



- Requirements for certain notices regarding the property subject to the environmental covenant.
- The names or identities of every holder.
- Rights of access to the property.
- Required signatures.
- Identification of the name and location of any administrative record for the environmental response project reflected in the environmental covenant.

In addition to these requirements, environmental covenants may contain additional information, restrictions, and requirements. If an environmental covenant conforms to the standards specified in this bill, it runs with the land and is perpetual unless any of the conditions listed in ORC 5301.89 in this bill apply to the environmental covenant. In practice, environmental covenants substantively encompass current law's "use restrictions" on environmentally contaminated properties, but in a more uniform and enforceable manner.

### **Environmental Protection Agency**

#### **Potential indirect fiscal effects**

This bill, through the creation of "environmental covenants," codifies and makes uniform practices already being carried out by Ohio EPA. Because Ohio EPA currently engages in activities included in this bill's conceptualization of environmental covenants, it is not expected that this bill would result in significant increases in state expenditures. However, because this bill gives statutory authority to some practices currently carried out under common law, it is impossible to say definitively that there would be no increase in administrative costs associated with entering into environmental covenants.

### **Department of Commerce, State Fire Marshal Division**

The State Fire Marshal's Bureau of Underground Storage Tank Regulation (BUSTR) is responsible for regulating the operation of underground storage tanks and overseeing the cleanup of tank releases. Similar to authority granted to the Ohio EPA, this bill grants the Fire Marshal the authority to enter into environmental covenants for the purpose of facilitating long-term clean-up and maintenance of properties contaminated with petroleum or other pollutants; provides a statutory basis for the recording and enforcement of environmental covenants by the Fire Marshal; provides increased enforcement capabilities for the Fire Marshal; and allows the Fire Marshal to recognize a wider range of enforceable land use restrictions.

#### **Potential indirect fiscal effects**

According to the Department of Commerce, it is expected that this bill will result in more cost-effective clean-up of petroleum pollution because nonresponsible parties may take voluntary action to clean-up a site and receive a release by BUSTR through an environmental covenant designating long-term use restrictions of the cleaned-up property. The voluntary nature of this activity could result in:

- An overall decrease in workload for the division of the State Fire Marshal as a result of more efficient petroleum pollution clean-up projects; and
- Potential increase in commercial development as a result of environmental covenants and their encompassing use restrictions that run with the land, thereby encouraging development of previously contaminated sites.

Similar to Ohio EPA, BUSTR already engages in activities included in this bill's conceptualization of environmental covenants, such as specifying use restrictions in deeds that are filed with the county recorder of the county in which the applicable property is located; therefore, it is not expected that this bill would result in significant increases in state expenditures. However, because this bill gives statutory authority to some practices currently carried out under common law, it is impossible to say definitively that there would be no increase in administrative costs associated with entering into environmental covenants.

### **County recorders**

#### **Potential indirect fiscal effects**

Under current law, deed restrictions must be filed in the office of the county recorder of each county in which the property contained in the deed is located. This bill requires that environmental covenants be filed in the office of the county recorder of each county in which the property subject to the environmental covenant is located in the same manner as a deed to the property. Environmental covenants are not exempt from recording fees under this bill.

Because use restrictions imposed as part of a remedial activity are already filed with county recorders' offices (current law), and this bill would result in the substitution of environmental covenants for use restrictions with respect to environmental response projects, presumably there would not be a significant increase in the number of filings. However, depending on both the number of environmental covenants filed with county recorders as a result of this bill, and the average length in pages of the covenants, counties could potentially experience an increase in revenue from county recorder fees.

Depending on the length and complexity of environmental covenants in comparison to the current use restrictions that are filed with county

recorders, this bill potentially could result in increased administrative expenses for county recorder offices. This increase, if at all, likely would not be significant.<sup>[1]</sup> In addition, the uniformity of environmental covenants, both in content and process, may potentially offset any increase in length.

***Federal property***

The bill provides that if it is not feasible to enter into an environmental covenant for federal property, the federal government may use another mechanism to ensure that the long-term use of the property will be compatible with remaining levels of hazardous substances on the property. The federal agency using such a mechanism must file a notice of that mechanism in the office of the county recorder of the county in which the federal property is located. This could potentially result in minimal increased filings in county recorders' offices.

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<sup>[1]</sup> As a point of reference, according to the County Commissioners Association of Ohio, the low interest rates of the last few years have resulted in a larger than usual number of filings (mortgages and refinancing) in county recorders' offices. Despite the increase in filings, county recorders' offices typically have not experienced a significant need for increased administrative help associated with these filings. It appears unlikely that the filing of environmental covenants would contribute to a similar increase in filings.