

**LEGISLATIVE SERVICES AGENCY
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FISCAL IMPACT STATEMENT

LS 6611

BILL NUMBER: SB 460

NOTE PREPARED: Jan 8, 2009

BILL AMENDED:

SUBJECT: Environmental Land Use Restrictions.

FIRST AUTHOR: Sen. Gard

FIRST SPONSOR:

BILL STATUS: As Introduced

FUNDS AFFECTED: **GENERAL**
 DEDICATED
 FEDERAL

IMPACT: State & Local

Summary of Legislation: *Environmental Trust.* This bill establishes the Environmental Trust within the Indiana Finance Authority (IFA) to (1) inventory certain environmental restrictive covenants; (2) create public computerized registries of the covenants and of local ordinances that establish certain land use restrictions; (3) monitor compliance with the covenants and report noncompliance to the Department of Environmental Management (IDEM) and the Attorney General; and (4) administer an environmental trust fund that is funded by fees imposed on owners of real property subject to the covenants and used to fund the operations of the Environmental Trust.

Penalties, Fees, and Liability. The bill requires the Environmental Trust to (1) establish a future sliding fee scale based on the relative costs of monitoring compliance among various tracts of real property subject to restrictive covenants; (2) consider means of applying Environmental Trust activities to privately established environmental restrictive covenants and those established before trust activities begin; and (3) consider the feasibility of incorporating notice of environmental restrictive covenants and restrictive ordinances into the "One Call" system. The bill establishes consequences for failure to pay the fee. The state, the IFA, and the Environmental Trust are not liable for acts or omissions related to maintenance of the inventory and the registries. The accuracy and completeness of information in the inventory and the registries is not warranted.

Expansion of Remediation Factors. The bill expands the application of remediation and closure goals, objectives, and standards. It eliminates the authority of IDEM to approve environmental restrictive covenants, delineates which elements of covenants are subject to IDEM approval, delineates the authority of IDEM to enforce covenants, and eliminates IDEM authority to require compliance reports from property owners.

Reimbursement from ELTF. The bill permits reimbursement of a property owner from the Underground

Petroleum Storage Tank Excess Liability Trust Fund (ELTF) of fees paid to the Environmental Trust.

Certificate of Completion. A covenant not to sue does not apply to future liability for a condition on property involved in a voluntary remediation work plan only if the condition was present on the property at the time the commissioner issued the certificate of completion. The bill allows IDEM to include in a certificate of completion or a covenant not to sue conditions that must be performed or maintained after issuance of the certificate or covenant. Exceptions that apply to liability to the state relating to contamination from hazardous substances apply in the same manner to liability to the state relating to contamination from petroleum.

Local Ordinances. With respect to local ordinances that establish certain land use restrictions, the bill (1) requires that a municipal corporation give notice to IDEM not later than 60 days before amendment or repeal and to the Environmental Trust not later than 30 days after passage, amendment, or repeal; (2) requires that the ordinance state those notice requirements; and (3) provides that the ordinance is considered adopted only if it states those notice requirements.

Advisory Committee. The bill establishes the Advisory Committee on Environmental Trust Issues.

Effective Date: Upon passage; July 1, 2009.

Explanation of State Expenditures: *Environmental Trust.* Total expenses for the administration of the trust are estimated at \$200,000 per year, which would be paid from the trust fund.

Expenses for the Advisory Committee are estimated at \$9,500 per year, which would be paid from state General Fund.

Background. The Governor must appoint the director of the Environmental Trust, who must, among other provisions, administer, manage, and direct the affairs and activities of the Environmental Trust and the employees of the Environmental Trust. Before September 1, 2010, the trust must report the results of the studies to the Governor, the Legislative Council, and the Environmental Quality Service Council (EQSC).

Personnel and administrative expenses are estimated at \$200,000 per year.

Environmental Trust Fund. Operations of the trust are funded solely from the Environmental Trust Fund. The fund must be administered by the Environmental Trust and may not be used for any purpose other than funding the operations of the trust. Expenses of administering the fund must be paid from money in the fund. Money in the fund at the end of a state fiscal year does not revert to the state General Fund.

Liability. Agents of the state, IFA, and the trust are immune from civil or criminal liability for any act or omission related to the performance of duties. Information in an inventory and in a registry is not warranted by the state, the IFA, or the Environmental Trust. This provision could save the state expenses associated with liability.

