

1 **UNDERGROUND STORAGE TANK ACT AMENDMENTS**

2 2011 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Kay L. McIff**

5 Senate Sponsor: J. Stuart Adams

6

LONG TITLE

7 **General Description:**

8 This bill modifies certain requirements relating to the Petroleum Storage Tank Trust
9 Fund.
10

11 **Highlighted Provisions:**

12 This bill:

13 ▶ eliminates a requirement that the state risk manager petition the Legislature to
14 increase certain fees if the state risk manager determines that the Petroleum Storage
15 Tank Trust Fund is not actuarially sound;

16 ▶ requires the executive secretary of the Solid and Hazardous Waste Control Board to
17 annually:

- 18 • evaluate the solvency of the Petroleum Storage Tank Trust Fund; and
- 19 • report to the Natural Resources, Agriculture, and Environment Interim

20 Committee; and

21 ▶ makes technical corrections.

22 **Money Appropriated in this Bill:**

23 None

24 **Other Special Clauses:**

25 None

26 **Utah Code Sections Affected:**

27 AMENDS:



28 19-6-405.3, as last amended by Laws of Utah 2010, Chapter 186

29 19-6-411, as last amended by Laws of Utah 1998, Chapter 95



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

32 Section 1. Section 19-6-405.3 is amended to read:

33 **19-6-405.3. Creation of Petroleum Storage Tank Loan Fund -- Purposes -- Loan**
34 **eligibility -- Loan restrictions -- Rulemaking.**

35 (1) There is created a revolving loan fund known as the Petroleum Storage Tank Loan
36 Fund.

37 (2) The sources of money for the loan fund are:

38 (a) appropriations to the loan fund;

39 (b) principal and interest received from the repayment of loans made by the executive
40 secretary under Subsection (3); and

41 (c) all investment income derived from money in the fund.

42 (3) The executive secretary may loan, in accordance with this section, money available
43 in the loan fund to a person to be used for:

44 (a) upgrading a petroleum storage tank;

45 (b) replacing an underground storage tank; or

46 (c) permanently closing an underground storage tank.

47 (4) A person may apply to the executive secretary for a loan under Subsection (3) if all
48 tanks owned or operated by that person are in substantial compliance with all state and federal
49 requirements or will be brought into substantial compliance using money from the loan fund.

50 (5) The executive secretary shall consider loan applications under Subsection (4) to
51 meet the following objectives:

52 (a) support availability of gasoline in rural parts of the state;

53 (b) support small businesses; and

54 (c) reduce the threat of a petroleum release endangering the environment.

55 (6) Loans made under this section may not be for more than:

56 (a) ~~[be for more than]~~ \$150,000 for all tanks at any one facility;

57 (b) ~~[be for more than]~~ \$50,000 per tank; and

58 (c) ~~[be for more than]~~ 80% of the total cost of:

- 59 (i) upgrading a tank;
- 60 (ii) replacing the underground storage tank; or
- 61 (iii) permanently closing the underground storage tank[;].

62 (7) A loan made under this section shall:

- 63 [~~(d)~~] (a) have a fixed annual interest rate of 3%;
- 64 [~~(e)~~] (b) have a term no longer than 10 years;
- 65 [~~(f)~~] (c) be made on the condition the loan applicant obtains adequate security for the
- 66 loan as established by board rule under Subsection [~~(7)~~] (8); and
- 67 [~~(g)~~] (d) comply with rules made by the board under Subsection [~~(7)~~] (8).

68 [~~(7)~~] (8) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking
69 Act, the board shall make rules establishing:

- 70 (a) form, content, and procedure for a loan application;
- 71 (b) criteria and procedures for prioritizing a loan application;
- 72 (c) requirements and procedures for securing a loan;
- 73 (d) procedures for making a loan;
- 74 (e) procedures for administering and ensuring repayment of a loan, including late
- 75 payment penalties; and
- 76 (f) procedures for recovering on a defaulted loan.

77 [~~(8)~~] (9) A decision by the executive secretary to loan money from the loan fund and
78 otherwise administer the loan fund is not subject to Title 63G, Chapter 4, Administrative
79 Procedures Act.

80 [~~(9)~~] (10) The Legislature shall appropriate money from the loan fund to the
81 department for the administration of the loan fund.

82 [~~(10)~~] (11) The executive secretary may enter into an agreement with a public entity or
83 private organization to perform a task associated with administration of the loan fund.

