
SUBSTITUTE SENATE BILL 5806

State of Washington

52nd Legislature

1991 Regular Session

By Senate Committee on Transportation (originally sponsored by Senators Patterson, Matson, Hansen, Vognild, Snyder, Barr, Hayner, Newhouse, Owen, Oke, Metcalf, Jesernig, Madsen, Conner, McMullen, Sellar, Johnson, Bailey and L. Smith).

Read first time March 6, 1991.

1 AN ACT Relating to underground storage tanks for petroleum
2 products; amending RCW 70.148.020 and 82.23A.020; adding a new section
3 to chapter 35.21 RCW; adding a new section to chapter 36.32 RCW; adding
4 new sections to chapter 70.148 RCW; creating new sections; and
5 declaring an emergency.

6 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

7 NEW SECTION. **Sec. 1.** LEGISLATIVE INTENT. Laws have been enacted
8 to limit and prevent environmental damage and risk to public health and
9 safety caused by underground petroleum storage tank leaks. Due to the
10 costs associated with compliance with such laws and the high costs
11 associated with correcting past environmental damage, underground
12 petroleum storage tank sites have closed or are planned for closure.
13 In addition, these costs present potential delays in needed corrective
14 action to protect the environment and public health and safety and loss
15 of necessary access to petroleum products within the affected local

1 community. Rural communities in particular have been hard pressed to
2 preserve their limited number of petroleum outlets and service
3 stations, the loss of which would adversely affect the fundamental
4 government responsibilities pertaining to: Emergency medical, fire,
5 and police services; vital educational, economic, social, and
6 transportation services; pollution prevention; and promotion of public
7 health and safety.

8 It is the intent of the legislature with the passage of this act to
9 assist the communities in the state that are remote from major
10 population centers and that are experiencing difficulties in preserving
11 their necessary petroleum outlets and service stations in order to:
12 Ensure emergency medical, fire, and police services; maintain vital
13 educational, economic, social, and transportation services; address
14 petroleum pollution; and promote public health and safety.

15 This act authorizes local governments to apply to the state for
16 loans and grants to facilitate the corrective action at an underground
17 petroleum storage tank site necessary to protect public health and
18 safety and preserve community access to fuel and other petroleum
19 products. Such financial assistance is conditioned upon a commitment
20 that the tank site will continue to meet local community needs.

21 NEW SECTION. **Sec. 2.** A new section is added to chapter 35.21 RCW
22 to read as follows:

23 CITIES AND TOWNS--AUTHORIZATION. (1) Cities and towns are
24 authorized to provide loans and grants to owners and operators of
25 underground storage tanks containing petroleum located within their
26 jurisdictions for the reconstruction, repair, renewal, site-cleanup,
27 maintenance, or establishment of the underground storage tank
28 containing petroleum if such action is necessary to accomplish one or
29 more of the following fundamental governmental responsibilities:

- 1 (a) Maintain emergency medical, fire, and police services;
- 2 (b) Preserve vital educational, economic, social, and
- 3 transportation services;
- 4 (c) Address petroleum pollution;
- 5 (d) Promote public health and safety.

6 (2) In consideration for receiving a loan or grant under subsection

7 (1) of this section, the owner and operator of the underground storage

8 tank containing petroleum shall be subject to the provisions of section

9 8 of this act.

10 NEW SECTION. **Sec. 3.** A new section is added to chapter 36.32 RCW

11 to read as follows:

12 COUNTIES--AUTHORIZATION. (1) Counties are authorized to provide

13 loans and grants to owners and operators of underground storage tanks

14 containing petroleum located within their jurisdictions for the

15 reconstruction, repair, renewal, site-cleanup, maintenance, or

16 establishment of the underground storage tank containing petroleum if

17 such action is necessary to accomplish one or more of the following

18 fundamental governmental responsibilities:

- 19 (a) Maintain emergency medical, fire, and police services;
- 20 (b) Preserve vital educational, economic, social, and
- 21 transportation services;
- 22 (c) Address petroleum pollution;
- 23 (d) Promote public health and safety.

24 (2) In consideration for receiving a loan or grant under subsection

25 (1) of this section, the owner and operator of the underground storage

26 tank containing petroleum shall be subject to the provisions of section

27 8 of this act.

