

## HB0138S01 compared with HB0138

~~deleted text~~ shows text that was in HB0138 but was deleted in HB0138S01.

inserted text shows text that was not in HB0138 but was inserted into HB0138S01.

**DISCLAIMER:** This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

Representative Steve Eliason proposes the following substitute bill:

### UNDERGROUND PETROLEUM STORAGE TANK AMENDMENTS

2014 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Steve Eliason**

Senate Sponsor: \_\_\_\_\_

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#### LONG TITLE

##### General Description:

This bill modifies provisions relating to the Division of Environmental Response and Remediation.

##### Highlighted Provisions:

This bill:

- ▶ amends definitions;
- ▶ authorizes the director of the Division of Environmental Response and Remediation to file a lien against a responsible party for the costs associated with a cleanup, if necessary;
- ▶ transfers balances from the Petroleum Storage Tank Loan Fund and the Circle K settlement into the Petroleum Storage Tank Trust Fund;
- ▶ authorizes the director of the Division of Environmental Response and Remediation

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to use money in the Petroleum Storage Tank Cleanup Fund to investigate a suspected release;

- ▶ requires the Division of Environmental Response and Remediation to charge an additional fee for an underground storage tank with an annual throughput rate of 70,000 gallons or less;
- ▶ authorizes the State Tax Commission to raise the environmental assurance fee to 13/20 cent per gallon on the first sale or use of petroleum in the state;
- ▶ authorizes the ~~{State Tax Commission, in consultation with the }~~Division of Environmental Response and Remediation~~{,}~~ to create a risk-based rebate system for environmental assurance fees;
- ▶ authorizes the director of the Division of Environmental Response and Remediation to revoke a certificate of compliance, in certain situations;
- ▶ authorizes the director of the Division of Environmental Response and Remediation to order an owner or operator to reimburse the division for the cost of managing and overseeing the cleanup of a release;
- ▶ provides a repeal date; and
- ▶ makes technical changes.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

This bill provides an effective date.

### Utah Code Sections Affected:

AMENDS:

**19-6-402**, as last amended by Laws of Utah 2012, Chapters 310 and 360

**19-6-404**, as last amended by Laws of Utah 2012, Chapter 360

**19-6-405.7**, as last amended by Laws of Utah 2012, Chapter 360

**19-6-408**, as last amended by Laws of Utah 2012, Chapter 360

**19-6-409**, as last amended by Laws of Utah 2013, Chapter 286

**19-6-410.5**, as last amended by Laws of Utah 2013, Chapter 286

**19-6-411**, as last amended by Laws of Utah 2012, Chapters 286, 310, 360 and last amended by Coordination Clause, Laws of Utah 2012, Chapter 310

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19-6-414, as last amended by Laws of Utah 2012, Chapter 360

19-6-420, as last amended by Laws of Utah 2012, Chapter 360

19-8-119, as last amended by Laws of Utah 2012, Chapter 360

63A-3-205, as last amended by Laws of Utah 2013, Chapter 227

63B-1b-102, as last amended by Laws of Utah 2013, Chapter 227

63B-1b-202, as last amended by Laws of Utah 2013, Chapter 227

ENACTS:

19-6-405.4, Utah Code Annotated 1953

63I-2-219, Utah Code Annotated 1953

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

Section 1. Section **19-6-402** is amended to read:

**19-6-402. Definitions.**

As used in this part:

- (1) "Abatement action" means action taken to limit, reduce, mitigate, or eliminate:
  - (a) a release from an underground storage tank or petroleum storage tank; or
  - (b) the damage caused by that release.
- (2) "Board" means the Solid and Hazardous Waste Control Board created in Section 19-1-106.
- (3) "Bodily injury" means bodily harm, sickness, disease, or death sustained by a person.
- (4) "Certificate of compliance" means a certificate issued to a facility by the director:
  - (a) demonstrating that an owner or operator of a facility containing one or more petroleum storage tanks has met the requirements of this part; and
  - (b) listing all tanks at the facility, specifying:
    - (i) which tanks may receive petroleum; and
    - (ii) which tanks have not met the requirements for compliance.
- (5) "Certificate of registration" means a certificate issued to a facility by the director demonstrating that an owner or operator of a facility containing one or more underground storage tanks has:
  - (a) registered the tanks; and

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(b) paid the annual underground storage tank fee.

(6) (a) "Certified underground storage tank consultant" means a person who:

(i) for a fee, or in connection with services for which a fee is charged, provides or contracts to provide information, opinions, or advice relating to underground storage tank release:

(A) management;

(B) abatement;

(C) investigation;

(D) corrective action; or

(E) evaluation;

(ii) has submitted an application to the director;

(iii) received a written statement of certification from the director; and

(iv) meets the education and experience standards established by the board under Subsection 19-6-403(1)(a)(vii).

(b) "Certified underground storage tank consultant" does not include:

(i) (A) an employee of the owner or operator of the underground storage tank; or

(B) an employee of a business operation that has a business relationship with the owner or operator of the underground storage tank, and markets petroleum products or manages underground storage tanks; or

(ii) a person licensed to practice law in this state who offers only legal advice on underground storage tank release:

(A) management;

(B) abatement;

(C) investigation;

(D) corrective action; or

(E) evaluation.

