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# HOUSE BILL No. 1236

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 13-11-2; IC 13-19-5.

**Synopsis:** Brownfield remediation financing. Allows persons other than political subdivisions to participate in the environmental remediation revolving loan fund program. (Current law allows loans and other assistance from the fund to be provided only to political subdivisions.) Allows a person that incurred costs under certain circumstances after December 31, 1998, and before January 1, 2000, in redeveloping a brownfield to apply for assistance from the environmental remediation revolving loan fund program, notwithstanding the fact that the person incurred the costs before applying for the assistance.

**Effective:** July 1, 2000.

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## McClain, Steele

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January 10, 2000, read first time and referred to Committee on Environmental Affairs.

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Introduced

Second Regular Session 111th General Assembly (2000)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1999 General Assembly.

## HOUSE BILL No. 1236

A BILL FOR AN ACT to amend the Indiana Code concerning environmental law.

*Be it enacted by the General Assembly of the State of Indiana:*

1 SECTION 1. IC 13-11-2-177.6 IS ADDED TO THE INDIANA  
2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
3 [EFFECTIVE JULY 1, 2000]: **Sec. 177.6. "Qualified entity", for**  
4 **purposes of IC 13-19-5, means a political subdivision or a person**  
5 **(as defined in IC 36-1-12-1.2).**

6 SECTION 2. IC 13-11-2-83, AS AMENDED BY P.L.132-1999,  
7 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
8 JULY 1, 2000]: Sec. 83. (a) "Financial assistance agreement", for  
9 purposes of IC 13-18-13, refers to an agreement between:

- 10 (1) the budget agency; and  
11 (2) a political subdivision;

12 establishing the terms and conditions of a loan or other financial  
13 assistance, including forgiveness of principal if allowed under federal  
14 law, by the state to the political subdivision.

15 (b) "Financial assistance agreement", for purposes of IC 13-19-5,  
16 means an agreement between the authority and a ~~political subdivision~~  
17 **qualified entity** that:

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- 1 (1) is approved by the budget agency; and  
 2 (2) establishes the terms and conditions of a loan or other  
 3 financial assistance by the state to the ~~political subdivision~~  
 4 **qualified entity**.

5 (c) "Financial assistance agreement", for purposes of IC 13-18-21,  
 6 refers to an agreement between:

- 7 (1) the budget agency; and  
 8 (2) a participant;

9 establishing the terms and conditions of a loan or other financial  
 10 assistance, including forgiveness of principal if allowed under federal  
 11 law, by the state to the participant.

12 SECTION 3. IC 13-19-5-2 IS AMENDED TO READ AS  
 13 FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 2. (a) The  
 14 environmental remediation revolving loan fund is established for the  
 15 purpose of providing money for loans and other financial assistance,  
 16 including grants, to or for the benefit of ~~political subdivisions~~ **qualified**  
 17 **entities** under this chapter. The fund shall be administered by the  
 18 authority.

19 (b) Expenses of administering the fund shall be paid from money in  
 20 the fund.

21 (c) The fund consists of the following:

- 22 (1) Appropriations made by the general assembly.  
 23 (2) Grants and gifts intended for deposit in the fund.  
 24 (3) Repayments of loans and other financial assistance, including  
 25 premiums, interest, and penalties.  
 26 (4) Proceeds from the sale of loans and other financial assistance  
 27 under section 9 of this chapter.  
 28 (5) Interest, premiums, gains, or other earnings on the fund.  
 29 (6) Money transferred from the hazardous substances response  
 30 trust fund under IC 13-25-4-1(a)(9).

31 (d) The authority shall invest the money in the fund not currently  
 32 needed to meet the obligations of the fund in the same manner as other  
 33 public funds may be invested. Interest, premiums, gains, or other  
 34 earnings from these investments shall be credited to the fund.

