

SENATE BILL REPORT

ESHB 1175

As Reported by Senate Committee On:
Environment, Energy & Technology, March 28, 2023
Ways & Means, April 3, 2023

Title: An act relating to creating a state financial assurance program for petroleum underground storage tanks.

Brief Description: Creating a state financial assurance program for petroleum underground storage tanks.

Sponsors: House Committee on Appropriations (originally sponsored by Representatives Doglio, Dye and Leavitt; by request of Pollution Liability Insurance Agency).

Brief History: Passed House: 3/16/23, 63-31.

Committee Activity: Environment, Energy & Technology: 3/22/23, 3/28/23 [DP-WM].
Ways & Means: 3/30/23, 4/03/23 [DP, w/oRec].

Brief Summary of Bill

- Directs the Pollution Liability Insurance Agency to establish and administer a state financial assurance program for owners and operators of petroleum underground storage tanks.
- Increases the rate of the Petroleum Products Tax from 0.15 percent to 0.3 percent.

SENATE COMMITTEE ON ENVIRONMENT, ENERGY & TECHNOLOGY

Majority Report: Do pass and be referred to Committee on Ways & Means.

Signed by Senators Nguyen, Chair; Lovelett, Vice Chair; MacEwen, Ranking Member; Boehnke, Lovick, Short, Trudeau and Wellman.

Staff: Gregory Vogel (786-7413)

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

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass.

Signed by Senators Rolfes, Chair; Robinson, Vice Chair, Operating & Revenue; Mullet, Vice Chair, Capital; Warnick, Assistant Ranking Member, Capital; Billig, Braun, Conway, Dhingra, Hasegawa, Hunt, Keiser, Muzzall, Nguyen, Pedersen, Saldaña, Van De Wege and Wellman.

Minority Report: That it be referred without recommendation.

Signed by Senators Wilson, L., Ranking Member, Operating; Gildon, Assistant Ranking Member, Operating; Schoesler, Ranking Member, Capital; Rivers, Assistant Ranking Member, Capital; Boehnke, Torres and Wagoner.

Staff: Jed Herman (786-7346)

Background: Pollution Liability Insurance Agency. The Pollution Liability Insurance Agency (PLIA) provides a number of services related to petroleum underground storage tanks (UST). These services include providing reinsurance to private insurance companies that provide insurance coverage to owners and operators of petroleum USTs. PLIA also provides a technical assistance program through which it reviews the sufficiency of cleanup actions connected with petroleum USTs, and operates a loan and grant program for cleanups and upgrades of petroleum USTs.

Pollution Liability Insurance Agency Funding. A tax of 0.15 percent of the wholesale value of refined petroleum products, known as the Petroleum Products Tax, is levied upon first possession in Washington of petroleum products. The tax does not apply to crude oil or liquefiable gasses such as natural gas. Proceeds from the tax are deposited in the Pollution Liability Insurance Trust Account (Trust Account) and spent on PLIA's insurance program and associated administrative costs. The tax temporarily ceases to be imposed when the Trust Account balance exceeds \$15 million in the previous calendar quarter, and is reimposed when the Trust Account balance falls below \$7.5 million in the previous calendar quarter.

Summary of Bill: State Financial Assurance Program. PLIA must establish and administer a state Financial Assurance Program (Program) for owners and operators of petroleum USTs. To participate in the Program, an owner or operator must register a petroleum UST in accordance with procedures established by PLIA. PLIA may conduct an assessment of a registered petroleum UST facility and any release from the petroleum UST to determine program or cost eligibility.

PLIA may provide an eligible owner or operator of a registered petroleum UST the following financial assurances:

- for releases occurring after tank registration, up to \$2 million per occurrence for taking remedial action and for compensating third parties for bodily injury and

- property damage caused by the release during the time the tank is registered by the owner or operator; and
- for releases occurring prior to tank registration, up to \$1 million per occurrence for taking remedial action.

PLIA may not spend more than \$3 million per fiscal year for multiple occurrences involving a single petroleum UST.

PLIA may prioritize funding for a release based on the threats posed by the release to human health and the environment, and whether the population threatened by the release may include a vulnerable population or an overburdened community.

PLIA must prioritize claims for remedial action costs over payment of a third-party claim. Before funding any third-party claim resulting from a release, PLIA must reserve the estimated cost of any remedial actions necessary to address the release, and if funding is remaining then payment may be on an eligible third-party claim.