1 NEW SECTION. **Sec. 4.** A new section is added to chapter 70.148 RCW
2 to read as follows:

3 COMMITTEE ESTABLISHED. There is established within the pollution
4 liability insurance agency the underground storage tank community
5 assistance program committee.

6 (1) The committee shall have five members. The director shall
7 appoint the members, which shall include:

8 (a) One member representing the Washington state association of
9 counties;

10 (b) One member representing the association of Washington cities;

11 (c) One member representing a state-wide agricultural organization;

12 (d) One member representing the pollution liability insurance
13 agency; and

14 (e) One member representing owners of underground petroleum storage
15 tanks.

16 (2) Each member shall serve a term of two years. A person
17 appointed to fill a vacancy of a member shall be appointed in a like
18 manner and shall serve for only the unexpired term. A member is
19 eligible for reappointment. A member may be removed by the director
20 only for cause.

21 (3) The director shall designate a member of the board as its
22 chairperson. The committee may elect other officers it deems
23 appropriate. Three members of the committee constitute a quorum and
24 three affirmative votes are necessary for the transaction of business
25 or the exercise of any power or function of the committee.

26 (4) The members of the committee shall serve without compensation,
27 but are entitled to reimbursement for actual and necessary expenses
28 incurred in the performance of official duties in accordance with RCW
29 43.03.050 and 43.03.060.

1 (5) Members shall not be liable to the state, to cities, towns, or
2 counties, or to any other person as a result of their activities,
3 whether ministerial or discretionary, as members except for willful
4 dishonesty or intentional violations of the law. The department may
5 purchase liability insurance for members and may indemnify these
6 persons against the claims of others.

7 NEW SECTION. **Sec. 5.** A new section is added to chapter 70.148 RCW
8 to read as follows:

9 AUTHORIZATION TO REVIEW AND APPROVE APPLICATIONS. Subject to the
10 restriction contained in sections 4 through 8 of this act, the
11 underground storage tank community assistance program committee is
12 authorized to review and approve applications of cities, towns, and
13 counties for loans or grants which the city, town, or county will use
14 to carry out the activities authorized under sections 2 and 3 of this
15 act.

16 NEW SECTION. **Sec. 6.** A new section is added to chapter 70.148 RCW
17 to read as follows:

18 APPLICATION STANDARDS. The underground storage tank community
19 assistance program committee shall approve those applications for loans
20 and grants that meet the minimum standards set forth in sections 4
21 through 8 of this act and that will best serve the intent of this
22 chapter to assist communities in providing for fundamental government
23 services.

24 (1) The committee shall not approve more than one hundred fifty
25 thousand dollars in loans and/or grants for any one underground storage
26 tank site.

27 (2) The committee shall only approve applications of cities, towns,
28 and counties seeking to preserve an underground storage tank site that

1 constitutes the sole source of petroleum products available to the
2 public in a rural community remote from other population centers.

3 (3) The committee shall only approve applications from cities or
4 towns that have demonstrated intention to comply with the provisions of
5 sections 2 and 8 of this act.

6 (4) The committee shall only approve applications from counties
7 that have demonstrated intention to comply with the provisions of
8 sections 3 and 8 of this act.

9 (5) In approving applications for grant money, the committee shall
10 give preference to those applicants providing a local match, in cash or
11 through in-kind services, for the state assistance. The committee
12 shall ensure to the greatest extent possible, given the limited
13 resources of the city, town, or county, that there is financial
14 participation by the city, town, or county.

15 (6) The committee shall adopt rules necessary to implement the
16 provisions of this chapter.

17 NEW SECTION. **Sec. 7.** A new section is added to chapter 70.148 RCW
18 to read as follows:

19 FUNDING LIMITATION. Loans or grants provided under sections 2 and
20 3 of this act for cleanup of underground petroleum storage tank sites
21 may not exceed seventy-five thousand dollars. If at any time before
22 providing the financial assistance, it appears to the city, town, or
23 county that site clean-up costs may exceed seventy-five thousand
24 dollars, the city, town, or county may not provide further financial
25 assistance until the owner or operator has developed and implemented a
26 corrective action plan with the department of ecology. These funds
27 shall not be expended for ongoing operations of underground storage
28 tanks.

