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**SUBSTITUTE HOUSE BILL 2114**

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**State of Washington**

**52nd Legislature**

**1991 Regular Session**

**By** House Committee on Financial Institutions & Insurance (originally sponsored by Representatives Prince, Grant, Lisk, Nealey, Fuhrman, Cole, Vance, Rayburn, Morton, Chandler, Neher, Hochstatter, Rasmussen, Moyer, McLean, Bowman, Betrozoff, Casada, D. Sommers, P. Johnson and Silver).

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 new sections  
3 to chapter 70.148 RCW; and declaring an emergency.

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

5       NEW SECTION.   **Sec. 1.**       The legislature recognizes as a  
6 fundamental government purpose the need to protect the environment and  
7 human health and safety. To that end the state has enacted laws  
8 designed to limit and prevent environmental damage and risk to public  
9 health and safety caused by underground petroleum storage tank leaks.  
10 Because of the costs associated with compliance with such laws and the  
11 high costs associated with correcting past environmental damage, many  
12 owners and operators of underground petroleum storage tanks have  
13 discontinued the use of or have planned to discontinue the use of such  
14 tanks. As a consequence, isolated communities face the loss of their  
15 source of motor vehicle fuel and face the risk that the owner or

1 operator will have insufficient funds to take corrective action for  
2 pollution caused by past leaks from the tanks. In particular, rural  
3 communities face the risk that essential emergency, medical, fire and  
4 police services may be disrupted through the diminution or elimination  
5 of local sellers of petroleum products and by the closure of  
6 underground storage tanks owned by local government entities serving  
7 these communities.

8 The legislature also recognizes as a fundamental government purpose  
9 the need to preserve a minimum level of economic viability in rural  
10 communities so that public revenues generated from economic activity  
11 are sufficient to sustain necessary governmental functions. The  
12 closing of local service stations adversely affects local economies by  
13 reducing or eliminating reasonable access to fuel for agricultural,  
14 commercial, and transportation needs.

15 The legislature intends to assist small communities within this  
16 state by authorizing:

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

23 (2) Local government entities to obtain state financial assistance  
24 to bring local government underground petroleum storage tanks into  
25 compliance with environmental regulations and to take needed corrective  
26 action for existing tank leaks.

27 NEW SECTION. **Sec. 2.** (1) Subject to the conditions and  
28 limitations of RCW 70.148.020, 82.23A.020, and sections 1 through 6 of  
29 this act, the director shall establish and manage a program for

1 providing financial assistance to public and private owners and  
2 operators of underground storage tanks who have been certified by the  
3 governing body of the county, city, or town in which the tanks are  
4 located as meeting a vital local government, public health or safety  
5 need. In providing such financial assistance the director shall:

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

8 (b) Limit assistance to only that amount necessary to supplement  
9 applicant financial resources;

10 (c) Limit assistance to no more than one hundred fifty thousand  
11 dollars in value for any one underground storage tank site of which  
12 amount no more than seventy-five thousand dollars in value may be  
13 provided for corrective action; and

14 (d) Whenever practicable, provide assistance through the direct  
15 payment of contractors and other professionals for labor, materials,  
16 and other services.

17 (2) Except as otherwise provided in RCW 70.148.020, 82.23A.020, and  
18 sections 1 through 6 of this act, no grant of financial assistance may  
19 be used for any purpose other than for corrective action and repair,  
20 replacement, reconstruction, and improvement of underground storage  
21 tanks and tank sites. If at any time prior to providing financial  
22 assistance or in the course of providing such assistance, it appears to  
23 the director that corrective action costs may exceed seventy-five  
24 thousand dollars, the director 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.

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

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

5 (5) The director shall approve or disapprove applications for  
6 financial assistance within sixty days of receipt of a completed  
7 application meeting the requirements of RCW 70.148.020, 82.23A.020, and  
8 sections 1 through 6 of this act. The certification by local  
9 government of an owner or operator shall not preclude the director from  
10 disapproving an application for financial assistance if the director  
11 finds that such assistance would not meet the purposes of RCW  
12 70.148.020, 82.23A.020, and sections 1 through 6 of this act.

13 (6) The director may adopt all rules necessary to implement the  
14 financial assistance program and shall consult with the technical  
15 advisory committee established under RCW 70.148.030 in developing such  
16 rules and in reviewing applications for financial assistance.

