



SENATE BILL 1565: Underground Storage Tank Amendments 2006

BILL ANALYSIS

Committee:		Date:	May 18, 2006
Introduced by:	Sen. Clodfelter	Summary by:	Tim Dodge
Version:	First Edition		Legislative Analyst

SUMMARY: *Senate Bill 1565 amends the statutes related to the cleanup of leaking underground storage tank (UST) sites under the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund (Commercial Fund) and the Noncommercial Leaking Petroleum Underground Storage Tank Cleanup Fund (Noncommercial Fund) to provide for a transition to private insurance and other mechanisms to demonstrate compliance with federal financial responsibility requirements.*

This bill is part of a two-bill package that includes Senate Bill 1584 (UST Program Funds).

[As introduced, this bill was identical to H2163, as introduced by Reps. Gibson and Harrison, which is currently in House Environment and Natural Resources.]

BILL ANALYSIS:

Senate Bill 1565 would begin the process of transitioning commercial USTs to private insurance or other mechanisms to demonstrate financial assurance (compliance with federal financial responsibility requirements) by progressively increasing tank fees, modifying regulatory requirements, and making other substantive changes to the UST cleanup program. The various provisions of the bill are interrelated and are intended to be considered as a whole in order to achieve major reforms in the UST cleanup program. Specifically, the bill would make the following changes:

Transition to private insurance or other private financial assurance mechanisms:

- Limits the eligibility for reimbursement of cleanup costs from the Commercial Fund to discharges or releases from existing tanks that are reported prior to 1 January 2017. (*Section 1*)
- Requires all new UST facilities and fully-upgraded UST facilities that are placed in service on or after 1 January 2007 to obtain private insurance or other private mechanisms to demonstrate financial assurance. (*Section 1*)
- Divides the commercial UST operating fee into two segments: the operating permit fee, which all commercial UST owners or operators must pay, and the financial responsibility fee, which commercial UST owners or operators that rely on the Commercial Fund to demonstrate financial assurance must pay. (*Section 2*)
- Provides for a progressive schedule of fee increases for the annual financial responsibility fee until the year 2017, at which time the Commercial Fund will no longer be available to provide financial assurance. (*Section 2*)
- Sets the annual operating permit fee for commercial USTs at \$72. (*Section 2*)

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- Directs the Department of Insurance, in consultation with the Petroleum Underground Storage Tank Funds Council (Funds Council) and the Department of Environment and Natural Resources (DENR), to provide guidance and technical assistance for the formation of insurance pool for USTs. (*Section 12*)
- Extends by one year the period of time during which DENR may use up to \$250,000 of the funds in the Noncommercial Fund and \$2,500,000 in the Commercial Fund during each fiscal year for performance-based cleanups of leaking UST sites. (*Section 13*)

Regulatory Reform:

- Increases secondary containment requirements for commercial UST systems by requiring all new commercial USTs installed on or after 1 January 2007 to be double-walled. (*Sections 6 and 7*)
- Establishes a pilot program to evaluate the use of site-specific cleanup standards at UST sites as an alternative to the risk-based assessment and corrective action standards currently in use. Participation in the pilot program is voluntary and would be available to responsible parties of a discharge or release that is classified as an intermediate risk. (*Section 9 and 10*)

Other Changes:

- Requires responsible parties to submit applications to determine eligibility for reimbursement from the Commercial Fund or the Noncommercial Fund within one year after completion of any task that is eligible for reimbursement. (*Section 3*)
- Requires responsible parties to submit requests for payment or reimbursement within one year of the date of completion of the task or the date on which DENR determines the site is eligible for reimbursement. (*Section 3*)
- Directs DENR to seek reimbursement of unauthorized costs that were paid or reimbursed from the Commercial Fund or Noncommercial Fund as a result of misrepresentation by an agent acting on behalf of the responsible party first from the agent of monies paid to or retained by the agent. (*Section 4*)
- Requires that DENR seek reimbursement of unauthorized costs that were paid or reimbursed within certain time limits, with the exception of cases involving fraud or misrepresentation. (*Section 4*)
- Directs DENR to establish a process to provide informal notice of any proposed policy change or rule interpretation at least 30 days prior to implementation of the policy change or rule interpretation. (*Section 11*)
- Makes other clarifying and conforming changes.

EFFECTIVE DATE:

Sections 1, 4, 5, 6, 7, 11, 12, 13, and 15 of the bill would become effective when it becomes law. Sections 2, 8, and 14 of the bill would become effective 1 January 2007. Section 3 of the bill would become effective 1 January 2007 and apply to determinations of eligibility and requests for payments made on or after that date. The pilot program established in Sections 9 and 10 of this bill would become effective when the bill becomes law and expire 1 September 2012

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BACKGROUND:

In 1988, the General Assembly established the Commercial Fund and the Noncommercial Fund to provide reimbursement for costs incurred during the cleanup of soil and groundwater contamination resulting from a release of petroleum from a UST. The Commercial Fund receives revenue from three sources: a small portion of the motor fuel excise tax, an inspection tax on motor fuel and kerosene, and an operating fee for USTs. The Noncommercial Fund receives revenue from the motor fuel excise tax and the inspection tax on motor fuel and kerosene. While the Funds continue to provide reimbursement for some assessment and remediation activities, the costs have continued to exceed the revenues to the Funds.

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