1 NEW SECTION. **Sec. 8.** A new section is added to chapter 70.148 RCW
2 to read as follows:

3 OWNER OR OPERATOR RESPONSIBILITIES TO LOCAL GOVERNMENT. (1) To
4 qualify for a loan or grant under section 2 or 3 of this act, the owner
5 or operator of an underground petroleum storage tank must:

6 (a) Apply and qualify for insurance from the pollution liability
7 insurance program; and

8 (b) Enter into a written agreement with the city, town, or county
9 that conditions financial assistance upon the owner's and operator's
10 promise to: (i) Provide needed petroleum products and related
11 services; (ii) maintain the tank site for the use for which the
12 assistance was provided for a period of not less than twenty-five years
13 from the date of the agreement; and (iii) maintain compliance with
14 state underground storage tank financial responsibility and other
15 technical requirements.

16 (2) The city, town, or county shall file the agreement required of
17 owners and operators receiving financial assistance as a real property
18 lien against the tank site with the county auditor in which the tanks
19 are located. If the owner or operator receiving financial assistance
20 under this chapter transfers his or her interest in such property, the
21 new owner or operator must agree to abide by the agreement, or any
22 financial assistance provided under this section immediately becomes
23 due and repayable to the awarding city, town, or county by the owner or
24 operator who received the assistance.

25 (3) If an owner or operator materially breaches the agreement
26 required of owners and operators receiving financial assistance, any
27 financial assistance provided under this section immediately becomes
28 due and repayable by the owner or operator.

1 NEW SECTION. **Sec. 9.** A new section is added to chapter 70.148 RCW
2 to read as follows:

3 DEFENSE OF ACTIONS. If an action based on a constitutional
4 challenge is brought or maintained against a city, town, or county
5 acting alone or jointly under this act, the city, town, or county may
6 request the state of Washington to act or assist in its defense. The
7 state of Washington shall give favorable consideration to such request
8 unless the city, town, or county has the fiscal and administrative
9 resources to act in its own defense.

10 **Sec. 10.** RCW 70.148.020 and 1990 c 64 s 3 are each amended to read
11 as follows:

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

25 (2) Each calendar quarter, the director shall report to the
26 insurance commissioner and the chairs of the senate ways and means,
27 senate financial institutions, house of representatives revenue, and
28 house of representatives financial institutions committees, the loss
29 and surplus reserves required for the calendar quarter. The director

1 shall notify the department of revenue of this amount by the fifteenth
2 day of each calendar quarter.

3 (3) Each calendar quarter the director shall report to the senate
4 ways and means and house of representatives revenue committees the
5 amount of reserves necessary to fund commitments made to provide
6 financial assistance under sections 4 through 8 of this act to the
7 extent that the financial assistance reserves do not jeopardize the
8 operations and liabilities of the pollution liability insurance
9 program. The director shall notify the department of revenue of this
10 amount by the fifteenth day of each calendar quarter. The director may
11 immediately establish an initial financial assistance reserve of five
12 million dollars from available revenues.

13 **Sec. 11.** RCW 82.23A.020 and 1990 c 64 s 12 are each amended to
14 read as follows:

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

19 (2) Moneys collected under this chapter shall be deposited in the
20 pollution liability insurance program trust account under RCW
21 70.148.020.

22 (3) Chapter 82.32 RCW applies to the tax imposed in this chapter.
23 The tax due dates, reporting periods, and return requirements
24 applicable to chapter 82.04 RCW apply equally to the tax imposed in
25 this chapter.

26 (4) Within thirty days after the end of each calendar quarter the
27 department shall determine the "quarterly balance," which shall be the
28 cash balance in the pollution liability insurance program trust account
29 as of the last day of that calendar quarter, after excluding the

1 reserves determined for that quarter under RCW 70.148.020 (2) and (3).
2 Balance determinations by the department under this section are final
3 and shall not be used to challenge the validity of any tax imposed
4 under this section. For each subsequent calendar quarter, tax shall be
5 imposed under this section during the entire calendar quarter unless:

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

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

12 NEW SECTION. **Sec. 12.** Section captions as used in this act do not
13 constitute any part of the law.

14 NEW SECTION. **Sec. 13.** If any provision of this act or its
15 application to any person or circumstance is held invalid, the
16 remainder of the act or the application of the provision to other
17 persons or circumstances is not affected.

18 NEW SECTION. **Sec. 14.** This act is necessary for the immediate
19 preservation of the public peace, health, or safety, or support of the
20 state government and its existing public institutions, and shall take
21 effect immediately.