

**LEGISLATIVE FISCAL NOTE**

**BILL NUMBER:** HB 1029/SB 1012

**SHORT TITLE:** Underground Storage Tank Amendments

**SPONSOR(S):** Representatives Weatherly; J. Brown, Church, Clary, Creech, Culp, Cummings, Davis, Dickson, Hill, Holmes, Hunt, Justus, Locke, Luebke, McMahan, Nichols, Pate, Reynolds, Richardson, Russell, Tallent, Tolson, Wilkins and Yongue and Senators Kerr; Blackmon, East, Forrester, Hartsell and Parnell.

**FISCAL IMPACT:** \* **Expenditures: Increase (x) Decrease ( )**  
                  **Revenues: Increase ( ) Decrease ( )**  
\*\* **No Impact (x )**  
\*\*\* **No Estimate Available (x)**

\* Section 15 appropriations, including requirements to implement enforcement, operating permit provisions in Sections 2, 3, 10, 14  
\*\* Sections 4, 6, 12  
\*\*\* Sections 1, 5, 7, 8, 9, 11, 13, 16

**FUNDS AFFECTED:** **General Fund ( ) Highway Fund ( ) Local Fund ( )**  
**Other Funds (x)** Commercial Leaking Petroleum  
Underground Storage Tank Cleanup Fund (Commercial  
Fund);  
Noncommercial Leaking Petroleum Underground Storage  
Tank  
Cleanup Fund (Noncommercial Fund)

**BILL SUMMARY:** UNDERGROUND STORAGE TANK AMENDS (=S 1012). TO IMPROVE THE REGULATION OF PETROLEUM UNDERGROUND STORAGE TANKS AND THE CLEANUP OF LEAKING PETROLEUM UNDERGROUND STORAGE TANKS. Identical to S 1012, introduced 5/4/95. Adds new section to require the Environmental Management Commission to adopt rules to establish a risk-based approach for the assessment, prioritization, and cleanup of discharges and releases from petroleum underground storage tanks. Authorizes the Commission to require an owner or operator or a landowner eligible for reimbursement to determine the degree of risk to human health and the environment that is posed by a discharge or release from petroleum underground storage tanks. Provides that if the Commission concludes that no cleanup or further action is required, the Department of Environment, Health and Natural Resources will not pay for or reimburse any costs from either the Commercial or Noncommercial Fund, other than that reasonable and necessary to conduct the risk assessment unless: (1) cleanup is ordered or damages awarded in a finally adjudicated judgment; (2) cleanup is required or damages agreed to in a consent judgment approved by the Department; (3) cleanup is required or damages agreed to in a settlement approved by the Department; (4) payment of reimbursement is for costs incurred prior to or as a result of notification of a determination by the Commission that no cleanup, no further cleanup or no action is required; or (5) payment or reimbursement is for costs that were incurred as a result of a later

determination by the Commission that the discharge or release poses a threat to human health or the environment.

Requires the owner or operator of each petroleum commercial underground storage tank to annually obtain an operating permit from the Department for the facility where the tank is located. Limits liability for display of an unexpired operating permit certificate to the owner or operator, unless another person knows or has reason to know that the owner or operator does not hold a currently valid operating permit for the facility. Permits an owner or operator to challenge a decision to deny or revoke a permit by filing a contested action.

Provides for a civil penalty of not more than \$10,000 per day, not to exceed \$200,000, for violations of the act. Authorizes the Department to seek injunctive relief in appropriate cases. Provides for criminal penalties for negligent violations of \$15,000 per day, not to exceed \$200,000 for each 30 day period, and \$100,000 per day for knowing and willful violations, not to exceed \$500,000 for each 30 day period. Provides that consent by the person endangered is an affirmative defense. Prohibits state criminal actions against a person who has been previously convicted of a federal violation based on the same set of facts.

Requires that the Commercial Fund be used to pay the cost of cleanup of environmental damage in excess of the multiple discharge amount up to the applicable aggregate maximum in the event two or more discharges or releases at any one facility, the first of which was discovered or reported on or after June 30, 1988 result in more than one plume of soil, surface water, or groundwater contamination. Provides that the Department will pay 80% of costs in excess of \$1,000,000 up to a maximum of \$1,500,000 upon proof that the owner, operator, or landowner paid at least 20%. Prohibits using the Commercial and Noncommercial Funds for costs paid or reimbursed by or from any other source.

Authorizes the Department to waive late penalties under certain proscribed situations. Authorizes the Department to contract for services necessary to evaluate any claim for reimbursement or compensation. Prohibits the Commission from requiring collection or removal of a discharge or restoration of an affected area if the person having control over oil and other hazardous materials discharged in violation of the act complies with rules governing the collection and removal of a discharge and the restoration of an affected area adopted by the Commission.

Requires the Department to begin issuing operating permits and operating permit certificates by January 1, 1996 and to have issued those permits and certificates to every facility covered under the act by July 1, 1996.

