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OHIO LEGISLATIVE SERVICE COMMISSION

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H.B. 168
133rd General Assembly

Fiscal Note & Local Impact Statement

[Click here for H.B. 168's Bill Analysis](#)

Version: As Passed by the Senate

Primary Sponsor: Rep. Arndt

Local Impact Statement Procedure Required: No

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Highlights

- Any increase in annual workload and related operating expenses to the Ohio Environmental Protection Agency resulting from granting the Director discretion to void a covenant not to sue under the Voluntary Action Program will be minimal at most and absorbed using current staff and resources.
- The establishment of immunity from civil liability for a property owner who is a bona fide prospective purchaser will have no direct fiscal effect on the state or political subdivisions.

Detailed Analysis

The bill: (1) establishes immunity from civil liability for a property owner who is a bona fide prospective purchaser, and (2) authorizes, rather than requires as under current law, the Director of Environmental Protection to issue an order voiding a covenant not to sue in certain circumstances.

Immunity

The bill's immunity provision pertains to civil actions brought by the state for performing investigational and remedial activities to address a release or threatened release of hazardous substances. The bill is unlikely to decrease the number of civil actions filed or recoveries made by the Ohio Environmental Protection Agency (Ohio EPA) although the subject of the action may change, for example, from the current property owner to a previous owner or previous polluting owner. This provision will have no direct fiscal effect on the state or political subdivisions.

Covenant not to sue

The bill eliminates a provision of law that automatically voids a covenant not to sue (CNS) under the Voluntary Action Program (VAP) when a property subject to institutional controls or activity and use limitations is not in compliance with those controls or limitations.¹ In its place, the bill instead, authorizes, but does not require, the Director of the Ohio EPA to issue an order voiding the covenant in that circumstance, and specifies that the order voiding the covenant not to sue is an appealable action.

The Ohio EPA anticipates that any resultant increase in work from granting discretion to the Director will be minimal at most and absorbed using current staff and resources. For calendar years 2016-2018, the annual VAP reports state that no CNS was revoked.

Currently, final actions of the Director of the Ohio EPA are appealable to the Environmental Review Appeals Commission.² Any party adversely affected by an order of the Commission may appeal to the appropriate court of appeals. The bill is unlikely to generate any discernible ongoing fiscal effect on the Commission or the courts of appeals.

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¹ The VAP is a voluntary brownfield cleanup program.

² The Environmental Review Appeals Commission is an appellate review board whose primary statutory duty is to hear and resolve appeals of various technical and legal final actions taken by state and local governmental entities, including the Ohio EPA, the State Fire Marshal, the State Emergency Response Commission, the Department of Agriculture, and local boards of health.