Funding for remedial actions and third-party claims is limited to the reasonable and necessary eligible costs established by PLIA.

For remedial actions, PLIA may establish a range of eligible costs or base payment of eligible costs on criteria to be met by persons who contract to perform remedial actions.

Program Fee. PLIA must establish by rule a fee to recover from owners and operators of registered petroleum USTs the cost of administering the Program. The fee may not exceed \$25,000 per petroleum UST per year.

Return of Cost Payment. PLIA may require an owner or operator to return any cost overpayment made under the Program. PLIA may also require an owner or operator to return any cost payment made under the Program if the owner or operator misrepresents or omits a fact relevant to a determination made by PLIA, or if the owner or operator fails to complete a required remedial action.

If a person with intent to defraud submits a loss declaration form, or issues an invoice or other demand for payment with knowledge that it is false in whole or in part, and with knowledge that it is being submitted to PLIA for cost payment, PLIA may require that the person return any cost payment received based on the false loss declaration form, invoice, or other demand for payment.

If a cost payment is not returned, PLIA may file a lien on the petroleum UST facility or other property owned by the owner or operator, and the Attorney General may commence a civil action against the owner or operator.

Remedial Actions—Registered Underground Storage Tanks. PLIA may conduct remedial

actions to investigate or clean up a release from a petroleum UST registered under the Program if the owner or operator has received, or is eligible to receive funding for remedial actions, and provides consent for PLIA to conduct the remedial action and enter upon the real property to conduct the remedial action. PLIA may not spend more per occurrence to take remedial action than the financial assurance limits established for the Program.

Remedial Actions—Unregistered Underground Storage Tanks. PLIA may conduct remedial actions to investigate or clean up a release from a petroleum UST, even if the petroleum UST is not registered under the Program, if the owner or operator consents, and the release occurs in an area at risk of impacts to drinking water or where addressing the release is necessary to equitably protect human health and the environment in overburdened communities. PLIA may seek recovery of any remedial action costs incurred from any liable person. PLIA may file a lien on the petroleum UST facility to recover PLIA's remedial action costs. The Attorney General may commence a civil action against any liable person to recover PLIA's remedial action costs.

Liens. PLIA may file a lien against the petroleum UST facility where the petroleum UST is located or property owned by the owner or operator of the petroleum UST if PLIA incurs remedial action costs or demands repayment of costs and those costs are not recovered by PLIA.

A lien filed under the Program may not exceed the remedial action costs incurred or repayments demanded by PLIA.

A lien filed under the Program has priority in rank over all other privileges, liens, monetary encumbrances, or other security interests affecting the real property, whenever incurred, filed, or recorded, except for local and special district property tax assessments.

Before filing a lien, PLIA must give notice of its intent to file a lien to the owner of the petroleum UST facility on which the lien is to be filed, mortgagees, and lienholders of record. If the petroleum UST facility owner is unknown or if a mailed notice is returned as undeliverable, PLIA must provide notice by posting a legal notice in the newspaper of largest circulation in the county in which the site is located. The notice must provide certain information, including a statement of the purpose of the lien and a brief description of the real property to be affected by the lien.

If PLIA has reason to believe that exigent circumstances require the filing of a lien prior to giving notice under this subsection, PLIA may file the lien immediately.

A lien filed under the program is effective when a statement of lien is filed with the county auditor in the county where the petroleum UST is located.

Unless PLIA determines it is in the public interest to remove the lien, the lien continues until the liabilities for the remedial action costs incurred or repayments demanded by PLIA

have been satisfied through the sale of the real property, foreclosure, or other means agreed to by PLIA.

PLIA may not file a lien under the Program against a petroleum UST owned by a local government.

Petroleum Products Tax. The rate of the Petroleum Products Tax is increased from 0.15 percent to 0.3 percent. The tax temporarily ceases to be imposed when the Trust Account balance exceeds \$30 million in the previous calendar quarter, and is reimposed when the Trust Account balance falls below \$15 million in the previous calendar quarter.

Pollution Liability Insurance Program Trust Account. The following moneys must be deposited into the Trust Account:

- moneys collected pursuant to the Petroleum Products Tax;
- all moneys appropriated by the Legislature to pay for PLIA's operating costs to carry out the Program;
- all fees or contributions collected from owners or operators under the Program;
- any recovery of remedial action costs incurred by PLIA under the Program; and
- any payments recovered or civil penalties collected by PLIA under the Program.

