February 16, 2011

SENATE BILL No. 347

DIGEST OF SB 347 (Updated February 14, 2011 2:02 pm - DI 118)

Citations Affected: IC 13-23.

Synopsis: Underground storage tank issues. Provides that a portion of the money in the underground petroleum storage tank excess liability trust fund is to be used to pay for the expenses of the Indiana department of environmental management to establish and implement an underground storage tank (UST) operator training program: (1) on an Internet web site; and (2) that complies the requirements of the federal Energy Policy Act of 2005. With respect to an action against a person who owned or operated an UST at the time a release occurred for recovery of costs paid to the state for corrective action or for contribution for costs directly incurred for corrective action: (1) permits recovery or contribution only to the extent the costs are reasonable; (2) specifies that the action is not limited to claims brought under UST statutes; (3) indicates which types of costs incurred for corrective action are subject to contribution; (4) allows a court to award attorney's fees and court costs and past, present, and future corrective action costs; (5) prohibits an award for contribution toward corrective action costs and attorney's fees and court costs incurred after a

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Effective: Upon passage.

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January 11, 2011, read first time and referred to Committee on Energy and Environmental Affairs.
February 15, 2011, reported favorably — Do Pass.

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Digest Continued

responsible party agrees to remediate the release in accordance with the appropriate rules and guidelines; (6) provides that if the person who agrees in writing to remediate the release does not remediate the release in substantial compliance with the rules and guidelines, the person who provided the notice may recover reasonable attorney's fees to enforce the agreement; (7) requires a person to notify each reasonably known person allegedly responsible for the UST release before incurring significant corrective action costs and attorney's fees or initiating an action; (8) specifies that notice may be by certified mail, registered mail, United States mail, or personal service; and (9) limits the recovery of corrective action costs and attorney's fees if a responsible party agrees to remediate the release.

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February 16, 2011

First Regular Session 117th General Assembly (2011)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type.~~

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~*this style type*~~ reconciles conflicts between statutes enacted by the 2010 Regular Session of the General Assembly.

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SENATE BILL No. 347

A BILL FOR AN ACT to amend the Indiana Code concerning environmental law.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 13-23-7-1, AS AMENDED BY P.L.114-2008, SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 1. (a) Subject to subsection (b), the underground petroleum storage tank excess liability trust fund is established for the following purposes:

(1) Assisting owners and operators of underground petroleum storage tanks to establish evidence of financial responsibility as required under IC 13-23-4.

(2) Providing a source of money to satisfy liabilities incurred by owners and operators of underground petroleum storage tanks under IC 13-23-13-8 for corrective action.

(3) Providing a source of money for the indemnification of third parties under IC 13-23-9-3.

(4) Providing a source of money to pay for the expenses of the department incurred in paying and administering claims against

the trust fund. Money may be provided under this subdivision only for those job activities and expenses that consist exclusively of administering the excess liability trust fund.

(5) Providing a source of money to pay for the expenses of the department incurred in inspecting underground storage tanks.

(6) Providing a source of money to pay for the expenses of the department to establish and implement an underground storage tank operator training program:

(A) on an Internet web site; and

(B) that complies the requirements of the federal Energy Policy Act of 2005.

(b) The combined amount of payments described in subsection (a)(4), ~~and~~ (a)(5), **and (a)(6)** from the underground petroleum storage tank excess liability trust fund in a state fiscal year may not exceed ten percent (10%) of the fund income in the immediately preceding state fiscal year.

SECTION 2. IC 13-23-13-5.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5.5. (a) Notwithstanding any other provision of this chapter, a person who is not an owner or operator of an underground storage tank is liable to the state only for corrective action to address a surface spill or overfill of a regulated substance from the underground storage tank that is intentionally caused by the person during the delivery of the regulated substance into the underground storage tank.