35 (e) As an alternative to subsection (d), the authority may invest or  
 36 cause to be invested all or a part of the fund in a fiduciary account with  
 37 a trustee that is a financial institution. Notwithstanding any other law,  
 38 any investment may be made by the trustee in accordance with at least  
 39 one (1) trust agreement or indenture. A trust agreement or indenture  
 40 may allow disbursements by the trustee to:

- 41 (1) the authority;  
 42 (2) the Indiana bond bank; or



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1 (3) any person to which the authority, the Indiana bond bank, or  
 2 a political subdivision is obligated, including a trustee that is a  
 3 financial institution for a grantor trust;  
 4 as provided in the trust agreement or indenture. The budget agency and  
 5 the state board of finance must approve any trust agreement or  
 6 indenture before its execution.

7 SECTION 4. IC 13-19-5-4 IS AMENDED TO READ AS  
 8 FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 4. The budget agency  
 9 shall do the following under this chapter:

10 (1) Conduct or cause to be conducted an evaluation concerning  
 11 the financial ability of a ~~political subdivision~~ **qualified entity** to:

12 (A) pay a loan or other financial assistance and other  
 13 obligations evidencing loans or other financial assistance, if  
 14 required to be paid; and

15 (B) otherwise comply with terms of the financial assistance  
 16 agreement.

17 (2) Review and, if it will not cause long term fiscal detriment to  
 18 the state, the fund, and the program, approve each financial  
 19 assistance agreement.

20 (3) Enter into memoranda of understanding with the department  
 21 and the authority concerning the administration and management  
 22 of the fund and the program.

23 SECTION 5. IC 13-19-5-5 IS AMENDED TO READ AS  
 24 FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 5. The department shall  
 25 do the following under this chapter:

26 (1) Evaluate the technical aspects of the ~~political subdivision's~~  
 27 **qualified entity's**:

28 (A) environmental assessment of potential brownfield  
 29 properties;

30 (B) proposed remediation; and

31 (C) remediation activities conducted on brownfield properties.

32 (2) Inspect or cause to be inspected remediation activities  
 33 conducted under this chapter.

34 (3) Act as a liaison with the United States Environmental  
 35 Protection Agency regarding the program.

36 (4) Be a point of contact for ~~political subdivisions~~ **qualified**  
 37 **entities** concerning technical questions about the environmental  
 38 aspects of the program.

39 (5) Enter into memoranda of understanding with the budget  
 40 agency and the authority concerning the administration and  
 41 management of the fund and the program.

42 SECTION 6. IC 13-19-5-7 IS AMENDED TO READ AS



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1 FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 7. The authority may  
 2 provide services to a ~~political subdivision~~ **qualified entity** in  
 3 connection with a loan or other financial assistance, including advisory  
 4 and other services.

5 SECTION 7. IC 13-19-5-9, AS AMENDED BY P.L.119-1999,  
 6 SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 7 JULY 1, 2000]: Sec. 9. (a) Based on the priority ranking system  
 8 established under section 8 of this chapter, the authority may make  
 9 loans or provide other financial assistance from the fund to or for the  
 10 benefit of a ~~political subdivision~~ **qualified entity** under this section.

11 (b) A loan or other financial assistance must be used for at least one  
 12 (1) of the purposes under section 1 of this chapter and may be used for  
 13 any of the following purposes:

14 (1) To establish reserves or sinking funds or provide interest  
 15 subsidies.

16 (2) To pay financing charges, including interest on the loan or  
 17 other financial assistance during remediation and for a reasonable  
 18 period after the completion of remediation.

19 (3) To pay consultant, advisory, and legal fees, and any other  
 20 costs or expenses resulting from:

21 (A) the assessment, planning, or remediation of a brownfield;  
 22 or

23 (B) the loan or other financial assistance.

24 (c) Upon the recommendation of the authority and the approval of  
 25 the budget agency, the interest rate or parameters for establishing the  
 26 interest rate on each loan, including parameters for establishing the  
 27 amount of interest subsidies, shall be established by the state board of  
 28 finance.

