

SENATE BILL REPORT

EHB 2735

As of February 20, 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: Passed House: 2/08/18, 97-0.

Committee Activity: Energy, Environment & Technology: 2/21/18.

Brief Summary of Bill

- Creates an exemption from disclosure under the Public Records Act (PRA) for certain financial, business, and commercial information submitted with an application for an underground storage tank (UST) grant or loan.

SENATE COMMITTEE ON ENERGY, ENVIRONMENT & TECHNOLOGY

Staff: Jan Odano (786-7486)

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

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 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 implements the UST revolving loan and grant program for remedial actions, investigations, and cleanup of releases or threatened releases of hazardous substances. PLIA implements the loans and grants program in conjunction with the Department of Health (DOH). PLIA selects recipients and manages associated work, while DOH administers the loans and grants. DOH may collect loan origination fees sufficient to cover the costs associated with program administration.

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. Under the program requirements adopted by PLIA, UST loan and grant applicants must submit copies of certain information as part of the loan application, including a history of the business, a debt schedule, and tax, account, cash flow, and credit information. 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 PLIA to implement this program expires in 2030.

PLIA may conduct remedial actions to investigate or clean up releases of hazardous substances at an UST facility and may request informal advice, assistance, and written opinions from the Department of Ecology regarding the sufficiency of the remedial action undertaken by the PLIA. All remedial actions must be conducted in compliance with Model Toxic Control Act requirements.

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—which is deposited into the Pollution Liability Insurance Program Trust Account.

The PRA. The 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 Bill: An exemption to the PRA is provided for certain financial information, business plans and commercial information that is provided by an applicant for a UST grant or loan. The information subject to exemption from disclosure must be:

- certified by the applicant that it is not publicly available or filed with another governmental agency; or disclosure would result in competitive harm; or would disclose specific account or personal financial information; and
- required by an agency as an exhibit to a main application or required by an agency to aid in evaluating the application for a UST loan or grant.

The exemption does not apply to the main application for a UST grant or loan and resulting agency work product.

Appropriation: None.

Fiscal Note: Available.

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

Effective Date: Ninety days after adjournment of session in which bill is passed.