



February 17, 2012

**ENGROSSED
SENATE BILL No. 168**

DIGEST OF SB 168 (Updated February 16, 2012 1:26 pm - DI 84)

Citations Affected: IC 13-23.

Synopsis: Liability for underground storage tank fees. Provides that the state may impose a lien on the property of an owner or operator of an underground storage tank, if the owner or operator of the tank fails to register or pay certain fees. Requires the department of environmental management (department) to: (1) provide 30 days written notice before filing a lien; and (2) perfect a lien by recording the lien with the county recorder in the county in which the property is located. Provides that a bona fide purchaser is eligible to receive funds from the underground storage tank excess liability trust fund if the: (1) transferee acquires an underground storage tank as a result of a bona fide transaction; (2) transferor fails to pay any registration fees; (3) department fails to record the lien; and (4) transferee pays past due fees and interest not more than 30 days after receiving notice of indebtedness.

Effective: July 1, 2012.

**Randolph, Gard, Buck, Bray,
Charbonneau, Eckerty, Holdman,
Schneider, Tallian, Breaux, Landske**
(HOUSE SPONSORS — SOLIDAY, WOLKINS, HARRIS, ESPICH)

January 4, 2012, read first time and referred to Committee on Energy and Environmental Affairs.

January 23, 2012, amended, reported favorably — Do Pass.

January 26, 2012, read second time, ordered engrossed.

January 27, 2012, engrossed.

January 31, 2012, read third time, passed. Yeas 50, nays 0.

HOUSE ACTION

February 9, 2012, read first time and referred to Committee on Environmental Affairs.

February 16, 2012, reported — Do Pass.

ES 168—LS 6647/DI 118+



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February 17, 2012

Second Regular Session 117th General Assembly (2012)

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 2011 Regular Session of the General Assembly.

ENGROSSED SENATE BILL No. 168

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 13-23-7-10 IS ADDED TO THE INDIANA CODE
2 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2012]: **Sec. 10. (a) The state may impose a lien on the property of
4 an owner or operator, if the owner or operator fails to pay fees that
5 are due under IC 13-23-12-1. The lien may secure the payment to
6 the state of an amount equal to the amount of the fees that are due.**
7 **(b) Before imposing a lien under this section, the department
8 shall provide at least thirty (30) days written notice to:**
9 **(1) the owner of record if the owner can be identified; and**
10 **(2) if the owner of record cannot be identified, the tenant,
11 operator, or other person having control of the property.**
12 **(c) Not earlier than thirty (30) days after notice is received, in
13 order to perfect the lien, the department shall record a lien
14 imposed under this section with the county recorder in the county
15 in which the property is located.**
16 SECTION 2. IC 13-23-8-4 IS AMENDED TO READ AS
17 FOLLOWS [EFFECTIVE JULY 1, 2012]: **Sec. 4. (a) Except as**

ES 168—LS 6647/DI 118+



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1 provided under subsection (b), and subject to section 4.5 of this
2 chapter, an owner or operator may receive money from the excess
3 liability trust fund under section 1 of this chapter only if the owner or
4 operator is in substantial compliance (as defined in 328 IAC 1-1-9)
5 with the following requirements:

6 (1) The owner or operator has complied with the following:

7 (A) This article or IC 13-7-20 (before its repeal).

8 (B) Rules adopted under this article or IC 13-7-20 (before its
9 repeal).

10 A release from an underground petroleum storage tank may not
11 prevent an owner or operator from establishing compliance with
12 this subdivision to receive money from the excess liability fund.

13 (2) The owner or operator has paid all registration fees that are
14 required under rules adopted under IC 13-23-8-4.5.

15 (3) The owner or operator has provided the commissioner with
16 evidence of payment of the amount of liability the owner or
17 operator is required to pay under section 2 of this chapter.

18 (4) A corrective action plan is approved by the commissioner or
19 deemed approved under this subdivision. The corrective action
20 plan for sites with a release from an underground petroleum
21 storage tank that impacts soil or groundwater, or both, is
22 automatically deemed approved only as long as:

23 (A) the plan conforms with:

24 (i) 329 IAC 9-4 and 329 IAC 9-5; and

25 (ii) the department's cleanup guidelines set forth in the
26 Underground Storage Tank Branch Guidance Manual,
27 including the department's risk integrated system of closure
28 standards; and

29 (B) the soil and groundwater contamination is confined to the
30 owner's or operator's property.

