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## DEPARTMENT OF COMMERCE

### Underground Storage Tank Revolving Loan Program

- Creates the Underground Storage Tank Revolving Loan Program, to be administered by the State Fire Marshal (or designee).
- Requires that interest-free loans be made under the Program to political subdivisions that seek to take action with regard to underground storage tanks when the tanks' owners or operators cannot be identified or cannot pay the costs of the action.
- Requires that the loans under the Program be financed exclusively through penalties and repaid loan amounts.
- Permits a political subdivision to take legal action to recover costs incurred if the tank owner or operator is identified or is determined to have been or be able to pay the costs of action taken by the political subdivision.

### Video-service disconnections

- Permits video-service disconnection without notice if disconnection is necessary to prevent the use of video service through fraud.
- Shortens the grace period for video-service disconnection for nonpayment from 45 days to 14 days, and expressly permits disconnection if only part of a billed amount is past due.
- Requires video service providers to establish billing due dates of at least 14 days after bills are issued.

### Other provisions

- Reduces from two to one the number of reports that bedding and stuffed toy manufacturers and importers must submit annually to the Superintendent of Industrial Compliance.
- Requires the Director of Commerce to fill mid-term vacancies on the Historical Boilers Licensing Board, but does not require the advice and consent of the Senate for the Director's appointments.
- Changes the index used to calculate biennial changes to the threshold levels that are used to determine whether a horizontal public improvement project is subject to Ohio's Prevailing Wage Law.



## Underground Storage Tank Revolving Loan Program

(R.C. 3737.02 and 3737.883; conforming changes in R.C. 3737.88 and 3737.884 (renumbered from 3737.883))

### Program overview and explanation of "corrective actions"

The bill creates the Underground Storage Tank Revolving Loan Program, to be administered by the State Fire Marshal or the Fire Marshal's designee. The Program is designed to assist political subdivisions seeking to take action with regard to underground storage tanks if the tanks' owners or operators<sup>8</sup> cannot be identified or cannot pay the costs of taking action. An underground storage tank is a stationary containment device (including the connected underground pipes) used to contain an accumulation of petroleum or any substance classified as hazardous by the Fire Marshal, the volume of which, including the volume of connecting pipes, is 10% or more beneath the surface of the ground.<sup>9</sup> Under the Program, the Fire Marshal is required to issue an interest-free loan to a political subdivision that meets the bill's application requirements and plans to spend from its own funds an amount equal to at least 5% of the requested loan amount.

The bill expressly permits political subdivisions to take the actions for which the loans may be requested. Specifically, it permits a political subdivision to do any of the following for an underground storage tank within the subdivision's territorial boundaries, provided the tank owner or operator is unidentifiable or was determined by the Fire Marshal as being unable to pay the costs of the action:

- Initiate, continue, or properly complete the removal of an underground storage tank system;
- Initiate, continue, or properly complete an assessment of the site of an underground storage tank or the site of an underground storage tank system;
- Initiate, continue, or properly complete a "corrective action."

"Corrective action" is extensively defined in continuing law. Therefore, by permitting a subdivision to take a corrective action, the bill permits the subdivision to take any action necessary to protect human health and the environment in the event of a release of petroleum into the environment. This includes any action necessary to monitor, assess, and evaluate the release. For a suspected release, "corrective action"

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<sup>8</sup> R.C. 3737.87(N), not in the bill.

<sup>9</sup> R.C. 3737.87(L), (O), and (P), not in the bill.



includes an investigation to confirm or disprove the occurrence of the release. For a confirmed release, "corrective action" includes any action taken consistent with a remedial action to clean up contaminated ground water, surface water, soils, and subsurface material and to address the residual effects of a release after the initial corrective action is taken.<sup>10</sup> Despite the bill's grant of authority, continuing law grants the Fire Marshal exclusive jurisdiction, in most cases, to regulate the storage, treatment, and disposal of petroleum-contaminated soil generated from corrective actions. Therefore, the bill's grant of authority may be limited by this exclusive jurisdiction.

