

2 SSB 5806 - H COMM AMD

3 By Committee on Financial Institutions & Insurance

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5 Strike everything after the enacting clause and insert the
6 following:

7 "NEW SECTION. Sec. 1. The legislature recognizes as a
8 fundamental government purpose the need to protect the environment and
9 human health and safety. To that end the state has enacted laws
10 designed to limit and prevent environmental damage and risk to public
11 health and safety caused by underground petroleum storage tank leaks.
12 Because of the costs associated with compliance with such laws and the
13 high costs associated with correcting past environmental damage, many
14 owners and operators of underground petroleum storage tanks have
15 discontinued the use of or have planned to discontinue the use of such
16 tanks. As a consequence, isolated communities face the loss of their
17 source of motor vehicle fuel and face the risk that the owner or
18 operator will have insufficient funds to take corrective action for
19 pollution caused by past leaks from the tanks. In particular, rural
20 communities face the risk that essential emergency, medical, fire and
21 police services may be disrupted through the diminution or elimination
22 of local sellers of petroleum products and by the closure of
23 underground storage tanks owned by local government entities serving
24 these communities.

25 The legislature also recognizes as a fundamental government purpose
26 the need to preserve a minimum level of economic viability in rural
27 communities so that public revenues generated from economic activity
28 are sufficient to sustain necessary governmental functions. The

1 closing of local service stations adversely affects local economies by
2 reducing or eliminating reasonable access to fuel for agricultural,
3 commercial, and transportation needs.

4 The legislature intends to assist small communities within this
5 state by authorizing:

6 (1) Cities, towns, and counties to certify that a local private
7 owner or operator of an underground petroleum storage tank meets a
8 vital local government, public health or safety need thereby qualifying
9 the owner or operator for state financial assistance in complying with
10 environmental regulations and assistance in taking needed corrective
11 action for existing tank leaks; and

12 (2) Local government entities to obtain state financial assistance
13 to bring local government underground petroleum storage tanks into
14 compliance with environmental regulations and to take needed corrective
15 action for existing tank leaks."

16 "NEW SECTION. Sec. 2. (1) Subject to the conditions and
17 limitations of sections 1 through 6 of this act, the director shall
18 establish and manage a program for providing financial assistance to
19 public and private owners and operators of underground storage tanks
20 who have been certified by the governing body of the county, city, or
21 town in which the tanks are located as meeting a vital local
22 government, public health or safety need. In providing such financial
23 assistance the director shall:

24 (a) Require owners and operators, including local government owners
25 and operators, to demonstrate serious financial hardship;

26 (b) Limit assistance to only that amount necessary to supplement
27 applicant financial resources;

28 (c) Limit assistance to no more than one hundred fifty thousand
29 dollars in value for any one underground storage tank site of which

1 amount no more than seventy-five thousand dollars in value may be
2 provided for corrective action; and

3 (d) Whenever practicable, provide assistance through the direct
4 payment of contractors and other professionals for labor, materials,
5 and other services.

6 (2) Except as otherwise provided in sections 1 through 6 of this
7 act, no grant of financial assistance may be used for any purpose other
8 than for corrective action and repair, replacement, reconstruction, and
9 improvement of underground storage tanks and tank sites. If at any
10 time prior to providing financial assistance or in the course of
11 providing such assistance, it appears to the director that corrective
12 action costs may exceed seventy-five thousand dollars, the director may
13 not provide further financial assistance until the owner or operator
14 has developed and implemented a corrective action plan with the
15 department of ecology.

16 (3) When requests for financial assistance exceed available funds,
17 the director shall give preference to providing assistance first to
18 those underground storage tank sites which constitute the sole source
19 of petroleum products in remote rural communities.

20 (4) The director shall consult with the department of ecology in
21 approving financial assistance for corrective action to ensure
22 compliance with regulations governing underground petroleum storage
23 tanks and corrective action.

24 (5) The director shall approve or disapprove applications for
25 financial assistance within sixty days of receipt of a completed
26 application meeting the requirements of sections 1 through 6 of this
27 act. The certification by local government of an owner or operator
28 shall not preclude the director from disapproving an application for
29 financial assistance if the director finds that such assistance would
30 not meet the purposes of sections 1 through 6 of this act.

1 (6) The director may adopt all rules necessary to implement the
2 financial assistance program and shall consult with the technical
3 advisory committee established under RCW 70.148.030 in developing such
4 rules and in reviewing applications for financial assistance."

