may use the Fund; the lieutenant governor may no longer use the Fund. This change is consistent with the change to the Recycling Market Development Board, where it is now IDEM not the Lt. Governor and Indiana Economic Development Corporation (IEDC), formerly the Indiana Department of Commerce, that is in charge.

SEA 154, P.L. 204-2007, SECTIONS 14-15, Ind. Code 13-20-13-8, 13-20-13-9, effective July 1, 2007.

UNDERGROUND STORAGE TANK ISSUES

ALCOHOL-BLENDED USTS

Underground Storage Tank ("UST") owners as well as the ethanol industry in Indiana have been placed at a distinct competitive advantage in terms of supporting the development of ethanol sales to the motoring public by legislation passed this year, taking effect on April 26, 2007. On October 5, 2006, Underwriters Laboratories, Inc. ("UL") suspended authorization to use UL Markings (listings or recognition) on components for fuel-dispensing devices that specifically reference compatibility with alcohol-blended fuels that contain greater than 15% alcohol (i.e., ethanol, methanol or other alcohols). UL's research indicated that the presence of high concentrations of ethanol or other alcohols within blended fuels may make these fuels more corrosive. While UL reported that it had no evidence of field issues related to this application, UL suspended authorization to use the UL mark on components used in dispensing devices that will dispense any alcohol blended fuels containing over 15% alcohol until updated certification requirements are established and the affected components have been found to comply with them. As a result of the UL's announcement, some states have completely shut down the retail sale of ethanol fuels to the motoring public pending further review and study. In addition many UST owners in Indiana became reluctant to install fuel-dispensing systems for E-85 because of fears that such installations could jeopardize their compliance with IDEM's UST requirements and Excess Liability Trust Fund ("ELTF") eligibility to address future environmental liabilities arising from the UST systems. This new law aims to provide ethanol retailers with the legislative and regulatory protection they need to install E-85 equipment at their UST service station locations. Specifically, the legislation passed:

(a) Carves out a regulatory exemption for the installation and use of certain USTs and related piping and dispensing equipment for selling alcohol blended fuels greater than 15% alcohol in Indiana;

(b) Allows for such UST systems to be considered in compliance with Indiana law, including eligibility for reimbursement under the ELTF in the event of a UST release in the future;

(c) Lowers the ELTF deductible for 2 different types of UST systems with secondary containment from $30,000 to $25,000; and

(d) Enables the Solid Waste Management Board to proceed in an orderly fashion to study and develop any additional secondary containment and safety requirements that it deems necessary in the future for UST systems, including those that sell alcohol-

blended fuels greater than 15% alcohol. Any UST systems installed before the new rules are promulgated are essentially grandfathered in and will not require replacement.

This law will require that all newly installed or replaced piping connected to the tank must meet the secondary containment requirements adopted by the SWMB.

SEA 155, P.L. 75-2007, HEA 1192, P.L. 221-2007, SECTIONS 13 and 14, Ind. Code 13-23-5-1, Ind. Code 13-23-8-3, Noncode Section, effective April 26, 2007.

UST RELEASE NOTICE

During each of the last three legislative sessions, Representative Ulmer (R-Goshen) has introduced an underground storage tank ("UST") notice bill that would require owners or operators of UST systems that released petroleum into the environment to notify neighboring landowners of the release within 10 days of its occurrence. Each session, the bill received strong opposition from petroleum marketers because requiring UST owners and operators to notify property owners within 10 days could result in needless negative impacts to the property valuations of each property owner so notified. The investigation and remediation of petroleum releases that result in off-site groundwater impacts generally require several years to complete. If the Bill were enacted, these off-site property owners seeking to sell their properties during this time would be required to disclose the environmental notification to a prospective buyer, thereby resulting in a needless diminution in a property value claim, even though the off-site property may never have been impacted by the UST release. Additionally, property owners' claims of stigma and diminished property value could be submitted to, and would be a financial drain on, the Excess Liability Trust Fund ("ELTF") at a time when the ELTF is underfunded. To address these concerns, Representative Ryan Dvorak (D-South Bend) offered an amendment which substantially altered the notice provisions, but that served both to increase the notification requirements without creating unnecessary property devaluation and litigation. The new law requires IDEM to provide notice of a release from a spill or an overfill of a UST system to the county health officer of each county in which the release, spill, or overfill occurred. The county health officer that receives notice from the department is then required to (1) publish notice of the release, spill, or overfill in a newspaper of general circulation in the county health officer's county and (2) provide any other notice of the release, spill, or overfill the county health officer considers necessary or appropriate.

HEA 1192, P.L. No. 221-2007, SECTION 16, Ind. Code 13-23-16, effective July 1, 2007.

WATER ISSUES

CONSERVANCY DISTRICTS

The Conservancy District law was revised this year to allow conservancy districts that provide a water supply for domestic, industrial, and public use to less than 2,000 customers to withdraw from the Indiana Utility Regulatory Commission's jurisdiction for the approval of

(1) rates and charges,
(2) stocks, bonds, notes, or other evidence of indebtedness,
(3) rules, and
(4) the annual report filing requirement

in the same manner that privately owned public utilities serving less than 300 customers, not-for-profit utilities and cooperative corporations exempt from state and federal income taxes may withdraw. Specifically, the Board of Directors must conduct a referendum of its members or shareholders to determine whether they approve of the withdrawal. The referendum must be conducted at a special meeting with not less than 30 days notice provided. No proxies are allowed. Not less than 5% of the members is required for a quorum to conduct business. The members vote by secret ballot and a majority vote of those present is required. The withdrawal is effective 30 days after a favorable majority vote.

SEA 312, P.L. 78-2007, SECTION 1; Ind. Code 8-1-2.7-1.3, effective July 1, 2007

In addition, the conservancy district law was amended to increase the compensation a court may order from $50 to $100 for not more than two regular or specially called board meetings per month and allowing an additional $50 per day for not more than five additional days a month that is devoted to the work on a district. Prior law allowed the court to

order $50 for each day a month devoted to work of the district. The provision allowing reimbursement for actual expenses, including traveling expense at the rate equal to that paid to state officers and employees was not changed.

SEA 312, P.L. 78-2007, SECTION 2; Ind. Code 14-33-5-16, effective July 1, 2007.

REGIONAL SEWAGE DISTRICTS

Technical corrections were made to portions of the law concerning regional sewage districts ("RSD"). A RSD which seeks to require connection to the RSD's sewer system of property that is (1) located outside the RSD's territory and (2) within 300 feet of the system must now provide the property owner with a letter of recommendation from the local health department that the connection is necessary to protect the public's health. The law also prohibits the RSD from requiring the property owner to connect if the property is already connected to a sewer system that (1) has received an NPDES permit and (2) has been determined to be functioning satisfactorily. Additionally, a RSD that adopts an ordinance to increase rates and charges more than 5% per year must give notice to affected users.

HEA 1192, P.L. No. 221-2007, SECTIONS 18-21, Ind. Code 13-26-5-2, 13-26-11-8, 13-26-11-14, 13-26-11-15; SECTION 49, non-code, effective May 11, 2007.

LAWS AFFECTING AGRICULTURE

GRAIN BUYERS AND CORN MARKETING

The Indiana legislature passed a bill this year amending several provisions of the Indiana Corn Marketing Law and creating the Grain Buyers and Warehousing Agency License Fee Fund.

SEED CORN

Seed Corn is now exempt from the Indiana Corn Market Development Law.

SEA 250, P.L. 207-2007, SECTION 3; Ind. Code §15-4-10-1, effective July 1, 2007

E85 SALES TAX DEDUCTION

The Indiana sales tax deductions for E85, currently capped at $2,000,000, may be exceeded to the extent funds are available for reimbursement to the Indiana treasury from the Corn Market Development Account (the "Account"). This new provision only applies to reporting periods after June 30, 2007. Up to 25% of the net amount collected in the Account now will be used for reimbursement to the treasury of sale tax deductions for E85. Beginning July 1, 2008, and on the same day of each year thereafter, the budget agency will transfer either 25% of the Account or the sum of all E85 retail merchant deductions in the previous fiscal year, whichever is less. The amount transferred will be deposited in the same manner as state gross retail and use taxes. The department of agriculture will publish in the Indiana Register a notice of the amount of funds available for the reimbursements.

SEA 250, P.L. 207-2007, SECTIONS 2, 20 and 30; Ind. Code §§6-2.5-7-5.5, 15-4-10-25-4.5, effective July 1, 2007

FIRST PURCHASER DEFINED

The term "first purchaser" means a person who is in the business of buying corn from producers or the Commodity Credit Corporation, if the corn is pledged as collateral for a loan issued under a price support loan program administered by the Commodity Credit Corporation. The new law exempts those who purchase 100,000 bushels of corn annually for the buyer's own use as seed or feed. Prior law set the exemption at only 50,000 bushels.

