

CERTIFICATION OF ENROLLMENT  
SUBSTITUTE SENATE BILL 5806

52nd Legislature  
1991 Regular Session

Passed by the Senate March 27, 1991  
Yeas 43 Nays 0

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**President of the Senate**

Passed by the House March 27, 1991  
Yeas 94 Nays 0

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**Speaker of the  
House of Representatives**

Approved

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**Governor of the State of Washington**

CERTIFICATE

I, Gordon Golob, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5806** as passed by the Senate and the House of Representatives on the dates hereon set forth.

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**Secretary**

FILED

Secretary of State  
State of Washington



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**SUBSTITUTE SENATE BILL 5806**

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AS AMENDED BY THE HOUSE

Passed Legislature - 1991 Regular Session

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

1 motor vehicle fuel and face the risk that the owner or operator will  
2 have insufficient funds to take corrective action for pollution caused  
3 by past leaks from the tanks. In particular, rural communities face  
4 the risk that essential emergency, medical, fire and police services  
5 may be disrupted through the diminution or elimination of local sellers  
6 of petroleum products and by the closure of underground storage tanks  
7 owned by local government entities serving 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 sections 1 through 6 of this act, the director shall  
29 establish and manage a program for providing financial assistance to

1 public and private owners and operators of underground storage tanks  
2 who have been certified by the governing body of the county, city, or  
3 town in which the tanks are located as meeting a vital local  
4 government, public health or safety need. In providing such financial  
5 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 sections 1 through 6 of this  
18 act, no grant of financial assistance may be used for any purpose other  
19 than for corrective action and repair, replacement, reconstruction, and  
20 improvement of underground storage tanks and tank sites. If at any  
21 time prior to providing financial assistance or in the course of  
22 providing such assistance, it appears to the director that corrective  
23 action costs may exceed seventy-five thousand dollars, the director may  
24 not provide further financial assistance until the owner or operator  
25 has developed and implemented a corrective action plan with the  
26 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 sections 1 through 6 of this  
8 act. The certification by local government of an owner or operator  
9 shall not preclude the director from disapproving an application for  
10 financial assistance if the director finds that such assistance would  
11 not meet the purposes of sections 1 through 6 of this act.

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

16 NEW SECTION. **Sec. 3.** (1) To qualify for financial assistance, a  
17 private owner or operator retailing petroleum products to the public  
18 must:

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

22 (b) If the director makes a preliminary determination of possible  
23 eligibility for financial assistance, apply to the appropriate  
24 governing body of the city or town in which the tanks are located or in  
25 the case where the tanks are located outside of the jurisdiction of a  
26 city or town, then to the appropriate governing body of the county in  
27 which the tanks are located, for a determination by the governing body  
28 of the city, town, or county that the continued operation of the tanks  
29 meets a vital local government, or public health or safety need; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28       (2) Apply to the governing body of the city, town, or county in  
29 which the hospital is located for certification that the continued



1 operation of the tank or tanks is necessary to maintain vital local  
2 public health or safety needs;

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

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

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

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

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

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

24 (c) Designate the local government official who will be responsible  
25 for negotiating the price of petroleum products to be sold on a cost-  
26 plus basis to the local government entities in the affected communities  
27 and the entities eligible to receive petroleum products at such price;  
28 and

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

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

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

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

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

10 **Sec. 7.** 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 program 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 chairs  
4 of the senate ways and means, senate financial institutions, house of  
5 representatives revenue, and house of representatives financial  
6 institutions and insurance committees, the amount of reserves necessary  
7 to fund commitments made to provide financial assistance under section  
8 2 of this act to the extent that the financial assistance reserves do  
9 not jeopardize the operations and liabilities of the pollution  
10 liability insurance program. The director shall notify the department  
11 of revenue of this amount by the fifteenth day of each calendar  
12 quarter. The director may immediately establish an initial financial  
13 assistance reserve of five million dollars from available revenues.  
14 The director may not expend more than fifteen million dollars for the  
15 financial assistance program.

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

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

22 (2) Moneys collected under this chapter shall be deposited in the  
23 pollution liability insurance program trust account under RCW  
24 70.148.020.

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

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

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

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

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

18 NEW SECTION. **Sec. 10.** If any provision of this act or its  
19 application to any person or circumstance is held invalid, the  
20 remainder of the act or the application of the provision to other  
21 persons or circumstances is not affected.

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