### **Definition of "political subdivision"**

The bill defines a "political subdivision" as a municipal corporation, township, county, school district, or other body corporate and politic responsible for governmental activities in a geographic area smaller than that of the state. The term includes certain hospital commissions and boards, certain local planning commissions and councils, port authorities, certain regional councils, certain emergency and fire and ambulance districts, solid waste management districts, community schools, and certain community-based correctional facilities and programs and their facility governing boards.<sup>11</sup> The bill also expressly states that the term includes a community improvement corporation, which is defined as an economic development corporation or a county land reutilization corporation.<sup>12</sup>

### **Loan applications**

In the loan application, the political subdivision must describe the action for which it is requesting the loan, state the requested loan amount, explain how it plans to spend at least 5% of the requested loan amount out of its own funds, and provide any other information requested by the Fire Marshal. The subdivision must also agree to written terms and conditions of the Fire Marshal. The bill prohibits loans from having terms of more than ten years.

### **Loan repayment and funding**

The interest-free loans must be repaid to the Fire Marshal. The repaid amounts are to be credited to the Underground Storage Tank Administration Fund, which is created in current law. The Fire Marshall must make the loans exclusively from those repaid amounts and from penalties collected for violations of current law governing

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<sup>10</sup> R.C. 3737.87(B), not in the bill.

<sup>11</sup> R.C. 2744.01(F), not in the bill.

<sup>12</sup> R.C. 1724.01(A)(1), not in the bill.

underground storage tanks, including rules and orders of the Fire Marshal.<sup>13</sup> The bill also permits repaid loan amounts to be used by the Fire Marshal for implementation and enforcement of underground-storage-tank, corrective-action, and installer-certification programs.

### **Recovery of costs from tank owners or operators**

The bill allows that if the Fire Marshal or any law enforcement agency identifies the tank owner or operator or determines, for any reason, that a previously identified owner or operator was or is able to pay the costs of the action for which the loan was issued, the political subdivision may bring any appropriate proceedings against the owner or operator to recover its incurred costs. The identification or determination must be made after the political subdivision has spent loan funds. The proceedings may be brought in either the court of common pleas having jurisdiction where the tank is located or the Court of Common Pleas of Franklin County.

### **Program administration**

The bill requires the Fire Marshal to adopt, and permits the Fire Marshal to amend or rescind, rules as necessary for the administration and operation of the Program. The rules may do any of the following:

- Further define the entities considered "political subdivisions" eligible to receive loans;
- Establish qualifying criteria for loan recipients;
- Establish criteria for awarding loans, loan amounts, loan payment terms, and permissible expenditures of loan funds, including methods that the Fire Marshal may use to verify the proper use of loan funds or to obtain reimbursement for or the return of improperly used loan funds.

The bill requires the Fire Marshal to consult with the Director of Development Services before issuing any loan under the Program.

The bill also permits the Fire Marshal to adopt, amend, or rescind rules for the issuance of emergency underground storage tank revolving loans to qualifying entities during a natural disaster or another similar event, as defined in rules.

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<sup>13</sup> R.C. 3737.882(C), not in the bill.



## Facilities excluded from the Program

The following are excluded from the definition of "underground storage tank," and therefore not subject to the Program:

- pipeline facilities, including gathering lines, regulated under federal law;
- farm or residential tanks of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes;
- tanks used for storing heating fuel for consumptive use on the premises where stored;
- surface impoundments, pits, ponds, or lagoons;
- storm or waste water collection systems;
- flow-through process tanks;
- storage tanks located in underground areas, including basements, cellars, mine workings, drifts, shafts, or tunnels, when the tanks are located on or above the surface of the floor;
- septic tanks;
- liquid traps or associated gathering lines directly related to oil or gas production and gathering operations.<sup>14</sup>

## Video-service disconnections

(R.C. 1332.26)