29 (d) Not more than ten percent (10%) of the money available in the  
 30 fund during a year may be loaned or otherwise provided to any one (1)  
 31 ~~political subdivision:~~ **qualified entity.**

32 (e) Before a ~~political subdivision~~ **qualified entity** may receive a  
 33 loan or other financial assistance, including grants, from the fund, a  
 34 ~~political subdivision~~ **the qualified entity** must submit the following:

35 (1) Documentation of community and neighborhood comment  
 36 concerning the use of a brownfield on which remediation  
 37 activities will be undertaken after remediation activities are  
 38 completed.

39 (2) A plan for repayment of the loan or other financial assistance,  
 40 if applicable.

41 (3) An approving opinion of a nationally recognized bond counsel  
 42 if required by the authority.



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1 (4) A summary of the environmental objectives of the proposed  
2 project.

3 (f) A ~~political subdivision~~ **qualified entity** that receives a loan or  
4 other financial assistance from the fund shall enter into a financial  
5 assistance agreement. A financial assistance agreement is a valid,  
6 binding, and enforceable agreement of the ~~political subdivision~~  
7 **qualified entity**.

8 (g) With the approval of the budget agency, the authority may sell  
9 or assign:

10 (1) loans or evidence of other financial assistance; and  
11 (2) other obligations of ~~political subdivisions~~ **qualified entities**  
12 evidencing the loans or other financial assistance from the fund;  
13 at any price and on terms acceptable to the authority. Proceeds of sales  
14 or assignments under this subsection shall be deposited in the fund. A  
15 sale or an assignment under this subsection does not create a liability  
16 or an indebtedness of the state or the authority except, in the case of the  
17 authority, strictly in accordance with the sale or assignment terms.

18 (h) The authority may pledge loans or evidences of other financial  
19 assistance and other obligations of ~~political subdivisions~~ **qualified**  
20 **entities** evidencing the loans or other financial assistance from the fund  
21 to secure other loans or financial assistance from the fund to or for the  
22 benefit of political subdivisions. The terms of a pledge under this  
23 subsection must be approved by the budget agency. Notwithstanding  
24 any other law, a pledge of property made by the authority and approved  
25 by the budget agency under this subsection is binding from the time the  
26 pledge is made. Revenues, other money, or other property pledged and  
27 then received are immediately subject to the lien of the pledge without  
28 any further act. The lien of a pledge is binding against all parties  
29 having claims of any kind in tort, contract, or otherwise against the  
30 authority, the department, the budget agency, a trustee, or the fund,  
31 regardless of whether the parties have notice of a lien. A resolution, an  
32 indenture, or other instrument by which a pledge is created is not  
33 required to be filed or recorded, except in the records of the authority  
34 or the budget agency. An action taken to enforce a pledge under this  
35 subsection and to realize the benefits of the pledge is limited to the  
36 property pledged. A pledge under this subsection does not create a  
37 liability or an indebtedness of the state or the authority except, in the  
38 case of the authority, strictly in accordance with the pledge terms.

39 SECTION 8. IC 13-19-5-10 IS AMENDED TO READ AS  
40 FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 10. Notwithstanding  
41 any other law and if provided in a financial assistance agreement, any  
42 state department or state agency, including the treasurer of state, that



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1 is the custodian of money payable to a ~~political subdivision~~, **qualified**  
 2 **entity**, other than money in payment for goods or services provided by  
 3 the ~~political subdivision~~, **qualified entity**, after written notice from the  
 4 budget director that the ~~political subdivision~~ **qualified entity** is in  
 5 default on the payment of principal or interest on a loan or evidence of  
 6 other financial assistance, may:

7 (1) withhold payment of money from that ~~political subdivision~~;  
 8 **qualified entity**; and

9 (2) pay over the money to the authority, a trustee that is a  
 10 financial institution for a grantor trust, or the Indiana bond bank,  
 11 as directed by the budget director, for the purpose of curing the  
 12 default.

