



Reprinted
February 18, 2011

SENATE BILL No. 347

DIGEST OF SB 347 (Updated February 17, 2011 4:54 pm - DI 118)

Citations Affected: IC 13-23.

Synopsis: Underground storage tank issues. Requires the department of environmental management to establish an underground storage tank (UST) operator training program. Provides for the use of excess liability trust fund to be used for expenses incurred in establishing and implementing an operator training program: (1) on an Internet web site, and (2) that complies with the requirements of the federal Energy Policy Act of 2005. Increases the limit on combined amount of payments from the excess liability trust fund in a fiscal year to eleven (11%) percent. Permits recovery or contribution only to the extent the costs are reasonable. Defines reasonable costs. Indicates which types of costs incurred for corrective action are subject to contribution. 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. Adds limitations for the recovery of attorney's fees, investigation and corrective action costs after the rejection date of a written offer or agreement. 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. Specifies that notice may be by certified mail, registered mail, United States mail, or personal service.

Effective: Upon passage; July 1, 2011.

Gard, Bray, Tallian

January 11, 2011, read first time and referred to Committee on Energy and Environmental Affairs.
February 15, 2011, reported favorably — Do Pass.
February 17, 2011, read second time, amended, ordered engrossed.

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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

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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:

1 SECTION 1. IC 13-23-3-5 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2011]: **Sec. 5. (a) The department shall establish a training
4 program:**

5 (1) on an Internet web site; and
6 (2) that complies with the requirements of the federal Energy
7 Policy Act of 2005 (P.L.109-58).
8 (b) The department may use the excess liability trust fund to pay
9 expenses related to the training program established under
10 subsection (a).

11 SECTION 2. IC 13-23-7-1, AS AMENDED BY P.L.114-2008,
12 SECTION 23, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
13 UPON PASSAGE]: **Sec. 1. (a)** Subject to subsection (b), the
14 underground petroleum storage tank excess liability trust fund is
15 established for the following purposes:

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- 1 (1) Assisting owners and operators of underground petroleum
- 2 storage tanks to establish evidence of financial responsibility as
- 3 required under IC 13-23-4.
- 4 (2) Providing a source of money to satisfy liabilities incurred by
- 5 owners and operators of underground petroleum storage tanks
- 6 under IC 13-23-13-8 for corrective action.
- 7 (3) Providing a source of money for the indemnification of third
- 8 parties under IC 13-23-9-3.
- 9 (4) Providing a source of money to pay for the expenses of the
- 10 department incurred in paying and administering claims against
- 11 the trust fund. Money may be provided under this subdivision
- 12 only for those job activities and expenses that consist exclusively
- 13 of administering the excess liability trust fund.
- 14 (5) Providing a source of money to pay for the expenses of the
- 15 department incurred in inspecting underground storage tanks.
- 16 **(6) Providing a source of money to pay expenses incurred by**
- 17 **the department in establishing and implementing an**
- 18 **underground storage tank operator training program:**
- 19 **(A) on an Internet web site; and**
- 20 **(B) that complies with the requirements of the federal**
- 21 **Energy Policy Act of 2005.**
- 22 (b) The combined amount of payments described in subsection
- 23 (a)(4), ~~and (a)(5), and (a)(6)~~ from the underground petroleum storage
- 24 tank excess liability trust fund in a state fiscal year may not exceed ~~ten~~
- 25 **eleven percent (11%)** of the fund income in the immediately
- 26 preceding state fiscal year.
- 27 SECTION 3. IC 13-23-13-5.5 IS AMENDED TO READ AS
- 28 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 5.5. (a)
- 29 Notwithstanding any other provision of this chapter, a person who is
- 30 not an owner or operator of an underground storage tank is liable to the
- 31 state only for corrective action to address a surface spill or overfill of
- 32 a regulated substance from the underground storage tank that is
- 33 intentionally caused by the person during the delivery of the regulated
- 34 substance into the underground storage tank.
- 35 (b) A person who is liable for corrective action under subsection (a)
- 36 is subject to a claim for contribution to corrective action costs arising
- 37 solely from the surface spill or overfill by a person ~~described in section~~
- 38 ~~8(b)(1) or 8(b)(2) of this chapter.~~ **who caused the spill or overfill.**
- 39 Except as otherwise provided in subsection (c) and (d), an action for
- 40 contribution under this section may be brought in the same manner and
- 41 is subject to the same provisions as an action brought under section
- 42 ~~8(b) 8~~ **8** of this chapter.

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

- 5 (1) the department; and
6 (2) each **reasonably known** person allegedly responsible for the
7 surface spill or overfill that occurred during the delivery of a
8 regulated substance into the underground storage tank.

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

- 11 (1) the department commences an administrative proceeding or
12 a civil action concerning the alleged surface spill or overfill not
13 later than ninety (90) days after receiving notice under subsection
14 (c)(1); or
15 (2) the person who receives the notice under subsection (c)(2)
16 agrees in writing, within ninety (90) days after receipt of the
17 notice, to remediate the surface spill or overfill in accordance
18 with the state's rules governing spills and overfills.