SEA 250, P.L. 207-2007, SECTION 5; Ind. Code §15-4-10-6, effective July 1, 2007

INDIANA CORN MARKETING COUNCIL

Starting July 1, 2007, there will be several changes to the Indiana Corn Marketing Council (the "Council"). The Council's membership has been increased to 17 voting and eight ex officio, nonvoting members. Each member serves a three-year term and may not serve more than three consecutive full terms. The composition of the Council is as follows. Voting Members: (1) Indiana counties are divided into nine districts, with one member elected to represent each district; (2) six members of the Council will be elected to represent all counties of Indiana; and (3) the dean of the college of Agriculture at Purdue University ("Dean") will appoint one representative each from the two largest general farm organization in Indiana to serve as members of the Council. The election of the six Council members will be held in the district, in the year, in which the term of the district's current Council member will expire. Between January 1 and March 15, the Council will notify the producers of the district of the upcoming election by publishing a notice in a statewide agricultural publication and by making information available to the news media in the district. Any producer over 18 years of age and a registered voter may run for a seat on the Council if the producer files a petition signed by 10 other producers who reside in the district. Petition forms and requests for ballots will be available on the Council's website. Absentee ballots will be given to any producer who requests one between 5 and 30 days before the election. Election for these Council members will be held, at a place designated by the Council within the voting district, in August. The winner of the election will take office the following October 1st.

Non-voting members are appointed as follows:

(1) The director of the department of agriculture will appoint two representatives of first purchaser organizations;

(2) The following each appoint a member:
  (A) The President Pro Tempore of the Senate.
  (B) The Minority Leader of the Senate
  (C) The Speaker of the House of Representatives.
  (D) The Minority Leader of the House of Representatives;

(3) The following serve as members:
  (A) The Dean or a designee; and
  (B) The Secretary of Agriculture or a designee.

The Council's top executives have been changed from chairman and vice chairman to president and vice president. The Council must now publish an activities report and audit and present this information to the Director, the Dean, and the Legislative Council in electronic format. The report and audit must also be available through the Council's web site. The new law adds three additional responsibilities to the Council:

(1) Adopt bylaws and operating procedures governing operations of the Council.

(2) Keep accurate accounts of all receipts and disbursements of funds handled by the Council and have receipts and disbursements audited annually by a certified public accountant; and

(3) Establish and maintain an Internet web site.

A majority of the voting members of the Council constitutes a quorum. The affirmative votes of at least a majority of the quorum, and at least nine affirmative votes, are required for the Council to take any action. Instead of meeting quarterly, the Council will now meet three times in each marketing year at the call of the president or the request of at least 2/3 of the members of the Council. The marketing year runs from October 1 to September 30. The Council must comply with the requirements of the Open Door Law.

SEA 250, P.L. 207-2007, SECTIONS 4, 6, 9, 10-18, and 32; Ind. Code §§ 15-4-10-1, 15-4-10-3.5, 15-4-10-12, 15-4-10-14, 15-4-10-15, 15-4-10-16, 15-4-10-17, 15-4-10-18, 15-4-10-19, 15-4-10-21, 15-4-10-22, 15-4-10-23, effective July 1, 2007

CORN MARKET DEVELOPMENT ACCOUNT

Money in the Indiana Corn Market Development Account (the "Account") will be used to pay for the administrative costs of the Council. If funds in the Account are insufficient to pay for the administrative costs, the Council may borrow funds for this purpose. Before September 1, 2007, the Council must prepare and deliver all necessary forms concerning assessment refunds and information concerning the operation of the program to all first purchasers. This section expires July 1, 2008.

SEA 250, P.L. 207-2007 SECTION 31, Ind. Code § 15-4-10-24.5, effective July 1, 2007.

The legislature has added new uses for money in the corn market development account. The Council may now expend any money from assessments and from investment income, not needed for administrative expenses, for promotion and research. The only use previously specified was market development.

"Promotion" is defined as:

(1) Communication directly with corn producers;
(2) Technical assistance; and
(3) Trade marketing activities to enhance the marketing opportunities of corn for corn products in domestic and foreign markets.

"Research" means any type of study to advance the:

(1) Marketability;
(2) Production;
(3) Product development;
(4) Quality; or
(5) Functional or nutritional value of corn or corn products, including any research activity designed to identify and analyze barriers to domestic and foreign sales of corn or corn products.

SEA 250, P.L. 207-2007 SECTIONS 7, 8, and 19; Ind. Code §§ 15-4-10-24, 15-4-10-10.5, 15-4-10-10.7, effective July 1, 2007.

CORN CHECK-OFF ASSESSMENT AND REFUND

COLLECTION OF ASSESSMENTS

An assessment of one-half cent per bushel will be collected on all corn sold in Indiana. The assessment may be imposed only once and will be collected by the first purchaser of the corn. A first purchaser shall keep detailed records of all assessments collected and remitted for at least three years. The Council may periodically audit a first purchasers check off assessment and remittance records. An audit must be conducted by a qualified public accountant of the Council's choosing, and the costs of the audit shall be paid by the Council. The first purchaser's time to remit the assessments collected is shortened from 45 to 30 days after the end of the period. After this time, the Council will contact the purchaser and allow the first purchaser to present comments to the Council regarding the delinquent remittance. After hearing comments, the Council may adjust the amount of assessments due, if the Council's figures are inaccurate. The Council will assess a fee of 2% of the amount of the unpaid assessment each month. A first purchaser is entitled to keep 3% of the total assessment as a handling fee if the first purchaser remits all assessments within 30 days after the end of the period.

SEA 250, P.L. 207-2007, SECTIONS 21, 23 and 24; Ind. Code §§ 15-4-10-26, 15-4-10-27, 15-4-10-30, effective July 1, 2007.

REFUND OF ASSESSMENTS

A corn producer now has 180 days after the state assessment is deducted from the sale price of the producer's corn to submit an application for refund. The Council will make application forms available on its website. Until July 1, 2009, a first purchaser will provide an application form to each producer along with each settlement form that shows the deduction. After that date, the first purchaser just has to have applications forms available in plain view at the first purchaser's place of business. Proof that an assessment, in the form of a copy of the purchase invoice or settlement sheet, must be submitted with the refund application. The claim form may be either mailed or faxed to the Council. The form must clearly state how to request a refund and the address where the form must be mailed or faxed. It must also contain information concerning procedures to claim a refund and any other information deemed necessary by the Council. If a refund is due under this section, the Council shall remit the refund to the producer within 30 days after the date the producer's application and proof of assessment are received.

SEA 250, P.L. 207-2007, SECTIONS 22 and 27; Ind. Code § 15-4-10-26.5, 15-4-10-34, effective July 1, 2007.

RESTRICTIONS ON USE OF ASSESSMENT FUNDS

Proceeds of the check off assessment collected by the Council under this chapter may not be used to influence legislation or governmental action or policy. Proceeds of the check-off assessment may be used to communicate information relating to the

(1) conduct
(2) implementation, or
(3) results

of promotion, research, and market development activities to appropriate government officials.

After January 1, 2009, proceeds of the check-off assessment may be used for action designed to market corn or corn products directly to a foreign government or a political subdivision of a foreign government. However, not more than 5% of the annual amount collected may be used under this subsection.

SEA 250, P.L. 207-2007, SECTION 25, Ind. Code § 15-4-10-32, effective July 1, 2007.

EXPIRATION OF THE CORN MARKETING LAW

The legislature has built a sunset provision into the corn marketing law. For the marketing year beginning October 1, 2009, if at least 25% of the assessment is refunded during the marketing year, the Council will:

(1) Ease collecting the assessment on January 1 of the subsequent year;
(2) Maintain a sufficient amount of money to pay for any refunds requested by producers; and
(3) Request that the legislative council have legislation prepared to repeal the corn market law.

If for the marketing year beginning October 1, 2009, less than 25% of the assessments is refunded, the council shall review the refunds for each year beginning with the marketing year beginning October 1, 2010. If refunds exceed 25% in 2 consecutive marketing years, the Council will:

(1) Cease collecting the assessment on the subsequent January 1 on the subsequent year;
(2) Maintain a sufficient amount of money to pay for any refunds requested by producers; and
(3) Request that the legislative council have legislation prepared to repeal the corn market law.

In this case, the Dean and the Council shall report to the legislative council the amounts collected and refunded. The report to the legislative council must be in an electronic format under Ind. Code §5-14-6.

SEA 250, P.L. 207-2007 SECTION 26, Ind. Code §15-4-10-33, effective July 1, 2007.

GRAIN BUYERS AND WAREHOUSING AGENCY LICENSE FEE FUND

The Indiana legislature has created the Grain Buyers and Warehousing Agency License Fee Fund (the "Fund") to provide for the administration of the Indiana grain buyers and warehousing licensing agency. The Fund will consist of:

(1) Warehousing licensing fees collected pursuant to Ind. Code §26-3-7-6.
(2) The $10 fee for inspection of moisture testing devices, charged by the director of the department of agriculture. This fee previously was deposited in the state treasury.
(3) Gifts and bequests.
(4) Appropriations made by the General Assembly.