31 If the corrective action plan fails to satisfy any of the requirements
32 of clause (A) or (B), the plan is automatically deemed
33 disapproved. If a corrective action plan is disapproved, the
34 claimant may supplement the plan. The corrective action plan is
35 automatically deemed approved when the cause for the
36 disapproval is corrected. For purposes of this subdivision, in the
37 event of a conflict between compliance with the corrective action
38 plan and the department's standards in clause (A), the
39 department's standards control. For purposes of this subdivision,
40 if there is a conflict between compliance with the corrective
41 action plan and the board's rules, the board's rules control. The
42 department may audit any corrective action plan. If the

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1 commissioner denies the plan, a detailed explanation of all the
 2 deficiencies of the plan must be provided with the denial.
 3 (b) An owner, operator, or transferee of property under subsection
 4 (e) is eligible to receive money from the fund before the owner,
 5 operator, or transferee has a corrective action plan approved or deemed
 6 approved if:
 7 (1) the work for which payment is sought under IC 13-23-9-2 was
 8 an initial response to a petroleum release that created the need for
 9 emergency action to abate an immediate threat of harm to human
 10 health, property, or the environment;
 11 (2) the work is for a site characterization completed in accordance
 12 with 329 IAC 9-5; or
 13 (3) the department has not acted upon a corrective action plan
 14 submitted under IC 13-23-9-2 within ninety (90) days after the
 15 date the department receives the:
 16 (A) plan; or
 17 (B) application to the fund;
 18 whichever is later.
 19 (c) The amount of money an owner, operator, or transferee of
 20 property under subsection (e) is eligible to receive from the fund under
 21 subsection (b) must be calculated in accordance with 328 IAC 1-3.
 22 (d) An owner, an operator, or a transferee of property described in
 23 subsection (e) eligible to receive money from the fund under this
 24 section may assign that right to another person.
 25 (e) A transferee of property upon which a tank was located is
 26 eligible to receive money from the fund under this section if **any of the**
 27 **following conditions are met:**
 28 (1) The transferor of the property was eligible to receive money
 29 under this section with respect to the property.
 30 (2) **The:**
 31 (A) **transferee acquires ownership or operation of an**
 32 **underground petroleum storage tank as a result of a bona**
 33 **fide, good faith transaction, negotiated at arm's length,**
 34 **between parties under separate ownership;**
 35 (B) **transferor failed to pay fees due under IC 13-23-12-1;**
 36 **and**
 37 (C) **department failed to record a lien against the property**
 38 **under IC 13-23-7-10.**
 39 (3) **The transferee pays all applicable tank fees under**
 40 **IC 13-23-12-1, including past due fees and interest for each**
 41 **tank not more than thirty (30) days after receiving notice of**
 42 **the indebtedness.**

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COMMITTEE REPORT

Madam President: The Senate Committee on Energy and Environmental Affairs, to which was referred Senate Bill No. 168, 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:

Page 1, line 3, delete "property on" and insert "**the property of an owner or operator**".

Page 1, line 4, delete "which an underground storage tank is located,".

Page 1, line 13, after "received," insert "**in order to perfect the lien**".

Page 3, line 28, before "transferor" delete "the" and insert "The".

Page 3, line 30, delete "transferee:" and insert ":".

Page 3, line 31, after "(A)" insert "**transferee**".

Page 3, line 35, delete "the".

Page 3, line 37, delete "the".

Page 3, after line 38, begin a new line block indented and insert:

"(3) The transferee pays all applicable tank fees under IC 13-23-12-1, including past due fees and interest for each tank not more than thirty (30) days after receiving notice of the indebtedness."

and when so amended that said bill do pass.

(Reference is to SB 168 as introduced.)

GARD, Chairperson

Committee Vote: Yeas 9, Nays 0.

COMMITTEE REPORT

Mr. Speaker: Your Committee on Environmental Affairs, to which was referred Senate Bill 168, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

WOLKINS, Chair

Committee Vote: yeas 9, nays 0.

ES 168—LS 6647/DI 118+



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