



## Legislative Fiscal Bureau

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Joint Committee on Finance

Paper #223

### **PECFA Payments for Abandoned Tank Removal (Commerce -- Housing, Buildings, and Environmental Regulation)**

*Base Agency*

[LFB 2007-09 Budget Summary: Page 101, #6]

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#### **CURRENT LAW**

The petroleum environmental cleanup fund award (PECFA) program reimburses owners or operators for a portion of the cleanup costs of discharges from petroleum product storage tank systems and home heating oil tank systems. The costs of removing the tank are not eligible for reimbursement.

#### **GOVERNOR**

Authorize Commerce to use the PECFA awards appropriation to pay for the removal of certain underground petroleum storage tanks. Authorize Commerce to contract with a certified tank removal contractor for the costs of emptying, cleaning, removing, and disposing of a tank that has not been properly closed, and to backfill the excavation, if any of the following applies: (a) the Department is unable to identify the owner of, or other person responsible for, the underground petroleum product storage tank system; (b) the Department determines, in the same way that it determines eligibility for waiver of the deductible due to financial hardship, that the owner of the underground petroleum product storage tank system is unable to pay for the activities; or (c) the Department determines that the owner or responsible party is unwilling to pay for the activities.

Up to \$250,000 annually from the PECFA awards appropriation would be set aside for payment of the eligible tank removal costs. Any portion of the \$250,000 that would not be used

to pay for removal of abandoned tanks would be available for currently authorized PECFA payments.

If the Department pays for removal of the tank, Commerce would be required to record a lien on the property with the register of deeds, and the property would remain subject to the lien until the amount is paid in full. Any payments received by Commerce from persons who make payments to remove the lien would be deposited in the petroleum inspection fund.

## **DISCUSSION POINTS**

1. Commerce made the proposal in order to find a way to pay for removal of abandoned underground petroleum tanks that have been improperly closed or not closed and that may pose a threat to the environment.

2. Commerce estimates the average cost of removing a tank would be approximately \$2,500 to \$3,000. Thus, with the \$250,000 annual set aside of the PECFA awards appropriation, approximately 75 to 100 tanks could be removed annually under the provision. Commerce estimates that fewer than 10% (740) of the over 7,400 abandoned tanks on the Department's database may qualify for payments under the provision.

3. When Commerce finds tanks that have not been closed, or not closed properly in compliance with Commerce administrative rules, the Department issues orders to shut down the tank and to properly close and remove it. Commerce has issued over 1,000 orders per year in the past three years, which have mostly resulted in voluntary compliance with tank closure requirements. However, Commerce has found that if a tank is abandoned, issuing an order typically doesn't result in proper closure if the owner can not be found or is unwilling to complete the required work.

4. Commerce officials are aware of perhaps 10 sites that might currently fit the criteria under the bill. They intend to implement the provision by asking Commerce tank inspectors and local petroleum tank operators (local governments or contractors) to look for abandoned tanks. Commerce would then verify the ownership of the tank, and whether the owner is able or willing to pay for the tank removal. They anticipate they would develop a list of sites, let bids 60 to 90 days after the budget goes into effect, and hire a contractor or contractors to perform tank removal activities in various regions of the state at identified sites.

5. It is likely that when some tanks are removed under the bill, PECFA-eligible contamination will be discovered. Commerce officials indicate they do not have enough information about potential tanks that might be removed under the provision to estimate the number of PECFA-eligible sites that might be discovered during the removal process. However, it can be anticipated that removal of tanks under the provision could result in at least a modest increase in the number of sites that need to be cleaned up under the PECFA program.

6. Currently, when contamination is discovered, the owner or operator is responsible

for cleaning it up and submitting PECFA claims for reimbursement. It is likely that if an owner is not willing or able to remove an abandoned tank, the owner would not be willing or able to clean up contamination found during the removal of the tank. Thus, it is uncertain what the process would be followed by Commerce and DNR to make sure that a site is cleaned up if contamination is discovered during the removal of an abandoned tank.

7. Currently, if Commerce waives the deductible (the portion of eligible costs that the owner or operator must pay) due to financial hardship on the part of the owner or operator, a lien is recorded on the property until the amount is paid in full. Commerce has waived the deductible on approximately 50 sites under the financial hardship provision, for a total of \$195,300 in waived deductible amount. The lien has been satisfied after sale of the property for 15 of the sites, and \$60,600 has been repaid to the petroleum inspection fund. The provision under the bill that would require recording a lien on the property for the costs of tank removal is similar to the current law provision for waiver of the deductible. Commerce indicates they would use the same procedures they currently use to determine if a PECFA claimant has financial hardship, whereby a known owner would have to provide information about income, tax records, assets, and liabilities to demonstrate an inability to pay for the tank removal.

8. Commerce would also record a lien on the property for the tank closure and removal costs by using the same procedures as used for the waiver of the deductible. Recording a lien on the property would ensure that the PECFA program could eventually be reimbursed for the costs, typically at the time of sale of the property.

9. Commerce intended that the provision would also cover site assessment costs for determining whether a petroleum product release or contamination exists at the tank site, but the bill does not include such costs. Commerce officials indicate that a site assessment needs to be done at the time the tank is removed before the excavation is backfilled, and that not including site assessment costs as eligible costs will make it difficult to determine if contamination is present. Commerce estimates a site assessment would cost approximately \$600 per site. This is included in the Commerce estimates of average removal costs equaling \$2,500 to \$3,000 per tank. The bill could be amended to include site assessment costs as eligible costs.

## **ALTERNATIVES TO BASE**

1. Approve the Governor's recommendations to: (a) authorize Commerce to use the PECFA awards appropriation to pay for the removal of certain underground petroleum storage tanks; (b) authorize Commerce to contract with a certified tank removal contractor for the costs of emptying, cleaning, removing, and disposing of a tank that has not been properly closed, and to backfill the excavation, if any of the following applies: (1) the Department is unable to identify the owner or person responsible for, the tank system; (2) the Department determines that the owner of the tank system is unable to pay for the tank removal; or (3) the Department determines that the owner or responsible party is unwilling to pay for the activities; (c) set aside up to \$250,000 annually from the PECFA awards appropriation for payment of the eligible tank removal costs; (d)

specify that any portion of the \$250,000 set aside that would not be used to pay for removal of abandoned tanks would be available for currently authorized PECFA payments; (e) direct Commerce to record a lien on the property for the tank removal costs with the register of deeds; (f) require that the property would remain subject to the lien until the amount is paid in full; (g) direct that Commerce deposit any payments received from persons who make repayments in order to remove the lien in the petroleum inspection fund.

2. Approve Alternative 1. In addition, include site assessment costs as eligible costs under the provision.

3. Maintain current law.

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