Expenses of administering the fund will be paid from money in the Fund. Any money left, after all obligations of the fund have been paid, will be invested by the treasurer of state in the same manner as other public money. Interest that accrues from these investments shall be deposited in the Fund. The statute specifically states that money in the Fund at the end of the fiscal year does not revert to the state general fund.

SEA 250, P.L. 207-2007, SECTIONS 1, 28, and 29, Ind. Code §§ 4-4-27-3, 26-3-7-6, 26-3-7-6.3, effective July 1, 2007.

FLEXIBLE FUEL VEHICLE INCENTIVES

The statute governing the collection and remittance of State gross retail tax on motor fuel was revised to include a flexible fuel vehicle incentive and an appropriation of $1,000,000 from the general fund to the Department of Agriculture for deposit in the newly-formed E85 fueling station grant fund established under IC 15-9-5, added by this act. The amount merchants may deduct from the state gross retail tax which each retail merchant who dispenses gasoline or special fuel from metered pumps pays in sales tax has been increased from $0.10 per gallon to $0.18 per gallon on the sale of E85 fuel. The total amount of deductions to be allowed has however been reduced from $2,000,000 to $1,000,000.

SEA 270, P.L. No. 182-2007, SECTION 3, Ind. Code 6-2.5-7-5, effective July 1, 2007.

A new section was added to Ind. Code 8-14-2-8 which will take effect in January 2008 and will provide a monthly incentive payment to political subdivisions if 75% of the fuel used in the political subdivision's E85 compatible motor vehicles is E85 fuel. The incentive payment will be equal to the total number of qualified motor vehicles owned by the political subdivision multiplied by $33.33. To

claim the E85 incentive payment, the fiscal officer of the political subdivision must present a statement to the Auditor of the State. If the payment is not issued within 90 days, the auditor shall pay interest. However, a political subdivision is not entitled to an E85 incentive payment for E85 used in a qualified motor vehicle owned by the political subdivision after December 31 of the fifth calendar year of the political subdivision's ownership of the qualified motor vehicle. This section expires January 1, 2015.

SEA 270, P.L. No. 182-2007, Ind. Code 8-14-2-8, effective January 1, 2008.

In addition, the legislature has amended the law concerning the Local Road and Street Account. That Account consists of 45% of monies deposited in the Highway, Road and Street Fund. Money in that Account is distributed to units of local government and allocated to each county on the basis of the ratio of each county's passenger car registrations to the total passenger car registrations of the state. This year the legislature revised the Local Road and Street Account law to direct the State Auditor to distribute E85 incentive payments to all qualified political subdivisions before making any other distributions.

SEA 207, P.L. No. 182-2007, Ind. Code 8-14-2-4, effective January 1, 2007.

Finally, effective July 1, 2007, the General Assembly established the E85 Fueling Station Grant Program and Fund. $1,000,000 has been appropriated to the Department of Agriculture ("DOA") for this new program. The DOA's office of energy and defense development will determine the amount of each grant awarded, but a grant may not exceed the lesser of the following: (1) the amount of the person's qualified investment or (2) five thousand dollars ($5,000) for all qualified investments made by the person at a single location.

A qualified investment refers to an ordinary and usual expense incurred after June 30, 2007, to do either of the following: (1) purchase any part of a renewable fuel compatible fueling station for the purpose of installing the new renewable fuel compatible fuel station at a location on which a fueling station is not located or converting an existing fueling station that is not a renewable fuel compatible fueling station into a fueling station that is a renewable fuel compatible fueling station or (2) refit any part of a fueling station that is not renewable fuel compatible as a renewable fuel compatible fueling station, including the costs of cleaning storage tanks and piping to remove petroleum sludge and other contaminants.

Renewable fuel compatible means capable of storing and delivering E85 base fuel without contaminants resulting from deterioration from constant contact with alcohol fuels and, in conformity with applicable governmental standards, if any, and other nationally recognized standards applying to storage and handling of E85 base fuel, as determined under the standards prescribed by the department.

SEA 270, P.L. 122-2006, Ind. Code 15-9-5, effective July 1, 2007.

LAWS AFFECTING THE DEPARTMENT OF NATURAL RESOURCES

CRIMINAL VIOLATIONS

House Enrolled Act 1738 modified two provisions of the statute passed this year focused primarily on the Indiana Department of Environmental Management's ("IDEM") criminal laws, to address laws relevant to the Department of Natural Resources' ("DNR") jurisdiction. First the statute which makes poisoning a public water supply a Class B felony, now provides that before a person can be prosecuted for poisoning, they must have acted with the intent to cause serious bodily injury. Before this change to the law, a person could be held liable

upon a showing that they recklessly, knowingly, or intentionally poisoned the public water supply. This change was made to be consistent with the new intent standard established for poisoning of a public water supply by tampering with a water supply, a water treatment plant, or a water distribution system regulated by IDEM. Second a change was made to the fine contained in Senate Enrolled Act 286 for littering within 100 feet of a body of water under the jurisdiction the DNR or the United States Army Corps of Engineers. The judgment against a person committing this Class A infraction is now limited to $1,000; before this amendment to Senate Enrolled Act 286 the judgment had to be at least $1,000.

HEA 1738, P.L. 231-2007, SECTIONS 3 and 4, Ind. Code 35-43-1-5 and Ind. Code 35-45-3-2, Effective July 1, 2007.

In addition, as part of the new environmental crimes bill for IDEM, one other change was made to the DNR criminal provisions. The level of criminal penalty was increased from a Class B to a Class A infraction for violations of litter or discharging sewage to waters from watercraft. This Class A infraction penalty is to be at least $1,000 for such a violation.

SEA 286, P.L. 137-2007, SECTION 32, Ind. Code 14-15-2-15, effective July 1, 2007.

EXCEPTION FOR DITCHES/DRAINS NEAR PUBLIC FRESHWATER LAKES

Persons living within one-half mile of lakes in Indiana are typically required to obtain a permit from the Department of Natural Resources ("DNR") before digging, dredging, constructing, cleaning, or repairing a ditch or drain that empties into that lake. The legislature modified the law this year not to require a permit if certain procedures are followed when performing the work. A DNR permit is not required if three conditions are met: (1) water from the ditch or drain empties into the lake before the work begins; (2) water from the ditch or drain continues to empty into the lake at the same location after the work ends, and (3) the activities are conducted using best-management practices for soil and erosion control. In sum, if the ditch or drain stays where it is, no permit for work to the ditch or drain is required.

HEA 1762, P.L. 28-2007, SECTION 1, Ind. Code 14-26-5-3, effective July 1, 2007.

SALE OF NURSERY STOCK AND WILDFLOWER SEEDS

The Indiana Department of Transportation ("INDOT") and the Department of Natural Resources ("DNR") both operate nurseries in Indiana. This year, the Indiana legislature amended INDOT and the DNR's authority to operate these nurseries by restricting to whom INDOT and DNR may sell their stock. INDOT and DNR are prohibited from selling "nursery stock" and "wildflower seeds" to individuals who do not reside in Indiana. The new law also prohibits sales to "retail businesses" and "wholesale businesses" that sell nursery stock and wildflower seeds. These prohibitions do not apply to, and therefore INDOT and DNR may still sell nursery stock and wildflower seeds to, governmental entities, nonprofit and educational institutions, and agricultural research programs, regardless of their locations inside or outside the State of Indiana. The new prohibitions do not apply to contracts entered into before July 1, 2007.

SEA 357, P.L. 82-2007, SECTIONS 1-4, Ind. Code 8-23-2-18, 14-8-2-184, 14-23-1-2, effective July 1, 2007.

SENIOR FISHING LICENSES

Currently, Hoosiers who are sixty-five (65) years of age are not required to have a fishing license to fish in Indiana. After July 1, 2007, the fishing license requirements have been changed to require that seniors born after March 31, 1943, who are at least sixty-four (64) years old will be required to pay three dollars ($3) for an annual fishing license or seventeen dollars ($17) for a "fish for life" license. The new requirements do not apply to those seniors born before April 1, 1943. Those Hoosiers currently over 65 will still enjoy the exemption from fishing license requirements.

The new senior fishing license requirements will raise money to fund Indiana's public water access, fish stocking, and fish management programs. Beyond the funds generated by the new licensing fees, the new requirements will also improve Indiana's distribution of money from the federal Sport Fish Restoration Program. The federal program is funded by excise taxes on fishing equipment and boat fuel, while the distributions to each state is determined by the number of licensed fishers in each state Adding

senior fishers to Indiana's pool of licensed fishers will increase the federal funding returned to Indiana.

HEA 1299, P.L. 14-2007, SECTIONS 1- 2, Ind. Code 4-22-11-8, 4-22-12-1, effective July 1, 2007.