5 "NEW SECTION. Sec. 3. (1) To qualify for financial assistance,
6 a private owner or operator retailing petroleum products to the public
7 must:

8 (a) First apply for insurance from the pollution liability
9 insurance program and request financial assistance in a form and manner
10 required by the director;

11 (b) If the director makes a preliminary determination of possible
12 eligibility for financial assistance, apply to the appropriate
13 governing body of the city or town in which the tanks are located or in
14 the case where the tanks are located outside of the jurisdiction of a
15 city or town, then to the appropriate governing body of the county in
16 which the tanks are located, for a determination by the governing body
17 of the city, town, or county that the continued operation of the tanks
18 meets a vital local government, or public health or safety need; and

19 (c) Qualify for insurance coverage from the pollution liability
20 insurance program if such financial assistance were to be provided.

21 (2) In consideration for financial assistance and prior to
22 receiving such assistance the owner and operator must enter into an
23 agreement with the state whereby the owner and operator agree:

24 (a) To sell petroleum products to the public;

25 (b) To maintain the tank site for use in the retail sale of
26 petroleum products for a period of not less than fifteen years from the
27 date of agreement;

28 (c) To sell petroleum products to local government entities within
29 the affected community on a cost-plus basis periodically negotiated

1 between the owner and operator and the city, town, or county in which
2 the tanks are located; and

3 (d) To maintain compliance with state underground storage tank
4 financial responsibility and environmental regulations.

5 (3) The agreement shall be filed as a real property lien against
6 the tank site with the county auditor in which the tanks are located.
7 If the owner or operator transfers his or her interest in such
8 property, the new owner or operator must agree to abide by the
9 agreement or any financial assistance provided under sections 1 through
10 6 of this act shall be immediately repaid to the state by the owner or
11 operator who received such assistance.

12 (4) As determined by the director, if an owner or operator
13 materially breaches the agreement, any financial assistance provided
14 shall be immediately repaid by such owner or operator.

15 (5) The agreement between an owner and operator and the state
16 required under this section shall expire fifteen years from the date of
17 entering into the agreement."

18 "NEW SECTION. Sec. 4. (1) To qualify for financial assistance,
19 a public owner or operator must:

20 (a) First apply for insurance from the pollution liability
21 insurance program and request financial assistance in a form and manner
22 required by the director;

23 (b) Provide to the director a copy of the resolution by the
24 governing body of the city, town, or county having jurisdiction,
25 finding that the continued operation of the tanks is necessary to
26 maintain vital local public health, education, or safety needs;

27 (c) Qualify for insurance coverage from the pollution liability
28 insurance program if such financial assistance were to be provided.

1 (2) The director shall give priority to and shall encourage local
2 government entities to consolidate multiple operational underground
3 storage tank sites into as few sites as possible. For this purpose,
4 the director may provide financial assistance for the establishment of
5 a new local government underground storage tank site contingent upon
6 the closure of other operational sites in accordance with environmental
7 regulations. Within the per site financial limits imposed under
8 sections 1 through 6 of this act, the director may authorize financial
9 assistance for the closure of operational sites when closure is for the
10 purpose of consolidation."

11 "NEW SECTION. **Sec. 5.** To qualify for financial assistance, a
12 rural hospital as defined in RCW 18.89.020, owning or operating an
13 underground storage tank must:

14 (1) First apply for insurance from the pollution liability
15 insurance program and request financial assistance in a form and manner
16 required by the director;

17 (2) Apply to the governing body of the city, town, or county in
18 which the hospital is located for certification that the continued
19 operation of the tank or tanks is necessary to maintain vital local
20 public health or safety needs;

21 (3) Qualify for insurance coverage from the pollution liability
22 insurance program if such financial assistance were to be provided; and

23 (4) Agree to provide charity care as defined in RCW 70.39.020 in an
24 amount of equivalent value to the financial assistance provided under
25 sections 1 through 6 of this act. The director shall consult with the
26 department of health to monitor and determine the time period over
27 which such care should be expected to be provided in the local
28 community."

1 "NEW SECTION. **Sec. 6.** (1) The director shall develop and
2 distribute to appropriate cities, towns, and counties a form for use by
3 the local government in making the certification required for all
4 private owner and operator financial assistance along with instructions
5 on the use of such form.

6 (2) In certifying a private owner or operator retailing petroleum
7 products to the public as meeting vital local government, public health
8 or safety needs, the local government shall:

9 (a) Consider and find that other retail suppliers of petroleum
10 products are located remote from the local community;

11 (b) Consider and find that the owner or operator requesting
12 certification is capable of faithfully fulfilling the agreement
13 required for financial assistance;

14 (c) Designate the local government official who will be responsible
15 for negotiating the price of petroleum products to be sold on a cost-
16 plus basis to the local government entities in the affected communities
17 and the entities eligible to receive petroleum products at such price;
18 and

19 (d) State the vital need or needs that the owner or operator meets.