84 Section 2. Section **19-6-411** is amended to read:

85 **19-6-411. Petroleum storage tank fee for program participants.**

86 (1) In addition to the underground storage tank registration fee paid in Section
87 19-6-408, the owner or operator of a petroleum storage tank who elects to participate in the
88 environmental assurance program under Section 19-6-410.5 shall also pay an annual petroleum
89 storage tank fee to the department for each facility as follows:

- 90 (a) on and after July 1, 1990, through June 30, 1993, an annual fee of:
- 91 (i) \$250 for each tank:
- 92 (A) located at a facility engaged in petroleum production, refining, or marketing; or
- 93 (B) with an annual monthly throughput of more than 10,000 gallons; and
- 94 (ii) \$125 for each tank:
- 95 (A) not located at a facility engaged in petroleum production, refining, or marketing;
- 96 and
- 97 (B) with an annual monthly throughput of 10,000 gallons or less;
- 98 (b) on and after July 1, 1993, through June 30, 1994, an annual fee of:
- 99 (i) \$150 for each tank:
- 100 (A) located at a facility engaged in petroleum production, refining, or marketing; or
- 101 (B) with an average monthly throughput of more than 10,000 gallons; and
- 102 (ii) \$75 for each tank:
- 103 (A) not located at a facility engaged in petroleum production, refining, or marketing;
- 104 and
- 105 (B) with an average monthly throughput of 10,000 gallons or less; [~~and~~]
- 106 (c) on and after July 1, 1994, an annual fee of:
- 107 (i) \$50 for each tank in a facility with an annual facility throughput rate of 400,000
- 108 gallons or less;
- 109 (ii) \$150 for each tank in a facility with an annual facility throughput rate of more than
- 110 400,000 gallons; and
- 111 (iii) \$150 for each tank in a facility regarding which:
- 112 (A) the facility's throughput rate is not reported to the department within 30 days after
- 113 the date this throughput information is requested by the department; or
- 114 (B) the owner or operator elects to pay the fee under this subsection, rather than report
- 115 under Subsection (1)(c)(i) or (ii); and
- 116 (d) on and after July 1, 1998, for any new tank:
- 117 (i) which is installed to replace an existing tank at an existing facility, any annual
- 118 petroleum storage tank fee paid for the current fiscal year for the existing tank is applicable to
- 119 the new tank; and
- 120 (ii) installed at a new facility or at an existing facility, which is not a replacement for

121 another existing tank, the fees are as provided in Subsection (1)(c) of this section.

122 (2) (a) As a condition of receiving a permit and being eligible for benefits under
123 Section 19-6-419 from the Petroleum Storage Tank Trust Fund, each underground storage tank
124 installation company shall pay to the department the following fees to be deposited in the fund:

125 (i) an annual fee of:

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

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

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

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

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

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

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

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

144 (iii) In order for the owner or operator to reinstate eligibility to receive payments for
145 claims against the fund, the owner or operator shall meet the requirements of Subsection
146 19-6-428(3).

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

151 (ii) If the fee, late penalty, and all accrued interest due are not received by the

152 department within 60 days after July 1, the underground storage tank installation company's
153 permit and eligibility to receive payments for claims against the fund lapse on the 61st day after
154 July 1.

155 (b) (i) Fees under Subsection (2)(a)(ii) are due prior to completion of installation. If
156 the department does not receive the fees prior to completion of installation, the department
157 shall impose a late penalty of \$60 per facility. The fee and the late penalty accrue interest at
158 12% per annum.

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

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

166 ~~[(5) If the state risk manager determines the fees established in Subsections (1) and (2)~~
167 ~~and the environmental assurance fee established in Section 19-6-410.5 are insufficient to~~
168 ~~maintain the fund on an actuarially sound basis, he shall petition the Legislature to increase the~~
169 ~~petroleum storage tank and underground storage tank installation company permit fees, and the~~
170 ~~environmental assurance fee to a level that will sustain the fund on an actuarially sound basis.]~~

171 (5) The executive secretary shall annually:

172 (a) evaluate the fund to determine if the fees established in Subsections (1) and (2) and
173 the environmental assurance fee established in Section 19-6-410.5 are sufficient to maintain
174 fund solvency and provide cash flow sufficient to meet the ongoing obligations of the fund; and

175 (b) report on the results of the evaluation to the Natural Resources, Agriculture, and
176 Environment Interim Committee.

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

180 (7) (a) Each petroleum storage tank or underground storage tank, for which payment of
181 fees has been made and other requirements have been met to qualify for a certificate of
182 compliance under this part, shall be issued a form of identification, as determined by the board

183 under Subsection (7)(b).

184 (b) The board shall make rules providing for the identification, through a tag or other
185 readily identifiable method, of petroleum storage tanks or underground storage tanks under
186 Subsection (7)(a) that qualify for a certificate of compliance under this part.

Legislative Review Note
as of 2-23-11 2:54 PM

Office of Legislative Research and General Counsel

FISCAL NOTE

H.B. 293

SHORT TITLE: **Underground Storage Tank Act Amendments**

SPONSOR: **McCliff, K.**

2011 GENERAL SESSION, STATE OF UTAH

STATE GOVERNMENT (UCA 36-12-13(2)(b))

Enactment of this bill likely will not materially impact the state budget.

LOCAL GOVERNMENTS (UCA 36-12-13(2)(c))

Enactment of this bill likely will not result in direct, measurable costs for local governments.

DIRECT EXPENDITURES BY UTAH RESIDENTS AND BUSINESSES (UCA 36-12-13(2)(d))

Enactment of this bill likely will not result in direct, measurable expenditures by Utah residents or businesses.