TAKING WILD ANIMALS WITH SPOTLIGHT OR SILENCER

Indiana law currently prohibits the use of spotlights or silencers as a way to take wild birds and animals. Spotlights have been used to disarm or shock the birds or animals so that hunters may then use a firearm or bow to kill the animal. Hence their use while a person also possesses a firearm, bow, or crossbow is illegal. Additionally, it is illegal for a person to use or possess a silencer. Recognizing that these devices can be useful for employees of the DNR or other federal wildlife management agency in the performance of their duties, the law was changed this year to allow employees of these agencies to use spotlights or silencers if they are acting within the performance of their duties and have express written consent from the director of the DNR.

HEA 1146, P.L. 13-2001, SECTIONS 1-2, Ind. Code 14-22-6-7, 14-22-6-11, effective July 1, 2007.

USE OF OUTSIDE WATER RESOURCES BY WATER UTILITIES

Effective May 11, 2007, the Natural Resources Commission ("NRC") must now follow certain public notification procedures before it can contract with a person to provide stream flow or sell water on a unit-pricing basis. Before this new law, the NRC was required to execute contracts which were subject to approval by the attorney general, the governor, and the person contacting for the use of the water. Contacts could not exceed fifty (50) years in length, and before submitting the contract to the governor, the Department of Natural Resources ("DNR") was required to prepare for the Governor to consider, a memorandum of the effect that the water contract would have on recreational facilities.

In response to at least one controversial project, which the public became aware of very late in the process, where water from the Monroe Reservoir would have been diverted to Indianapolis instead of using water from Geist Reservoir because residents of Geist feared the lowering of their water level, now, in addition to the current requirements, HEA 1738 requires additional notice provisions and public meetings to allow interested parties to comment on the proposed water contracts. Specifically, within 30 days of receiving a request to enter a contract, the DNR is required to send notice to other parties who already hold contracts, and the executive and legislative bodies of counties, municipalities, and conservancy districts in which the water will be used and in which the affected reservoir is located. Those parties already holding water contracts are in turn required to send notice within seven days to any parties or water utilities that purchase water from that party. The DNR shall also publish notice in at least one general circulation newspaper in the counties in which the water is proposed to be used, the affected reservoir is located, or where affected parties are located.

The required notices must identify the party requesting a water contract, the nature of the requested contract, the process by which the NRC will determine whether to enter the contract, and a statement about the recipient's duty to provide notice to any of its water purchasing customers. The notices must also list the date, time, and location of required public meetings.

The DNR Advisory Council must also hold public meetings in each county in which notice is published. The public meeting must include a presentation by the DNR describing the nature of the contract request and the process by which the NRC will determine whether to enter the contract. The meeting must also allow an opportunity for public comment, and the DNR Advisory Council must provide a report summarizing the public meeting to the NRC within 30 days of the meeting. The NRC cannot make a determination on the water contract until notice has been mailed and it has received the reports of the public meetings. These restrictions ensure that all interested parties receive notice and are allowed to comment before the NRC enters water contracts.

The exception in Ind. Code 14-25-2-8 still applies to prohibit the state from requiring compensation for water that both comes from a reservoir impoundment financed by the state and is provided to water users in an area in which the outlet of the reservoir impoundment has been the primary source of water for at least fifty years.

HEA 1738, P.L. 231-2007, SECTIONS 1- 2, Ind. Code 14-25-2-2, 14-22-2-2.5, effective May 11, 2007.

WATER RESOURCES STUDY COMMITTEE

In addition to limiting water contracts that the NRC can enter, HEA 1738 seeks to further protect Indiana's water resources by directing the Water Resource Study Committee to study processes and methods currently used to determine water resource allocation and distribution in Indiana and to make recommendations for appropriate policies to govern future allocation and distribution planning. The committee's findings and recommendations are due by November 1, 2007. With the additional information generated by the study, the legislature may be in a better position to make changes in upcoming years to protect Indiana's finite water resources.

HEA 1738, P.L. 231-2007, SECTION 5, effective May 11, 2007.

LAWS AFFECTING THE BUREAU OF MINES AND MINING SAFETY

As a result of the large number of worker deaths in underground mines in other states, the Indiana General Assembly has evaluated Indiana's mine safety laws and made changes to ensure that Indiana's laws are those necessary to protect worker safety. In general all of Indiana's old safety standards have been replaced by new laws that are based on current Federal Mine Safety Health Administration regulations. In addition, $60,000 has been appropriated by the legislature for mine rescue equipment. These changes took effect April 23, 2007. An explanation of the specific changes made to Indiana's law follows.

The Labor and Safety laws were amended to remove from the Bureau of Mines and Mining Safety ("Bureau") the following duties in connection with surface coal mines, leaving more time to focus on underground mines:

(1) Safety consultation requested by the mine operator;
(2) Provision of mine safety and health education information;
(3) Provision of mine safety and health training required by the Federal Mine Safety and Health Administration where that training is not otherwise available; and
(4) Investigation of fatalities that have occurred.

In addition the Bureau no longer has the duty to provide mine safety and health training required by the Federal Mine Safety and Health Administration to underground mines; refocusing its efforts in other areas.

HEA 1335, P.L. 35-2007 SECTION 1, Ind. Code 22-1-1-5, effective April 23, 2007.

Indiana Code 22-10-1.5 was amended to apply to all mines, not just commercial underground mines. Indiana Code 22-10-1.5 is the law establishing the Mining Board. This year, the Mining Board was given the responsibility for establishing by rule higher fees for persons applying for an examination for a certificate of competency and for replacement of lost or destroyed certificates. Current fees are $25 and $5.

HEA 1335, P.L. 35-2007 SECTIONS 3, 6, 15, 16 and 18, Ind. Code 22-10-1.5-1, Ind. Code 22-10-1.5-4, Ind. Code 22-10-3-10, Ind. Code 22-10-3-11, and Ind. Code 22-10-3-13, effective April 23, 2007.

The Governor is no longer required to first hold a hearing before removing a member for cause from the Mining Board.

HEA 1335, P.L. 35-2007, SECTION 4, Ind. Code 22-10-1.5-2, effective April 23, 2007.

Non-state-employee members of the Mining Board are now entitled to the minimum salary per diem and reimbursement for traveling expenses and other expenses actually incurred in connection with the member's duties.

HEA 1335, P.L. 35-2007 SECTION 5, Ind. Code 22-10-1.5-3

The law was amended to clarify that it is not the Mining Board that is responsible for administering all of the laws concerning coal mines. The Mining

Board does have the new responsibility for examining persons applying for certificates of competency and continues to have responsibility for: (1) collecting and distributing information concerning preventing mine accidents and improvements for health and safety and conservation of the mineral resources and economic conditions of the mining industry; (2) submitting bills to the general assembly for necessary legislation; (3) assessing and collecting fees from mine operators necessary to purchase and maintain underground mine rescue equipment for the Bureau of Mines and Mine Safety; and (4) reporting to the Commissioner of the Department of Labor concerning the need for additional mine inspectors. The law was clarified this year however, to provide that the Mine Board is only to assess and collect fees from operators if appropriations from the General Assembly are not considered sufficient and the law was changed to allow the Mining Board to assess fees on all mine operators, not just underground mine operators. The legislature did appropriate $60,000 this session for this purpose.

HEA 1335, P.L. 35-2007 SECTION 7, Ind. Code 22-10-1.5-5, effective April 23, 2007.

The qualifications for the Director of the Bureau of Mines and Mine Safety ("Director") were changed this year to provide that the qualification be only that he or she possesses a practical knowledge of Indiana mining laws, not just Indiana coal mining laws and that he or she need not have knowledge of mining engineering. In addition, the law was revised to provide that the Director can be removed for other than cause; meaning that the Director now serves at the pleasure of the Governor.

HEA 1335, P.L. 35-2007 SECTION 8, Ind. Code 22-10-1.5-6, effective April 23, 2007.

The law creating the position of a chief mine inspection, Ind. Code 22-10-1.5-7, has been modified to make employment of that position subject to appropriation by the general assembly for the position. In addition the qualification of that person has been changed from being a person that has an Indiana fire boss certificate to one who has an Indiana mine examiner certificate. A fire boss is one who examines mines for gas and other dangers. A mine examiner is a properly certified person designated by the mine foreman to examine the mine for gas and other dangers.

HEA 1335, P.L. 35-2007 SECTION 9, Ind. Code 22-10-1.5-7, effective April 23, 2007.

The law has been revised to eliminate the director and mine inspector's police officer power to arrest and detain persons found violating the mining laws.

HEA 1335, P.L. 35-207 SECTION 13, Ind. Code 22-10-3-6, effective April 23, 2007.

The Director of the Bureau of Mines and Mine Safety ("Director") is no longer given the responsibility for collecting statistics related to coal mining in the State. However records of inspections and reports relating to coal mines will be available on the website maintained by the Bureau of Mines and Mine Safety. Inspection reports must be made available on the web within 60 days of the date of the inspection. Reports related to coal mines will remain available on the web for a period of 2 years.

HEA 1335, P.L. 35-207 SECTION 13, Ind. Code 22-10-3-6, effective April 23, 2007.

