

SENATE BILL REPORT

2SSB 6187

As Passed Senate, February 10, 2016

Title: An act relating to the authority of the pollution liability insurance agency.

Brief Description: Concerning the authority of the pollution liability insurance agency.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Litzow, Ranker, Fraser and Sheldon; by request of Pollution Liability Insurance Agency).

Brief History:

Committee Activity: Energy, Environment & Telecommunications: 1/14/16, 1/19/16 [DPS-WM].

Ways & Means: 1/27/16, 2/03/16 [DP2S].

Passed Senate: 2/10/16, 49-0.

SENATE COMMITTEE ON ENERGY, ENVIRONMENT & TELECOMMUNICATIONS

Majority Report: That Substitute Senate Bill No. 6187 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Erickson, Chair; Sheldon, Vice Chair; McCoy, Ranking Minority Member; Braun, Brown, Cleveland, Habib, Honeyford and Ranker.

Staff: Jan Odano (786-7486)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Second Substitute Senate Bill No. 6187 be substituted therefor, and the second substitute bill do pass.

Signed by Senators Hill, Chair; Braun, Vice Chair; Dammeier, Vice Chair; Honeyford, Vice Chair, Capital Budget Chair; Keiser, Assistant Ranking Member on the Capital Budget; Ranker, Ranking Minority Member, Operating; Bailey, Becker, Billig, Brown, Conway, Darneille, Hasegawa, Hewitt, Nelson, O'Ban, Padden, Parlette, Pedersen, Schoesler and Warnick.

Staff: Sherry McNamara (786-7402)

Background: In 1989, the Legislature created the Pollution Liability Insurance Agency (PLIA). PLIA was initially established to meet the requirements of the United States

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Environmental Protection Agency (EPA) for owners and operators of underground storage tanks (UST) to demonstrate financial responsibility for the clean-up of contamination from spills or releases of petroleum. In 1995, the duties of PLIA were expanded to owners and operators of heating oil tanks. PLIA offers insurance coverage for clean-up of contamination from active heating oil tanks that are registered in the program prior to a contamination event.

PLIA provides insurance to insurance companies that insure owners and operators of UST and heating oil tanks. The objective of PLIA is to improve the availability and affordability of pollution liability insurance for owners and operators of UST by selling reinsurance at a price significantly below the private market price for similar insurance. The discount is passed to owners and operators of UST through reduced insurance premiums and increased availability of insurance.

PLIA also provided financial assistance to public and private owners and operators of UST that are certified as meeting vital local government public health and safety needs. Financial assistance was provided to owners and operators who demonstrate serious financial hardship. The financial assistance was allotted for use by owners and operators only for clean-ups and upgrades to meet EPA requirements. This program is no longer active.

PLIA and its programs are funded through: a pollution liability fee of 1.2 cents per gallon of heating oil, imposed on dealers making sales of heating oil to a home owner or a consumer which is deposited into the Heating Oil Pollution Liability Trust Account; and an excise tax of 0.3 percent on the wholesale value of petroleum - the Petroleum Products tax (PPT) - which is deposited into the Pollution Liability Insurance Program Trust Account. When the balance of the account falls below \$7.5 million the PPT is imposed, and is suspended when the balance exceeds \$15 million.

PLIA and the pollution liability insurance program are set to expire on July 1, 2020.

Summary of Second Substitute Bill: A UST revolving loan and grant program is established under PLIA for remedial actions, investigations and cleanups of releases or threatened releases of hazardous substances at UST facilities. A grant or loan may be used to upgrade, replace or permanently close a UST, install new infrastructure or retrofit existing infrastructure for renewable or alternative energy for motor vehicles at a UST facility, and install and remove temporary above ground petroleum storage tank systems. The loan or grant project must have a useful life of at least 13 years. A grant or loan may not exceed \$2 million. All remedial actions must be conducted in compliance with Model Toxic Control Act requirements.

A loan or grant may not be used for remedial actions unless the recipient of a loan or grant agrees to and demonstrates monies available under financial assurance have been expended or rejected by the provider.

PLIA may conduct remedial actions to investigate or clean up releases of hazardous substances at an underground storage tank facility. For this to occur, the owner or operator of the facility must be the recipient of a loan or grant and consent to PLIA: conducting remedial actions; recovering remedial action costs; filing a lien on the property to recover costs; and

entering the property. PLIA may conduct remedial actions using funds in the UST revolving loan and grant account, but cannot spend more than the difference between the loaned amount and \$2 million.

PLIA must partner with the Department of Health (DOH) to implement the revolving loan grant program. DOH may collect loan origination fees to cover costs for administering the financial assistance program. PLIA must use the monies in the revolving account to fund DOH operating costs for the program.

