

SENATE BILL No. 592

DIGEST OF INTRODUCED BILL

Citations Affected: IC 13-11-2; IC 13-23.

Synopsis: Excess liability trust fund claims. Provides that, if certain conditions are met, a person who was not an owner or operator of an underground storage tank (UST) at the time of a release from the UST may assume liability for corrective action in response to the release from the UST and may receive reimbursement from the underground petroleum storage tank excess liability trust fund (ELTF). Provides that the administrator of the ELTF: (1) may audit any claim against the ELTF to protect against fraud, waste, and abuse; and (2) may pay from the ELTF, in connection with one eligible release from a UST, not more than \$1,500,000 for corrective action and not more than \$1,000,000 for third party indemnification claims. Authorizes the department of environmental management (IDEM) to develop, and the underground storage tank financial assurance board to approve, guidelines to assist eligible parties in identifying goods and services for which reimbursement may be paid from the ELTF. Provides that a person to whom the right to receive payment from the ELTF was assigned, in order to receive payment, must provide proof of the assignment to the administrator of the ELTF. Authorizes the commissioner of IDEM to undertake corrective action in response to a release of a regulated substance from a UST if the person who is subject to a corrective action order with respect to the release, through no fault of that person, does not have access to the property that is the subject of the corrective action order.

Effective: July 1, 2019.

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January 15, 2019, read first time and referred to Committee on Environmental Affairs.



First Regular Session of the 121st General Assembly (2019)

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 2018 Regular and Special Session of the General Assembly.

SENATE BILL No. 592

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 13-11-2-2 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 2. **(a) Except as**
3 **provided in sections 81 and 123 of this chapter, IC 13-17-12-5,**
4 **IC 13-18-2-1, IC 13-23, and IC 13-25-2-4, "administrator" refers to**
5 the administrator of the United States Environmental Protection
6 Agency.

7 **(b) "Administrator", for purposes of IC 13-23, refers to the**
8 **administrator of the ELTF.**

9 SECTION 2. IC 13-11-2-62.5, AS ADDED BY P.L.96-2016,
10 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
11 JULY 1, 2019]: Sec. 62.5. "Eligible party", as used in IC 13-23, means
12 any of the following **with respect to a UST from which a release (as**
13 **defined in section 184(a) of this chapter) occurs:**

14 (1) **A person:**

15 **(A) who was an owner (as defined in ~~IC 13-11-2-150~~; section**
16 **150 of this chapter) of the UST when the release from the**
17 **UST occurred; or**



(B) if the date when the release from the UST occurred cannot be determined, who was an owner of the UST when the release was discovered.

(2) A person:

(A) who was an operator (as defined in ~~IC 13-11-2-148(d)~~ and ~~IC 13-11-2-148(e)~~; section 148(d) of this chapter) of the UST when the release from the UST occurred; or

(B) if the date when the release from the UST occurred cannot be determined, who was an operator of the UST when the release was discovered.

(3) A ~~former owner or operator of a UST~~; person who assumes liability for corrective action in accordance with IC 13-23-13-2.5.

(4) A transferee of property upon which a UST is located;

(5) A transferee of property upon which a UST was located but from which the UST has been removed;

SECTION 3. IC 13-23-7-7, AS AMENDED BY P.L.96-2016, SECTION 18, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 7. (a) The state board of accounts shall audit the ELTF.

(b) Once every five (5) years, the department shall arrange for an independent actuarial study examining the future obligations and fiscal sustainability of the ELTF.

(c) The administrator of the ELTF may audit any claim against the ELTF to protect against fraud, waste, and abuse.

SECTION 4. IC 13-23-8-4, AS AMENDED BY P.L.96-2016, SECTION 25, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 4. (a) The administrator shall pay ELTF claims that are:

(1) for costs related to eligible releases;

(2) submitted by eligible parties; and

(3) submitted in accordance with IC 13-23-8 and IC 13-23-9.

(b) An eligible party may assign the right to receive payment of an ELTF claim to another person.

(c) To receive payment of an ELTF claim, the person to whom the right to receive payment was assigned under subsection (b) must provide proof of the assignment to the administrator of the ELTF.

SECTION 5. IC 13-23-8-8, AS AMENDED BY P.L.96-2016, SECTION 30, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 8. (a) The administrator of the ELTF:

(1) shall not pay more than two million five hundred thousand



dollars (\$2,500,000) from the ELTF per eligible release; and
 (2) shall not pay any eligible party more than ten million dollars (\$10,000,000) from the ELTF per fiscal year.

(b) After an eligible party has submitted multiple ELTF claims for a total of at least ten million dollars (\$10,000,000) in a fiscal year, the eligible party is ineligible to submit any other ELTF claim during that fiscal year.

(c) If the right to receive money from the fund under this chapter is assigned as described in section 4(b) of this chapter, payments made to one (1) or more assignees shall be considered payments to the assignor for purposes of the limits established in subsection (a).

(d) Reimbursement under this section shall be apportioned as follows for each eligible release from a UST:

(1) For corrective action ordered under IC 13-23-13, the administrator may pay not more than one million five hundred thousand dollars (\$1,500,000).

(2) For third party indemnification claims submitted in accordance with IC 13-23-9-3, the administrator may pay not more than one million dollars (\$1,000,000).

SECTION 6. IC 13-23-9-1.5, AS AMENDED BY P.L.200-2017, SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 1.5. (a) The administrator may pay ELTF claims only for costs that:

(1) are reasonable and cost effective; and
 (2) result from or reimburse the ~~claimant~~ **eligible party** for the following:

(A) Work performed for site characterization.

