

**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 6975
BILL NUMBER: HB 1162

NOTE PREPARED: Apr 15, 2009
BILL AMENDED: Apr 14, 2009

SUBJECT: Environmental Matters.

FIRST AUTHOR: Rep. Tyler
FIRST SPONSOR: Sen. Gard

BILL STATUS: As Passed Senate

FUNDS AFFECTED: **GENERAL**
 DEDICATED
 FEDERAL

IMPACT: State & Local

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

Permits. This bill provides that if a person has been issued a permit by the Department of Environmental Management (IDEM) to construct, install, or operate a facility, equipment, or a device, the person may not start the construction, installation, operation, or modification of the facility, equipment, or device until the person has obtained any approval required by any county; city, or town in which the facility, equipment, or device is located.

Regional Water, Sewer, or Solid Waste District. The bill allows the board of a regional water, sewer, or solid waste district to adopt an ordinance allowing payment of certain claims in advance of board allowance.

Institutional Control Registry. This bill establishes the Institutional Control Registry (ICR) administered by IDEM. The bill establishes in the ICR an inventory and computerized registry of restrictive covenants in Indiana and a computerized registry of environmental restrictive ordinances adopted by Indiana municipal corporations. It requires IDEM to monitor compliance with the covenants. The bill amends the definition of "restrictive covenant". IDEM must (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 whether the tract owner has developed and follows an environmental management system and agrees to provide an annual report to IDEM; (4) consider means of applying ICR activities to privately established environmental restrictive covenants and those established before ICR activities begin; and (5) consider the feasibility of incorporating notice of environmental restrictive covenants and restrictive ordinances into the "One Call" system.

Attorney General. IDEM must report noncompliance to the Attorney General.

Fees. IDEM must 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. It provides that the ICR applies to all restrictive covenants regardless when they were recorded, but that the fee applies only to those recorded after 2009.

Environmental Trust Fund. This bill establishes the Environmental Trust Fund to fund the ICR.

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

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. It 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. These provisions would affect IDEM's administrative expenditures by an indeterminable amount.

ELTF. This 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. Expenditures from ELTF for reimbursement that will result are indeterminable.

Liability. The bill provides that 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.

Certificate of Completion. This provision 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 requires that a municipal corporation give notice to IDEM not later than 60 days before amendment or repeal and to IDEM not later than 30 days after passage, amendment, or repeal. It allows IDEM to waive the 60 days notice requirement. It requires IDEM to consider and give effect to environmental restrictive ordinances in evaluating risk-based remediation proposals. Remediation and closure goals, objectives, and standards for all remediation projects conducted under hazardous waste management, UST, petroleum, and Hazardous Substances Response Trust Fund statutes must be consistent with the remediation objectives applicable to voluntary remediation work plans. The bill adjusts the circumstances under which additional action is not necessary after creation of a voluntary remediation work plan and the factors on which risk-based remediation objectives based on site-specific risk assessments must be based. It requires IDEM to consider and give effect to environmental restrictive covenants in evaluating risk-based remediation proposals.

Total Maximum Daily Load (TMDL) for a Pollutant. The bill requires IDEM in the establishment of the total maximum daily load for a surface water to make every reasonable effort, when IDEM identifies the surface water, to identify the pollutant under consideration for the establishment of the TMDL to establish for a surface water the TMDL for a pollutant only if in identifying the surface water IDEM identifies the pollutant under consideration. The bill establishes procedures IDEM must follow if IDEM (1) is unable to identify the pollutant and later identifies one or more pollutants; or (2) identifies the pollutant and later identifies one or more other pollutants.

Adoption of Rule for Antidegradation Standards. For all waters of the state, IDEM is required to complete an antidegradation review and modification, if necessary, of the rules of the WPCB that authorize National Pollutant Discharge Elimination System (NPDES) general permits. After an antidegradation review of a rule is conducted, activities covered by an NPDES general permit authorized by that rule are not required to undergo an additional antidegradation review. The bill establishes the factors the IDEM commissioner must consider in determining whether a proposed discharge is socially or economically necessary under antidegradation standards and implementation procedures, and provides that the commissioner may rely on consideration of any one or a combination of the listed factors. It establishes a deadline for IDEM to adopt antidegradation standards and implementation procedures and to act on applications for approval of associated NPDES permits. The bill allows the IDEM commissioner to extend for cause for not more than 90 days the deadline for IDEM to adopt antidegradation standards and implementation procedures.

Repeal of Exceptional Use Water. The bill provides that each exceptional use water designated by the Water Pollution Control Board (WPCB) before June 1, 2009, becomes an Outstanding State Resource Water on June 1, 2009, by operation of law. The bill repeals the definition of exceptional use water, and eliminates all references to that term. It specifies the categories of regulation for all waters of the state.

Effective Date: (Amended) Upon passage; June 1, 2009; July 1, 2009.

Explanation of State Expenditures: (Revised) The bill does the following.

Institutional Control Registry and Environmental Trust. The operations of the Registry are funded solely from the Environmental Trust Fund. IDEM 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. IDEM 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.

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.

ICR 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.

Total Maximum Daily Load for a Pollutant. This provision will have minimal impact on IDEM expenditures.

Adoption of Rule for Antidegradation Standards. IDEM is already in the rulemaking process. The new rule will require additional IDEM resources as IDEM issues permits that are subject to the new rule. The provision will not require additional staff, but rather more work effort.

Repeal of Exceptional Use Water. This provision will have minimal impact on IDEM expenditures.

Explanation of State Revenues: (Revised) The bill does the following.

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 IDEM only once. IDEM 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.

IDEM 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 IDEM. Interest, premiums, gains, and other earnings from investments must be credited to the Environmental Trust Fund. IDEM 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: *Permits.* The proposal could result in additional administrative

expenses for a local unit if the local unit would not have considered the facility were it not for the provisions of the bill.

Regional Water, Sewer, or Solid Waste District. The bill allows the fiscal officer of the district to make claim payments in advance of board allowance for certain kinds of expenses. This provision could result in improved efficiency of payments from districts.

(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-day notice requirement. The impact of this provision is indeterminable.

Explanation of Local Revenues:

State Agencies Affected: IDEM; EQSC; State Auditor; Attorney General.

Local Agencies Affected: Counties, Cities, and Towns; Regional Water, Sewer, or Solid Waste Districts; Governmental entities that submit determinations regarding discharges into waters..

Information Sources: Sandra Flum, IDEM.

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