The Director and mine inspector's duties have been revised to no longer require that he or she inspect the surface plant and measure the volume of air at the intake and return of the main ventilating current and each split and that passing through the last breakthrough in each pair or set of entries, but to make those actions something which the director and mine inspection are authorized to do. The law has been supplemented to require that the director or mine inspector make time available during an inspection for interactions with the employees of the mine in order to ascertain the familiarity of the employees with self-rescuers and accessible escapeways.

HEA 1335, P.L. 35-2007 SECTION 13, Ind. Code 22-10-3-6, effective April 23, 2007.

Terminology for mine workers has changed. No longer is there an assistant mine foreman or a fire boss. In the place is a new position of a mine examiner. That person is a properly certified person designed by the mine foreman to examine the mine for gas and other dangers. A mine examiner may temporarily act as a section foreman if designed to act as such by the mine foreman. New positions of belt examiner and hoisting engineer have been added. A belt examiner is an individual designated by the mine foreman to perform the functions as required by 30 CFR Part 75 in connection with

examinations to ensure that the belt, belt drives, dump points, air movement, roof and ribs of a mine are in a safe condition. A hoisting engineer is an individual who is capable of transporting people and materials in and out of a mine by means of a hoist.

HEA 1335, P.L. 35-2007 SECTION 12, Ind. Code 22-10-3-1, effective April 23, 2007.

No longer must the Director or mine inspector notify the mine management and a representative of miners at the time of each inspection of the opportunity to accompany the state inspector.

HEA 1335, P.L. 35-2007 SECTION 13, Ind. Code 22-10-3-6, effective April 23, 2007.

The Mining Board is no longer required to meet on the first Saturday of January, April, July, and October to examine applicants for certificates. Now 30 days advance notice will be posted at all coal mines in the state and posted on the website maintained by the Bureau of Mines and Mine Safety of the date, time, and place for examinations, to be held during the months of January, April, July, and October. The Mining Board is required to establish standards for the competent practice for belt examiner and mine engineers, in addition to the requirement to already have such standards in place for mine foreman, shot-firer and hoisting engineer. Each of those positions must obtain a certificate of competency from the Mining Board, after proving themselves competent and qualified. Certification now can be judged by a single member of the Mining Board, as opposed to prior law requiring a majoring of the Mining Board to consider each applicant. The new position of mine examiner must have three years of experience in underground coal mines, or two years, if the person has graduated and holds a degree in engineering or an associate in applied science degree in coal mining technology from an accredited school, college or university. The new position of belt examiner must have at least one year of experience in belt maintenance or installation work. The position of hoisting engineer must now not only be capable of operating a hoist and have a thorough knowledge of coal mining laws pertaining to hoisting operations, but now also must have at least one year of mining experience and at least 20 hours practical experience under the supervision of a certified hoisting engineer. The Mining Board may refuse to examine an applicant who cannot readily understand the written English language or express himself or herself in English Language.

HEA 1335, P.L.35-2007 SECTION 15, Ind. Code 22-10-3-10, effective April 23, 2007.

Mine operators are now required to provide a copy of the Mine Safety Administration Form 7000-2 to the Director of the Bureau of Mines and Mine Safety in lieu of the special report required under old laws that related to the seam mined, tons of coal produced, number of men employed, days operating, and days lost during the month due to injury. That report is to be provided to the Director at the same time it is sent to the Mine Safety Administration.

HEA 1335, P.L. 35-2007, SECTION 20, Ind. Code 22-10-3-15, effective April 23, 2007.

The law has been changed to require the Bureau of Mines and Mine safety to maintain either one or two mine rescue teams. These teams consist of at least five members and two alternate members. The members are to be provided by active underground mines. The Director of the Bureau of Mines and Mine Safety in consultation with the Mining Board will determine the training and retraining requirements for mine rescue teams, consistent with Mine Safety Administration requirements.

HEA 1335, P.L.35-2007 SECTION 21, Ind. Code 22-10-12-11, effective April 23, 2007.

The duties of the Director of the Bureau of Mines and Mine Safety, in the event of a mine disaster, have been clarified and expanded. Under the old law the Director was to cooperate with interested federal agencies and order and coordinate the rescue operation. Under the new law, when an underground mine disaster affects mine personnel, the director is required to immediately report to the mine. He or she then is to cooperate with the Federal Mine Safety Administration and actively assist in the rescue efforts.

HEA 1335, P.L. 35-2007 SECTION 22, Ind. Code 22-10-12-12, effective April 23, 2007.

The Mine Safety Fund, which exists to provide funding for the purchase and maintenance of underground mine rescue equipment will now have additional funds as a result of a change made this year. The fees from examinations, for duplicate certificates, and fees for certificates will now be placed in that fund, supplementing the money already placed in that fund from assessments the

mining board collects and interest from investments the State Treasurer is required to do with money in the fund not currently needed to meet obligations.

HEA 1335, P.L. 35-2007 SECTION 23, Ind. Code 22-10-12-16, effective April 23, 2007.

Finally, a new chapter has been added to the Mining Laws authorizing mine operators to test for alcohol use and illegal use of drugs. The tests may be done when there is probable cause to conduct the test of an employee or on a random basis among all mine employees. Testing may be done on the grounds of the mine or off premises at a medical facility. Testing must be done by legally approved testing techniques and results must be certified by a medical review officer who has the ability and training necessary to verify test results. However until January 1, 2012, this new testing authority does not apply to or abrogate a labor contract or labor agreement that addresses alcohol or drug testing that was in effect on April 23, 2007. Neither does this new law preclude arbitration on a provision in a labor contract or labor agreement for alcohol or drug testing that was in effect on April 23, 2007.

HEA 1335, P.L. 35-2007 SECTIONS 24 and 27, Ind. Code 22-10-15 and Non Code Section, effective April 23, 2007.

LAWS AFFECTING THE ENVIRONMENTAL QUALITY SERVICE COUNCIL

EQSC TO STUDY AND REPORT ON RULEMAKING AND RECYCLING

The Environmental Quality Service Counsel ("EQSC") has again been assigned certain topics by the Legislature for study during 2007. The EQSC is directed to study and make recommendations concerning shortening the environmental rulemaking process. In addition EQSC is to study the goals, funding, markets, and structure of recycling in Indiana. The EQSC is to provide its findings and recommendations on these matters in its final 2007 report to the General Assembly.

SEA 154, P.L. 204-2007, SECTION 17, non-code provision, effective July 1, 2007.

The EQSC also may study topics of its own choosing. We expect the EQSC to Study Concentrated Animal Feeding Operations as a result of the failed effort to pass legislation this past session.

MISCELLANEOUS ENVIRONMENTAL LEGISLATION

GUIDELINES FOR THE CONSTRUCTION OF INTERSTATE PIPELINES

New statutory provisions have been added as of May 2, 2007, to assist private landowners in negotiating property purchase agreements with pipeline companies that propose to construct interstate pipelines. This new law directs the Indiana Utility Regulatory Com-mission ("IURC") to provide information regarding new interstate pipeline projects on its website. The bill was sponsored by Representative Bob Bischoff (D-Lawrenceburg) after he learned that the Rockies Express Pipeline East project would run approximately 622 miles from Audrain County, Missouri, to Monroe County, Ohio, and would affect nine counties in Indiana.

The new chapter regarding pipeline construction guidelines only applies to the construction of interstate pipelines on privately owned land in Indiana and does not apply to construction across publicly owned land or public right-of-ways. Ind. Code 8-1-22.6-1(a) and (b). The term "construction" means construction, reconstruction, maintenance,

and extension of pipelines and also includes the preparation of the worksite in addition to the removal of pipeline structures.
Ind. Code 8-1-22.6-3.

The new statute directs the Pipeline Safety Division ("Division") of the IURC to develop voluntary guidelines to be considered by a pipeline company proposing to construct a pipeline located in whole or in part in Indiana. Ind. Code 8-1-22.6-8. These guidelines are not binding on either a pipeline company or the private landowner, but are meant to provide guidance to the private landowner while negotiating the price or details involved in the easement needed by the pipeline company to construct the pipeline. These guidelines have been developed by the Division and are available on its website at http://www.in.gov/iurc/pipeline/senatebill529.html and were also published in the Indiana Register on August 29, 2007.

Once a pipeline company proposes to construct a pipeline in Indiana, the Division must send a copy of the guidelines to the pipeline company by certified mail. Ind. Code 8-1-22.6-9(b). The Division must also give notice to the pipeline company that it will send the guidelines to all landowners affected by the pipeline construction and that the Division encourages landowners to agree to the guidelines in any negotiations with the pipeline company. *Id*. The Division must send this notice within 3 days of notice from the Federal Energy Regulatory Commission ("FERC") of the pipeline company's application for certificate of territorial authority or when it learns of the proposed pipeline either

(1) because the pipeline company has filed an application for a certificate of public convenience and necessity with the FERC,

(2) has conducted studies or surveys in preparation for a filing with the FERC,

(3) begins having public hearings about the pipeline,

(4) enters upon Indiana land to determine route or location of a pipeline,

(5) begins contacting landowners in Indiana to negotiate the price for easements or other interest in land, or

(6) otherwise prepares for construction of the pipeline.