17 NEW SECTION. **Sec. 3.** (1) To qualify for financial assistance,  
18 a private owner or operator retailing petroleum products to the public  
19 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) If the director makes a preliminary determination of possible  
24 eligibility for financial assistance, apply to the appropriate  
25 governing body of the city or town in which the tanks are located or in  
26 the case where the tanks are located outside of the jurisdiction of a  
27 city or town, then to the appropriate governing body of the county in  
28 which the tanks are located, for a determination by the governing body

1 of the city, town, or county that the continued operation of the tanks  
2 meets a vital local government, or public health or safety need; and

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

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

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

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

12 (c) To sell petroleum products to local government entities within  
13 the affected community on a cost-plus basis periodically negotiated  
14 between the owner and operator and the city, town, or county in which  
15 the tanks are located; and

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

18 (3) The agreement shall be filed as a real property lien against  
19 the tank site with the county auditor in which the tanks are located.  
20 If the owner or operator transfers his or her interest in such  
21 property, the new owner or operator must agree to abide by the  
22 agreement or any financial assistance provided under RCW 70.148.020,  
23 82.23A.020, and sections 1 through 6 of this act shall be immediately  
24 repaid to the state by the owner or operator who received such  
25 assistance.

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

1 (5) The agreement between an owner and operator and the state  
2 required under this section shall expire fifteen years from the date of  
3 entering into the agreement.

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

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

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

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

15 (2) The director shall give priority to and shall encourage local  
16 government entities to consolidate multiple operational underground  
17 storage tank sites into as few sites as possible. For this purpose,  
18 the director may provide financial assistance for the establishment of  
19 a new local government underground storage tank site contingent upon  
20 the closure of other operational sites in accordance with environmental  
21 regulations. Within the per site financial limits imposed under RCW  
22 70.148.020, 82.23A.020, and sections 1 through 6 of this act, the  
23 director may authorize financial assistance for the closure of  
24 operational sites when closure is for the purpose of consolidation.

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

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

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

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

10 (4) Agree to provide charity care as defined in RCW 70.39.020 in an  
11 amount of equivalent value to the financial assistance provided under  
12 RCW 70.148.020, 82.23A.020, and sections 1 through 6 of this act. The  
13 director shall consult with the department of health to monitor and  
14 determine the time period over which such care should be expected to be  
15 provided in the local community.

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

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

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

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

1 (c) Designate the local government official who will be responsible  
2 for negotiating the price of petroleum products to be sold on a cost-  
3 plus basis to the local government entities in the affected communities  
4 and the entities eligible to receive petroleum products at such price;  
5 and

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

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

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

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

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

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

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

1 surplus balances in the pollution liability insurance program trust  
2 account shall be credited to the account notwithstanding RCW 43.84.090.

3 (2) Each calendar quarter, the director shall report to the  
4 insurance commissioner and the chairs of the senate ways and means,  
5 senate financial institutions, house of representatives revenue, and  
6 house of representatives financial institutions committees, the loss  
7 and surplus reserves required for the calendar quarter. The director  
8 shall notify the department of revenue of this amount by the fifteenth  
9 day of each calendar quarter.

10 (3) Each calendar quarter the director shall report to the chairs  
11 of the senate ways and means, senate financial institutions, house of  
12 representatives revenue, and house of representatives financial  
13 institutions and insurance committees, the amount of reserves necessary  
14 to fund commitments made to provide financial assistance under section  
15 2 of this act to the extent that the financial assistance reserves do  
16 not jeopardize the operations and liabilities of the pollution  
17 liability insurance program. The director shall notify the department  
18 of revenue of this amount by the fifteenth day of each calendar  
19 quarter. The director may immediately establish an initial financial  
20 assistance reserve of five million dollars from available revenues.  
21 The director may not expend more than fifteen million dollars for the  
22 financial assistance program.

23 **Sec. 8.** RCW 82.23A.020 and 1990 c 64 s 12 are each amended to read  
24 as follows:

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

1 (2) Moneys collected under this chapter shall be deposited in the  
2 pollution liability insurance program trust account under RCW  
3 70.148.020.

4 (3) Chapter 82.32 RCW applies to the tax imposed in this chapter.  
5 The tax due dates, reporting periods, and return requirements  
6 applicable to chapter 82.04 RCW apply equally to the tax imposed in  
7 this chapter.

8 (4) Within thirty days after the end of each calendar quarter the  
9 department shall determine the "quarterly balance," which shall be the  
10 cash balance in the pollution liability insurance program trust account  
11 as of the last day of that calendar quarter, after excluding the  
12 reserves determined for that quarter under RCW 70.148.020(2) and (3).  
13 Balance determinations by the department under this section are final  
14 and shall not be used to challenge the validity of any tax imposed  
15 under this section. For each subsequent calendar quarter, tax shall be  
16 imposed under this section during the entire calendar quarter unless:

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

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

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

25 NEW SECTION. Sec. 10. If any provision of this act or its  
26 application to any person or circumstance is held invalid, the  
27 remainder of the act or the application of the provision to other  
28 persons or circumstances is not affected.

1        NEW SECTION.    **Sec. 11.**        This act is necessary for the immediate  
2 preservation of the public peace, health, or safety, or support of the  
3 state government and its existing public institutions, and shall take  
4 effect immediately.