

# SENATE BILL REPORT

## SHB 2357

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As of February 18, 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:** House Committee on Environment (originally sponsored by Representatives Peterson, Young, S. Hunt, Fitzgibbon, Kirby, Buys, Pollet and Kretz; by request of Pollution Liability Insurance Agency).

**Brief History:** Passed House: 2/10/16, 97-0.

**Committee Activity:** Energy, Environment & Telecommunications: 2/23/16.

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### SENATE COMMITTEE ON ENERGY, ENVIRONMENT & TELECOMMUNICATIONS

**Staff:** Jan Odano (786-7486)

**Background:** In 1989, the Legislature created the Pollution Liability Insurance Agency (PLIA). PLIA was initially established to meet the requirements of the United States 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 This program is no longer active.

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*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.*

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 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 demonstrate that 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. An owner or operator must authorize PLIA to enter property to conduct remedial actions, which must be focused on maintaining the economic vitality of 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:** Ninety days after adjournment of session in which bill is passed.