Expansion of Remediation Factors. A restrictive covenant executed after June 30, 2009, is not subject to IDEM approval. IDEM may review and approve or disapprove activities and land use restrictions that are proposed as part of a remediation, closure, cleanup, or corrective action to be included in a restrictive covenant. After 2009, IDEM may not require the owner of a tract that has paid a fee to report the extent of compliance with a restrictive covenant that applies to the tract and is the basis of the imposition of the fee.

IDEM currently approves remediation plans, and they would continue to review remediation. However, IDEM would no longer be responsible for tracking the filing of restrictive covenants and compliance with the covenant in the future. The trust would be responsible for these activities. If the trust experienced an enforcement problem, they would notify IDEM who would conduct initial enforcement activities. If IDEM failed to obtain compliance, the case would be sent to the Attorney General. These provisions could reduce IDEM's administrative expenditures by an indeterminable amount.

ELTF. IDEM must use money in the ELTF to pay claims for reimbursement of a fee paid by the owner of a tract that is subject to restrictive covenants established to address issues related to an underground storage tank located on the tract. To receive money from the ELTF, a claimant must submit a copy of a receipt from the Environmental Trust for payment of a fee. Expenditures from ELTF for reimbursement that will result are indeterminable.

State Auditor. The State Auditor must pay to the claimant the approved amount from money available in the ELTF. As of January 2009, ELTF had a zero balance; however, \$3M was dispersed during the course of FY 2008.

Appeal Process. The bill provides for an appeal process that would be handled by an IDEM administrator. These provisions could increase administrative expenses for IDEM. The impact would depend on the number and nature of future appeals.

Certificate of Completion. This provision clarifies that IDEM can put conditions on certificates of completion. For example, IDEM could require that no future digging be performed at a site where contaminants were covered with dirt or concrete.

Advisory Committee on Environmental Trust Issues. The bill establishes the advisory committee which consists of seven members: two legislators; two state employees; three lay members. The chair of the Legislative Council must appoint the chair of the committee. The committee must advise the director of the Environmental Trust; study issues designated by the Legislative Council; review the mission and goals of the Environmental Trust and evaluate the implementation of the mission; submit to the Governor and the Legislative Council reports at any time and a final report before November 1, 2011. Reports must include an outline of activities of the committee; recommendations for action by the Environmental Trust; and recommendations for legislative action.

The advisory committee must operate under policies governing study committees adopted by the Legislative Council. Legislative Services Agency provides staff for study committees. Total expenses for the committee could not exceed a budget established by the Legislative Council. The budget for the 2008 interim was \$9,500. The funds necessary to carry out this provision will be paid from state General Fund appropriations to the Legislative Council and Legislative Services Agency.

Explanation of State Revenues: Fees. The owner of a tract subject to one or more certain restrictive covenants is liable for a fee of \$5,000. The number of owners that will be liable for a fee is unknown. If 50 owners were subject to the fee, fees would generate \$250,000, which would be deposited in the trust fund. The owner must pay this fee only once.

Before 2011, the Environmental Trust must establish by rule a schedule of graduated fees based on the relative costs of monitoring compliance among various tracts of real property subject to restrictive covenants. The schedule of fees would apply in lieu of the flat fee to owners of real property subject to restrictive

covenants that are recorded after the effective date of the rule. The amount of revenue that would be generated by a graduated schedule will depend on compliance costs and the schedule adopted.

Environmental Trust Fund. The fund consists of:

- (A) fees deposited in the fund;
- (B) appropriations from the General Assembly;
- (C) grants, gifts, and donations intended for deposit in the fund; and
- (D) interest that accrues from money in the fund.

The Environmental Trust must invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public money may be invested. Money in the fund at the end of a state fiscal year does not revert to the state General Fund.

The bill contains no appropriation for the fund.

Explanation of Local Expenditures: *Local Ordinances.* The legislative body must give written notice to IDEM before amendment or repeal of a restrictive ordinance; and give written notice to the Environmental Trust after passage, amendment, or repeal of a restrictive ordinance. This provision should have minimal impact on local expenditures.

Advisory Committee on Environmental Trust Issues. The bill establishes the advisory committee which could consist of an employee of local government. Participation by a local unit could result in administrative expenses; however, the employee could be reimbursed for participation.

Explanation of Local Revenues:

State Agencies Affected: IDEM; IFA; Legislative Services Agency, Legislative Council; EQSC; State Auditor; Governor's Office.

Local Agencies Affected: Municipal corporations and local units.

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