Except for expenditures for the petroleum UST revolving loan and grant program expenditures from the Trust Account must be used exclusively for the pollution liability reinsurance program and the financial assurance program.

Financial Reporting. PLIA must monitor the performance of the program and, after the end of each biennium, publish a financial report on the Program showing administrative and other expenses paid from the Program.

For each calendar quarter, PLIA must determine the loss and surplus reserves required for the Program. PLIA must notify the Department of Revenue of this amount by the fifteenth day of each calendar quarter.

Rulemaking. PLIA must adopt rules as necessary to carry out the provisions of the Program. To accelerate remedial actions, PLIA may implement the Program through interpretative guidance pending adoption of rules.

The Department of Ecology (Ecology) must adopt rules to enable use of the Program to meet the financial responsibility requirements of the Underground Storage Tanks Act. The rules must be consistent with and no less stringent than the federal regulations.

Review of the Pollution Liability Insurance Agency Decisions. A person may request a review by the director of PLIA of Program decisions by submitting a written request and specifying the basis for the review, in accordance with procedures established by PLIA. These decisions include, among others:

- a denial of Program eligibility;
- a denial of eligibility for payment under the Program; and
- the amount of payment allowed for remedial actions.

A person has 45 days after the decision to file a written request for review with the director. If the written request for review is received within 45 days, the director must conduct an adjudicative hearing under the Administrative Procedure Act.

Liability. PLIA is not liable for any costs for remedial actions or third-party claims under the Program where no owner or operator exists.

Nothing in the Program establishes or creates any liability or responsibility on the part of PLIA or the state as administrators of the program to pay any costs for remedial actions or third-party claims from any source other than the Trust Account.

PLIA and the state as administrators of the Program have no liability or responsibility to make payments for remedial action costs or third-party claims if the moneys in the Trust Account are insufficient.

Officers, employees, and authorized representatives of PLIA and the state of Washington are immune from civil liability and no cause of action of any nature may arise from any act or omission in exercising powers and duties under the Program.

Interaction with other Laws. Nothing in the act limits the authority of Ecology under the Model Toxics Control Act.

Nothing in the act affects or modifies the obligations or liability of any person under any other state or federal law.

PLIA is authorized to recover the costs of remedial actions conducted under the act, including the use of cost recovery options in the Model Toxics Control Act or other applicable state or federal laws.

Expiration. The program expires July 1, 2030.

Appropriation: None.

Fiscal Note: Available.

Creates Committee/Commission/Task Force that includes Legislative members: No.

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

Staff Summary of Public Testimony (Environment, Energy & Technology): PRO: We

have a lot of underground storage tanks, and we are trying to keep our environment clean by working together with this program and MTCA. The bill provides additional resources and oversight for cleaning the underground storage tanks up.

Most of the gas stations are small, independent businesses. Despite the state reinsurance program, there are still significant barriers to cleanups for these tank owners. PLIA often has to advocate on behalf of owners to get coverage under the insurance policies.

To provide program reserves, the tax needs to go back to the 0.3 level. Businesses support this bill which does the good work of helpful protection for storage tank owners.

CON: We see this bill as a risk bail out and it will leave Washington with unaddressed clean-up sites. PLIA will take in the oldest gas stations with the dirtiest tanks and greenlight these stations with leaky tanks to operate. These stations will continue to leak into our soil and ground water negatively impacting our environment.

Persons Testifying (Environment, Energy & Technology): PRO: Representative Beth Doglio, Prime Sponsor; Greg Hanon, WSPA; Cassandra Garcia, PLIA; Peter Godlewski, Association of Washington Business; Diana Carlen, Washington Oil Marketers Association.

CON: MATTHEW METZ, Coltura; Clif Swiggett, Carbon Washington.

Persons Signed In To Testify But Not Testifying (Environment, Energy & Technology): No one.

Staff Summary of Public Testimony (Ways & Means): PRO: The bill will help create safeguards against expensive clean up. We support the bill.

Persons Testifying (Ways & Means): PRO: Peter Godlewski, Association of Washington Business; Cassandra Garcia, PLIA.

Persons Signed In To Testify But Not Testifying (Ways & Means): No one.