

HOUSE BILL REPORT

ESHB 1175

As Passed House:

March 16, 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:

Committee Activity:

Environment & Energy: 1/16/23, 1/23/23 [DP];

Appropriations: 2/1/23, 2/8/23 [DPS].

Floor Activity:

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

Brief Summary of Engrossed Substitute Bill

- Directs the Pollution Liability Insurance Agency (PLIA) to establish and administer a state financial assurance program (program) for owners and operators of petroleum underground storage tanks.
- Prescribes criteria for participation in the program.
- Establishes payment limits for remedial actions and for compensating third parties under the program.
- Authorizes PLIA to take specified actions in order to implement the program, including conducting remedial actions and adopting rules.
- Changes the rate of the Petroleum Products Tax from .15 percent to .30 percent.

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.

HOUSE COMMITTEE ON ENVIRONMENT & ENERGY

Majority Report: Do pass. Signed by 14 members: Representatives Doglio, Chair; Mena, Vice Chair; Dye, Ranking Minority Member; Ybarra, Assistant Ranking Minority Member; Abbarno, Barnard, Berry, Duerr, Fey, Goehner, Lekanoff, Ramel, Slatter and Street.

Minority Report: Without recommendation. Signed by 1 member: Representative Couture.

Staff: Robert Hatfield (786-7117).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 31 members: Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Stokesbary, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Corry, Assistant Ranking Minority Member; Berg, Chandler, Chopp, Connors, Couture, Davis, Dye, Fitzgibbon, Hansen, Harris, Lekanoff, Pollet, Riccelli, Rude, Ryu, Sandlin, Schmick, Senn, Simmons, Slatter, Springer, Steele, Stonier and Tharinger.

Staff: Dan Jones (786-7118).

Background:

Pollution Liability Insurance Agency.

The Pollution Liability Agency (PLIA) provides a number of services related to petroleum underground storage tanks (USTs). 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. Finally, PLIA operates a loan and grant program for cleanups and upgrades of petroleum USTs.

Pollution Liability Insurance Agency Funding.

A tax of .15 percent of the wholesale value of refined petroleum products, known as the Petroleum Products Tax, is levied upon first possession in Washington of certain 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 Engrossed Substitute Bill:

State Financial Assurance Program.

The Pollution Liability Insurance Agency (PLIA) is directed to establish and administer a state financial assurance program (program) for owners and operators of petroleum underground storage tanks (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.

Under the program, 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.

Under the program, 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 under the program based on certain factors, including the threats posed by the release to human health and the environment.

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 under the program, PLIA must reserve the estimated cost of any remedial actions necessary to address the release.

Funding for remedial actions and third-party claims under the program 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.

Fee.

PLIA must establish by rule a fee to recover from owners and operators of registered petroleum underground storage tanks 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 cost overpayment or payment is not returned as described above, 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.

If a person with intent to defraud submits a loss declaration form, or issues an invoice or other demand for payment under the program 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 as described above, 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 certain conditions are met, including that the owner or operator provides consent for PLIA to conduct the remedial action. PLIA may not spend more per occurrence to take remedial action under the program 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 financial assurance program, if certain conditions are met, including that 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 by PLIA under the program 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 changed from .15 percent to .30 percent. The tax temporarily ceases to be imposed when the Pollution Liability Insurance Program Trust Account (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—Deposits.

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.

Pollution Liability Insurance Program Trust Account—Expenditures.

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 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 under the Administrative Procedure Act 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 must adopt rules under the Administrative Procedure Act 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 Pollution Liability Insurance Agency Decisions.

A person may request a review by the director of certain PLIA decisions by submitting a written request, 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 the Department 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.

Effective Date: The bill contains multiple effective dates. Please see the bill.

Staff Summary of Public Testimony (Environment & Energy):

(In support) The petroleum underground storage tank (UST) reinsurance program was supposed to be a temporary fix when it began in 1990 for the purpose of providing required financial assurances related to petroleum USTs. Under that program, the state insures \$925,000 out of a \$1 million insurance policy. The state has spent approximately \$84.5 million in petroleum UST cleanups. There is a recent trend in cleanups: more and more, owners and operators are reaching directly to PLIA for assistance. When PLIA is in a reinsurance role, it doesn't have much of a role in carrying out the actual cleanup; this bill would provide PLIA with a greater role in overseeing cleanups to ensure that sites actually get cleaned up.

PLIA is a real success story that has contributed to the cleanup of thousands of sites around the state. It is a small agency that punches above its weight. Each new iteration of the financial assurance program improves the program. When the financial assurance program started in 1990, the petroleum tax was .5 percent, then it was reduced to .3 percent, and then it was reduced to the current .15 percent. But to actually implement the financial assurance program in the bill and do the required work, the tax now needs to go back to .3 percent.

PLIA has worked closely with fueling station operators over the years, and has built up a lot

of trust over that time.

(Opposed) None.

Staff Summary of Public Testimony (Appropriations):

(In support) The Pollution Liability Insurance Agency (PLIA) has been effective in helping underground storage tank (UST) owners meet financial responsibility requirements and deal with releases from USTs. The bill would enable the PLIA to engage with and assist UST owners more directly, and be more effective and timely when a release occurs. The bill would help UST owners manage the tanks they have, including older tanks, in a more modern, responsible way. The bill follows a model used by 36 other states. The bill allows for cost recovery when appropriate. The bill would incentivize prevention-based activities. The increased rate of the Petroleum Products Tax would still be lower than the rate of the tax when it originally went into effect.

(Opposed) The funding resulting from this bill would not be enough to cover the liabilities of underground storage tank releases. Many USTs are older than 25 years, and carry high risks that increase each year, but the bill would allow even the oldest USTs to receive coverage without a screening process. Many older tanks are contaminated and costly to clean up. The USTs present a public health risk, especially to younger generations, and the bill allows gas stations to continue leaking dangerous toxins. It is inappropriate to use taxpayer dollars to bail out the oil industry.

(Other) The state cleanup fund model used in this bill is the most commonly used method nationally to meet federal financial responsibility requirements, followed by insurance. There is no magic number for the amount of funding needed, it is just a matter of making sure that revenue keeps pace with expenditures.

Persons Testifying (Environment & Energy): Representative Beth Doglio, prime sponsor; Russell Olsen, Washington State Pollution Liability Insurance Agency; Greg Hanon, Western States Petroleum Association; and Diana Carlen, Washington Oil Marketers Association.

Persons Testifying (Appropriations): (In support) Russell Olsen, Washington State Pollution Liability Insurance Agency; Greg Hanon, Western States Petroleum Association; and Diana Carlen, Washington State Oil Marketers Association.

(Opposed) Matthew Metz, Coltura; Paul Fredlund; and Clif Swiggett, Carbon Washington.

(Other) Mark Barolo, United States Environmental Protection Agency, Office of Underground Storage Tanks.

Persons Signed In To Testify But Not Testifying (Environment & Energy): None.

Persons Signed In To Testify But Not Testifying (Appropriations): None.