Ind. Code 8-1-22.6-9(a) and (c).

Once a proposed pipeline project has been identified, the Division must also appoint at least one division employee to act as project coordinator. The project coordinator is also responsible for monitoring any filings with the FERC, to attend public hearings or meetings concerning the pipeline in Indiana, receiving questions and complaints from Indiana residents, and updating the information about the pipeline project on the IURC website.
Ind. Code 8-1-22.6-12.

The pipeline company is obligated to provide to the Division a list of landowners that will be affected by the proposed pipeline construction. Ind. Code 8-1-22.6-10(a). The Division is required to send to each landowner by certified mail a copy of or reference to the voluntary guidelines along with a notice that the guidelines have been provided to the pipeline company, that although not binding on either the pipeline company or the landowner that the guidelines may be used to simplify negotiations in establishing a price for any easement, and encouraging the landowner to agree to any construction guidelines which the pipeline company agrees to follow. Ind. Code 8-1-22.6-10(b). The notice must also include the contact information at the Division which a landowner may call for information regarding any construction guidelines to which the pipeline company has agreed, in addition to contact information for project coordinators designated by the Division, the contact information for the FERC, and the IURC's website address. Ind. Code 8-1-22.6-10(b). The Division is required to mail this information within 20 days after it receives the list of landowners from the pipeline company. Ind. Code 8-1-22.6-10(c).

SEA 529, SECTION 2; P.L. 110-2007; Ind. Code 8-1-22.6 et seq., effective May 2, 2007.

In addition the eminent domain law was amended to prohibit a public utility or pipeline company from entering upon land it seeks to acquire before it either sends notice via certified mail 14 days in advance of its proposed entry or it receives a landowner's signed consent to enter the property. If the public utility or pipeline company fails to follow this procedure,

an affected landowner may bring an action in the circuit court of the county in which the property is located. A prevailing landowner is entitled to its actual damages and the reasonable cost of the action, including attorneys' fees.

SEA 529, P.L. 110-2007, SECTION 2, Ind. Code 32-24-1-3(g), effective May 2, 2007.

LAWS AFFECTING RULEMAKING

EMERGENCY RULEMAKING

Normally, when the environmental boards undertake a rulemaking, IDEM must follow the procedures outlined in Ind. Code 13-14-9 involving public comment periods, public meetings, and the notice required for rulemaking actions. Additionally, Ind. Code 4-22-2-24 through 36 apply. Those sections require public notice, public hearings, and submission and review of the rule by the attorney general. Currently Indiana Code 4-22-2-37.1 provides that certain enumerated emergency rulemakings are not required to comply with the aforementioned statutory requirements. This section of the code was amended this year to expand the use of emergency rulemakings by the air pollution control board, solid waste management board, or the water pollution control board when necessary to comply with a date provided by federal law. As before, this emergency rulemaking power can only be used by the environmental boards if

(A) variance procedures are included in the rules and
(B) permits or licenses granted during the period the emergency rule is in effect are reviewed after the emergency rule expires.

SEA 154, P.L. 204-2007, SECTION 2; Ind. Code 4-22-2-37.1, effective May 10, 2007.

RULEMAKING WITHOUT PUBLIC COMMENT PERIODS

Provisions of Ind. Code 13-14-9 were also changed this year. These provisions concern rulemakings where the Commissioner of IDEM determines that no public comment periods are necessary as allowed by Ind. Code 13-14-9-8. This procedure is only available when:

(1) The proposed rule constitutes
  (A) an adoption or incorporation by reference of a federal law, regulation, or rule that
    (i) is or will be applicable to Indiana and
    (ii) contains no amendments that have a substantive effect on the scope or intended application of the federal law or rule;
  (B) a technical amendment with no substantive effect on an existing Indiana rule; or
  (C) A substantive amendment to an existing Indiana rule, the primary and intended purpose of which is to clarify the existing rule; and

(2) the proposed rule is of such nature and scope that there is no reasonably anticipated benefit to the environment or the persons referred to in section 7(a)(2) [persons to be regulated or otherwise affected by the proposed rule] of this chapter from the following:
  (A) exposing the proposed rule to diverse public comment under section 3 or 4 of this chapter [provisions for first and second public comment periods]
  (B) affording interested or affected parties the opportunity to be heard under section 3 or 4 of this chapter [provisions for first and second public comment periods].

Ind. Code 13-14-9-8(a)(1). To clarify what is required under this provision and to simplify the code section on rulemaking procedures, Ind. Code § 13-14-9-1 was amended to specify the sections of the chapter which do not apply to rulemakings pursuant to Ind. Code 13-14-9-8. Indiana Code 13-

14-9-8 was then expanded to specify the materials which must be included in the notice of adoption of a proposed rule (which had formerly been included in Ind. Code 13-14-9-6). Ind. Code 13-14-9-8 now also includes a section specifying which actions a board may take on a rule not subject to public comment periods: adopt the proposed rule, reject the proposed rule, reconsider the proposed rule at a subsequent meeting, or determine that additional public comment is necessary. Just as before (formerly under Ind. Code 13-14-9-12), if the board determines that additional public comment is necessary, a second notice of public comment shall be published in accordance with Ind. Code 13-14-9-4. These changes to Ind. Code 13-14-9 clarify the procedures that must be followed when the Commissioner determines that no public comment period is necessary, making Ind. Code 13-14-9-8 more of a stand-alone provision.

SEA 154, SECTIONS 11-13; P.L. 204-2007; Ind. Code 13-14-9-1, 13-14-9-8, 13-14-9-12, effective May 10, 2007.

LAWS AFFECTING THE OPEN DOOR POLICY

Indiana's Open Door Law has been revised this year in an effort to protect public access rights by addressing serial meetings and limiting the ability of members who are not physically present at a meeting to participate in voting or count toward constituting a quorum for purposes of taking action.

DEFINITION OF PUBLIC AGENCY AND MEETINGS

Under the Open Door Law, "governing bodies" of "public agencies" are required to hold "meetings" for the purpose of taking "official action" in compliance with the Open Door Law. The very broad definition of the public agencies subject to the Open Door Law was slightly changed this year. Previously public agencies included all of the following:

(1) Any state board, commissioner, department, agency, authority, or other entity designated, exercising a portion of the executive, administrative or legislative power of the state.

(2) Any county, township, school corporation, city, town, political subdivision or other entity, designated, exercising, in a limited geographical area the executive, administrative or legislative power of the state or delegated local governmental power.

(3) Any entity which is subject to either budget review by the Department of Local Government Finance or governing body of a county, city, town, township, or school corporation or audit by the State Board of Accounts.

(4) Any building corporation of a political subdivision of the state,

(5) Any advisory commissioner, committee, or body created by statute, ordinance, or executive order to advise the government body of a public agency, except medical staffs or the committees of such medical staff.

(6) The Indiana Gaming Commissioner, including any department, division or office of the Gaming Commission.

(7) The Indiana Horse Racing Commission, including any department, division or office of the Horse Racing Commission.

This year, a change was made to provide that entities subject to audit by the State Board of Accounts are a public agency subject to the Open Door Law, only if that audit is one that is required by state, rule. or regulation. In addition, the legislature exempted from the Open Door Law an entity that receives public funds through an agreement with the state, county, or municipality to provide services, goods or other benefits in exchange for fees, if that entity is not required by statute, rule, or regulation to be audited by the State Board of Accounts.

SEA 103, P.L. 179-2007 SECTIONS 1and 2, Ind. Code 5-14-1.5-2 and Ind. Code 5-14-1.5-2.1, effective July 1, 2007.

What constitutes the governing body of a public agency was not changed. It is still necessary that the governing body be two or more individuals who either are

(1) the public agency in the form of a board, a commission, an authority, a council, a committee, a body, or entity that takes official action on public business;

(2) the board, commission, council, or other body of a public agency which takes official action upon public business; or

(3) a committee appointed directly by the governing body or its presiding officer delegated to take official action upon public business, excluding agents conducting collective bargaining on behalf of the public agency.

What is a meeting was, however, changed this year. A meeting is a gathering of a majority of the governing body of a public agency for the purpose of taking official action upon public business, except for (a) social or chance gatherings not intended to avoid the Open Door Law, (b) on-site inspections of a project or program, (c) travel to and attending meetings of organizations devoted to betterment of government, and (d) a caucus. This year the legislature expanded the types of gatherings that are excluded from the definition of "meeting" under the Open Door Law. Those additional exclusions are

(1) any onsite inspection of facilities of applicants for incentives or assistance from the governing body;

(2) a gathering to discuss an industrial or a commercial prospect that does not include a conclusion as to recommendations, policy, or final action on the terms of a request or an offer of public financial resources;

(3) an orientation of members of the governing body on their role and responsibilities as public officials, but not for any other public reason; and

(4) a gathering for the sole purpose of administering an oath of office.

SEA 103, P.L. 179-2007 SECTION 1, Ind. Code 5-14-1.5-2, effective July 1, 2007.

