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FISCAL IMPACT STATEMENT

LS 7046

BILL NUMBER: HB 1279

NOTE PREPARED: Mar 1, 2005

BILL AMENDED: Feb 28, 2005

SUBJECT: Brownfield Tax Reduction or Waiver.

FIRST AUTHOR: Rep. Wolkins

FIRST SPONSOR:

BILL STATUS: 2nd Reading - 1st House

FUNDS AFFECTED: **GENERAL**
 X DEDICATED
 FEDERAL

IMPACT: State & Local

Summary of Legislation: (Amended) This bill provides for the following:

Brownfield Taxes: This bill establishes a procedure for an owner of a brownfield to petition the Department of Local Government Finance (DLGF) to waive or reduce the outstanding charges against the brownfield listed on the tax duplicate. It requires a county or municipal fiscal body to review the petition and either deny the petition or make a recommendation to the department.

The bill extends the voluntary remediation tax credit by two years and expands the tax liability to which the credit applies. It requires the taxpayer, to receive the credit, to submit information to the Indiana Development Finance Authority (IDFA) instead of the local legislative body. It requires IDFA to certify eligibility for the credit. The bill increases the maximum credit amount and changes the method of computation of the amount. The bill also increases the total amount of credits allowed statewide to \$2,000,000.

Environmental Liability: The bill provides that, for purposes of the law concerning underground storage tanks and petroleum releases: (1) a person is considered an owner or operator; and (2) a governmental entity is not an owner or an operator; of an underground storage tank or a petroleum facility if the person conveyed ownership or control of the tank or facility to the governmental entity because of circumstances in which the governmental entity involuntarily acquired ownership or control. It requires all of the \$90 Underground Petroleum Storage Tank Registration Fee to be deposited in the Excess Liability Trust Fund.

The bill also provides that a governmental entity is not liable for costs or damages associated with the presence of a hazardous substance on a property in which the political subdivision acquired an interest because of

circumstances in which the governmental entity involuntarily acquired an interest in the property unless the governmental entity causes or contributes to the release or threatened release of the hazardous substance. It provides that a governmental entity is not liable if a loss results from an act taken to investigate or remediate hazardous substances, petroleum, or other pollutants associated with a brownfield.

Effective Date: July 1, 2004; January 1, 2005 (retroactive); Upon Passage; July 1, 2005.

Explanation of State Expenditures: *Brownfield Income Tax Credit:* This bill increases the cap of the voluntary remediation tax credit by \$1 M and extends by two years the length of time the credit may be allowed. The credit is reimbursed by the Environmental Remediation Revolving Loan Fund. The bill also changes the approval process for these credits and requires a taxpayer who applies for this credit to submit specific documentation to the Indiana Development Finance Authority (IDFA) for approval. Under current law, plans must be approved by the local fiscal body.

Background: The Environmental Remediation Revolving Loan Fund received a \$5 M biennial appropriation for FY 2004-FY2005 from the General Fund. This is a nonreverting dedicated fund. According to the IDFA, who administers the Fund, the balance in the Fund was over \$15.1M as of February 22, 2005.

Brownfield Tax Reduction or Waiver. A person that owns or desires to own a brownfield may file a petition with the county auditor seeking a reduction or waiver of the delinquent tax liability. The petition must be on a form prescribed by the State Board of Accounts and approved by the DLGF. On receipt by the DLGF of a recommendation by the fiscal body to waive or reduce the delinquent tax liability, the DLGF must review the petition and deny the petition, waive the delinquent tax liability, or reduce the delinquent tax liability. The DLGF must give notice of its determination and the right to seek an appeal by mail to the petitioner; the owner, if different from the petitioner; all persons having a substantial property interest of public record in the brownfield; the township assessor; the county property tax assessment board of appeals; the fiscal body involved; and the county auditor. On receipt by the DLGF by the person seeking an appeal of the DLGF's determination, the DLGF hold a hearing and give proper notice. After the hearing, the DLGF must give proper notice by mail of the final determination. The Indiana Board of Tax Review must conduct impartial reviews of appeals of DLGF final determinations.

The above provisions will increase administrative expenses for the entities involved. However, it is expected that the entities will be able to cover any additional expense given existing resources.

