FINAL BILL REPORT
SHB 2357

C 161 L 16
Synopsis as Enacted

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).

House Committee on Environment
House Committee on Capital Budget
Senate Committee on Energy, Environment & Telecommunications
Senate Committee on Ways & Means

Background:

Pollution Liability Insurance Agency.
The Pollution Liability Insurance Agency (PLIA), established in 1989, provides reinsurance to insurance companies that provide coverage to the owners and operators of underground storage tanks (UST) used to store petroleum. Under federal and state law, owners and operators of USTs that store petroleum must demonstrate financial responsibility regarding their ability to pay for accidental releases. Petroleum UST owners and operators must demonstrate either $500,000 or $1 million in per-occurrence financial responsibility, depending on the type of facility and the amount of petroleum handled by the facility. Owners or operators of 100 or fewer petroleum USTs must also demonstrate at least $1 million in aggregate financial responsibility, and owners or operators of 101 or more petroleum USTs must demonstrate $2 million in aggregate financial responsibility. Demonstrations of financial responsibility may include insurance, self-insurance, group insurance coverage, surety bonds, guarantees, letters of credit, or trust funds.

The PLIA is directed to contract with insurers of USTs to provide coverage to the insurers for liability risks associated with underwriting policies covering third-party bodily injury, property damage, and corrective actions related to UST ownership or operation. The PLIA reinsurance of insurers is capped at the same $1 million and $2 million thresholds for per-occurrence and aggregate coverage that also represent the minimum financial responsibility amounts required of UST owners and operators.

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.

Beginning in the early 1990s, the PLIA administered a program that provided grants for remedial action or tank replacement projects associated with USTs that local governments certified as meeting vital local government, public health, or safety needs, although funds are no longer available for that program.

Since 1995 the PLIA has also administered a program that provides, via a contracted insurer, up to $60,000 in contamination cleanup insurance to registered owners of heating oil tanks. This program also provides technical assistance to heating oil tank owners, and helps fund upgrades of insured heating oil tanks to models that meet superior leak protection design criteria.

The authorization for the PLIA, along with the petroleum UST and heating oil tank insurance programs, expires in 2020.

The Pollution Liability Insurance Agency Program Funding.
A tax of 0.3 percent of the wholesale value of refined petroleum products is levied upon first possession in Washington. 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 the 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 begins being reimposed when the Trust Account balance falls below $7.5 million in the previous calendar quarter. The tax expires on July 1, 2020, at the same time as the expiration of the PLIA's UST program and charter to exist as a state agency.

The PLIA heating oil insurance program is funded through a fee of 1.2 cents per gallon of heating oil that is imposed on fuel dealers.

Relevant Department of Ecology and Department of Health Programs.
The Department of Ecology (ECY) administers a UST regulatory program for USTs that store substances regulated under the federal Resource Conservation and Recovery Act (RCRA) that pose a threat to human health and the environment. The program provides an annual license to USTs that meet performance and operational standards. The UST owners and operators are required to report suspected or confirmed releases from USTs, and must follow notification and decommissioning procedures in order to repair or close a UST.

Under the state's contaminated sites cleanup law, the Model Toxics Control Act (MTCA), remedial actions are cleanup-related activities to identify and reduce the threats posed by hazardous substance contamination of sites. The ECY oversees the remedial actions that liable parties and others undertake, and makes determinations of the sufficiency of cleanup activities relative to site cleanup standards established by the ECY. The ECY may provide informal non-binding advice, assistance, and written opinions to a person conducting a remedial action under the MTCA, and may collect costs associated with this advisory activity from the person seeking the advice. The cleanup of released hazardous substances from USTs must follow MTCA procedures and meet MTCA standards.

In instances where the ECY incurs cleanup costs at a facility, the ECY may file a lien against the real property where the cleanup occurred. An ECY lien against real property has priority

over most other financial encumbrances on the property, except for property tax assessments and pre-existing mortgage liens. The ECY must provide notice prior to filing a lien against a property or prior to conducting a cleanup that would authorize the ECY to file a lien against the property.

The Department of Health (DOH) administers various grant and loan programs related to public health, including the Drinking Water State Revolving Fund, which provides loans to municipal and privately owned drinking water systems. The DOH charges a loan fee to drinking water loan recipients.