### Terminology

The bill makes some changes to current customer-service requirements for video-service disconnections. These requirements apply to providers who have video service authorizations issued by the Director of Commerce. "Video service" means the provision of video programming over wires or cables located at least in part in public rights-of-way, regardless of the technology used. Video service includes cable service, but excludes (1) wireless video programming, (2) Internet video programming, and (3)

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<sup>14</sup> R.C. 3737.87(P)(1) to (9), not in the bill.



cable service in certain unincorporated areas of townships prior to October 1, 1979, unless a franchise was subsequently issued to the company.<sup>15</sup>

### **Changes to requirements**

The bill permits video-service disconnection without notice if disconnection is necessary to prevent the use of video service through fraud. Disconnection without notice is currently permitted for these three other reasons: (1) the subscriber requests it, (2) it is necessary to prevent theft of video service, and (3) it is necessary to reduce or prevent signal leakage. Normally, ten days' written notice of disconnection is required. The bill also changes the timeline for when video service may be disconnected for nonpayment. Specifically, it changes the grace period – or the number of days past the due date during which the subscriber may not be disconnected for an unpaid bill – from 45 to 14 days. It also expressly allows disconnection for a partial nonpayment. Current law permits disconnection "for failure of the subscriber to pay its video service bill." Also, video service providers under the bill are required to establish billing due dates of at least 14 days after bills are issued. There are no due-date requirements in current law.

### **Enforcement**

The enforcement provisions that apply to the current customer-service requirements also apply to the requirements made and changed by the bill. The Director may investigate alleged violations of or failures to comply with the requirements, but "has no authority to regulate video service." However, if the Director finds that a violation or a failure to comply exists, the Director may, after written notice to the provider and a reasonable time for compliance, apply for a court order enjoining the activity or requiring compliance, enter into a written assurance of voluntary compliance with the provider, or assess a civil penalty. Civil penalties are capped at \$1,000 per day of violation or noncompliance, not to exceed a total of \$10,000.<sup>16</sup>

### **Bedding and stuffed toys – reporting requirements**

(R.C. 3713.06)

The bill reduces the number of reports that a bedding and stuffed toy manufacturer or importer must submit annually to the Superintendent of Industrial Compliance. Current law requires a registered toy manufacturer or importer who manufactures or imports bedding or stuffed toys for retail sale or use in Ohio to submit a report showing the total number of items of bedding or stuffed toys imported or

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<sup>15</sup> R.C. 1332.21(J) and (M) and 1332.24(A)(1), not in the bill.

<sup>16</sup> R.C. 1332.24(B) and (C), not in the bill.



manufactured in Ohio once every six months. The bill requires a registered toy manufacturer or importer to submit the report once every year.

### **Historical Boilers Licensing Board vacancies**

(R.C. 4104.33)

The bill requires the Director of Commerce to fill mid-term vacancies on the Historical Boilers Licensing Board, but does not require the advice and consent of the Senate for the Director's appointments. Current law requires mid-term vacancies to be filled in the manner provided for during initial appointments, which gives the Governor, the President of the Senate, and the Speaker of the House appointment authority.

### **Prevailing wage threshold index**

(R.C. 4115.034; R.C. 4115.03, not in the bill)

Under continuing law and unless an exception applies, the construction of a public improvement in which the total overall project cost is fairly estimated to exceed a statutory price threshold is subject to Ohio's Prevailing Wage Law. The statutory threshold for horizontal projects (projects that involve roads, streets, alleys, sewers, ditches, and other works connected to road or bridge construction) is adjusted biennially by the Director of Commerce. Current law requires the Director to adjust the threshold level based on the Implicit Price Deflator for Construction established by the federal government, with a maximum adjustment of 3% of the threshold level in existence at the time of the adjustment. The federal government no longer establishes that index. The bill instead requires the Director to use the Construction Cost Index published by the Engineering News-Record. If that index ceases being published, a similar recognized industry index chosen by the Director must be used.