(7) "Closed" means an underground storage tank no longer in use that has been:

(a) emptied and cleaned to remove all liquids and accumulated sludges; and

(b) (i) removed from the ground; or

(ii) filled with an inert solid material.

(8) "Corrective action plan" means a plan for correcting a release from a petroleum

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storage tank that includes provisions for any of the following:

- (a) cleanup or removal of the release;
- (b) containment or isolation of the release;
- (c) treatment of the release;
- (d) correction of the cause of the release;
- (e) monitoring and maintenance of the site of the release;
- (f) provision of alternative water supplies to a person whose drinking water has

become contaminated by the release; or

(g) temporary or permanent relocation, whichever is determined by the director to be more cost-effective, of a person whose dwelling has been determined by the director to be no longer habitable due to the release.

(9) "Costs" means money expended for:

- (a) investigation;
- (b) abatement action;
- (c) corrective action;
- (d) judgments, awards, and settlements for bodily injury or property damage to third

parties;

(e) legal and claims adjusting costs incurred by the state in connection with judgments, awards, or settlements for bodily injury or property damage to third parties; or

(f) costs incurred by the state risk manager in determining the actuarial soundness of the fund.

(10) "Covered by the fund" means the requirements of Section 19-6-424 have been met.

(11) "Director" means the director of the Division of Environmental Response and Remediation.

(12) "Division" means the Division of Environmental Response and Remediation, created in Subsection 19-1-105(1)(c).

(13) "Dwelling" means a building that is usually occupied by a person lodging there at night.

(14) "Enforcement proceedings" means a civil action or the procedures to enforce orders established by Section 19-6-425.

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(15) "Facility" means all underground storage tanks located on a single parcel of property or on any property adjacent or contiguous to that parcel.

(16) "Fund" means the Petroleum Storage Tank Trust Fund created in Section 19-6-409.

~~[(17) "Loan fund" means the Petroleum Storage Tank Loan Fund created in Section 19-6-405.3.]~~

~~[(18)]~~ (17) "Operator" means a person in control of or who is responsible on a daily basis for the maintenance of an underground storage tank that is in use for the storage, use, or dispensing of a regulated substance.

~~[(19)]~~ (18) "Owner" means:

(a) in the case of an underground storage tank in use on or after November 8, 1984, a person who owns an underground storage tank used for the storage, use, or dispensing of a regulated substance; and

(b) in the case of an underground storage tank in use before November 8, 1984, but not in use on or after November 8, 1984, a person who owned the tank immediately before the discontinuance of its use for the storage, use, or dispensing of a regulated substance.

~~[(20)]~~ (19) "Petroleum" includes crude oil or a fraction of crude oil that is liquid at:

(a) 60 degrees Fahrenheit; and

(b) a pressure of 14.7 pounds per square inch absolute.

~~[(21)]~~ (20) "Petroleum storage tank" means a tank that:

(a) (i) is underground;

(ii) is regulated under Subtitle I of the Resource Conservation and Recovery Act, 42 U.S.C. ~~[Section]~~ Sec. 6991c, et seq.; and

(iii) contains petroleum; or

(b) the owner or operator voluntarily submits for participation in the Petroleum Storage Tank Trust Fund under Section 19-6-415.

~~[(22)]~~ (21) "Petroleum Storage Tank Restricted Account" means the account created in Section 19-6-405.5.

~~[(23)]~~ (22) "Program" means the Environmental Assurance Program under Section 19-6-410.5.

~~[(24)]~~ (23) "Property damage" means physical injury to, destruction of, or loss of use of

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tangible property.

~~[(25)]~~ (24) (a) "Regulated substance" means petroleum and petroleum-based substances comprised of a complex blend of hydrocarbons derived from crude oil through processes of separation, conversion, upgrading, and finishing.

(b) "Regulated substance" includes motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

~~[(26)]~~ (25) (a) "Release" means spilling, leaking, emitting, discharging, escaping, leaching, or disposing a regulated substance from an underground storage tank or petroleum storage tank.

(b) A release of a regulated substance from an underground storage tank or petroleum storage tank is considered a single release from that tank system.

~~[(27)]~~ (26) (a) "Responsible party" means a person who:

- (i) is the owner or operator of a facility;
- (ii) owns or has legal or equitable title in a facility or an underground storage tank;
- (iii) owned or had legal or equitable title in a facility at the time petroleum was received or contained at the facility;
- (iv) operated or otherwise controlled activities at a facility at the time petroleum was received or contained at the facility; or
- (v) is an underground storage tank installation company.

(b) "Responsible party" as defined in Subsections ~~[(27)]~~ (26)(a)(i), (ii), and (iii) does not include:

(i) a person who is not an operator and, without participating in the management of a facility and otherwise not engaged in petroleum production, refining, and marketing, holds indicia of ownership:

- (A) primarily to protect ~~[his]~~ the person's security interest in the facility; or
- (B) as a fiduciary or custodian under Title 75, Utah Uniform Probate Code, or under an employee benefit plan; or
- (ii) governmental ownership or control of property by involuntary transfers as provided in CERCLA Section 101(20)(D), 42 U.S.C. Sec. 9601(20)(D).

(c) The exemption created by Subsection ~~[(27)]~~ (26)(b)(i)(B) does not apply to actions taken by the state or its officials or agencies under this part.

