

HOUSE BILL REPORT

EHB 2735

As Passed House:
February 8, 2018

Title: An act relating to public disclosure of certain information procured or obtained pursuant to a loan or grant application under the underground storage tank revolving loan and grant program.

Brief Description: Concerning public disclosure of certain information procured or obtained pursuant to a loan or grant application under the underground storage tank revolving loan and grant program.

Sponsors: Representatives Young, Peterson and Kretz; by request of Pollution Liability Insurance Agency.

Brief History:

Committee Activity:

Environment: 1/18/18, 1/22/18 [DP].

Floor Activity:

Passed House: 2/8/18, 97-0.

Brief Summary of Engrossed Bill

- Creates an exemption from disclosure under the Public Records Act for some financial, business, and commercial information submitted to an agency as part of the Pollution Liability Insurance Agency's Underground Storage Tank Revolving Loan and Grant Program.

HOUSE COMMITTEE ON ENVIRONMENT

Majority Report: Do pass. Signed by 8 members: Representatives Fitzgibbon, Chair; Peterson, Vice Chair; Taylor, Ranking Minority Member; Maycumber, Assistant Ranking Minority Member; Buys, Dye, Kagi and McBride.

Staff: Jacob Lipson (786-7196).

Background:

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.

Pollution Liability Insurance Agency's Underground Storage Tank Revolving Loan and Grant Program.

The Pollution Liability Insurance Agency (PLIA) provides a government funding model to help owners and operators meet their financial responsibility and environmental cleanup requirements for underground storage tanks (USTs). The PLIA's responsibilities include the administration of a program to provide reinsurance to insurance companies that provide coverage to the owners and operators of USTs used to store petroleum.

In 2016 the PLIA was authorized to establish a program to issue grants and revolving loans to UST owners or operators for the replacement of USTs or for cleanup associated with UST spills (UST loans and grants). So long as a project involves either of those activities, UST loans and grants may also be used for installing new infrastructure or retrofitting existing infrastructure to dispense alternative fuels, or to temporarily situate above-ground storage tanks. The UST loans and grants may not exceed \$2 million per UST facility. The UST loans and grants must be used for projects that develop and acquire assets with a useful life of at least 13 years. The authority for the PLIA to implement this program expires in 2030.

The PLIA implements the loans and grants program in conjunction with the Department of Health (DOH). The PLIA selects recipients and manages associated work, while the DOH administers the loans and grants. The DOH may collect loan origination fees sufficient to cover the DOH's costs associated with program administration. The PLIA may request informal advice, assistance, and written opinions from the Department of Ecology regarding the sufficiency of the remedial action undertaken by the PLIA.

Under the program requirements adopted by the PLIA, UST loan and grant applicants must submit copies of certain information to the PLIA as part of their application, including a history of the business, a debt schedule, and tax, account, cash flow, and credit information.

The UST loans and grants program is primarily funded through a possession tax on refined petroleum products that is currently 0.3 percent, and that is scheduled to be reduced to 0.15 percent in 2021. Up to \$20 million per biennium in revenue may be transferred from an account used to fund the PLIA's reinsurance program, which is also funded by the possession tax on refined petroleum products, into the account used to fund the UST loans and grants program. This transfer may only take place at the beginning of each biennium if the reinsurance program's account balance exceeds \$7.5 million, excluding certain reserves, and may only involve the transfer of funds that exceed the \$7.5 million threshold. The account used to fund the UST loans and grants program may also accept money appropriated by the Legislature for loan or grant purposes, money from the repayment of loans under the program and the recovery of remedial action costs, and any federal grants.

Public Records Act.

The Public Records Act (PRA) requires state and local agencies to make their written records available to the public for inspection and copying upon request, unless the information fits into one of the various specific exemptions in the PRA or otherwise provided in law. The stated policy of the PRA favors disclosure and requires narrow application of the listed exemptions.

Under the PRA, certain enumerated types of financial, commercial, and proprietary information are exempt from disclosure, including financial information submitted as part of a ferry or highway construction bid, and financial and commercial information supplied during a loan or program service application under certain programs or submitted to certain state agencies.

Summary of Engrossed Bill:

An exemption is added to the PRA to exempt from disclosure portions of financial information, business plans, and commercial information submitted as part of the PLIA UST Revolving Loan and Grant Program (Program). The portion subject to the exemption from disclosure must be: (1) certified by the applicant not to be available in other public forums or government filings; (2) certified by the applicant that the information's disclosure would cause competitive harm or would disclose specific account or personal financial information; and (3) required by an agency as an exhibit to a grant or loan application or requested to aid in evaluating a grant or loan application. The main application submitted to an agency as part of the Program is not exempt from public disclosure, and any resulting agency work product is also not exempt from public disclosure.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) The Program for underground storage tanks has been designed effectively, and the PLIA fielded an initial round of applications from tank owners. However, only 43 owners applied for grants or loans, and the PLIA's outreach conversations with owners revealed a hesitancy to apply for fear of confidential tax and other financial information being made public as a result of their application for a grant or loan. The PLIA aspires to be as transparent as possible in how it conducts business, but does not want to hinder the success of its programs by disclosing information that should not be made public.

(Opposed) None.

(Other) The newspaper alliance appreciates the PLIA's outreach regarding this legislation before it was filed, but there was not time to perfect the language prior to filing the original bill. The legislation should clarify that any source documents with financial information that are used by the PLIA for purposes of generating underwriting memorandums is the type of information that shouldn't be disclosed, rather than exempting any financial exhibits that accompany an application. The PLIA's decision-making process itself should be public information, so that any unsuccessful applicants for grants or loans can know why their application was not selected.

Persons Testifying: (In support) Representative Young, prime sponsor; and Russell Olsen, Pollution Liability Insurance Agency.

(Other) Rowland Thompson, Allied Daily Newspapers of Washington.

Persons Signed In To Testify But Not Testifying: None.