(b) A person who is liable for corrective action under subsection (a) is subject to a claim for contribution to corrective action costs arising solely from the surface spill or overfill by a person ~~described in section 8(b)(1) or 8(b)(2) of this chapter.~~ **who caused the spill or overfill.** Except as otherwise provided in subsection (c) and (d), an action for contribution under this section may be brought in the same manner and is subject to the same provisions as an action brought under section ~~8(b)~~ **8** of this chapter.

(c) Before a person ~~brings~~ **initiates** a contribution action under this section, the person must provide written notice of intent to ~~bring~~ **initiate** the action by certified mail, **registered mail, United States mail, or personal service** to:

(1) the department; and

(2) each **reasonably known** person allegedly responsible for the surface spill or overfill that occurred during the delivery of a regulated substance into the underground storage tank.

(d) A person that provides notice under subsection (c) may not ~~bring~~ **initiate** a contribution action if:

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(1) the department commences an administrative proceeding or a civil action concerning the alleged surface spill or overfill not later than ninety (90) days after receiving notice under subsection (c)(1); or

(2) the person who receives the notice under subsection (c)(2) agrees in writing, within ninety (90) days after receipt of the notice, to remediate the surface spill or overfill in accordance with the state's rules governing spills and overfills.

SECTION 3. IC 13-23-13-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 8. (a) Except where an owner or operator can prove that a release from an underground storage tank was caused solely by:

(1) an act of God;

(2) an act of war;

(3) negligence on the part of the state or the United States government; or

(4) any combination of the causes set forth in subdivisions (1) through (3);

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

~~(b) A person who:~~

~~(1) pays to the state the costs described under subsection (a); or~~

~~(2) undertakes corrective action resulting from a release from an underground storage tank, regardless of whether the corrective action is undertaken voluntarily or under an order issued under this chapter, IC 13-23-14-1, IC 13-7-20-19 (before its repeal), or IC 13-7-20-26 (before its repeal);~~

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

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

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

(1) to investigate, minimize, contain, eliminate, remediate, mitigate, or clean up a release from an underground storage tank, including emergency measures taken as part of an initial response to the release; or

(2) under an order issued under this chapter, IC 13-23-14-1, IC 13-7-20-19 (before its repeal), or IC 13-7-20-26 (before its repeal);

may receive a contribution toward those costs from a person who owned or operated the underground storage tank at the time the release occurred.

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

(e) Before a person:

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

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

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

(f) If:

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

(2) the person who receives the notice submits an agreement in writing:

(A) to the department and the person who provided the notice under subsection (e); and

(B) agreeing to investigate and, if necessary, remediate the

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release in accordance with rules adopted by the board and department guidelines that govern releases from underground storage tanks, including time frames for investigation and, if necessary, for remediation;

the person who provided the notice under subsection (e) may recover under this article only past corrective action costs, court costs, and attorney's fees reasonably incurred before the date the written agreement is submitted under subdivision (2).

(g) If:

(1) the person who agrees in writing to remediate the release under subsection (f) does not investigate or remediate the release in substantial compliance with rules adopted by the board and department guidelines governing releases from underground storage tanks; and

(2) the department issues a notice of violation because of the person's failure to investigate or remediate the release in substantial compliance with the rules and guidelines;

the person who provided the notice under subsection (e) may recover reasonable attorney's fees to enforce the agreement that are incurred after the date the notice of violation is issued and until the date the violation is corrected.

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

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

(2) Award past, present, and future costs of undertaking corrective action reasonably incurred under subsection (c).

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

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

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

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

~~(e)~~ **(k)** The state may recover corrective action costs under this

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

SECTION 4. **An emergency is declared for this act.**

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COMMITTEE REPORT

Madam President: The Senate Committee on Energy and Environmental Affairs, to which was referred Senate Bill No. 347, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill DO PASS.

(Reference is made to Senate Bill 347 as introduced.)

GARD, Chairperson

Committee Vote: Yeas 8, Nays 1.

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