19 SECTION 4. IC 13-23-13-8 IS AMENDED TO READ AS
20 FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 8. (a) Except where
21 an owner or operator can prove that a release from an underground
22 storage tank was caused solely by:

- 23 (1) an act of God;
24 (2) an act of war;
25 (3) negligence on the part of the state or the United States
26 government; or
27 (4) any combination of the causes set forth in subdivisions (1)
28 through (3);

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

37 ~~(b) A person who:~~

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

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1 ~~IC 13-7-20-26~~ (before its repeal);
 2 is entitled to receive a contribution from a person who owned or
 3 operated the underground storage tank at the time the release occurred.
 4 A person who brings a successful action to receive a contribution from
 5 an owner or operator is also entitled to receive reasonable attorney's
 6 fees and court costs from the owner or operator. An action brought
 7 under this subsection may be brought in a circuit or superior court. In
 8 resolving a contribution claim, a court may allocate the cost of a
 9 corrective action among the parties to the action using equitable factors
 10 that the court determines are appropriate.

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

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

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

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

29 may receive a contribution toward the reasonable costs of a
 30 corrective action, including investigation, from a person who
 31 owned or operated the underground storage tank at the time the
 32 release occurred. For purposes of this subsection, reasonable costs
 33 of a corrective action are subject to the rules adopted by the
 34 underground storage tank financial assurance board that relate to
 35 reimbursement issued by the excess liability trust fund.

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

40 (e) As soon as practicable after the discovery of a storage tank,
 41 a person who:

42 (1) incurs investigative costs, corrective action costs, or

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1 attorney's fees; or
 2 (2) initiates an action under subsection (b) or (c) on or after
 3 the effective date of this subsection;
 4 shall provide written notice by certified mail, registered mail,
 5 United States mail, or personal service to each reasonably known
 6 person allegedly responsible for the release from the underground
 7 storage tank.

8 (f) If:
 9 (1) a person provides notice to a person under subsection (e);
 10 and
 11 (2) the person who receives the notice submits an agreement
 12 in writing:

- 13 (A) to the department and the person who provided the
 14 notice under subsection (e); and
- 15 (B) agreeing to investigate and, if necessary, remediate the
 16 release in accordance with rules adopted by the board and
 17 department guidelines that govern releases from
 18 underground storage tanks, including reasonable time
 19 frames to complete an investigation and, if necessary,
 20 remediation;

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

25 (g) If a person who provides a notice under subsection (f)(1)
 26 rejects a written offer or agreement that satisfies the provisions of
 27 subsection (f)(2), the person who submitted the written offer or
 28 agreement is entitled to seek a court order that limits the recovery
 29 of any attorney's fees, investigation costs, and corrective action
 30 costs incurred after the date of the written offer or agreement.

31 (h) If:
 32 (1) the person who agrees in writing to remediate the release
 33 under subsection (f) does not investigate or remediate the
 34 release in substantial compliance with rules adopted by the
 35 board and department guidelines governing releases from
 36 underground storage tanks; and
 37 (2) the department issues a notice of violation because of the
 38 person's failure to investigate or remediate the release in
 39 substantial compliance with the rules and guidelines;

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

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the date the violation is corrected.

(i) 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 (h).

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

~~(e)~~ (j) 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)~~ (k) 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)~~ (l) The state may recover corrective action costs under this 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 5. 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.

 SENATE MOTION

Madam President: I move that Senate Bill 347 be amended to read as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 13-23-3-5 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JULY 1, 2011]: **Sec. 5. (a) The department shall establish a training program:**

(1) on an Internet web site; and

(2) that complies with the requirements of the federal Energy Policy Act of 2005 (P.L.109-58).

(b) The department may use the excess liability trust fund to pay expenses related to the training program established under subsection (a)."

Page 2, line 6, delete "for the expenses of" and insert "**expenses incurred by**".

Page 2, line 7, delete "to establish and implement" and insert "**in establishing and implementing**".

Page 2, line 10, after "complies" insert "**with**".

Page 2, line 14, strike "ten" and insert "**eleven**".

Page 2, line 15, strike "(10%)" and insert "**(11%)**".

Page 4, line 7, delete "(h)" and insert "**(i)**".

Page 4, line 19, delete "those costs" and insert "**the reasonable costs of a corrective action, including investigation,**".

Page 4, line 21, after "occurred." insert "**For purposes of this subsection, reasonable costs of a corrective action are subject to the rules adopted by the underground storage tank financial assurance board that relate to reimbursement issued by the excess liability**

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trust fund."

Page 4, line 26, delete "Before a person:" and insert "As soon as practicable after the discovery of a storage tank, a person who:".

Page 4, line 27, delete "significant".

Page 4, line 31, delete "the person must" and insert "shall".

Page 5, line 3, delete "time frames for" and insert "reasonable time frames to complete an".

Page 5, line 4, delete "for".

Page 5, between lines 8 and 9, begin a new paragraph and insert:

"(g) If a person who provides a notice under subsection (f)(1) rejects a written offer or agreement that satisfies the provisions of subsection (f)(2), the person who submitted the written offer or agreement is entitled to seek a court order that limits the recovery of any attorney's fees, investigation costs, and corrective action costs incurred after the date of the written offer or agreement."

Page 5, line 9, delete "(g)" and insert "(h)".

Page 5, line 22, delete "(h)" and insert "(i)".

Page 5, line 32, delete "(g)." and insert "(h)".

Page 5, line 35, delete "(i)" and insert "(j)".

Page 5, line 38, delete "(j)" and insert "(k)".

Page 5, line 42, delete "(k)" and insert "(l)".

Renumber all SECTIONS consecutively.

(Reference is to SB 347 as printed February 16, 2011.)

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