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FISCAL IMPACT STATEMENT

LS 6014

BILL NUMBER: HB 1192

NOTE PREPARED: May 3, 2007

BILL AMENDED: Apr 29, 2007

SUBJECT: Notice of Underground Storage Tank Releases.

FIRST AUTHOR: Rep. Ulmer

FIRST SPONSOR: Sen. Gard

BILL STATUS: Enrolled

FUNDS AFFECTED: **GENERAL**
 DEDICATED
 FEDERAL

IMPACT: State & Local

Summary of Legislation: *Notice of Underground Storage Tank (UST) Release:* This bill requires the Department of Environmental Management (IDEM) to provide notice of a release, spill, or an overflow of a UST system to the county health officer of each county in which the release, spill, or overflow occurred. It requires a county health officer that receives notice from IDEM to (1) publish notice of the release, spill, or overflow in a newspaper of general circulation in the county health officer's county; and (2) provide any other notice of the release, spill, or overflow the county health officer considers necessary or appropriate.

Underground Storage Tanks: With respect to the prohibition against installation of certain USTs before the effective date of certain rules, the bill adds to the criteria for exception from the prohibition the requirement that all newly installed or replaced piping connected to the tank meets the secondary containment requirements adopted by the Solid Waste Management Board. With respect to USTs that contain alcohol blended fuels composed of greater than 15% alcohol, the bill excepts the USTs from that prohibition if they meet certain standards; and provides that the USTs are subject to certain release response and detection requirements. The bill also adds effective date provisions. It adjusts limitations on payments from the Excess Liability Trust Fund (ELTF).

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.

Environmental Legal Action: The bill also eliminates the requirement that a person that brings an environmental legal action (ELA) be a private person. It clarifies that a person may bring an ELA regardless of whether the person caused or contributed to the hazardous substance release or petroleum release that is the basis for the ELA. The bill also establishes a statute of limitations for an ELA.

Regional Sewage Districts: The bill requires a regional sewage district (RSD) that seeks to require connection to the RSD's sewer system of property that is (1) located outside the RSD's territory; and (2) within 300 feet of the system; to provide the property owner with a letter of recommendation from the local health department that the connection is necessary to protect the public's health. It prohibits the RSD from requiring the property owner to connect if the property is already connected to a sewer system that: (1) has received an NPDES permit; and (2) has been determined to be functioning satisfactorily. It requires an RSD that adopts an ordinance to increase rates and charges more than 5% per year to give notice to affected users.

Effective Date: Upon passage; July 1, 2007.

Explanation of State Expenditures: *Notice of UST Release:* The bill requires IDEM to notify local health departments if IDEM becomes aware of a release from a UST. IDEM should be able to accomplish this task given its existing level of resources.

*Background--*This bill applies to UST systems regulated by IDEM, which include a tank and its related piping and are used to hold petroleum products or other hazardous substances. According to IDEM,

as of August 30, 2006, the Leaking Underground Storage Tank Program has received 8,461 release reports and closed 5,484 sites (61%) since the program was initiated in 1986. The program has received approximately 210 release reports per year since FY 2001 and closed between 500 and 600 sites in FY 2007. Roughly 500 owners of sites in violation are unable to pay for cleanup.

ELTF: IC 13-23-8 provides that IDEM must use money in ELTF to pay certain costs involved with corrective action taken to eliminate or mitigate a release from a petroleum UST.

The bill provides that if a petroleum UST that is involved in a claim is in compliance, has no double wall with piping that has secondary containment, the deductible that claims must exceed before seeking reimbursement from ELTF is reduced from \$30,000 to \$25,000.

If the petroleum UST involved in the occurrence for which claims are made is in compliance before required, has a double wall with piping that does not have secondary containment, the amount of the deductible is \$25,000. Under existing statute, this category is not covered.

If the UST has a double wall with secondary containment, the deductible is reduced from \$25,000 to \$20,000.

The above provisions will likely increase expenditures from ELTF. The number and nature of future claims is indeterminable. As of February 15, 2007, ELTF had a free balance of \$64,000.

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 currently 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: *Environmental Legal Action--Court Fee Revenue:* If additional civil actions occur and court fees are collected, revenue to the state General Fund may increase. A civil filing fee of \$100 would be assessed when a civil case is filed, 70% of which would be deposited in the state General Fund if the case is filed in a court of record or 55% if the case is filed in a city or town court. In addition, some or all of the judicial salaries fee (\$15), the public defense administration fee (\$3), the court administration fee (\$2), and the judicial insurance adjustment fee (\$1) are deposited into the state General Fund.

With respect to other provisions of the bill, see *Explanation of State Expenditures* above.

Explanation of Local Expenditures: *Notice of UST Release:* The bill provides that a county health officer that receives notice of a release from IDEM must publish notice of the release, spill, or overfill in a newspaper of general circulation in the county and provide any other notice the county health officer considers necessary or appropriate. These provisions will increase expenditures for the county health department; however, it is anticipated that counties will be able to cover any additional costs involved.

With respect to other provisions of the bill, see *Explanation of State Expenditures* above.

Regional Sewage Districts: The bill requires a regional sewage district (RSD) under certain circumstances to provide property owners with letters of recommendation from the local health department that the connection is necessary to protect the public's health. It requires an RSD that adopts an ordinance to increase rates and charges more than 5% per year to give notice to affected users. Local units should be able to cover any increase in expenses given existing resources.

Explanation of Local Revenues: *Environmental Legal Action--Court Fee Revenue:* If additional civil actions occur, local governments would receive revenue from the following sources. The county general fund would receive 27% of the \$100 filing fee that is assessed in a court of record. Cities and towns maintaining a law enforcement agency that prosecutes at least 50% of its ordinance violations in a court of record may receive 3% of court fees. If the case is filed in a city or town court, 20% of the court fee would be deposited in the county general fund and 25% would be deposited in the city or town general fund. Additional fees may be collected at the discretion of the judge and depending upon the particular type of case.

With respect to other provisions of the bill, see *Explanation of State Expenditures* above.

Regional Sewage Districts: The bill prohibits an RSD from requiring the property owner to connect if the property is already connected to a sewer system that has received an NPDES permit and has been determined to be functioning satisfactorily. The impact of this provision is indeterminable.

State Agencies Affected: IDEM, IFA.

Local Agencies Affected: County health departments; political subdivisions and redevelopment commissions; trial courts, city and town courts; regional sewer districts.

Information Sources: Bruce Palin, Assistant Commissioner, IDEM.

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