

1 **UNDERGROUND PETROLEUM STORAGE TANK FINANCIAL**
2 **VIABILITY STUDY**

3 2013 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Steve Eliason**

6 Senate Sponsor: Howard A. Stephenson

8 **LONG TITLE**

9 **General Description:**

10 This bill requires the Department of Environmental Quality to study the financial
11 viability of the Environmental Assurance Program and the Petroleum Storage Tank
12 Trust Fund and modifies the maximum cash balance of the Petroleum Storage Tank
13 Trust Fund.

14 **Highlighted Provisions:**

15 This bill:

- 16 ▶ requires the Department of Environmental Quality to study the financial viability of
17 the Environmental Assurance Program and the Petroleum Storage Tank Trust Fund;
- 18 ▶ allows the director of the Department of Environmental Quality to expend money
19 from the Petroleum Storage Tank Trust Fund to pay for the cost of the study;
- 20 ▶ modifies the maximum cash balance of the Petroleum Storage Tank Trust Fund; and
- 21 ▶ makes technical changes.

22 **Money Appropriated in this Bill:**

23 None

24 **Other Special Clauses:**

25 None

26 **Utah Code Sections Affected:**

27 AMENDS:

28 **19-6-409**, as last amended by Laws of Utah 2012, Chapters 286 and 360

29 **19-6-410.5**, as last amended by Laws of Utah 2012, Chapter 286

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Be it enacted by the Legislature of the state of Utah:

Section 1. Section **19-6-409** is amended to read:

19-6-409. Petroleum Storage Tank Trust Fund created -- Source of revenues.

(1) (a) There is created a private-purpose trust fund entitled the "Petroleum Storage Tank Trust Fund."

(b) The sole sources of revenues for the fund are:

(i) petroleum storage tank fees paid under Section 19-6-411;

(ii) underground storage tank installation company permit fees paid under Section 19-6-411;

(iii) the environmental assurance fee and penalties paid under Section 19-6-410.5; and

(iv) interest accrued on revenues listed in this Subsection (1)(b).

(c) Interest earned on fund money is deposited into the fund.

(2) The director may expend money from the fund to pay costs:

(a) covered by the fund under Section 19-6-419;

(b) of administering the:

(i) fund; and

(ii) environmental assurance program and fee under Section 19-6-410.5;

(c) incurred by the state for a legal service or claim adjusting service provided in connection with a claim, judgment, award, or settlement for bodily injury or property damage to a third party;

(d) incurred by the executive director in determining the actuarial soundness of the fund;

(e) incurred by a third party claiming injury or damages from a release reported on or after May 11, 2010, for hiring a certified underground storage tank consultant:

(i) to review an investigation or corrective action by a responsible party; and

(ii) in accordance with Subsection (4); ~~and~~

(f) incurred by the department to implement the study described in Subsection

58 19-6-410.5(8), including a one-time cost of up to \$200,000 for the actuarial study described in
59 Subsection 19-6-410.5(8)(a)(ii); and

60 [~~f~~] (g) allowed under this part that are not listed under this Subsection (2).

61 (3) Costs for the administration of the fund and the environmental assurance fee shall
62 be appropriated by the Legislature.

63 (4) The director shall:

64 (a) in paying costs under Subsection (2)(e):

65 (i) determine a reasonable limit on costs paid based on the:

66 (A) extent of the release;

67 (B) impact of the release; and

68 (C) services provided by the certified underground storage tank consultant;

69 (ii) pay, per release, costs for one certified underground storage tank consultant agreed
70 to by all third parties claiming damages or injury;

71 (iii) include costs paid in the coverage limits allowed under Section 19-6-419; and

72 (iv) not pay legal costs of third parties;

73 (b) review and give careful consideration to reports and recommendations provided by
74 a certified underground storage tank consultant hired by a third party; and

75 (c) make reports and recommendations provided under Subsection (4)(b) available on
76 the Division of Environmental Response and Remediation's website.

77 Section 2. Section **19-6-410.5** is amended to read:

78 **19-6-410.5. Environmental Assurance Program -- Participant fee -- State Tax**
79 **Commission administration, collection, and enforcement of tax.**

80 (1) As used in this section:

81 (a) "Cash balance" means cash plus investments and current accounts receivable minus
82 current accounts payable, excluding the liabilities estimated by the executive director.

83 (b) "Commission" means the State Tax Commission, as defined in Section 59-1-101.