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(d) The terms and activities "indicia of ownership," "primarily to protect a security interest," "participation in management," and "security interest" under this part are in accordance with 40 C.F.R. Part 280, Subpart I, as amended, and 42 U.S.C. Sec. 6991b(h)(9).

(e) The terms "participate in management" and "indicia of ownership" as defined in 40 C.F.R. Part 280, Subpart I, as amended, and 42 U.S.C. Sec. 6991b(h)(9) include and apply to the fiduciaries listed in Subsection [~~(27)~~] (26)(b)(i)(B).

[~~(28)~~] (27) "Soil test" means a test, established or approved by board rule, to detect the presence of petroleum in soil.

[~~(29)~~] (28) "State cleanup appropriation" means money appropriated by the Legislature to the department to fund the investigation, abatement, and corrective action regarding releases not covered by the fund.

[~~(30)~~] (29) "Underground storage tank" means a tank regulated under Subtitle I, Resource Conservation and Recovery Act, 42 U.S.C. Sec. 6991c, et seq., including:

- (a) a petroleum storage tank;
- (b) underground pipes and lines connected to a storage tank;
- (c) underground ancillary equipment; [~~and~~]
- (d) a containment system[-]; and
- (e) each compartment of a multi-compartment storage tank.

[~~(31)~~] (30) "Underground storage tank installation company" means a person, firm, partnership, corporation, governmental entity, association, or other organization who installs underground storage tanks.

[~~(32)~~] (31) "Underground storage tank installation company permit" means a permit issued to an underground storage tank installation company by the director.

[~~(33)~~] (32) "Underground storage tank technician" means a person employed by and acting under the direct supervision of a certified underground storage tank consultant to assist in carrying out the functions described in Subsection (6)(a).

Section 2. Section **19-6-404** is amended to read:

### **19-6-404. Powers and duties of director.**

- (1) The director shall:
  - (a) administer the petroleum storage tank program established in this part; and
  - (b) as authorized by the board and subject to the provisions of this part, act as



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executive secretary of the board under the direction of the chairman of the board.

(2) As necessary to meet the requirements or carry out the purposes of this part, the director may:

- (a) advise, consult, and cooperate with other persons;
- (b) employ persons;
- (c) authorize a certified employee or a certified representative of the department to conduct facility inspections and reviews of records required to be kept by this part and by rules made under this part;
- (d) encourage, participate in, or conduct studies, investigation, research, and demonstrations;
- (e) collect and disseminate information;
- (f) enforce rules made by the board and any requirement in this part by issuing notices and orders;
- (g) review plans, specifications, or other data;
- (h) under the direction of the executive director, represent the state in all matters pertaining to interstate underground storage tank management and control, including entering into interstate compacts and other similar agreements;
- (i) enter into contracts or agreements with political subdivisions for the performance of any of the department's responsibilities under this part if:
  - (i) the contract or agreement is not prohibited by state or federal law and will not result in a loss of federal funding; and
  - (ii) the director determines that:
    - (A) the political subdivision is willing and able to satisfactorily discharge its responsibilities under the contract or agreement; and
    - (B) the contract or agreement will be practical and effective;
- (j) take any necessary enforcement action authorized under this part, including filing a lien against the real property, which is subject to cleanup and is owned by a responsible party, for the costs of abatement, investigative and corrective actions taken by the agency, if necessary, and depositing any funds received into the Petroleum Storage Tank Cleanup Fund created in Section 19-6-405.7;
- (k) require an owner or operator of an underground storage tank to:

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- (i) furnish information or records relating to the tank, its equipment, and contents;
- (ii) monitor, inspect, test, or sample the tank, its contents, and any surrounding soils, air, or water; or
- (iii) provide access to the tank at reasonable times;
- (l) take any abatement, investigative, or corrective action as authorized in this part; or
- (m) enter into agreements or issue orders to apportion percentages of liability of responsible parties under Section 19-6-424.5.

Section 3. Section **19-6-405.4** is enacted to read:

### **19-6-405.4. Transfer of balances.**

By June 30, 2014, the Department of Environmental Quality shall transfer:

- (1) the balances in the Petroleum Storage Tank Loan Fund created in Section 19-6-405.3 into the Petroleum Storage Tank Trust Fund created in Section 19-6-409; and
- (2) any funds remaining from the Circle K settlement in the Petroleum Damage Fund into the Petroleum Storage Tank Trust Fund created in Section 19-6-409.

Section 4. Section **19-6-405.7** is amended to read:

### **19-6-405.7. Petroleum Storage Tank Cleanup Fund -- Revenue and purposes.**

- (1) There is created a private-purpose trust fund entitled the "Petroleum Storage Tank Cleanup Fund," which is referred to in this section as the cleanup fund.
- (2) The cleanup fund sources of revenue are:
  - (a) any voluntary contributions received by the department for the cleanup of facilities;
  - (b) legislative appropriations made to the cleanup fund; and
  - (c) costs recovered under this part.
- (3) The cleanup fund shall earn interest, which shall be deposited in the cleanup fund.
- (4) The director may use the cleanup fund money for administration, investigation, abatement action, and preparing and implementing a corrective action plan regarding releases and suspected releases not covered by the Petroleum Storage Tank Trust Fund created in Section 19-6-409.