Appropriates \$2,625,000 from Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund to the Department of Environment, Health, and Natural Resources for 1995-96 and \$2,625,000 for 1996-97. Appropriates \$800,000 from Noncommercial Leaking Petroleum Underground Storage Tank Cleanup Fund to the Department of Environment, Health, and Natural Resources for 1995-96 and \$800,000 for 1996-97. Appropriates

\$135,000 from Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund to the Department of Agriculture for 1995-96 and \$90,000 for 1996-97.

**EFFECTIVE DATE:** Effective upon ratification except, section regarding registration of petroleum underground storage tanks is effective July 1, 1996, sections regarding enforcement and penalties are effective January 1, 1996, sections regarding the cleanup fund apply to any pending claim for reimbursement and apply retroactively to any discharge or release that was discovered or reported on or after June 30 1988, and appropriations are effective July 1, 1995.

**PRINCIPAL DEPARTMENT(S)/PROGRAM(S) AFFECTED:**

Department of Environment, Health, and Natural Resources  
 Division of Environmental Management, Groundwater Section  
 Department of Agriculture  
 Standards Division

**FISCAL IMPACT**

**COMMERCIAL FUND**

**APPROPRIATION TO DEPARTMENT OF ENVIRONMENT, HEALTH AND NATURAL RESOURCES**

	<u>FY95-96</u>	<u>FY96-97</u>	<u>FY97-98</u>	<u>FY98-99</u>	<u>FY99-00</u>
<b>EXPENDITURES</b>					
<b>RECURRING</b>	1,950,000	1,950,000	1,950,000	1,950,000	1,950,000
<b>NON-RECURRING</b>	150,000				
	<u>2,100,000</u>	<u>1,950,000</u>	1,950,000	1,950,000	1,950,000
<b>POSITIONS:</b>	41	41	41	41	41

**APPROPRIATION TO DEPARTMENT OF AGRICULTURE**

	<u>FY95-96</u>	<u>FY96-97</u>	<u>FY97-98</u>	<u>FY98-99</u>	<u>FY99-00</u>
<b>EXPENDITURES</b>					
<b>RECURRING</b>	90,000	90,000	90,000	90,000	90,000
	<u>135,000</u>	90,000	90,000	90,000	90,000
<b>POSITIONS:</b>	3	3	3	3	3

**ASSUMPTIONS AND METHODOLOGY:**

**Appropriations**

The bill appropriates funds from the Commercial Fund to DEHNR and the Dept. of Agriculture to implement the provisions of the state's underground storage tank regulations and to administer the Leaking Petroleum Underground Storage Tank Cleanup (UST) program (the

continuation budget currently includes an appropriation of \$698,325 from the Commercial Fund to DEHNR for this purpose).

The appropriation to DEHNR includes funds for additional staff and support for UST permit certification, inspection, leak compliance, reimbursement review and enforcement activities. No more than \$125,000 each fiscal year may be used to identify and evaluate the potential health and environmental risks of abandoned petroleum tanks. \$150,000 is provided for the 1995-96 fiscal year only to evaluate the effectiveness of the current practice of requiring Professional Engineers and Licensed Geologists to certify closure activities associated with UST sites.

The funds appropriated to the Dept. of Agriculture will support 3 additional inspector positions to perform annual leak compliance inspections at commercial retail outlets.

### **Risk Assessment**

The costs of a site-specific risk-based assessments completed in accordance with rules adopted by the Environmental Management Commission (EMC) are eligible for reimbursement from the Commercial Fund, but subject to applicable deductibles. DEHNR estimates that most risk assessments will cost less than the applicable deductible resulting in no impact on Commercial Fund expenditures. However, because the intent of this provision of the bill is protect the solvency of the fund and limit reimbursements to cleanups posing the greatest risk to human health and the environment, the Department projects that this approach will reduce the overall costs to (reimbursements from) the fund by approximately 30%.

### **120-day Rule Repealed**

Current law requires that to be eligible for reimbursement from the Commercial Fund, a discharge or release from an underground tank must be discovered or reported within 120 days of the time the tank is removed from the ground. This act eliminates this requirement, making the cleanup of any petroleum discharge from a commercial UST eligible for reimbursement from the Commercial Fund if the tank was in the ground June 30, 1988 and the release is discovered or reported on or after that date.

This change could have the effect of increasing the number of claims for sites previously ineligible under the 120-day rule. DEHNR knows of 10 sites previously denied reimbursement based on this rule that would now be eligible for reimbursement. There may be additional sites that never applied for reimbursement because the owner/operator of the tank believed the site to be ineligible for reimbursement under the 120-day rule.

The increase in claims will likely result in an increase in expenditures or reimbursements from the Commercial Fund, but no estimate of the exact amount is available. It is unknown how many

owner/operators will come forward as a result of this change, how many will be denied reimbursement based on other eligibility criteria and how many sites will be determined to pose a degree of risk "that is no greater than the acceptable level of risk established by the Commission" under the new risk assessment rules.

