

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

200 W. Washington, Suite 301
Indianapolis, IN 46204
(317) 233-0696
<http://www.in.gov/legislative>

FISCAL IMPACT STATEMENT

LS 7377

BILL NUMBER: SB 433

NOTE PREPARED: Feb 6, 2007

BILL AMENDED: Jan 29, 2007

SUBJECT: Environmental Remediation.

FIRST AUTHOR: Sen. Gard

FIRST SPONSOR: Rep. Dvorak

BILL STATUS: As Passed Senate

FUNDS AFFECTED: **GENERAL**
 X DEDICATED
 FEDERAL

IMPACT: State & Local

Summary of Legislation: (Amended) *Environmental Remediation Revolving Loan Fund:* The bill increases 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.

Expansion of Loan Fund Uses: This bill broadens permissible uses of the Environmental Remediation Revolving Loan Fund.

Collect Fees for Services: The bill allows the IFA to provide services to and collect fees from any person in connection with financial assistance, liability clarification, and technical assistance. It requires the deposit of fee revenue in the fund.

Private Environmental Insurance Products: It allows the IFA to undertake activities to make private environmental insurance products available to encourage and facilitate the cleanup and redevelopment of brownfield properties.

Agreements with Political Subdivisions: The bill allows the IFA to enter into agreements with political subdivisions for various purposes related to environmental investigation and remediation.

IFA Immunity: It provides governmental immunity to the IFA with respect to investigation and remediation of brownfields under agreements with political subdivisions.

Political Subdivision Immunity: It provides that 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.

Nonprofit Corporation Immunity: This bill provides that a nonprofit corporation that supports a political subdivision is not liable to the state for certain environmental remediation costs and damages unless the corporation causes or contributes to the environmental contamination.

Redevelopment Commissions: The bill allows redevelopment commissions to enter into agreements with the authority and to carry out environmental investigation and remediation.

Technical Corrections: It also makes technical corrections.

Effective Date: July 1, 2007.

Explanation of State Expenditures: *Environmental Remediation Revolving Loan Fund:* The bill increases from 10% to 50% the amount of money available in the fund that may be loaned by the IFA to any one political subdivision in a state fiscal year.

Under existing law, a political subdivision can only receive up to 10% of the money available in the fund, which can limit the ability to complete a project and/or address more than one brownfield site in a community. In addition the amount of funds remaining in the fund is substantially less than previous years, causing the 10% maximum amount to be increasingly smaller.

The proposal increases the cap on financial assistance to a political subdivision to 50% and clarifies that such limitation is for each state fiscal year.

The following is the currently available fund balance:

| | |
|--|---------------------|
| Fund Balance as of 12/31/06 | \$ 15,538,670 |
| Financial commitments made (loans & grants): | (4,396,384) |
| Reserved for SFY 2007 Grant commitments: | (3,500,000) |
| Tax Credit Set Aside (through CY 2007): | <u>(2,000,000)</u> |
| Balance available for loans: | <u>\$ 5,642,286</u> |

Based on this balance, a political subdivision could receive up to 10%, or \$564,228. The proposal would provide that units could receive up to 50%, or \$2,821,143.

However, it is anticipated that the available balance set forth above will be fully used within the next two years. Recent demand for funding is demonstrated by the following.

| | Requested Amount | Amount Awarded |
|--|-------------------------|-----------------------|
| FY 1998 | | \$1,000,300 |
| FY 1999 | | \$ 522,190 |
| FY 2000 | | \$ 380,365 |
| FY 2001 | | \$ 582,355 |
| FY 2002 | \$ 769,826 | \$ 477,979 |
| FY 2003 | \$ 455,556 | \$ 552,930 |
| FY 2004 | \$ 884,398 | \$ 458,279 |
| FY 2005 | \$ 995,492 | \$ 663,941 |
| FY 2006* | \$3,597,389 | \$2,166,392 |
| FY 2007* | \$2,965,660 | \$1,480,000 |
| *Data includes demand and award information for both assessment grant and non-petroleum remediation grant funding. | | |

A summary of the financial assistance by county is available at the Legislative Services Agency. Over 70 counties have received financial assistance from the Program.

Background Information--The Fund was created in 1997 with an initial appropriation of \$10 M. Since that time, the following amounts have been appropriated.

| Fiscal Year | Appropriation |
|--------------------|----------------------|
| 1999 | \$5 M |
| 2001 | \$5 M |
| 2003 | \$5 M |
| 2005 | \$2.5 M |

The following table summarizes the financial awards provided by the above appropriations.

| | Assessment Grants | Remediation Grants | Low Interest Loans | Federal Matching Grants | Voluntary Remediation Tax Credits | TOTALS |
|---------|-------------------|--------------------|--------------------|-------------------------|-----------------------------------|-----------------|
| FY1998 | \$1,000,300 | | | | | \$ 1,000,300 |
| FY 1999 | \$ 522,190 | | \$ 500,000 | | | \$ 1,022,190 |
| FY 2000 | \$ 380,365 | | \$ 2,583,466 | | | \$ 2,963,831 |
| FY 2001 | \$ 582,355 | | \$ 2,167,000 | | | \$ 2,749,355 |
| FY 2002 | \$ 477,979 | | \$ 1,847,800 | | | \$ 2,325,779 |
| FY 2003 | \$ 552,930 | | \$ 400,000 | | | \$ 952,930 |
| FY 2004 | \$ 458,279 | | | | | \$ 458,279 |
| FY 2005 | \$ 663,941 | | \$ 2,250,000 | \$ 70,000 | | \$ 2,983,941 |
| FY 2006 | \$1,187,642 | \$ 978,750 | \$ 950,000 | \$280,000 | | \$ 3,366,392 |
| FY 2007 | \$ 500,000 | \$ 980,000 | \$ 1,600,000 | | | \$ 3,080,000 |
| TOTALS | \$6,325,981 | \$1,958,750 | \$12,298,266.50 | \$350,000 | \$ 0 | \$20,932,997.50 |