(B) Development and implementation of a corrective action plan that:

(i) is approved by the commissioner under rules adopted by the environmental rules board; and

(ii) has not been suspended.

(C) Work performed as part of an emergency response necessary to abate an immediate threat of harm to human health, property, or the environment.

(D) Third party indemnification claims submitted in accordance with section 3 of this chapter.

(E) Reasonable attorney's fees incurred in defense of third party claims.

(F) Releases that occurred on or after April 1, 1988.

(G) Compensation paid by the claimant to technicians for services performed in preparation of the claimant's ELTF



1 claim.

2 (b) The administrator may also pay ELTF claims for costs not
3 described in subsection (a) if allowed under rules adopted by the
4 **underground storage tank** financial assurance board.

5 SECTION 7. IC 13-23-11-7, AS AMENDED BY P.L.96-2016,
6 SECTION 40, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
7 JULY 1, 2019]: Sec. 7. (a) The board shall do the following:

8 (1) Adopt rules under IC 4-22-2 and IC 13-14-9 necessary to do
9 the following:

10 (A) Carry out the duties of the board under this article.

11 (B) Establish standards and procedures under which:

12 (i) eligible parties may submit ELTF claims; and

13 (ii) the administrator of the ELTF may pay ELTF claims.

14 (C) Establish standards for determining the reasonableness and
15 cost effectiveness of corrective action for purposes of
16 reimbursement from the ELTF under IC 13-23-9-1.5(a)(1).

17 (D) Establish standards for priorities in the payment of ELTF
18 claims, including a priority for claims associated with releases
19 from USTs that pose an immediate and significant threat to the
20 environment.

21 (2) Take testimony and receive a written report at every meeting
22 of the board from the commissioner or the commissioner's
23 designee regarding the financial condition and operation of the
24 ELTF, including:

25 (A) a detailed breakdown of contractual and administrative
26 expenses the department is claiming from the ELTF under
27 IC 13-23-7-1(a)(4); and

28 (B) a claims statistics report consisting of:

29 (i) the status and amounts of claims submitted to the ELTF;
30 and

31 (ii) ELTF claims payments made.

32 Testimony shall be taken and a written report shall be received
33 under this subdivision at every meeting of the board. However,
34 the testimony and written report are not required more than one
35 (1) time during any thirty (30) day period.

36 (3) Consult with the department on administration of the ELTF in
37 developing uniform policies and procedures for revenue
38 collection and claims administration of the ELTF.

39 (b) The department shall consult with the board on administration
40 of the ELTF. The consultation must include evaluation of alternative
41 means of administering the ELTF in a cost effective and efficient
42 manner.



(c) At each meeting of the board, the department shall provide the board with a written report on the financial condition and operation of the ELTF.

(d) The department may develop and present to the board in accordance with IC 13-14-1-11.5, and the board may approve, guidelines that are:

(1) based on the rules adopted under subsection (a)(1)(C); and

(2) intended to assist eligible parties in:

(A) identifying goods and services for which reimbursement may be paid from the ELTF; and

(B) evaluating proposed and incurred corrective action costs, including attorney's fees incurred by an eligible party, for purposes of reimbursement from the ELTF.

SECTION 8. IC 13-23-13-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 1. (a) The commissioner may: ~~under rules adopted under IC 13-23-1-2;~~

(1) issue an order under IC 13-14-2-7 or IC 4-21.5-4; or

(2) proceed under IC 13-14-2-6;

to require the owner or operator of an underground storage tank to undertake corrective action with respect to any release of a regulated substance.

(b) If the commissioner determines that the corrective action will be done properly and promptly by:

(1) the owner or operator of the underground storage tank from which the release occurs; or

(2) a person who assumes liability for corrective action in accordance with section 2.5 of this chapter;

the commissioner may enter into an agreed order ~~with the owner or operator~~ to implement necessary corrective action.

SECTION 9. IC 13-23-13-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: Sec. 2. The commissioner ~~under rules adopted under IC 13-23-1-2;~~ may undertake corrective action **under this chapter** with respect to any release of a regulated substance into the environment from an underground storage tank if:

(1) that action is necessary, in the judgment of the commissioner, to protect human health and the environment; and

(2) at least one (1) of the following conditions exists:

(A) A person cannot be found not later than ninety (90) days after a suspected or confirmed release is identified (or a shorter time necessary to protect human health and the environment) who is:

(i) an owner or operator of the underground storage tank;



(ii) subject to the rules concerning corrective action; and
 (iii) capable of properly carrying out corrective action with respect to the release.

(B) An existing situation requires prompt action by the commissioner under this section to protect human health and the environment.

(C) The cost of corrective action at the site of an underground storage tank exceeds the amount of financial responsibility required under IC 13-23-1-2(c)(6), IC 13-23-4-4, and IC 13-23-4-5 and, considering the class or category of underground storage tank from which the release occurred, expenditures by the state are necessary to ensure an effective corrective action.

(D) The owner or operator of the underground storage tank has failed or refused to comply with an order of the commissioner or a judgment of a court of competent jurisdiction under section 1 of this chapter to take corrective action with respect to the release.

(E) Through no fault of the person who is subject to a corrective action order under this chapter, the property that is the subject of the corrective action order is no longer accessible by that person.

SECTION 10. IC 13-23-13-2.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2019]: **Sec. 2.5. For purposes of becoming an eligible party under IC 13-23-9, a person may assume liability for corrective action in response to a release from a UST:**

(1) if:

(A) the identity of the person who owned or operated the UST at the time of the release is not known; or

(B) the person who owned or operated the UST at the time of the release is not able to carry out corrective action; and

(2) if the person assuming liability enters into an agreed order with the commissioner under section 1(b) of this chapter concerning the corrective action.

