

## ACT 317

H.B. NO. 2751

A Bill for an Act Relating to Underground Storage Tanks.

*Be It Enacted by the Legislature of the State of Hawaii:*

SECTION 1. The legislature finds it essential that the State encourage all practical means to control or eliminate pollution hazards posed by leaking petroleum underground storage tanks. This Act requires the department of health to perform a study for the purpose of establishing an actuarially sound financial assurance fund to help owners and operators to meet federal financial responsibility requirements which were adopted to ensure adequate funding to pay for the clean up of future releases and associated liability costs.

SECTION 2. Chapter 342L, Hawaii Revised Statutes, is amended by adding a new section to part II to be appropriately designated and to read as follows:

**“§342L- Financial responsibility guarantee fund.** (a) There is established in the state treasury a special fund to be known as the “underground storage tank financial responsibility guarantee fund”. The moneys in the fund shall be held separate and apart from all other moneys, funds, and accounts in the state treasury.

(b) The director may suspend the collection of fees at any time that the director determines, on both actuarial and environmental grounds, that the fund has a sufficient balance to meet actual and projected claims.

(c) Beginning October 1, 1990, but not later than October 26, 1990, every owner or operator who has complied with the notification requirements of section 342L-30 shall pay a maintenance fee of \$200 to the director for each petroleum underground storage tank and not later than April 26 and October 26 of each year thereafter, every owner or operator who has complied with the notification requirements of section 342L-30 shall pay a biannual maintenance fee of \$100 to the director for each petroleum underground storage tank unless the fee is suspended by the director pursuant to subsection (b).

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The director may increase or decrease the amount of the fee pursuant to rules adopted under chapter 91 in order to maintain an adequate level in the fund.

(d) In addition to any other moneys appropriated by the legislature, the fund shall consist of:

- (1) Funds from the annual maintenance fees; and
- (2) Any interest earned on moneys deposited into the fund.

(e) No later than twenty days prior to the convening of the 1991 regular legislative session, the department shall submit a report to the legislature, with accompanying proposed legislation, to provide for a financial guarantee program. The program shall contain the following features:

- (1) An actuarially sound program covering those losses or expenses which cannot be otherwise covered by the certified persons;
- (2) A program which will qualify under United States Environmental Protection Agency guidelines; and
- (3) A program which will ensure that no state moneys, other than any directly appropriated for such purposes, are at risk.

The department shall present any other insurance or guarantee program that should be considered as alternatives.

(f) The department shall adopt rules pursuant to chapter 91 to establish the conditions and eligibility requirements necessary for persons to acquire and maintain certification under the program. The department shall design a certificate to verify the standing of any individual. The conditions required for the granting of certifications shall include, but not be limited to:

- (1) The submittal of release detection data by the applicant to demonstrate that a tank is not leaking; and
- (2) The submittal of sufficient soil and groundwater data by the applicant to demonstrate that any existing contamination at the site has been characterized.

(g) The department shall distribute information on interim application requirements and publicize the availability of applications. Interim application requirements shall include, but not be limited to:

- (1) General information on the owner or operator, and the identity and description of the petroleum underground storage tank and facility;
- (2) The submittal of sufficient soil and groundwater data to demonstrate that any existing contamination at the site has been characterized; and
- (3) Release detection data which demonstrate that the petroleum underground storage tank is not leaking.

(h) The department shall review all completed interim applications received prior to October 26, 1990, and issue its determination on the approval or disapproval of all interim applications prior to October 26, 1991, with regard to interim participation in the program.

(i) Only those applicants who have complied with the notification requirements of section 342L-30 and have been granted interim approval for participation in the program shall be deemed certified under the fund.

(j) The department shall coordinate with and enlist the assistance of the department of commerce and consumer affairs on matters relating to finance and insurance.

(k) The department shall adopt rules in accordance with chapter 91 to carry out this section.

(l) The department may use the fund for the payment of administrative expenses including but not limited the hiring of consultants, actuaries, and attorneys on a contractual basis, for the study required under this section."

SECTION 3. New statutory material is underscored.<sup>1</sup>

SECTION 4. This Act shall take effect upon its approval.

(Approved July 3, 1990.)

**Note**

1. Edited pursuant to HRS §23G-16.5.