Section 5. Section **19-6-408** is amended to read:

### **19-6-408. Underground storage tank registration fee -- Processing fee for tanks not in the program.**

- (1) The department may assess an annual underground storage tank registration fee

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against ~~[owners]~~ an owner or ~~[operators]~~ operator of an underground storage ~~[tanks]~~ tank that ~~[have]~~ has not been closed. These fees shall be:

- (a) billed per facility;
- (b) due on July 1 annually;
- (c) deposited with the department as dedicated credits;
- (d) used by the department for the administration of the underground storage tank

program outlined in this part; and

- (e) established under Section 63J-1-504.

(2) (a) As used in this Subsection (2), "financial assurance mechanism document" may be a single document that covers more than one facility through a single financial assurance mechanism.

(b) In addition to the fee under Subsection (1), an owner or operator who elects to demonstrate financial assurance through a mechanism other than the Environmental Assurance Program shall pay a processing fee ~~[of: (i) for fiscal year 1997-98, \$1,000 for each financial assurance mechanism document submitted to the division for review; and (ii) on and after July 1, 1998, a processing fee]~~ established under Section 63J-1-504.

~~[(b)]~~ (c) If a combination of financial assurance mechanisms is used to demonstrate financial assurance, the fee under Subsection ~~[(2)(a)]~~ (2)(b) shall be paid for each document submitted.

~~[(c) As used in this Subsection (2), "financial assurance mechanism document" may be a single document that covers more than one facility through a single financial assurance mechanism.]~~

(3) Any funds provided for administration of the underground storage tank program under this section that are not expended at the end of the fiscal year lapse into the Petroleum Storage Tank Restricted Account created in Section 19-6-405.5.

(4) The director shall provide all owners or operators who pay the annual underground storage tank registration fee a certificate of registration.

(5) (a) The director may issue a notice of agency action assessing a civil penalty of \$1,000 per facility if an owner or operator of an underground storage tank facility fails to pay the required fee within 60 days after the July 1 due date.

- (b) The registration fee and late payment penalty accrue interest at 12% per annum.

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(c) If the registration fee, late payment penalty, and interest accrued under this Subsection (5) are not paid in full within 60 days after the July 1 due date any certificate of compliance issued prior to the July 1 due date lapses. The director may not reissue the certificate of compliance until full payment under this Subsection (5) is made to the department.

(d) The director may waive any penalty assessed under this Subsection (5) if no fuel has been dispensed from the tank on or after July 1, 1991.

Section 6. 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) appropriations to the fund;

(v) principal and interest received from the repayment of loans made by the director under Subsection (5); and

~~(iv)~~ (vi) 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

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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);

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

(g) allowed under this part that are not listed under this Subsection (2).

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

(4) The director shall:

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

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

(A) extent of the release;

(B) impact of the release; and

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

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

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

(iv) not pay legal costs of third parties;

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

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

(5) The director may loan, in accordance with this section, money available in the fund to a person to be used for:

(a) upgrading an underground storage tank;

(b) replacing an underground storage tank; or

(c) permanently closing an underground storage tank.

(6) A person may apply to the director for a loan under Subsection (5) if all tanks

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owned or operated by that person are in substantial compliance with all state and federal requirements or will be brought into substantial compliance using money from the fund.

(7) The director shall consider loan applications under Subsection (6) to meet the following objectives:

- (a) support availability of gasoline in rural parts of the state;
- (b) support small businesses; and
- (c) reduce the threat of a petroleum release endangering the environment.

(8) (a) A loan made under this section may not be for more than:

- (i) \$150,000 for all tanks at any one facility;
- (ii) \$50,000 per tank; and
- (iii) 80% of the total cost of:

(A) upgrading an underground storage tank;

(B) replacing an underground storage tank; or

(C) permanently closing an underground storage tank.

(b) A loan made under this section shall:

- (i) have a fixed annual interest rate of ~~1.5%~~ 0%;
- (ii) have a term no longer than 10 years;
- (iii) be made on the condition the loan applicant obtains adequate security for the loan

as established by board rule under Subsection (8); and

(iv) comply with rules made by the board under Subsection (8).

(8) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the board shall make rules establishing:

- (a) form, content, and procedure for a loan application;
- (b) criteria and procedures for prioritizing a loan application;
- (c) requirements and procedures for securing a loan;
- (d) procedures for making a loan;
- (e) procedures for administering and ensuring repayment of a loan, including late

payment penalties;

(f) procedures for recovering on a defaulted loan; and

(g) the maximum amount of the fund that may be used for loans.

(9) A decision by the director to loan money from the fund and otherwise administer

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the fund is not subject to Title 63G, Chapter 4, Administrative Procedures Act.

(10) The Legislature shall appropriate money from the fund to the department for the administration costs associated with making loans under this section.

(11) The director may enter into an agreement with a public entity or private organization to perform a task associated with administration of loans made under this section.

Section 7. Section **19-6-410.5** is amended to read:

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

(1) As used in this section:

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

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

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

(b) The program shall provide to a participating owner or operator, upon payment of the fee imposed under Subsection (4), assistance with satisfying the financial responsibility requirements of 40 C.F.R., Part 280, Subpart H, by providing funds from the Petroleum Storage Tank Trust Fund established in Section 19-6-409, subject to the terms and conditions of Chapter 6, Part 4, Underground Storage Tank Act, and rules implemented under that part.