20 (3) In certifying a hospital as meeting local public health and
21 safety needs the local government shall:

22 (a) Consider and find that the continued use of the underground
23 storage tank by the hospital is necessary; and

24 (b) Consider and find that the hospital provides health care
25 services to the poor and otherwise provides charity care.

26 (4) The director shall notify the governing body of the city, town,
27 or county providing certification when financial assistance for a
28 private owner or operator has been approved."

1 **"Sec. 7.** RCW 70.148.020 and 1990 c 64 s 3 are each amended to read
2 as follows:

3 (1) The pollution liability insurance program trust account is
4 established in the custody of the state treasurer. All funds
5 appropriated for this chapter and all premiums collected for
6 reinsurance shall be deposited in the account. Expenditures from the
7 account shall be used exclusively for the purposes of this chapter
8 including payment of costs of administering the pollution liability
9 insurance and underground storage tank community assistance programs.
10 The account is subject to allotment procedures under chapter 43.88 RCW.
11 Expenditures for payment of the costs of administering the program may
12 be made only after appropriation by statute. No appropriation is
13 required for other expenditures from the account. The earnings on any
14 surplus balances in the pollution liability insurance program trust
15 account shall be credited to the account notwithstanding RCW 43.84.090.

16 (2) Each calendar quarter, the director shall report to the
17 insurance commissioner and the chairs of the senate ways and means,
18 senate financial institutions, house of representatives revenue, and
19 house of representatives financial institutions committees, the loss
20 and surplus reserves required for the calendar quarter. The director
21 shall notify the department of revenue of this amount by the fifteenth
22 day of each calendar quarter.

23 (3) Each calendar quarter the director shall report to the chairs
24 of the senate ways and means, senate financial institutions, house of
25 representatives revenue, and house of representatives financial
26 institutions and insurance committees, the amount of reserves necessary
27 to fund commitments made to provide financial assistance under section
28 2 of this act to the extent that the financial assistance reserves do
29 not jeopardize the operations and liabilities of the pollution
30 liability insurance program. The director shall notify the department

1 of revenue of this amount by the fifteenth day of each calendar
2 quarter. The director may immediately establish an initial financial
3 assistance reserve of five million dollars from available revenues.
4 The director may not expend more than fifteen million dollars for the
5 financial assistance program."

6 "Sec. 8. RCW 82.23A.020 and 1990 c 64 s 12 are each amended to
7 read as follows:

8 (1) A tax is imposed on the privilege of possession of petroleum
9 products in this state. The rate of the tax shall be fifty one-
10 hundredths of one percent multiplied by the wholesale value of the
11 petroleum product.

12 (2) Moneys collected under this chapter shall be deposited in the
13 pollution liability insurance program trust account under RCW
14 70.148.020.

15 (3) Chapter 82.32 RCW applies to the tax imposed in this chapter.
16 The tax due dates, reporting periods, and return requirements
17 applicable to chapter 82.04 RCW apply equally to the tax imposed in
18 this chapter.

19 (4) Within thirty days after the end of each calendar quarter the
20 department shall determine the "quarterly balance," which shall be the
21 cash balance in the pollution liability insurance program trust account
22 as of the last day of that calendar quarter, after excluding the
23 reserves determined for that quarter under RCW 70.148.020(2) and (3).
24 Balance determinations by the department under this section are final
25 and shall not be used to challenge the validity of any tax imposed
26 under this section. For each subsequent calendar quarter, tax shall be
27 imposed under this section during the entire calendar quarter unless:

1 (a) Tax was imposed under this section during the immediately
2 preceding calendar quarter, and the most recent quarterly balance is
3 more than fifteen million dollars; or

4 (b) Tax was not imposed under this section during the immediately
5 preceding calendar quarter, and the most recent quarterly balance is
6 more than seven million five hundred thousand dollars."

7 "NEW SECTION. Sec. 9. Sections 1 through 6 of this act shall
8 each be added to chapter 70.148 RCW."

9 "NEW SECTION. Sec. 10. If any provision of this act or its
10 application to any person or circumstance is held invalid, the
11 remainder of the act or the application of the provision to other
12 persons or circumstances is not affected."

13 "NEW SECTION. Sec. 11. This act is necessary for the immediate
14 preservation of the public peace, health, or safety, or support of the
15 state government and its existing public institutions, and shall take
16 effect immediately."

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20 On page 1, line 2 of the title, after "products;" strike the
21 remainder of the title and insert "amending RCW 70.148.020 and
22 82.23A.020; adding new sections to chapter 70.148 RCW; and declaring an
23 emergency."