

COMMITTEE REPORT

MADAM PRESIDENT:

The Senate Committee on Energy and Environmental Affairs, to which was referred Senate Bill No. 127, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

- 1 Page 1, line 11, strike "described in section".
- 2 Page 1, line 12, delete "8(b)".
- 3 Page 1, line 12, strike "or".
- 4 Page 1, line 12, delete "8(c)".
- 5 Page 1, line 12, strike "of this chapter." and insert "**who caused the**
- 6 **spill or overflow.**".
- 7 Page 1, line 15, delete "8(c)" and insert "8".
- 8 Page 2, line 1, after "mail" insert ", **registered mail, United States**
- 9 **mail, or personal service**".
- 10 Page 2, line 3, after "each" insert "**reasonably known**".
- 11 Page 2, delete lines 16 through 42, begin a new paragraph and
- 12 insert:
- 13 "SECTION 2. IC 13-23-13-8 IS AMENDED TO READ AS
- 14 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 8. (a) Except where
- 15 an owner or operator can prove that a release from an underground
- 16 storage tank was caused solely by:
- 17 (1) an act of God;
- 18 (2) an act of war;
- 19 (3) negligence on the part of the state or the United States
- 20 government; or
- 21 (4) any combination of the causes set forth in subdivisions (1)

1 through (3);
 2 the owner or operator of an underground storage tank is liable to the
 3 state for the ~~actual~~ **reasonable** costs of any corrective action taken
 4 under section 2 of this chapter or IC 13-7-20-19(b) (before its repeal)
 5 involving the underground storage tank and is responsible for
 6 undertaking any corrective action, including undertaking an exposure
 7 assessment, ordered under this chapter, IC 13-23-14-1, IC 13-7-20-19
 8 (before its repeal), or IC 13-7-20-26 (before its repeal), or required by
 9 this title or a rule adopted under this title.

10 (b) A person who:

- 11 (1) pays to the state the costs described under subsection (a); or
 12 (2) undertakes corrective action resulting from a release from an
 13 underground storage tank, regardless of whether the corrective
 14 action is undertaken voluntarily or under an order issued under
 15 this chapter, IC 13-23-14-1, IC 13-7-20-19 (before its repeal); or
 16 IC 13-7-20-26 (before its repeal);

17 is entitled to receive a contribution from a person who owned or
 18 operated the underground storage tank at the time the release occurred:
 19 A person who brings a successful action to receive a contribution from
 20 an owner or operator is also entitled to receive reasonable attorney's
 21 fees and court costs from the owner or operator. An action brought
 22 under this subsection may be brought in a circuit or superior court. In
 23 resolving a contribution claim, a court may allocate the cost of a
 24 corrective action among the parties to the action using equitable factors
 25 that the court determines are appropriate.

26 (b) A person who pays to the state the reasonable corrective
 27 action costs described under subsection (a), regardless of whether
 28 the corrective action is undertaken voluntarily or under an order
 29 issued under this chapter, may recover those costs from a person
 30 who owned or operated the underground storage tank at the time
 31 the release occurred.

32 (c) Subject to subsections (e) through (h), a person who
 33 undertakes corrective action, regardless of whether the corrective
 34 action is undertaken voluntarily or under an order issued under
 35 this chapter, that results from a release from an underground
 36 storage tank and that is:

- 37 (1) to investigate, minimize, contain, eliminate, remediate,
 38 mitigate, or clean up a release from an underground storage
 39 tank, including emergency measures taken as part of an initial
 40 response to the release; or
 41 (2) under an order issued under this chapter, IC 13-23-14-1,
 42 IC 13-7-20-19 (before its repeal), or IC 13-7-20-26 (before its

1 repeal);
2 may receive a contribution toward those costs from a person who
3 owned or operated the underground storage tank at the time the
4 release occurred.

5 (d) An action brought under subsection (b) or (c) may be
6 brought in a circuit or superior court. Nothing in this section
7 requires that the action be limited to claims brought under this
8 article.

9 (e) Before a person:

10 (1) incurs significant investigative costs, corrective action
11 costs, or attorney's fees; or

12 (2) initiates an action under subsection (b) or (c) on or after
13 the effective date of this subsection;

14 the person must provide written notice by certified mail, registered
15 mail, United States mail, or personal service to each reasonably
16 known person allegedly responsible for the release from the
17 underground storage tank.

18 (f) If:

19 (1) a person provides notice to a person under subsection (e);
20 and

21 (2) the person who receives the notice agrees in writing to
22 remediate the release in accordance with rules and the
23 department's guidelines, including time frames for
24 remediation, that govern releases from underground storage
25 tanks;

26 the person providing notice may recover under this article only
27 past corrective action costs, court costs, and attorney's fees
28 reasonably incurred before the date of the written agreement
29 under subdivision (2).

30 (g) If the person who agrees in writing to remediate the release
31 under subsection (f) does not remediate the release in substantial
32 compliance with rules and the department's guidelines governing
33 releases from underground storage tanks, the person who provided
34 the notice may recover reasonable attorney's fees to enforce the
35 agreement.

36 (h) In resolving a claim in an action initiated to recover costs or
37 for contribution under this section, a court may use any legal and
38 equitable factors that the court determines are appropriate in
39 deciding whether to do any of the following:

40 (1) Award costs of corrective action reasonably incurred
41 under subsection (b).

42 (2) Award past, present, and future costs of undertaking

1 **corrective action reasonably incurred under subsection (c).**
 2 **(3) Award attorney's fees and court costs to a person who**
 3 **reasonably incurred those fees and costs in prosecuting a**
 4 **successful action under subsection (b), (c), or (g).**

5 **(4) Allocate any amounts awarded under subdivisions (1)**
 6 **through (3) among the parties to the action.**

7 ~~(e)~~ **(i)** Money recovered by the state under this section in connection
 8 with any corrective action undertaken with respect to a release of
 9 petroleum shall be deposited in the petroleum trust fund.

10 ~~(d)~~ **(j)** Money recovered by the state under this section in connection
 11 with any corrective action undertaken with respect to a release of a
 12 regulated substance other than petroleum shall be deposited in the
 13 hazardous substances response trust fund.

14 ~~(e)~~ **(k)** The state may recover corrective action costs under this
 15 section in an action commenced under IC 13-14-2-6, IC 13-14-2-7,
 16 IC 13-7-5-7 (before its repeal), or IC 13-7-5-8 (before its repeal). An
 17 action to recover corrective action costs under this section may be
 18 combined, as appropriate, with an action to enforce an order issued
 19 under section 1 of this chapter or IC 13-7-20-19(a) (before its repeal)
 20 to require corrective action not already undertaken by the
 21 commissioner."

22 Delete pages 3 through 4.

23 Page 5, delete lines 1 through 34.

(Reference is to SB 127 as introduced.)

and when so amended that said bill do pass .

Committee Vote: Yeas 10, Nays 0.

Senator Gard, Chairperson