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

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

(4) (a) There is assessed an environmental assurance fee of [~~1/2~~] 13/20 cent per gallon on the first sale or use of petroleum products in the state.

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

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

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

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

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

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

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

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

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

(d) ~~{The commission}~~ By January 1, 2015, the division shall, by rule ~~{and in consultation with the division, create a risk-based rebate system}~~ create:

(i) a model for assessing the risk profile of each facility participating in the program, for purposes of qualifying for a rebate of a portion of the environmental assurance fee described in Subsection (4) collected from an owner or operator that participates in the program; and

(ii) a rebate schedule listing the amount of the environmental assurance fee that an owner or operator participating in the program may qualify for based on risk profiles determined by the model developed under Subsection (5)(d)(i).

(e) The rebate described in Subsection (5)(d):

(i) may not exceed 40% of the actual fee collected from an owner or operator of a low-risk underground storage tank as defined in the risk-based model developed under section (5)(d):

(ii) is administered on a per facility basis;

(iii) is based on the facility's risk profile at the end of the prior calendar year;

(iv) is only applicable to an environmental assurance fee collected after December 30, 2014; and

(v) shall be claimed in the form of a refund from the commission.

(f) The refund described in Subsection (5)(e)(v) may be claimed on a monthly basis.

(6) (a) The person responsible for payment of the fee under this section shall, by the



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last day of the month following the month in which the sale occurs:

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

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

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

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

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

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

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

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

(8) The department shall:

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

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

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

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

(v) identify and study other adverse impacts to the program and the fund; and

(b) based on the information obtained and developed under Subsection (8)(a), prepare a recommendation to implement a strategy to minimize adverse selection of participants in the

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program and eliminate or reduce the actuarial deficit of the fund.

(9) The department shall report to the Natural Resources, Agriculture, and Environment Interim Committee before December 31, 2013, regarding:

- (a) the information obtained and developed under Subsection (8)(a); and
- (b) the recommendation prepared under Subsection (8)(b).

Section 8. Section **19-6-411** is amended to read:

### **19-6-411. Petroleum storage tank fee for program participants.**

(1) In addition to the underground storage tank registration fee paid in Section 19-6-408, the owner or operator of a petroleum storage tank who elects to participate in the environmental assurance program under Section 19-6-410.5 shall also pay an annual petroleum storage tank fee to the department for each facility as follows:

(a) an annual fee of:

(i) \$450 for each tank in a facility with an annual facility throughput rate of 70,000 gallons or less;

~~[(i) \$50]~~ (ii) \$150 for each tank in a facility with an annual facility throughput rate of [400,000] greater than 70,000 gallons [or less]; and

~~[(ii) \$150 for each tank in a facility with an annual facility throughput rate of more than 400,000 gallons; and]~~

(iii) ~~[\$150]~~ \$450 for each tank in a facility regarding which:

(A) the facility's throughput rate is not reported to the department within 30 days after the date this throughput information is requested by the department; or

(B) the owner or operator elects to pay the fee under this Subsection (1)(a)(iii), rather than report under Subsection (1)(a)(i) or (ii); and

(b) for any new tank:

(i) that is installed to replace an existing tank at an existing facility, any annual petroleum storage tank fee paid for the current fiscal year for the existing tank is applicable to the new tank; and

(ii) installed at a new facility or at an existing facility, which is not a replacement for another existing tank, the fees are as provided in Subsection (1)(a)(ii) ~~[of this section]~~.

(2) (a) As a condition of receiving a permit and being eligible for benefits under Section 19-6-419 from the Petroleum Storage Tank Trust Fund, each underground storage tank

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installation company shall pay to the department the following fees to be deposited in the fund:

(i) an annual fee of:

(A) \$2,000 per underground storage tank installation company if the installation company has installed 15 or fewer underground storage tanks within the 12 months preceding the fee due date; or

(B) \$4,000 per underground storage tank installation company if the installation company has installed 16 or more underground storage tanks within the 12 months preceding the fee due date; and

(ii) \$200 for each underground storage tank installed in the state, to be paid prior to completion of installation.

(b) The board shall make rules specifying which portions of an underground storage tank installation shall be subject to the permitting fees when less than a full underground storage tank system is installed.

(3) (a) Fees under Subsection (1) are due on or before July 1 annually.

(b) If the department does not receive the fee on or before July 1, the department shall impose a late penalty of \$60 per facility.

(c) (i) The fee and the late penalty accrue interest at 12% per annum.

(ii) If the fee, the late penalty, and all accrued interest are not received by the department within 60 days after July 1, the eligibility of the owner or operator to receive payments for claims against the fund lapses on the 61st day after July 1.

(iii) In order for the owner or operator to reinstate eligibility to receive payments for claims against the fund, the owner or operator shall meet the requirements of Subsection 19-6-428(3).

(4) (a) (i) Fees under Subsection (2)(a)(i) are due on or before July 1 annually. If the department does not receive the fees on or before July 1, the department shall impose a late penalty of \$60 per installation company. The fee and the late penalty accrue interest at 12% per annum.