13 However, the withholding of payment from the ~~political subdivision~~  
 14 **qualified entity** and payment to the authority, a trustee, or the Indiana  
 15 bond bank may not adversely affect the validity of the defaulted loan  
 16 or other financial assistance.

17 SECTION 9. IC 13-19-5-12 IS AMENDED TO READ AS  
 18 FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 12. (a) Notwithstanding  
 19 any other law, a ~~political subdivision~~ **qualified entity** may borrow  
 20 money from the authority by negotiating a loan or other financial  
 21 assistance directly and without complying with requirements for the  
 22 competitive sale of bonds, notes, or other obligations or evidences of  
 23 indebtedness. A ~~political subdivision~~ **qualified entity** must observe  
 24 any existing contractual commitments to bondholders or other persons  
 25 when entering into a financial assistance agreement.

26 (b) Notwithstanding any other law, a ~~political subdivision~~ **qualified**  
 27 **entity** may issue and sell its notes, the principal and accrued interest on  
 28 which shall be paid with proceeds from the issuance of its bonds or  
 29 other available money at the time the notes are due. The:

30 (1) notes must be issued in accordance with a resolution or an  
 31 ordinance; and

32 (2) proceeds must be used to carry out this chapter.

33 (c) A ~~political subdivision~~ **qualified entity** that issues notes under  
 34 subsection (b) may renew or extend the notes on terms agreed to with  
 35 the authority. The authority may purchase and see the renewed or  
 36 extended notes. Accrued interest on the date of renewal or extension  
 37 may be paid or added to the principal amount of the note being  
 38 renewed or extended.

39 (d) The notes issued by a ~~political subdivision~~ **qualified entity**  
 40 under subsection (b), including renewals or extensions, mature in the  
 41 amounts and at the times, not exceeding four (4) years from the date of  
 42 original issuance, agreed to by the ~~political subdivision~~ **qualified**



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1 **entity** and the authority.

2 (e) Compliance with subsection (b) constitutes full authority for a  
 3 ~~political subdivision~~ **qualified entity** to issue notes and sell the notes  
 4 to the authority. The ~~political subdivision~~ **qualified entity** is not  
 5 required to comply with any other law applicable to the authorization,  
 6 approval, issuance, and sale of its notes. The notes are valid and  
 7 binding obligations of the ~~political subdivision~~ **qualified entity** and are  
 8 enforceable in accordance with the terms of the notes and payable  
 9 solely from the sources specified in the resolution or ordinance  
 10 authorizing the issuance of the notes. However, if the ~~political~~  
 11 ~~subdivision~~ **qualified entity** issues bonds, all or part of the proceeds of  
 12 which will be used to pay the notes issued under subsection (b), neither  
 13 this section nor the actual issuance by a ~~political subdivision~~ **qualified**  
 14 **entity** of its notes under subsection (b) relieves the ~~political~~  
 15 ~~subdivision~~ **qualified entity** of its obligation to comply with the  
 16 statutory requirements for the issuance of its bonds.

17 SECTION 10. IC 13-19-5-13 IS AMENDED TO READ AS  
 18 FOLLOWS [EFFECTIVE JULY 1, 2000]: Sec. 13. (a) As an  
 19 alternative to making loans or providing other financial assistance to  
 20 ~~political subdivisions;~~ **qualified entities**, the authority, after obtaining  
 21 the approval of the budget agency, may use the money in the fund or  
 22 provide a leveraged loan program and other financial assistance  
 23 programs to or for the benefit of ~~political subdivisions;~~ **qualified**  
 24 **entities**, including using money in the fund to enhance a political  
 25 subdivision's obligations under this chapter by:

26 (1) granting money to:

27 (A) be deposited in:

28 (i) a capital or reserve fund established under IC 5-1.5 or  
 29 another law, including this chapter; or

30 (ii) any account established within the fund; or

31 (B) provide interest subsidies;

32 (2) paying bond insurance premiums, reserve insurance  
 33 premiums, or credit enhancement, liquidity support, remarketing,  
 34 or conversion fees, or other similar fees or costs for obligations of  
 35 a political subdivision or for bonds or other obligations issued by  
 36 a trustee that is a financial institution for a grantor trust or by the  
 37 Indiana bond bank if credit market access is improved or interest  
 38 rates are reduced; or

39 (3) guaranteeing all or a part of obligations issued by political  
 40 subdivisions or of bonds or other obligations issued by a trustee  
 41 that is a financial institution for a grantor trust or by the Indiana  
 42 bond bank.



