

HB 2215 -- PETROLEUM STORAGE TANK INSURANCE FUND

SPONSOR: Kolkmeier

This bill modifies provisions relating to the Petroleum Storage Tank Insurance Fund. In its main provisions, it:

- (1) Specifies that the fund is not to be administered as an express trust and moneys in the fund are not to be deemed insurance for the purposes of provisions of law relating to insurance;
- (2) Changes the makeup of the board of trustees of the fund;
- (3) Specifies that the board of trustees is to be a state agency for all pertinent purposes and repeals a provision allowing the board to contract with the Department of Natural Resources or another state agency for its staff;
- (4) Authorizes the board to enter into contingency contracts to subrogate claims on behalf of its participants and specifies that the contracts are not to be subject to provisions of law relating to limitations on contingent fee contracts;
- (5) Specifies that a trustee may make a claim or receive benefits from the fund so long as the trustee does not participate in deliberations or decisions of the board regarding the claim;
- (6) Requires the board to report to the State Treasurer an estimate of its remaining obligations on December 31, 2025, and each year thereafter so long as moneys remain in the fund,, and by January 30th of the succeeding year the State Treasurer shall report to the General Assembly the amount remaining in the fund and the board's estimate of remaining obligations;
- (7) Specifies that owners and operators of petroleum storage tanks may apply to participate in the fund and will be subject to the terms of a participation agreement issued by the board of trustees;
- (8) Removes the requirement that participants show compliance with technical standards established by the U.S. Environmental Protection Agency, but they must certify that the petroleum tanks meet or exceed petroleum storage tank regulations established by the Department of Natural Resources and the Department of Agriculture;
- (9) Requires an applicant to provide evidence that he or she can pay the first \$10,000 of cleanup costs;
- (10) Repeals requirements relating to claims for cleanup costs

associated with a release from a petroleum storage tank and coverage for third party claims involving property damage or bodily injury caused by leaking tanks;

(11) Requires coverage to fund participants for the cost of cleanup associated with a release from a petroleum storage tank and third party claims involving property damage or bodily injury arising from such release up to \$1 million per occurrence or \$2 million in the aggregate per year. The board may also provide legal defense of eligible third party claims;

(12) Prohibits coverage for repair of damages beyond that required to contain and cleanup a petroleum release or for loss of damage to other property owned by the participant or to a participant or third party for loss or damage of an intangible nature or for punitive damages;

(13) Authorizes the board to investigate and settle any third party claim and, if legal defense coverage is provided, to choose and employ counsel to represent a participant and defend such claims;

(14) Specifies that nothing shall be construed to create a cause of action against the fund or the board and such provisions do not broaden the liability of the state nor to abolish nor waive any defense which might otherwise be available to the state or to any person;

(15) Repeals a provision relating to funding for cleanup of contamination where the owner or operator participated in or applied for participation in the fund before December 31, 1997, regardless of when the release occurred;

(16) Limits the liability of the fund for cleanups of contamination caused by releases from underground storage tanks which contained petroleum or for above ground storage tanks used for the sale of various fuels, and which were taken out of use prior to December 31, 1997, to \$990,000 and the person initiating the cleanup must pay the first \$10,000 of cleanup costs;

(17) Requires the board to provide for the appeal of decisions denying, in whole or in part, requests by fund participants for payment. Any deliberations conducted and votes taken on such an appeal are closed to the applicant and the public until a final decision is issued; and

(18) Specifies a list of records that are not public records under the Sunshine Law.

This bill is similar to SB 856 (2020).