(ii) If the fee, late penalty, and all accrued interest due are not received by the department within 60 days after July 1, the underground storage tank installation company's permit and eligibility to receive payments for claims against the fund lapse on the 61st day after July 1.

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(b) (i) Fees under Subsection (2)(a)(ii) are due prior to completion of installation. If the department does not receive the fees prior to completion of installation, the department shall impose a late penalty of \$60 per facility. The fee and the late penalty accrue interest at 12% per annum.

(ii) If the fee, late penalty, and all accrued interest are not received by the department within 60 days after the underground storage tank installation is completed, eligibility to receive payments for claims against the fund for that tank lapse on the 61st day after the tank installation is completed.

(c) The director may not reissue the underground storage tank installation company permit until the fee, late penalty, and all accrued interest are received by the department.

(5) If the executive director determines that the fees established in Subsections (1) and (2) and the environmental assurance fee established in Section 19-6-410.5 are insufficient to maintain the fund on an actuarially sound basis, the executive director may petition the Legislature to increase the petroleum storage tank and underground storage tank installation company permit fees, and the environmental assurance fee to a level that will sustain the fund on an actuarially sound basis.

(6) The director may waive all or part of the fees required to be paid on or before May 5, 1997, for a petroleum storage tank under this section if no fuel has been dispensed from the tank on or after July 1, 1991.

(7) (a) The director shall issue a certificate of compliance to the owner or operator of a petroleum storage tank or underground storage tank, for which payment of fees has been made and other requirements have been met to qualify for a certificate of compliance under this part.

(b) The board shall make rules providing for the identification, through a tag or other readily identifiable method, of a petroleum storage tank or underground storage tank under Subsection (7)(a) that does not qualify for a certificate of compliance under this part.

Section 9. Section **19-6-414** is amended to read:

**19-6-414. Grounds for revocation of certificate of compliance and ineligibility for payment of costs from fund.**

(1) If the director determines that any of the requirements of Subsection 19-6-412(2) [~~and~~], Section 19-6-413, or Subsection 19-6-420(2) have not been met, the director shall notify the owner or operator by certified mail that:

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- (a) ~~[his]~~ the owner or operator's certificate of compliance may be revoked;
- (b) if ~~[he]~~ the owner or operator is participating in the program, ~~[he]~~ the owner or operator is violating the eligibility requirements for the fund; and
- (c) ~~[he]~~ the owner or operator shall demonstrate ~~[his]~~ the owner or operator's compliance with this part within 60 days after receipt of the notification or ~~[his]~~ the certificate of compliance will be revoked and if participating in the program ~~[he]~~ the owner or operator will be ineligible to receive payment for claims against the fund.

(2) If the director determines the owner's or operator's compliance problems have not been resolved within 60 days after receipt of the notification in Subsection (1), the director shall send written notice to the owner or operator that the owner's or operator's certificate of compliance is revoked and he is no longer eligible for payment of costs from the fund.

(3) Revocation of certificates of compliance may be appealed to the executive director.

Section 10. Section **19-6-420** is amended to read:

### **19-6-420. Releases -- Abatement actions -- Corrective actions.**

(1) If the director determines that a release from a petroleum storage tank has occurred, ~~[he]~~ the director shall:

- (a) identify and name as many of the responsible parties as reasonably possible; and
- (b) determine which responsible parties, if any, are covered by the fund regarding the release in question.

(2) Regardless of whether the tank generating the release is covered by the fund, the director may:

- (a) order the owner or operator to ~~+~~  
~~— (i) +~~ take abatement, or investigative~~;~~ or corrective action, including the submission of a corrective action plan; and  
~~{ — (ii) reimburse the division for the cost of managing and overseeing the abatement, or investigative or corrective action of the release; and~~  
~~+ (b) if the owner or operator fails to [take any of the abatement, investigative, or corrective] comply with the action ordered by the director under Subsection (2)(a), the director may take [any] one or more of the following actions:~~

(i) subject to the conditions in this part, use money from the fund, if the tank involved is covered by the fund, state cleanup appropriation, or the Petroleum Storage Tank Cleanup

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Fund created under Section 19-6-405.7 to perform investigative, abatement, or corrective action;

(ii) commence an enforcement proceeding;

(iii) enter into agreements or issue orders as allowed by Section 19-6-424.5; ~~or~~

(iv) recover costs from responsible parties equal to their proportionate share of liability as determined by Section 19-6-424.5~~[-]; or~~

(v) where the owner or operator is the responsible party, revoke the responsible party's certificate of compliance, as described in Section 19-6-414.

(3) (a) Subject to the limitations established in Section 19-6-419, the director shall provide money from the fund for abatement action for a release generated by a tank covered by the fund if:

(i) the owner or operator takes the abatement action ordered by the director; and

(ii) the director approves the abatement action.

(b) If a release presents the possibility of imminent and substantial danger to the public health or the environment, the owner or operator may take immediate abatement action and petition the director for reimbursement from the fund for the costs of the abatement action. If the owner or operator can demonstrate to the satisfaction of the director that the abatement action was reasonable and timely in light of circumstances, the director shall reimburse the petitioner for costs associated with immediate abatement action, subject to the limitations established in Section 19-6-419.

(c) The owner or operator shall notify the director within 24 hours of the abatement action taken.