What constitutes official action was not changed. It remains to receive information, deliberate, make recommendations, establish policy, make decisions, or take final action.

PARTICIPATION IN MEETINGS BY ELECTRONIC MEANS

The legislature added a section to the law to make it the general rule that members who are not physically present at a meeting but who communicate with members of the governing body during the meeting by telephone, computer, videoconferencing, or any other electronic means, may not participate in final action taken at that meeting and may not be considered to be present for purposes of determining a quorum. This general rule does not apply if there is another statute that authorizes participation by electronic means.

SEA 103, P.L. 179-2007 SECTION 3, Ind. Code 5-14-1.5-3, effective July 1, 2007.

Overriding that general rule, the legislature then added specific statutory authorization for certain public agencies allowing members to participate in the vote when participating by electronic means, but only if a quorum is physically present and all other members and the public present at the meeting can simultaneously communicate with each other during the meeting. The public agencies and committees of those governing bodies who may participate electronically include (1) a joint agency of a municipal utility program, (2) Ivy Tech Community College, (3) Vincennes University, (4) Ball State University (5) Indiana State University, (6) Indiana University, (7) Purdue University, (8) The University of Southern Indiana, and (9) Professional Licensing Agencies, including the Board of Chiropractic Examiners, the State Board of Dentistry, the Indiana State Board of Health Facility Administrators, the Medical Licensing Board of Indiana, the Indiana State Board of Nursing, the Indiana Optometry Board, the Indiana Board of Pharmacy, the Board of Podiatric Medicine, the Board of Environmental Health Specialists, the Speech-Language Pathology and Audiology Board, the State Psychology Board, the Indiana Board of Veterinary Medical Examiners, the Controlled Substances Advisory Committee, the

Committee of Hearing Aid Dealer Examiners, the Indiana Physical Therapy Committee, the Respiratory Care Committee, the Occupational Therapy Committee, the Social Worker, Marriage and Family Therapist, and Mental Health Counselor Board, the Physician Assistant Committee, the Indiana Athletic Trainers Board, the Indiana Dietitians Certification Board, and the Indiana Hypnotist Committee. The memoranda of a meeting where a member participates by electronic means must state the name of each member who was physically present at the place of where the meeting was conducted and each member who participated in the meeting electronically and each member who was absent.

SEA 103, P.L. 179-2007, SECTIONS 3, 10, 11, 12, 13, and 14, Ind. Code 5-15-1.5-3, Ind. Code 8-1-2.2-31, Ind. Code 21-22-3-5, Ind. Code 21-25-3-8, Ind. Code 21-27-2-2, and Ind. Code 25-1-14, effective July 1, 2007.

PROHIBITION AGAINST USE OF SERIAL MEETING TO AVOID OPEN DOOR LAW

The legislature addressed serial meeting this year, providing, with certain exceptions, that members of the governing body who participate in a series of gatherings either in person or by electronic means (excluding electronic mail) violate the Open Door Law if members of the governing body participate in a series of at least two gatherings of members of the governing body and the series of gatherings meet all of the following criteria:

(1) One of the gatherings is attended by at least three members but less than a quorum of the members of the governing body and the other gathering or gatherings include at least two members of the governing body (for the city-county council of a consolidated city, one of the gatherings must be attended by at least five members and the other gatherings must include at least three members);

(2) the total sum of different members attending all gatherings at least equals a quorum of the governing body;

(3) all the gatherings concern the same subject matter and are held within a period of not more than 7 consecutive days; and

(4) the gatherings are held for the purpose of taking official action on public business.

With these requirements for what constitutes prohibited serial gatherings, it is clear this prohibition does not apply to County Boards of Commissioners, since there could never be a meeting of at least three members, which is less than a quorum.

The same seven exceptions that generally apply to what constitutes a meeting, plus one other, apply. It is not a gathering for purposes of the prohibition against serial meetings if the gathering is

(1) a social or chance gathering not intended by the members to avoid the Open Door Law,

(2) an on-site inspections of a project, program, or facility of an applicant for incentives or assistance from the governing body,

(3) travel to and attending meetings of organizations devoted to betterment of government,

(4) a caucus,

(5) a gathering to discuss an industrial or a commercial prospect that does not include a conclusion as to recommendations, policy, decisions, or final action on the terms of a request or an offer of public financial resources,

(6) an orientation of members of the governing body on their role, responsibilities as public officials, but not for any other public reason; and

(7) a gathering for the sole purpose of administering an oath of office, or

(8) a gathering between less than a quorum of members intended solely for a member to receive information and deliberate on whether a member or members may be inclined to support a member's proposal or a particular piece of legislation, at which no other official action will occur.

A violation of the prohibition against using serial meetings to take official action can be prosecuted by an action in any court of competent jurisdiction to obtain a declaratory judgment to enjoin continuing, threatened, or future violations or to declare void any policy, decision, or final action that is based in whole or in part upon official action taken at a series of gatherings in violation of the Open Door Law.

SEA 103, P.L. 179-2007 SECTIONS 4 and 6, Ind. Code 5-14-1.5-3.1 and Ind. Code 5-14-1.5-7, effective July 1, 2007.

EXECUTIVE SESSIONS

The matters for which an executive session may be held have been expanded this year. Negotiations (in addition to "interviews" as provided in the current law) may be held in executive session between industrial or commercial prospects and the following:

(1) an economic development commission,
(2) a local economic development organization, and
(3) a governing body of a political subdivision.

SEA 103, P.L. 179-2007, SECTION 5, Ind. Code 5-14-1.5-6.1, effective July 1, 2007.

LAWS AFFECTING PUBLIC RECORDS

DEFINITION OF PUBLIC AGENCY

The definition of "public agency" for purposes of the Public Records law was changed this year. The same change made to the Open Door Law was made. Specifically this year, a change was made to provide that entities subject to audit by the State Board of Accounts are a public agency subject to the public records law, only if that audit is one that is required by statute, rule, or regulation. In addition, the legislature exempted from the Access to Public Records law an entity that receives public funds through an agreement with the state, county, or municipality to provide services, goods, or other benefits in exchange for fees, if that entity is not required by statute, rule, or regulation to be audited by the State Board of Accounts.

SEA 103, P.L. 179-2007 SECTIONS 7 and 8, Ind. Code 5-14-3-2 and Ind. Code 5-14-3-2.1, effective July 1, 2007.

EXCEPTION FROM DISCLOSURE

A new exception from what must be disclosed as a public record has been added to the law this year. Exempt from public access, at the discretion of the public agency, are records relating to negotiations between industrial, research, or commercial prospects and a local economic development organization or a governing body of a political subdivision while negotiations are in progress. A final offer of public financial resources communicated by a governing body of a political subdivision, however, shall be available for inspection and copying after negotiations with that prospect have ended. The law had already exempted at the discretion of the agency negotiations between industrial, research, or commercial prospects and the Indiana Economic Development Corporation, the Indiana Finance Authority, and economic development commissions. This exception has been extended to local government agencies.

SEA 103, PL 179-2007 SECTION 9, Ind. Code 5-14-3-4, effective July 1, 2007.

OTHER LAWS OF INTEREST

CERTIFIED AND REGISTERED MAIL NOTICE PROCEDURES CHANGED

Many older laws and rules require that the State give notice by registered mail. The legislature has already addressed that out-dated form of giving notice by adopting Indiana Code 1-1-7-1 to provide that if a statute of the General Assembly or a rule adopted by an agency requires that notice or another matter be given by registered mail that it is acceptable to use certified mail by the United States Post Office to comply. The law now has been further changed to recognize all of the private mail carrier services. Effective July 1, 2007, delivery may be done by other private carriers and even by hand delivery by an employee of a state agency. Specifically, the law provides where a statute or a rule requires notice be given by certified or registered mail, the notice may now be provided by any service of the United States Post Office or by a private delivery service that tracks the delivery of mail and requires a signature upon delivery. In addition, notice may now be hand delivered by an employee of the unit of government sending the notice.

The law has been expanded also to provide what must be done if that first effort at notice fails. If the notice by one of the above noted means is returned undelivered (and no rule regarding the means of giving notice established by the Supreme Court applies), a second effort at notice must be given by (1) personal delivery, (2) leaving a copy of the notice at the dwelling house of the person receiving the notice, (3) sending a copy of the notice by first class mail to the last known address of the person receiving the notice, or (4) serving the agent of the person (established by rule, statute, or valid agreement) who is to receive the notice.

SEA 310, PL 208-2007, Inc. Code 1-1-4-1, effective July 1, 2007.

