

**SENATE BILL REPORT**

**SB 5480**

**AS REPORTED BY COMMITTEE ON ENVIRONMENT & NATURAL RESOURCES,  
FEBRUARY 28, 1991**

**Brief Description:** Pertaining to the applicability of the uniform fire code to underground storage tank laws.

**SPONSORS:** Senators Oke, Owen, Sutherland and Metcalf; by request of Department of Ecology.

**SENATE COMMITTEE ON ENVIRONMENT & NATURAL RESOURCES**

**Majority Report:** That Substitute Senate Bill No. 5480 be substituted therefor, and the substitute bill do pass.

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

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

**Hearing Dates:** February 28, 1991

**BACKGROUND:**

In 1984, amendments to the 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.

Pursuant to the RCRA allowance for states to apply to the EPA for delegation of the UST regulatory program, the Legislature directed the Department of Ecology to establish a Washington Underground Storage Tank Regulatory Program in 1989.

The Washington program includes the following elements: (1) Statewide regulations for USTs that are consistent with and no less stringent than the federal regulations; (2) an administrative and enforcement program that meets minimum federal requirements and encourages the delegation of program responsibilities to local governments; and (3) cooperation with the State Building Code Council when adopting rules.

As of July 1, 1990, the statewide UST regulations preempt and supersede local regulations governing the same areas of regulation, except in the following cases:

- (1) Local regulations that pertain to local authority to immediately respond to releases;
- (2) Local UST regulations existing prior to November 1, 1988 that are more stringent than the federal regulations and the uniform building and fire codes; and

- (3) Local regulations existing prior to July 1, 1990 that pertain to permits and fees for using USTs in street right of ways.

The areas which are regulated by state rules and the Uniform Fire Code (UFC) are not precisely the same. The UFC regulates the storage of flammable and combustible materials, while the UST rules regulate UST systems which are at least 10 percent below the ground and which store petroleum and hazardous substances.

The state UST rules exempt (1) tanks containing 110 gallons or less; (2) tanks containing substances used for consumptive purposes on a facility's premises (such as home heating oil); (3) tanks less than 1,100 gallons located at farms and residences used for storing motor fuel. However, these tanks are regulated under UFC regulations.

Some local fire officials have interpreted existing preemption language in UST law as a "blanket preemption" of the UFC. The Department of Ecology has interpreted state law to mean that only provisions of the UFC which are in direct conflict with the UST rules are preempted.

The Department of Ecology has identified three areas where there is a direct conflict between the UFC and state rules. These areas are:

- (1) Repair of Leaking UST Systems. Under the UFC, leaking tanks must be removed (79.601(d)). WAC 173-360-325 allows leaking UST systems to be repaired but requires that the repairs allow the UST system to meet new tank standards, and a method of release detection must be employed before the tank is put back into service.
- (2) Closure of a Tank in Place. The UFC requires the local Fire Chief to permit UST systems to be closed in place (79.115). WAC 173-360-385 allows the owner or operator of the UST system to determine if the tank will be closed in place. The state rule provides that the closure must be conducted by a licensed service provider employing licensed supervisors.
- (3) Temporary Closure of a Tank in Place. The UFC requires that tanks which have been temporarily closed for one year, or that are located on abandoned property, be permanently closed. WAC 173-360-380 also requires tanks which have been temporarily closed for one year to be permanently closed, unless the owner or operator of the UST system has requested an extension of the temporary closure period. WAC 173-360-380 allows tanks located on abandoned property to be temporarily closed, with extensions of the temporary closure period.

Many local fire officials contend that existing law provides an overly broad preemption of the UFC in areas where there is not a direct conflict with the state UST standards.

**SUMMARY:**

State rules developed by the Department of Ecology for the state Underground Storage Tank Program preempt only those portions of the Uniform Fire Code that conflict with the state rules directly.

**EFFECT OF PROPOSED SUBSTITUTE:**

Provisions of the Uniform Fire Code that are not as strict, and that do not directly conflict with state underground storage tank rules are not preempted by the state rules.

**Appropriation:** none

**Revenue:** none

**Fiscal Note:** none requested

**TESTIMONY FOR:**

This bill will help clear up any confusion regarding the relationship of the state rules to the Uniform Fire Code.

**TESTIMONY AGAINST:** None

**TESTIFIED:** Otto Jensen, Washington State Association of Fire Chiefs (pro)