(4) (a) If the director determines corrective action is necessary, the director shall order the owner or operator to submit a corrective action plan to address the release.

(b) If the owner or operator submits a corrective action plan, the director shall review the corrective action plan and approve or disapprove the plan.

(c) In reviewing the corrective action plan, the director shall consider the following:

(i) the threat to public health;

(ii) the threat to the environment; and

(iii) the cost-effectiveness of alternative corrective actions.

(5) If the director approves the corrective action plan or develops his own corrective

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action plan, ~~he~~ the director shall:

(a) approve the estimated cost of implementing the corrective action plan;

(b) order the owner or operator to implement the corrective action plan;

(c) (i) if the release is covered by the fund, determine the amount of fund money to be allocated to an owner or operator to implement a corrective action plan; and

(ii) subject to the limitations established in Section 19-6-419, provide money from the fund to the owner or operator to implement the corrective action plan.

(6) (a) The director may not distribute any money from the fund for corrective action until the owner or operator obtains the director's approval of the corrective action plan.

(b) An owner or operator who begins corrective action without first obtaining approval from the director and who is covered by the fund may be reimbursed for the costs of the corrective action, subject to the limitations established in Section 19-6-419, if:

(i) the owner or operator submits the corrective action plan to the director within seven days after beginning corrective action; and

(ii) the director approves the corrective action plan.

(7) If the director disapproves the plan, ~~he~~ the director shall solicit a new corrective action plan from the owner or operator.

(8) If the director disapproves the second corrective action plan, or if the owner or operator fails to submit a second plan within a reasonable time, the director may:

(a) develop ~~his own~~ an alternative corrective action plan; and

(b) act as authorized under Subsections (2) and (5).

(9) (a) When notified that the corrective action plan has been implemented, the director shall inspect the location of the release to determine whether or not the corrective action has been properly performed and completed.

(b) If the director determines the corrective action has not been properly performed or completed, ~~he~~ the director may issue an order requiring the owner or operator to complete the corrective action within the time specified in the order.

(10) (a) For releases not covered by the fund, the director may recover from the responsible party expenses incurred by the division for managing and overseeing the abatement, and investigation or corrective action of the release. These expenses shall be:

(i) billed quarterly per release;

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(ii) due within thirty days of billing;

(iii) deposited with the division as dedicated credits;

(iv) used by the division for the administration of the underground storage tank program outlined in this part; and

(v) billed per hourly rates as established under Section 63J-1-504.

(b) If the responsible party fails to pay expenses under Subsection 10(a), the director may:

(i) revoke the responsible party's certificate of compliance, as described in Section 19-6-414, if the responsible party is also the owner or operator; and

(ii) pursue an action to collect expenses in Subsection 10(a), including the costs of collection.

Section 11. Section **19-8-119** is amended to read:

### **19-8-119. Apportionment or contribution.**

(1) Any party who incurs costs under a voluntary agreement entered into under this part in excess of his liability may seek contribution in an action in district court from any other party who is or may be liable under Subsection 19-6-302(21) or 19-6-402[(27)](26) for the excess costs after providing written notice to any other party that the party bringing the action has entered into a voluntary agreement and will incur costs.

(2) In resolving claims made under Subsection (1), the court shall allocate costs using the standards in Subsection 19-6-310(2).

Section 12. Section **63A-3-205** is amended to read:

### **63A-3-205. Revolving loan funds -- Standards and procedures -- Annual report.**

(1) As used in this section, "revolving loan fund" means:

(a) the Water Resources Conservation and Development Fund, created in Section 73-10-24;

(b) the Water Resources Construction Fund, created in Section 73-10-8;

(c) the Water Resources Cities Water Loan Fund, created in Section 73-10-22;

(d) the Clean Fuel Conversion Funds, created in Title 19, Chapter 1, Part 4, Clean Fuels and Vehicle Technology Program Act;

(e) the Water Development Security Fund and its subaccounts, created in Section 73-10c-5;



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- (f) the Agriculture Resource Development Fund, created in Section 4-18-106;
  - (g) the Utah Rural Rehabilitation Fund, created in Section 4-19-4;
  - (h) the Permanent Community Impact Fund, created in Section 35A-8-603;
  - (i) the Petroleum Storage Tank ~~[Loan]~~ Trust Fund, created in Section ~~[19-6-405.3]~~ 19-6-409;
  - (j) the Uintah Basin Revitalization Fund, created in Section 35A-8-1602;
  - (k) the Navajo Revitalization Fund, created in Section 35A-8-1704; and
  - (l) the Energy Efficiency Fund, created in Section 11-45-201.
- (2) The division shall for each revolving loan fund:
- (a) make rules establishing standards and procedures governing:
    - (i) payment schedules and due dates;
    - (ii) interest rate effective dates;
    - (iii) loan documentation requirements; and
    - (iv) interest rate calculation requirements; and
  - (b) make an annual report to the Legislature containing:
    - (i) the total dollars loaned by that fund during the last fiscal year;
    - (ii) a listing of each loan currently more than 90 days delinquent, in default, or that was restructured during the last fiscal year;
    - (iii) a description of each project that received money from that revolving loan fund;
    - (iv) the amount of each loan made to that project;
    - (v) the specific purpose for which the proceeds of the loan were to be used, if any;
    - (vi) any restrictions on the use of the loan proceeds;
    - (vii) the present value of each loan at the end of the fiscal year calculated using the interest rate paid by the state on the bonds providing the revenue on which the loan is based or, if that is unknown, on the average interest rate paid by the state on general obligation bonds issued during the most recent fiscal year in which bonds were sold; and
    - (viii) the financial position of each revolving loan fund, including the fund's cash investments, cash forecasts, and equity position.