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1 (b) The authority and the budget agency may enter into any  
2 agreements with:

- 3 (1) a trustee that is a financial institution for a grantor trust;  
4 (2) the Indiana bond bank; or  
5 (3) political subdivisions;

6 to carry out this chapter.

7 (c) A guarantee of obligations or bonds under subsection (a)(3) must  
8 be limited to money in the fund. A guarantee under subsection (a)(3)  
9 does not create a liability or an indebtedness of the state or of the  
10 authority except, in the case of the authority, strictly in accordance with  
11 the guarantee terms.

12 (d) Notwithstanding any other law, the authority is considered a  
13 qualified entity for purposes of IC 5-1.5.

14 SECTION 11. IC 13-19-5-15, AS ADDED BY P.L.119-1999,  
15 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
16 JULY 1, 2000]: Sec. 15. (a) The authority may deposit appropriations  
17 or other money received under this chapter after June 30, 1999, into a  
18 subaccount of the fund. The authority shall use money deposited in the  
19 subaccount to award forgivable loans to ~~political subdivisions~~  
20 **qualified entities** for remediation or other brownfield redevelopment  
21 activities. The authority shall, in the manner provided by section 11 of  
22 this chapter, adopt guidelines to establish a ~~political subdivision's~~  
23 **qualified entity's** eligibility for a forgivable loan. The guidelines must  
24 provide priority for projects that:

- 25 (1) involve abandoned gas stations or underground storage tank  
26 issues; or  
27 (2) are located within one-half (0.5) mile of any of the following:  
28 (A) A child care center (as defined by IC 12-7-2-28.4).  
29 (B) A child care home (as defined by IC 12-7-2-28.6).  
30 (C) A child caring institution (as defined by IC 12-7-2-29).  
31 (D) A school age child care program (as defined by  
32 IC 12-17-12-5).  
33 (E) An elementary or a secondary school attended by students  
34 in kindergarten or grades 1 through 12.

35 (b) Not more than twenty percent (20%) of the total amount of loans  
36 provided for a project under this chapter may be in the form of a  
37 forgivable loan.

38 (c) The financial assistance agreement for a project to be financed  
39 with a forgivable loan must specify economic development or  
40 redevelopment goals for the project that must be achieved before the  
41 ~~political subdivision~~ **qualified entity** will be released from its  
42 obligation to repay the forgivable loan.



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1           SECTION 12. [EFFECTIVE JULY 1, 2000] (a) **This SECTION**  
 2 **applies only to a person that:**  
 3           **(1) before January 1, 2000, negotiated with a political**  
 4 **subdivision concerning an application for assistance under**  
 5 **IC 13-19-5;**  
 6           **(2) did not receive any assistance under IC 13-19-5 because**  
 7 **the political subdivision described in subdivision (1) did not**  
 8 **apply for the assistance; and**  
 9           **(3) incurred costs after December 31, 1998, and before**  
 10 **January 1, 2000, in redeveloping a brownfield (as defined in**  
 11 **IC 13-11-2-19.3).**  
 12           **(b) A person described in subsection (a) may apply for**  
 13 **assistance under IC 13-19-5, as amended by this act, for costs of**  
 14 **brownfield redevelopment described in subsection (a)(3),**  
 15 **notwithstanding the fact that the person incurred the costs before**  
 16 **applying for the assistance.**  
 17           **(c) This SECTION expires July 1, 2001.**

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