Summary:

The Pollution Liability Insurance Agency Grant and Revolving Loan Program.
The PLIA is directed to establish a program to issue grants and revolving loans to UST owners or operators. Grants or loans may not exceed $2 million per UST facility. Grants or loans must be used for projects that develop and acquire assets with a useful life of at least 13 years. Grants and loans may be used for:

- remedial actions at UST facilities consistent with MTCA requirements, so long as at least one of the releases or threatened releases of hazardous substances involves petroleum release; and
- upgrading, replacing, or closing a UST used to store petroleum.

So long as a project involves either of the activities described above, grants and loans may also be used for installing new infrastructure or retrofitting existing infrastructure to disperse alternative fuels, including electric vehicle charging, or to temporarily situate above-ground petroleum storage tanks.

Grants or loans may only be used for remedial actions associated with petroleum USTs that are required to obtain financial assurances if the recipient owner or operator first expends any money available from those financial assurances, or demonstrates the rejection of a claim to use their financial assurances.

The PLIA must implement the grant and revolving loan program in conjunction with the DOH. The PLIA must select recipients and manage associated work, while the DOH must administer the loans and grants. The DOH may collect loan origination fees sufficient to cover the DOH's costs associated with program administration.

Remedial Actions undertaken by the Pollution Liability Insurance Agency.
The PLIA may conduct remedial actions to investigate and clean up a release at a UST facility, if the owner or operator received a grant or loan from the PLIA. The PLIA may not spend more than the difference between the amount granted or loaned to the owner or operator and the $2 million spending limit for each UST facility. In order for the PLIA to conduct a remedial action:

- the owner of the real property must consent to the PLIA's remedial actions, the PLIA's recovery of remedial action costs, and the PLIA or authorized representatives entering the property; and
- the UST owner must consent to the PLIA filing a lien on the UST facility in order to recover the PLIA's costs.

The PLIA may request informal advice, assistance, and written opinions from the ECY regarding the sufficiency of the remedial action undertaken by the PLIA. Remedial actions by the PLIA must focus on maintaining the economic vitality of properties.

The PLIA is given the authority to file liens against UST facilities, other than those owned by local governments, where the PLIA has undertaken a remedial action for which it has not recovered associated costs. The PLIA must provide notice to UST facility owners when it intends to file a lien, unless exigent circumstances, such as impending bankruptcy, require immediate filing of the lien. The PLIA liens for remedial action costs are given priority over other property liens except local property tax assessments. Actions to foreclose the lien must be brought by the Office of the Attorney General on behalf of the PLIA.

Underground Storage Tanks Program Taxes, Accounts, and Appropriations.
The possession tax on refined petroleum products is reduced from 0.30 percent of the petroleum product's wholesale value to 0.15 percent, beginning July 1, 2021.

A new appropriated Revolving Loan and Grant Account (Loan and Grant Account) is created. Funds in the Loan and Grant Account, which include state appropriations, federal grants, recovered remedial action costs, and loan repayments, may be spent on the PLIA and the DOH program costs, to issue grants and loans, and to conduct remedial actions.

If the balance of the Trust Account exceeds $7.5 million, excluding any reserves for open claims under the insurance program, on July 1, 2016, July 1, 2017, or on July 1 at the beginning of any fiscal biennium, excess funds above $7.5 million must be transferred to the Loan and Grant Account. No more than $10 million may be transferred in 2016 from the Trust Account to the Loan and Grant Account, and no more than $20 million may be transferred in succeeding biennia. If $20 million is not in the Trust Account on the first July 1 of a biennium, the transfer may occur on the second July 1 of a biennium.

Other Administrative Provisions.
The PLIA's petroleum UST reinsurance program and heating oil insurance program are extended until 2030. The authorization is repealed for PLIA's no-longer-operational assistance program for USTs in small communities.

The PLIA must submit a report on grant and loan program activities to the Legislature and the Office of Financial Management every two years in September. The report must include information about the PLIA and the DOH operating costs, grant and loan expenditures, facility cleanups and UST upgrades or closures, and liens and cost recovery actions.

The PLIA may adopt rules to implement the program, but may implement the program using interpretive guidance during the pendency of the rulemaking process. The PLIA must also enter into agreement with the DOH within one year of the law taking effect.

The state and state employees are immune from liability associated with the program, and causes of action may not arise from program activities. The ECY's authority to conduct remedial actions under the MTCA is not limited by the new remedial action authority granted to the PLIA.

The PLIA grant and loan program expires July 1, 2030, although forthcoming loan repayments and cost recovery actions do not expire with the program's authority. When the program expires, any program funds and forthcoming payments revert to the DOH.

A severability clause is included.

Votes on Final Passage:

House	97	0
Senate	47	0

Effective: June 9, 2016
July 1, 2016 (Sections 1-13)