### **Multiple Deductibles**

Currently, discharges from more than one UST are treated as separate discharge occurrences and require a separate deductible for each, unless the discharges combine to form one plume of soil, surface water or groundwater contamination, in which case they are treated as one discharge requiring one deductible. The provisions of this bill designate the deductible for multiple discharges from a single facility to be the lesser of the sum of the deductibles for each discharge treated separately as if it were the only release or one and one-half (1.5) times the highest single deductible.

According to the Department more owners/operators have paid sizable deductibles for multiple releases that did not combine than have benefited when multiple discharges have combined requiring only a single deductible. Therefore, this provision will likely increase the amount of reimbursements from the Commercial Fund because the owner/operator's share of the costs is decreasing at the expense of the fund.

### **Increase in Coverage**

This act increases the maximum amount covered by the Commercial Fund for environmental cleanups and third party damage claims from \$1,000,000 to \$1,500,000. The Commercial Fund will reimburse 80% of the costs between \$1,000,000 and \$1,500,000.

This change is likely to have a negligible impact on the fund since to date there have been no cleanups in excess of \$1,000,000 and there are currently only a few claims approaching \$1,000,000.

### **Insurance Payments**

The bill prohibits the use of the Commercial Fund to reimburse any costs reimbursed by any other source, including insurers.

Although this provision should result in a decrease in the amount of expenditures or reimbursements from the fund, no estimate is available because the Department has no way of knowing how many owner/operators are insured.

### **Outside Review**

This act allows DEHNR to contract for expert witnesses or other consultant services necessary to evaluate reimbursement and

compensation claims. The Department has no expectation of widespread use of this provision. The impact on the Commercial Fund should be negligible since such services are primarily required in legal proceedings, which historically have been settled prior this stage.

As written, the provisions of this bill related to the cleanup funds apply to any pending claim for reimbursement and apply retroactively to any discharge or release that was discovered or reported on or after June 30 1988, making it difficult to predict the actual impact, positive or negative, on the Commercial Fund. Although the direction of the fiscal impact to the Commercial Fund can be predicted for certain provisions, without an estimate of the amount of each impact, no determination can be made as to the net effect of this act on the fund.

FISCAL IMPACT

NONCOMMERCIAL FUND

APPROPRIATION TO DEPARTMENT OF ENVIRONMENT, HEALTH AND NATURAL RESOURCES

	<u>FY95-96</u>	<u>FY96-97</u>	<u>FY97-98</u>	<u>FY98-99</u>	<u>FY99-00</u>
<b>EXPENDITURES</b>					
<b>RECURRING</b>	125,000	125,000	125,000	125,000	125,000
<b>NON-RECURRING</b>					

**POSITIONS:**

**ASSUMPTIONS AND METHODOLOGY:**

**Appropriations**

The bill appropriates funds from the Noncommercial Fund to DEHNR implement the provisions of the state's underground storage tank regulations and to administer the Leaking Petroleum Underground Storage Tank Cleanup (UST) program. The continuation budget currently includes an appropriation of \$698,326 from the Noncommercial Fund to DEHNR for this purpose.

The additional \$125,000 appropriated to DEHNR each fiscal year from the noncommercial fund may be used only to identify and evaluate the potential health and environmental risks of abandoned petroleum tanks.

**Risk Assessment**

The costs of a site-specific risk-based assessment completed in accordance with rules adopted by the Environmental Management Commission are eligible for reimbursement from the Noncommercial Fund. However, because the intent of this provision of the bill is protect the solvency of the fund and limit reimbursements to cleanups posing the greatest risk to human health and the environment, the Department projects that this approach will reduce the overall costs to (reimbursements from) the fund by approximately 30%.

**Insurance Payments**

The bill prohibits the use of the Noncommercial Fund to reimburse any costs reimbursed by any other source, including insurers.

Although this provision should result in a decrease in the amount of expenditures or reimbursements from the fund, no estimate is available because the Department has no way of knowing how many owner/operators are insured.



**Outside Review**

This act allows DEHNR to contact for expert witnesses or other consultant services necessary to evaluate reimbursement and compensation claims. The Department has no expectation of widespread use of this provision. The impact on the Noncommercial Fund should be negligible since such services are primarily required in legal proceedings, which historically have been settled prior this stage.

As written, the provisions of this bill related to the cleanup funds apply to any pending claim for reimbursement and apply retroactively to any discharge or release that was discovered or reported on or after June 30 1988, making it difficult to predict the actual impact, positive or negative, on the Noncommercial Fund. Although the direction of the fiscal impact to the Noncommercial Fund can be predicted for certain provisions, without an estimate of the amount of each impact, no determination can be made as to the net effect of this act on the fund.

**SOURCES OF DATA:**

Department of Environment, Health, and Natural Resources  
Division of Environmental Management, Groundwater Section

**TECHNICAL CONSIDERATIONS:**

**FISCAL RESEARCH DIVISION**  
733-4910

**PREPARED BY:** Mona Moon  
**APPROVED BY:** Tom Covington **TomC**  
**DATE:** May 23, 1995  
**[FRD#003]**



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