Environmental Liability: This bill attempts to clarify liability exemption for political subdivisions in relation to underground storage tanks, petroleum releases and hazardous substances. It also provides that the owners of underground storage tanks, petroleum releases, and hazardous substances, previous to the involuntary acquisition by a political subdivision, are held liable for the site's cleanup. A political subdivision is not granted exemption from liability if it contributed to any contamination release.

This bill could have a fiscal impact on the Department of Environmental Management if less staff time is spent on interpreting liability exemption to political subdivisions. However, because previous owners would be held liable for releases as described above, more staff time could be spent preparing additional comfort letters. Comfort letters provide a statement of liability exemption status for applicable political subdivisions.

Explanation of State Revenues: *Brownfield Income Tax Credit:* This bill increases the cap of the voluntary remediation tax credit from \$1M to \$2 M beginning in tax year 2005. The maximum amount of credit which

is allowed for each brownfield site is increased from \$100,000 to \$200,000. The bill also extends the applicability of these tax credits which were set to expire December 31, 2005, to December 31, 2007. The bill extends the carry forward provisions of these tax credit. According to the IDFA, no credits have been granted to date. However there are sufficient funds in the Environmental Remediation Revolving Loan Fund to reimburse the General Fund for any new credits granted in tax years 2005, 2006, and 2007. (See State Expenditures Above.)

Environmental Liability: The bill also makes it so that the \$90 Underground Petroleum Storage Tank Registration Fee is no longer split between the Excess Liability Trust Fund and the Petroleum Trust Fund. Currently, \$45 goes to each fund. For FY 2004, approximately \$710,000 were collected by the Department of Revenue and deposited into the Petroleum Trust Fund. This bill would cause future deposits from this fee to be made only to the Excess Liability Trust Fund.

Explanation of Local Expenditures: *Brownfield Tax Reduction or Waiver.* If a person files a petition, the county auditor must forward a copy of the complete petition to the township assessor in which the brownfield is located; the owner, if different from the petitioner; all persons having a substantial property interest of public record in the brownfield; the county property tax assessment board of appeals; the fiscal body involved; IDEM; and the DLGF.

On receipt of a complete petition, the county board must conduct a public hearing on the petition. The board must give notice of the date, time, and place fixed for the hearing by mail to the entities listed above. The board may recommend that the DLGF grant the petition or approve a reduction of the delinquent tax liability under certain conditions.

After the hearing, the county board must give notice, by mail, to the parties listed above. The fiscal body must review the petition and submitted by the board and deny the petition, recommend that the DLGF waive the delinquent tax liability, or recommend that the DLGF reduce the delinquent tax liability. The fiscal body may recommend a reduction of the delinquent tax liability in an amount that differs from the amount of reduction recommended by the board. The fiscal body must publish notice of its consideration of the petition and forward to the DLGF written notice of its action.

After the DLGF gives notice of its determination, a person aggrieved by a DLGF determination may obtain an additional review by the DLGF and a public hearing by filing a petition for review with the county auditor. The county auditor must transmit the petition to the DLGF. A petitioner may initiate an appeal of the DLGF's final determination by filing a petition with the county assessor.

The above provisions will increase administrative expenses for local units. However, it is presumed that the local units will be able to cover any additional expense given existing resources.

Explanation of Local Revenues: (Revised) *Brownfield Tax Reduction or Waiver.* A person that owns or desires to own a brownfield may file a petition with the county auditor seeking a reduction or waiver of the delinquent tax liability. The county auditor must reduce or remove the delinquent tax liability on the tax duplicate if the petition is approved. The reduction or removal of the tax liability applies until the auditor determines if the plan was complete on the required date. If the plan was complete, the reduction or removal becomes permanent. If not complete, the auditor must restore to the tax duplicate the delinquent tax liability. Removing or reducing the liability will reduce revenues to local units if the delinquency would have been paid were it not for the petition. However, restoration of a brownfield could increase local revenues by adding

property to the tax base if improvements are made to the brownfield.

State Agencies Affected: Indiana Development Finance Authority; Department of Environmental Management; Department of Local Government Finance.

Local Agencies Affected: All.

Information Sources: Calvin Kelly, Indiana Development Finance Authority; *Monthly Report of Net Tax Collections*, Department of State Revenue.

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