

SENATE BILL REPORT

ESSB 5263

AS PASSED SENATE, FEBRUARY 15, 1991

**Brief Description:** Regulating underground storage tanks.

**SPONSORS:** Senate Committee on Environment & Natural Resources (originally sponsored by Senators Owen, Amondson, Snyder, Matson, Hansen, Conner, Bauer, Newhouse, Anderson and Barr).

**SENATE COMMITTEE ON ENVIRONMENT & NATURAL RESOURCES**

**Majority Report:** That Substitute Senate Bill No. 5263 be substituted therefor, and the substitute bill do pass.

Signed by Senators Metcalf, Chairman; Oke, Vice Chairman; Amondson, Barr, Conner, Owen, Patterson, and Sutherland.

**Staff:** Gabrielle Horner (786-7717)

**Hearing Dates:** January 28, 1991; February 5, 1991

**BACKGROUND:**

In 1984, amendments to the federal Resource Conservation and Recovery Act (RCRA) directed the Environmental Protection Agency (EPA) to establish a regulatory program for underground storage tanks (USTs) containing petroleum products and hazardous substances. Congress encouraged the program to be delegated to the states.

In 1989 the Washington Legislature directed the Department of Ecology to establish a state UST regulatory program (Chapter 90.76 RCW). The state UST requirements cover underground tanks regulated under the federal act, and are to be "consistent with and no less stringent than the federal rules." State law encourages the delegation of responsibilities to local governments and provides for the distribution of funds to cover delegated program costs.

The state program preempts local UST laws and regulations except for: (1) local ordinances in effect on November 1, 1988 that are more stringent than federal regulations and the uniform building, mechanical, and fire codes; (2) local authority to immediately respond to releases of regulated substances; and (3) local ordinances in existence prior to July 1, 1990 that pertain to USTs in street right of ways.

Local governments may apply to Ecology to designate environmentally sensitive areas and propose requirements for USTs that are more stringent than the state standards for these areas. If local governments apply to Ecology later than five years after the state rules are adopted (rules were adopted on November 28, 1990), proposed local ordinances for

environmentally sensitive areas apply only to new UST installations.

Some owners and operators of USTs believe that local ordinances to protect environmentally sensitive areas would require tanks that have been upgraded to state standards, to be further upgraded--at a significant cost.

Secondly, some local fire officials, who implement the Uniform Fire Code (UFC), contend that existing state law provides an overly broad preemption of the UFC. However, the areas which are regulated by state rules and the UFC are not precisely the same. The UFC regulates the storage of flammable and combustible materials for fire prevention and safety, while the state UST rules regulate the general operating and leak detection of tank systems which store petroleum and hazardous substances.

Existing statutes require modification to address the issue of installed USTs and proposed environmentally sensitive areas, and to clarify those aspects of the UFC which are preempted by state law.

**SUMMARY:**

The five-year period when local sensitive area requirements may apply to in-place upgraded tanks is removed. Tanks that meet state, federal and local standards for tank upgrading and installation are exempt from having to meet additional requirements in local sensitive areas adopted after January 1, 1991. The primary purpose of local environmentally sensitive areas is for the protection of drinking water resources.

**Appropriation:** none

**Revenue:** none

**Fiscal Note:** none requested

**TESTIMONY FOR:**

To avoid paying expensive tank upgrading costs twice, tank owners and operators who are striving to meet current upgrade standards would like to be exempted from local sensitive area requirements that may be proposed in the future.

Ecology rules defining local sensitive areas are too broad, and go beyond what the Legislature intended. Protection of drinking water resources should be the main purpose.

Local fire officials would like a clarification on state UST rule preemption of the fire code.

**TESTIMONY AGAINST:**

"Grandfathering" underground storage tanks which meet existing state and local standards limits the ability of local governments to protect groundwater resources in the future.

**TESTIFIED:** Tim Hamilton, Jim Hiibel, Automotive United Trades Organization (pro); Tom Allen, Acme Fuel (pro); Gary Smith, Independent Business Association (pro); Randy Ray, Washington Oil Marketers Association and Oil Heat Institute (pro); Bruce Wishart, Sierra Club (con); Otto Jensen, Washington State Association of Fire Chiefs (pro)