FOUNDRY PRODUCT PROTECTION FROM UNFAIR FOREIGN COMPETITION

The law passed in 1978 to protect domestic steel producers from unfair competition by foreign steel producers was amended on July 1, 2007, to also apply this protection to foundry products. Specifically, under this law, state, county, city, township, school, and conservancy districts and other governmental units or districts that let public bids for construction or other public works under Indiana law, must require that every contract for the construction, reconstruction, alteration, repair, improvement, or maintenance of public works contain a provision that if any steel or foundry products are to be used or supplied in the performance of the contract or subcontract, only steel or foundry products made in the United States be used or supplied. The only exception to this requirement is if the United States steel or foundry product's cost is unreasonable or the head of the agency determines the steel or foundry products are not produced in the United States in sufficient quantities to meet the requirements of the contract. A cost will be unreasonable if the bid or offered price is 15% more than the bid or offered price of foreign origin. The Agency head may also accept the bid of a United States steel or foundry product as reasonable if it is not more than 25% more than the foreign steel or foundry product's price, if the agency determines for a particular project that the use of the domestic product would benefit the local or state economy through improved job security and employment opportunity. Whenever an agency head makes such a determination, a report must be filed with the Governor and the Legislative Services agency detailing the reasons for such determination and the probable impact on the economy of the use of domestic steel or foundry castings in the project at a cost more than 15% of the foreign product.

SEA 96, P.L. 6-2007, Ind. Code 5-16-8-1, Ind. Code 5-16-8-2 and Ind. Code 5-16-8-4; effective July 1, 2007.

GRANTS AND LOANS FOR ALTERNATIVE FUEL TECHNOLOGY

In further support of private efforts to assist with diversifying Indiana's economy, the Legislature added alternative fuel technology to the list of

economic development proposals eligible for grants and loans from the Twenty-First Century Research and Technology Fund. The Fund consists of appropriations from the General Assembly, proceeds of bonds issued by the Indiana Finance Authority, and loan repayments. The amendment provides that grants and loans may be made from the Fund for the development of alternative fuel technologies, and the development and production of fuel-efficient vehicles.

SEA 106, P.L. No. 127-2007, SECTION 108, Ind. Code 5-28-16-2, effective July 1, 2007.

INDIANA FINANCE AUTHORITY

The Indiana Finance Authority ("IFA") was created by the Indiana General Assembly to oversee state-related debt issuance and provide efficient financing solutions to facilitate state, local government, and business investment in Indiana. Likewise, the IEDC was recently created to promote economic development and investment in the State of Indiana. This year, the Legislature passed SEA 524, which transferred oversight of a number of state run programs from the IFA to the IEDC, including:

a. The Shovel Ready Site Development Center
b. The Capital Access Program
c. The Industrial Development Loan Guaranty Program
d. The Agricultural Rural Development Fund and
e. The Business Development Loan Fund.

The bill also abolished the Indiana Health and Education Facility Financing Authority ("IHEFFA") and transfers the former powers of the authority of the IHEFFA to the IFA.

Senate Enrolled Act 524 contains numerous other changes to effectuate the transfer of these programs to the IEDC and the IFA. For example, funds owed to the IFA for the various programs that are being moved to the IEDC shall be transferred as of July 1, 2007. In addition, the "secretary" of the IFA has been renamed the "public finance director." The job duties remain the same.

SEA 524, P.L. 162-2007, SECTIONS 1-45, Ind. Code 4-4-10.9-1, Ind. Code 4-4-10.9-1.2, Ind. Code 4-4-10.9-11, Ind. Code 4-4-10.9-24.5, Ind. Code 4-4-11-2.7, Ind. Code 4-4-11-15, Ind. Code 4-4-11-17, Ind. Code 4-4-11-17.5, Ind. Code 4-4-11-19, Ind. Code 4-4-11-31, Ind. Code 4-4-11-36.1, Ind. Code 4-4-11-39, Ind. Code 4-4-11-41, Ind. Code 4-13.5-4-4, Ind. Code 5-1-16-1, Ind. Code 5-1-16-1.1, Ind. Code 5-1-16-13, Ind. Code 5-1-16-15, Ind. Code 5-1-16.5-7, Ind. Code 5-13-12-8, Ind. Code 5-28-5-14, Ind. Code 5-28-5-15, Ind. Code 5-28-28.4, Ind. Code 5-28-29, Ind. Code 5-28-30, Ind. Code 5-28-31, Ind. Code 5-28-32, Ind. Code 6-3.1-13-27, Ind. Code 8-1-29.5-7, Ind. Code 8-9.5-9-2, Ind. Code 8-14.5-6-6, Ind. Code 8-15-2-9, Ind. Code 8-16-1-14, Ind. Code 14-14-1-17, Ind. Code 14-14-1-23, Ind. Code 16-18-2-338.5, Ind. Code 16-22-5-15, Ind. Code 20-12-63-3, Ind. Code 28-5-1-6, Ind. Code 34-30-2-8, Ind. Code 34-30-2-87, Ind. Code 4-4-10.9-7.5, Ind. Code 4-4-10.9-8.5, Ind. Code 4-4-10.9-9, Ind. Code 4-4-10.9-9.5, Ind. Code 4-4-10.9-10, Ind. Code 4-4-10.9-16, Ind. Code 4-4-10.9-17, Ind. Code 4-4-10.9-26, Ind. Code 4-4-11-16, Ind. Code 4-4-11-16.3, Ind. Code 4-4-11-16.5, Ind. Code 4-4-11-44, Ind. Code 4-4-11-45, Ind. Code 4-4-26, Ind. Code 5-1-16-2, Ind. Code 5-1-16-3, Ind. Code 5-1-16-4, Ind. Code 5-1-16-5, Ind. Code 5-1-16-6, Ind. Code 5-1-16-7, Ind. Code 5-1-16-8, Ind. Code 5-1-16-9, Ind. Code 5-1-16-10.5, Ind. Code 5-1-16-11, Ind. Code 5-1-16-12, Ind. Code 5-1-16-13.1, Ind. Code 5-1-16-35, Ind. Code 5-1-16.5-54. Ind. Code 15-7-4.9, Ind. Code 15-7-5, Ind. Code 20-12-63-24, and non-code amendments, effective July 1, 2007

REAL PROPERTY CONVEYANCES, MORTGAGES AND HOMEOWNERS' ASSOCIATION LIENS

The law applicable to recording real property documents generally and mortgages specifically has been modified, and a new statutory provision has been added regarding liens by homeowners' associations for non-payment of common expenses assessed against real estate.

Indiana Code 32-21-2-3 was amended to add a requirement that before any conveyance of a mortgage, or an instrument of writing may be recorded, after June 30, 2007 in addition to the requirements that already existed, if the mailing address on the conveyance is not a street address or a rural route address of the grantee, then the conveyance must include a street or rural route address for the grantee.

SEA 232, P.L. 135-2007, SECTION 1, Ind. Code 32-21-2-3, effective July 1, 2007.

The law concerning establishing priority according to the time of filing was changed this year for a mortgage of land (Ind. Code 32-21-4-1(c)). The law now provides that if a mortgage is recorded with the county recorder, but does not comply with the requirements of Ind. Code 32-21-2-3 (proper acknowledgment and street address), Ind. Code 32-21-2-7 (acknowledgement) or the technical requirements of Ind. Code 36-2-11-16(c) (signatures), the mortgage is still validly recorded and provides constructive notice to subsequent purchasers of the instrument as of the date of the filing.

SEA 232, P.L. 135-2007, SECTION 2, Ind. Code 32-21-4-1, effective July 1, 2007.

A new chapter 14 has been added to the law concerning liens on property to deal with homeowners' association liens, Ind. Code 32-28-14. This new chapter establishes procedures for the creation, recording, foreclosing, and releasing of liens on real estate by a homeowners' association for non-payment of common expenses against the real estate. For purposes of this law a "homeowners' association" is defined as all owners of real estate in a subdivision acting as an entity in accordance with any bylaws, covenants or other written instruments of the homeowners' association.

The new homeowners' association lien chapter provides that all sums assessed by a homeowners' association for the share of the common expenses chargeable to an owner of real estate in a subdivision constitute a homeowners' association lien upon the real estate when a notice of lien is recorded with the county recorder by the homeowners' association. The lien attaches on the date of filing the notice of lien and does not relate back to a date specified by any other homeowners' association document or the date of assessment of the lien. To be valid, the notice of lien must be signed by an officer of the homeowners' association (and properly acknowledged) and include

(1) the name and address of the homeowners' association,
(2) the address and legal description of the property to be liened,
(3) the name of the owner of the property to be liened, and
(4) the amount of the lien.

Suit to enforce the lien must be filed within one year of the recording of the notice of lien. Any lien not enforced within that time frame is void. A lien under this chapter can be foreclosed and be the subject of a judicially ordered sale.

In a voluntary conveyance, the grantee of real estate is jointly and severally liable for all unpaid assessments against the grantor only if the homeowners' lien is recorded before the deed by which the grantee takes title to the real estate. Similarly, a mortgagee of a first mortgage of record (or other purchaser) that takes title through foreclosure is not liable for common expenses that became due before the acquisition of the real estate.

The homeowners' lien is void if the homeowners' association is given notice to file an action to foreclose its lien by the owner of the real estate and the homeowners' association fails to do so within 30 days of receipt of the notice.

SEA 232, P.L. 135-2007, SECTION 3, Ind. Code 32-23-14, effective July 1, 2007.

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