Expansion of Loan Fund Uses: The bill broadens permissible uses of the Environmental Remediation Revolving Loan Fund. Program funds currently are available for assessments and remediation of environmental contamination and clearances of real property in connection with certain remediation activities. The bill expands the use of funds for additional purposes (e.g., demolition, grading, clearance of real property not just in conjunction with projects under the redevelopment statutes).

The bill expands and clarifies the program purpose to include use of petroleum remediation grant funds for assessment. Currently, use of the petroleum remediation grant money has been limited to remediation (but not assessment) of petroleum contamination.

Program staff time and effort will be reimbursed from either grant funds obtained by the program to benefit the political subdivision's site and/or sale proceeds generated by the sale and/or development of the redeveloped site.

To date, the program has awarded \$1,917,167 in petroleum grants for 22 projects.

Collect Fees for Services: The bill allows the IFA to provide services to and collect fees from any person in connection with financial assistance, liability clarification, and technical assistance. It requires the deposit of fee revenue in the fund. Existing language is limited to charging fees to political subdivisions for costs related to financial assistance. (However, this provision has never been used.) The proposal modifies existing fee language to make fee assessment applicable to all stakeholders (not just political subdivisions) and for all types of assistance provided by the program (including financial, technical, or legal). The bill requires the IFA to adopt guidelines for the assessment of fees.

The IFA has always had the ability to charge fees for financial assistance and has never instituted a fee. However, fees could be considered to cover personnel costs.

Private Environmental Insurance Products: The proposal authorizes the IFA to contract with private insurers to make private environmental insurance products available to encourage and facilitate brownfields redevelopment. The bill provides that the IFA must, in addition to other responsibilities, undertake activities to make private environmental insurance products available to encourage and facilitate the cleanup and redevelopment of brownfield properties. The bill allows the IFA to negotiate with, select, and contract with one or more insurers to provide insurance products.

No additional administrative costs are anticipated. If the program determines some form of environmental insurance program would be beneficial to communities, the IFA would add such insurance as an incentive that is offered to qualified applicants.

Agreements with Political Subdivisions: The bill allows the IFA to enter into agreements with political subdivisions, which would include redevelopment commissions, for various purposes related to environmental investigation and remediation. The bill provides that redevelopment commissions may enter on or into, inspect, investigate, and assess real property and structures acquired or to be acquired for redevelopment purposes to determine the existence, source, nature, and extent of any environmental contamination. The commissions may also remediate and/or mitigate environmental contamination.

The IFA must also enter into agreements with political subdivisions to manage environmental assessment activities and environmental remediation activities conducted on brownfield properties.

The bill allows the IFA to offer political subdivisions that are unwilling or unable to undertake site assessment and remediation activities the opportunity to have the IFA undertake such activities on their behalf. Currently, the program provides financial awards to political subdivisions which must then retain environmental consultants to perform the work. The program's project managers work with the political subdivisions in the supervision of the consultants. The larger political subdivisions have environmental staff that understand what is required in an environmental cleanup and can manage most projects. Smaller communities, however, cannot afford specialized staff, and the Brownfields project managers spend a great deal of time providing assistance to local officials and environmental consultants that have been retained by political subdivisions. The legislation would enable a political subdivision to contract directly with the IFA, and the IFA would act as the political subdivision's environmental consultant. Remediation work would still be performed by contractors; however, they would be retained and supervised by the IFA.

It is anticipated that program staff time and effort on such projects will be reimbursed from either state or federal grant funds awarded to the political subdivision site and/or sale proceeds generated by the sale and/or development of the redeveloped site.

IFA Immunity: The bill provides governmental immunity to the IFA with respect to investigation and remediation of brownfields under agreements with political subdivisions. The IFA is not liable for any contamination addressed by the IFA under an agreement unless existing contamination on the brownfield is exacerbated due to gross negligence or intentional misconduct by the IFA. The IFA has never been held liable in the past for a brownfield; however, if the program will be contracting to serve as a political subdivision's consultant, the program would be afforded the same protections as the political subdivision.

Political Subdivision Immunity: The bill provides that 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. The bill proposes to modify definitions of owner and operator for hazardous substances and petroleum remediation statutes and existing liability exemption language to clarify that a political subdivision may investigate or remediate contamination and monitor or close underground storage tanks without being deemed to "operate" or contribute to existing contamination unless such contamination is exacerbated due to gross negligence or willful misconduct. The provision could save political subdivisions from expenses associated with future liability.

Explanation of State Revenues: See *Explanation of State Expenditures* above.

Explanation of Local Expenditures: See *Explanation of State Expenditures* above.

Explanation of Local Revenues: See *Explanation of State Expenditures* above.

State Agencies Affected: IFA.

Local Agencies Affected: Political subdivisions and redevelopment commissions.

Information Sources: IFA.

Fiscal Analyst: Bernadette Bartlett, 317-232-9586.