Section 13. Section 63B-1b-102 is amended to read:

### **63B-1b-102. Definitions.**

As used in this chapter:

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(1) "Agency bonds" means any bond, note, contract, or other evidence of indebtedness representing loans or grants made by an authorizing agency.

(2) "Authorized official" means the state treasurer or other person authorized by a bond document to perform the required action.

(3) "Authorizing agency" means the board, person, or unit with legal responsibility for administering and managing revolving loan funds.

(4) "Bond document" means:

(a) a resolution of the commission; or

(b) an indenture or other similar document authorized by the commission that authorizes and secures outstanding revenue bonds from time to time.

(5) "Commission" means the State Bonding Commission, created in Section 63B-1-201.

(6) "Revenue bonds" means any special fund revenue bonds issued under this chapter.

(7) "Revolving Loan Funds" means:

(a) the Water Resources Conservation and Development Fund, created in Section 73-10-24;

(b) the Water Resources Construction Fund, created in Section 73-10-8;

(c) the Water Resources Cities Water Loan Fund, created in Section 73-10-22;

(d) the Clean Fuel Conversion Funds, created in Title 19, Chapter 1, Part 4, Clean Fuels and Vehicle Technology Program Act;

(e) the Water Development Security Fund and its subaccounts, created in Section 73-10c-5;

(f) the Agriculture Resource Development Fund, created in Section 4-18-106;

(g) the Utah Rural Rehabilitation Fund, created in Section 4-19-4;

(h) the Permanent Community Impact Fund, created in Section 35A-8-303;

(i) the Petroleum Storage Tank ~~[Loan] Trust~~ Fund, created in Section ~~[19-6-405.3]~~ 19-6-409; and

(j) the Transportation Infrastructure Loan Fund, created in Section 72-2-202.

Section 14. Section 63B-1b-202 is amended to read:

**63B-1b-202. Custodial officer -- Powers and duties.**

(1) (a) There is created within the Division of Finance an officer responsible for the

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care, custody, safekeeping, collection, and accounting of all bonds, notes, contracts, trust documents, and other evidences of indebtedness:

- (i) owned or administered by the state or any of its agencies; and
- (ii) except as provided in Subsection (1)(b), relating to revolving loan funds.

(b) Notwithstanding Subsection (1)(a), the officer described in Subsection (1)(a) is not responsible for the care, custody, safekeeping, collection, and accounting of a bond, note, contract, trust document, or other evidence of indebtedness relating to the:

- (i) Agriculture Resource Development Fund, created in Section 4-18-106;
- (ii) Utah Rural Rehabilitation Fund, created in Section 4-19-4;
- (iii) Petroleum Storage Tank ~~[Loan]~~ Trust Fund, created in Section ~~[19-6-405.3]~~

19-6-409;

- (iv) Olene Walker Housing Loan Fund, created in Section 35A-8-502;
- (v) Business Development for Disadvantaged Rural Communities Restricted Account, created in Section 63M-1-2003; and
- (vi) Brownfields Fund, created in Section 19-8-120.

(2) (a) Each authorizing agency shall deliver to this officer for the officer's care, custody, safekeeping, collection, and accounting all bonds, notes, contracts, trust documents, and other evidences of indebtedness:

- (i) owned or administered by the state or any of its agencies; and
- (ii) except as provided in Subsection (1)(b), relating to revolving loan funds.

(b) This officer shall:

(i) establish systems, programs, and facilities for the care, custody, safekeeping, collection, and accounting for the bonds, notes, contracts, trust documents, and other evidences of indebtedness submitted to the officer under this Subsection (2); and

(ii) shall make available updated reports to each authorizing agency as to the status of loans under their authority.

(3) The officer described in Section 63B-1b-201 shall deliver to the officer described in Subsection (1)(a) for the care, custody, safekeeping, collection, and accounting by the officer described in Subsection (1)(a) of all bonds, notes, contracts, trust documents, and other evidences of indebtedness closed as provided in Subsection 63B-1b-201(2)(b).

Section ~~{12}~~15. Section **63I-2-219** is enacted to read:

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### 63I-2-219. Repeal dates -- Title 19.

(1) Section 19-6-405.3 is repealed July 1, 2014.

(2) Section 19-6-405.4 is repealed July 1, 2014.

### Section ~~{13}~~16. **Effective date.**

(1) Except as provided in Subsections (2), ~~(3)~~, and ~~(~~3~~4)~~, this bill takes effect on May 13, 2014.

(2) The amendments to Section 19-6-409 take effect on July 1, 2014.

(3) The amendments to Section ~~{19-6-420}~~19-6-410.5 take effect on ~~{July}~~January 1, 2015.

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### **Legislative Review Note**

~~as of 2-13-14 6:19 PM~~

~~Office of Legislative Research and General Counsel;~~ (4) The amendments to Section 19-6-420 take effect on July 1, 2015.