84 (2) (a) There is created an Environmental Assurance Program.

85 (b) The program shall provide to a participating owner or operator, upon payment of

86 the fee imposed under Subsection (4), assistance with satisfying the financial responsibility
87 requirements of 40 C.F.R., Part 280, Subpart H, by providing funds from the Petroleum
88 Storage Tank Trust Fund established in Section 19-6-409, subject to the terms and conditions
89 of Chapter 6, Part 4, Underground Storage Tank Act, and rules implemented under that part.

90 (3) (a) Subject to Subsection (3)(b), participation in the program is voluntary.

91 (b) An owner or operator seeking to satisfy financial responsibility requirements
92 through the program shall use the program for all petroleum underground storage tanks that the
93 owner or operator owns or operates.

94 (4) (a) There is assessed an environmental assurance fee of 1/2 cent per gallon on the
95 first sale or use of petroleum products in the state.

96 (b) The environmental assurance fee and any other revenue collected under this section
97 shall be deposited in the Petroleum Storage Tank Trust Fund created in Section 19-6-409 and
98 used solely for the purposes listed in Section 19-6-409.

99 (5) (a) The commission shall administer, collect, and enforce the fee imposed under
100 this section according to the same procedures used in the administration, collection, and
101 enforcement of the state sales and use tax under:

102 (i) Title 59, Chapter 1, General Taxation Policies; and

103 (ii) Title 59, Chapter 12, Part 1, Tax Collection.

104 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
105 commission shall make rules to establish:

106 (i) the method of payment of the environmental assurance fee;

107 (ii) the procedure for reimbursement or exemption of an owner or operator that does
108 not participate in the program, including an owner or operator of an above ground storage tank;
109 and

110 (iii) the procedure for confirming with the department that an owner or operator
111 qualifies for reimbursement or exemption under Subsection (5)(b)(ii).

112 (c) The commission may retain an amount not to exceed 2.5% of fees collected under
113 this section for the cost to the commission of rendering its services.

114 (6) (a) The person responsible for payment of the fee under this section shall, by the
115 last day of the month following the month in which the sale occurs:

- 116 (i) complete and submit the form prescribed by the commission; and
- 117 (ii) pay the fee to the commission.

118 (b) (i) The penalties and interest for failure to file the form or to pay the environmental
119 assurance fee are the same as the penalties and interest under Sections 59-1-401 and 59-1-402.

120 (ii) The commission shall deposit penalties and interest collected under this section in
121 the Petroleum Storage Tank Trust Fund.

122 (c) The commission shall report to the department a person who is delinquent in
123 payment of the fee under this section.

124 (7) (a) (i) If the cash balance of the Petroleum Storage Tank Trust Fund on June 30 of
125 any year exceeds [~~\$20,000,000~~] \$30,000,000, the assessment of the environmental assurance
126 fee as provided in Subsection (4) is reduced to 1/4 cent per gallon beginning November 1.

127 (ii) The reduction under this Subsection (7)(a) remains in effect until modified by the
128 Legislature in a general or special session.

129 (b) The commission shall determine the cash balance of the fund each year as of June
130 30.

131 (c) Before September 1 of each year, the department shall provide the commission with
132 the accounts payable of the fund as of June 30.

133 (8) The department shall:

134 (a) (i) study the adverse selection of participants in the program and the actuarial
135 deficit of the fund;

136 (ii) obtain an actuarial study and related consultation that provides the necessary
137 calculations to minimize adverse selection in the program and the actuarial deficit of the fund;

138 (iii) develop a risk characterization profile for participants in the program and
139 recommend a fee schedule based on fair market rates;

140 (iv) develop a strategy to reduce the negative equity balance of the fund and, based on
141 the fee schedule described in Subsection (8)(a)(iii), a corresponding time schedule showing an

142 actuarial reduction in the negative equity balance of the fund; and
143 (v) identify and study other adverse impacts to the program and the fund; and
144 (b) based on the information obtained and developed under Subsection (8)(a), prepare a
145 recommendation to implement a strategy to minimize adverse selection of participants in the
146 program and eliminate or reduce the actuarial deficit of the fund.
147 (9) The department shall report to the Natural Resources, Agriculture, and
148 Environment Interim Committee before December 31, 2013, regarding:
149 (a) the information obtained and developed under Subsection (8)(a); and
150 (b) the recommendation prepared under Subsection (8)(b).