

**LEGISLATIVE SERVICES AGENCY
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FISCAL IMPACT STATEMENT

LS 6611
BILL NUMBER: SB 460

NOTE PREPARED: Feb 23, 2009
BILL AMENDED: Feb 19, 2009

SUBJECT: Environmental Land Use Restrictions.

FIRST AUTHOR: Sen. Gard
FIRST SPONSOR:

BILL STATUS: 2nd Reading - 1st House

FUNDS AFFECTED: **GENERAL**
 DEDICATED
 FEDERAL

IMPACT: State & Local

Summary of Legislation: (Amended) The bill does the following.

Institutional Control Registry and Environmental Trust. This bill establishes the Institutional Control Registry administered by the Indiana Finance Authority (IFA), and establishes the Environmental Trust Fund to fund the registry and the program. It establishes in the registry an inventory and computerized registry of restrictive covenants in Indiana and a computerized registry of environmental restrictive ordinances adopted by Indiana municipal corporations. The bill requires the IFA to monitor compliance with the covenants, report noncompliance to the Department of Environmental Management (IDEM) and the Attorney General, collect fees applied to owners of tracts subject to restrictive covenants, and deposit fee revenue in the Environmental Trust Fund. It establishes consequences for failure to pay the fee.

Liability. The state, the IFA, and their officers, agents, and employees are immune from liability for acts or omissions related to maintenance of the inventory and the registries. No person may rely on the accuracy and completeness of information in the inventory and the registries.

Fees. The bill requires the IFA 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 whether a tract owner is a governmental entity; (3) consider means of applying Institutional Control Registry activities to privately established environmental restrictive covenants and those established before registry activities begin; and (3) consider the feasibility of incorporating notice of environmental restrictive covenants and restrictive ordinances into the "One Call" system.

Definitions. The bill amends the definitions of "owner" and "operator" for purposes of exceptions to liability

for releases from underground storage tanks (UST) and of "owner or operator" for purposes of exceptions to liability for releases of petroleum.

Expansion of Remediation Factors. The bill expands the application of remediation and closure goals, objectives, and standards. The bill eliminates the authority of IDEM to approve environmental restrictive covenants, delineates the authority of IDEM to enforce covenants, and eliminates IDEM authority to require compliance reports from property owners. It requires IDEM to review and act on activities and land use restrictions proposed as part of certain actions to be included in a restrictive covenant. It requires IDEM to consider and give effect to environmental restrictive ordinances in evaluating risk-based remediation proposals.

Reimbursement from ELTF. The bill permits reimbursement from the Underground Petroleum Storage Tank Excess Liability Trust Fund (ELTF) of fees paid by the owner of a tract because the tract is subject to a restrictive covenant established to address issues related to a UST located on the tract.

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 IDEM 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.

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 IFA and IDEM not later than 30 days after passage, amendment, or repeal. The bill allows IDEM to waive the 60-days notice requirement.

Effective Date: July 1, 2009.

Explanation of State Expenditures: *Institutional Control Registry and Environmental Trust.* The operations of the Registry are funded solely from the Environmental Trust Fund. The IFA must administer the registry and the trust and may employ necessary staff. Total expenses for the administration of the registry and the trust are estimated at \$200,000 per year, which would be paid from the trust fund.

Environmental Trust Fund. The IFA must administer the fund, which may not be used for any purpose other than funding the operations of the IFA related to the management of the Registry. Expenses of administering the registry and 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.

Attorney General. The IFA must provide the Attorney General with information if collection of fees is necessary. The impact that this provision will have on the Attorney General will depend on the number of cases in which fees are not paid.

Liability. Agents of the state, IFA, and their officers, agents, and employees are immune from liability for acts or omission related to the maintenance of the inventory and the registry. This provision could save the state expenses associated with liability.

(Revised) *Expansion of Remediation Factors.* 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. It requires IDEM to review and act on activities and land use restrictions proposed as part of certain actions to be included in a restrictive covenant. It requires IDEM to consider and give effect to environmental restrictive ordinances in evaluating risk-based remediation proposals. These provisions would affect 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.

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 to the IFA only once. The IFA must establish a schedule of graduated fees based on monitoring costs. Consequently, in subsequent years, the fees and fee collections may change.

Environmental Trust Fund. The fund consists of:

- (A) fees;
- (B) appropriations;
- (C) grants, gifts, and donations; and
- (D) interest, premiums, gains, or other earnings that accrue from money in the fund.

The IFA must invest money in the Environmental Trust not currently needed to meet current obligations related to the management of the registry in accordance with investment policy adopted by the IFA. Interest, premiums, gains, and other earnings from investments must be credited to the Environmental Trust Fund. The IFA may invest all or part of the Environmental Trust Fund in a fiduciary account with a trustee that is a financial institution.

The bill contains no appropriation for the fund.

Explanation of Local Expenditures: (Revised) *Local Ordinances.* With respect to local ordinances that establish certain land use restrictions, the bill requires that a municipal corporation give notice to IDEM not later than 60 days before amendment or repeal and to the IFA and IDEM not later than 30 days after passage, amendment, or repeal. The bill allows IDEM to waive the 60-days notice requirement. The impact of this provision is indeterminable.

Explanation of Local Revenues:

State Agencies Affected: IDEM; IFA; Legislative Services Agency, Legislative Council; EQSC; State Auditor; Attorney General.

Local Agencies Affected: Municipal corporations and local units.

Information Sources: Jim McGoff, IFA; Kari Evans, 236-1313, Barnes and Thornburg.

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