PLIA may file a lien for unrecovered costs incurred by conducting remedial actions. The lien may not exceed the cost of the remedial action. Liens have priority in rank over all other privileges, liens, or other security interests except for local and special district property tax assessments. PLIA must provide notice to the property owner, if known, by certified mail or by posting legal notice in the newspaper with the largest circulation in the county where the site is located. The notice must provide details such as the purpose of the lien, description of the property, and a statement of the costs incurred. PLIA may file a lien immediately when there is an imminent bankruptcy filing by the facility owner, or transfer or sale of the property subject to the lien.

The PLIA UST revolving loan and grant account is created in the state treasury. Any loan repayment, money appropriated by the Legislature, funds from cost recovery, federal grants provided to PLIA for remedial actions, and deposits made by private or public entities must be deposited into the account.

By September 1 of every even numbered year, PLIA must provide a report to the Office of Financial Management and the appropriate legislative committees on activities supported by the PLIA UST revolving loan and grant account. The report must include:

- the total number of loans and grants;
- the amounts loaned or granted;
- the number of sites cleaned up, UST upgraded, replaced, or permanently closed;
- the number of jobs preserved; and
- the description, name, location, and status of the projects.

PLIA is authorized to adopt rules to implement the UST revolving loan and grant program. It must enter into an agreement with DOH within one year of the effective date of the bill. Until the rules are adopted, PLIA may implement the UST revolving loan and grant program through interpretative guidance so as to not delay the award of a grant or loan.

The expiration date of PLIA is extended from July 1, 2020 to July 1, 2030.

The Petroleum Products tax is reduced after July 1, 2021 from 0.3 percent to 0.15 percent of the wholesale value of the petroleum product.

On July 1, 2016, if the Pollution Liability Insurance Program Trust Account exceeds \$7.5 million, the State Treasurer must transfer the amount exceeding \$7.5 million up to \$10 million into the PLIA UST revolving loan and grant account. On July 1, 2017, and every two years after, if the Pollution Liability Insurance Program Trust Account exceeds \$7.5 million, the State Treasurer must transfer the amount exceeding \$7.5 million up to \$20 million into

the PLIA UST revolving loan and grant account. The State Treasurer must transfer the amount exceeding \$7.5 million, if \$20 million is not available, at the beginning of the first fiscal year of the biennium.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: The bill contains several effective dates. Please refer to the bill.

Staff Summary of Public Testimony on Original Bill (Energy, Environment & Telecommunications): PRO: This allows for continued efficiency and effectiveness of the program. PCI supports reauthorization of PLIA, its reinsurance program, and the new grant and loan program. PLIA is cost effective and stabilizes the insurance program. Seventy percent of those owning UST are small businesses. Small businesses need these programs. They are vital to their businesses. This program saved two multigenerational businesses. The bill is a result of collaboration between disparate groups and it is enjoyable being on the same side. PLIA is also the home of the residential heating program, which is very helpful. The agency needs to remain viable to help residential owners of UST. Transitions to alternative and renewable energy is key. We support protecting air quality from any kind of pollution. Public health needs to be preserved. The Department of Ecology worked very closely with PLIA. PLIA provides critical reinsurance for businesses and homes. This will help to accelerate clean-ups throughout the state and utilize model remedies.

Persons Testifying on Original Bill (Energy, Environment & Telecommunications): PRO: Senator Ranker, Mel Sorensen, Property Casualty Insurers Association of America, (PCI); Bill Clarke, WA Realtors; Russell Olsen, PLIA; John Funderburk, Sound Earth Strategies; Jim Pendowski, Ecology-Toxics Cleanup; Mary Moore, League of Women Voters of Washington; Dave Ducharme, WA Oil Marketers Assn.

Persons Signed In To Testify But Not Testifying: No one.

Staff Summary of Public Testimony on First Substitute (Ways & Means): PRO: PLIA's focus is on reinsurance for UST owners and operators. Since 1990, the agency has had 516 claims and closed 459 claims. PLIA is looking to secure the future. The USTs in Washington are aging, the average is 24.2 years old. Most of the owners and operators cannot afford upgrades without financing. Banks will not provide financial assistance or loans for land that has been contaminated. This bill fills the market void by providing the financial resources for UST owners and operators to replace and upgrade. This program has public health benefits. More than 2500 operable USTs are near groundwater sources. Providing the financial assistance will prevent future contamination and protect the groundwater. This is a self-supporting loan program. The petroleum products tax is reduced in the coming years.

Persons Testifying on First Substitute (Ways & Means): PRO: Russ Olsen, PLIA; Clark Halvorson, WA Department of Health; Greg Hanon, Western States Petroleum Association.

Persons Signed In To Testify But Not Testifying on First Substitute: No one.