March 19, 2013

ENGROSSED
SENATE BILL No. 297

DIGEST OF SB 297 (Updated March 13, 2013 11:14 am - DI 69)

Citations Affected: IC 13-23.

Synopsis: Payments from excess liability trust fund. Allows the department of state revenue to impose a lien on the property of an owner or operator of an underground storage tank (tank), if the owner or operator fails to pay fees due under certain provisions. Allows a transferee of property upon which a tank is located to receive money from the excess liability trust fund if applicable tank fees are paid. Provides that past due fees include fees, interest, and penalties assessed by the department of state revenue.

Effective: July 1, 2013.

Randolph, Charbonneau, Schneider
(HOUSE SPONSORS — WOLKINS, BROWN C, HARRIS)

January 8, 2013, read first time and referred to Committee on Rules and Legislative Procedure.
January 15, 2013, amended; reassigned to Committee on Tax and Fiscal Policy.
February 7, 2013, reported favorably — Do Pass.
February 11, 2013, read second time, ordered engrossed.
February 12, 2013, engrossed. Read third time, passed. Yeas 49, nays 0.

HOUSE ACTION

February 26, 2013, read first time and referred to Committee on Environmental Affairs.
March 18, 2013, reported — Do Pass.

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First Regular Session 118th General Assembly (2013)

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 2012 Regular Session of the General Assembly.

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ENGROSSED
SENATE BILL No. 297

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 13-23-7-10, AS ADDED BY P.L.19-2012, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 10. (a) The ~~state~~ **department of revenue** may impose a lien on the property of an owner or operator, if the owner or operator fails to pay fees that are due under IC 13-23-12-1 **according to the provisions in IC 6-8.1-8-2.** The lien may secure the payment to the state of an amount equal to the amount of the fees that are due.

~~(b) Before imposing a lien under this section, the department shall provide at least thirty (30) days written notice to:~~

~~(1) the owner of record if the owner can be identified; and~~

~~(2) if the owner of record cannot be identified, the tenant, operator, or other person having control of the property.~~

~~(c) Not earlier than thirty (30) days after notice is received, in order to perfect the lien, the department shall record a lien imposed under this section with the county recorder in the county in which the property is located.~~

(b) If the department of revenue fails to impose a lien on the

property described in subsection (a), no penalties or interest may be collected on the tax under IC 6-8.1-8-2.

SECTION 2. IC 13-23-8-4, AS AMENDED BY P.L.19-2012, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2013]: Sec. 4. (a) Except as provided under subsection (b), and subject to section 4.5 of this chapter, an owner or operator may receive money from the excess liability trust fund under section 1 of this chapter only if the owner or operator is in substantial compliance (as defined in 328 IAC 1-1-9) with the following requirements:

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

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

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

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

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

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

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

(A) the plan conforms with:

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

(ii) the department's cleanup guidelines set forth in the Underground Storage Tank Branch Guidance Manual, including the department's ~~risk integrated system of closure~~ **guidance on remediation and closure** standards; and

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

If the corrective action plan fails to satisfy any of the requirements of clause (A) or (B), the plan is automatically deemed disapproved. If a corrective action plan is disapproved, the claimant may supplement the plan. The corrective action plan is automatically deemed approved when the cause for the disapproval is corrected. For purposes of this subdivision, in the event of a conflict between compliance with the corrective action plan and the department's standards in clause (A), the

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department's standards control. For purposes of this subdivision, if there is a conflict between compliance with the corrective action plan and the board's rules, the board's rules control. The department may audit any corrective action plan. If the commissioner denies the plan, a detailed explanation of all the deficiencies of the plan must be provided with the denial.

(b) An owner, operator, or transferee of property under subsection (e) is eligible to receive money from the fund before the owner, operator, or transferee has a corrective action plan approved or deemed approved if:

(1) the work for which payment is sought under IC 13-23-9-2 was an initial response to a petroleum release that created the need for emergency action to abate an immediate threat of harm to human health, property, or the environment;

(2) the work is for a site characterization completed in accordance with 329 IAC 9-5; or

(3) the department has not acted upon a corrective action plan submitted under IC 13-23-9-2 within ninety (90) days after the date the department receives the:

(A) plan; or

(B) application to the fund;

whichever is later.

(c) The amount of money an owner, operator, or transferee of property under subsection (e) is eligible to receive from the fund under subsection (b) must be calculated in accordance with 328 IAC 1-3.

(d) An owner, an operator, or a transferee of property described in subsection (e) eligible to receive money from the fund under this section may assign that right to another person.

(e) A transferee of property upon which a tank was located is eligible to receive money from the fund under this section if: ~~any of the following conditions are met:~~

(1) the transferor of the property was eligible to receive money under this section with respect to the property;

(2) the ~~(A)~~ transferee ~~acquires~~ **acquired** ownership or operation of an underground petroleum storage tank as a result of a bona fide, good faith transaction, negotiated at arm's length, between parties under separate ownership; **and**

~~(B) transferor failed to pay fees due under IC 13-23-12-1; and~~

~~(C) department failed to record a lien against the property under IC 13-23-7-10.~~

(3) the transferee pays all applicable tank fees under IC 13-23-12-1, including past due fees and interest for each tank,

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not more than thirty (30) days after receiving notice of the indebtedness.

For purposes of subdivision (3), past due fees include fees, interest, and penalties assessed by the department of revenue.

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COMMITTEE REPORT

Madam President: The Senate Committee on Rules and Legislative Procedure, to which was referred Senate Bill No. 297, 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:

Delete everything after the enacting clause and insert the following:

(SEE TEXT OF BILL)

and when so amended that said bill be reassigned to the Senate Committee on Tax and Fiscal Policy.

(Reference is to SB 297 as introduced.)

LONG, Chairperson

COMMITTEE REPORT

Madam President: The Senate Committee on Tax and Fiscal Policy, to which was referred Senate Bill No. 297, 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 297 as printed January 16, 2013.)

HERSHMAN, Chairperson

Committee Vote: Yeas 12, Nays 0.

COMMITTEE REPORT

Mr. Speaker: Your Committee on Environmental Affairs, to which was referred Senate Bill 297, 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 11, nays 0.

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