

HOUSE BILL REPORT

HB 2114

*As Reported By House Committee on:
Financial Institutions & Insurance*

Title: An act relating to underground storage tanks for petroleum products.

Brief Description: Authorizing loans and grants to preserve underground petroleum storage tanks in rural areas.

Sponsor(s): 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.

Brief History:

Reported by House Committee on:
Financial Institutions & Insurance, March 6, 1991, DPS.

**HOUSE COMMITTEE ON
FINANCIAL INSTITUTIONS & INSURANCE**

Majority Report: *That Substitute House Bill No. 2114 be substituted therefor, and the substitute bill do pass.*
Signed by 13 members: Representatives Dellwo, Chair; Zellinsky, Vice Chair; Broback, Ranking Minority Member; Mielke, Assistant Ranking Minority Member; Anderson; Dorn; Inslee; R. Johnson; R. Meyers; Paris; Schmidt; Scott; and Winsley.

Staff: John Conniff (786-7119).

Background: In 1984, Congress enacted legislation to regulate underground storage tanks (USTs) containing petroleum products. The legislation directed the Environmental Protection Agency to develop a comprehensive regulatory program governing UST's including standards for improving or upgrading UST's, correcting pollution from leaks from UST's, and for obtaining liability insurance or an acceptable insurance substitute covering liability for clean-up and third party damages. These regulations were adopted over the past few years and compliance with various parts of the regulations is required at different times over the next eight years. The State has adopted parallel statutory and regulatory provisions.

In large part because of the financial consequences of these statutes and regulations, many owners and operators of UST's have decided to discontinue use of UST's. For example, many gasoline stations have been unable to afford a combination of the costs of insurance, tank replacement, and clean-up costs and have therefore chosen to close their businesses. The closure of gasoline stations in rural areas may have the effect of limiting local community access to fuel. Small local government entities have similarly been unable to afford compliance with environmental regulations governing UST's. Rural hospitals which maintain backup power generators supplied by fuel from UST's also cannot afford compliance.

Summary of Substitute Bill: The director of the Pollution Liability Insurance Agency (PLIA) must establish and manage a program for providing financial assistance to public and private owners and operators of underground storage tanks (UST's) that have been certified by the governing body of the county, city, or town in which the UST's are located as meeting vital local government, public health and safety needs. The director must consult with the Technical Advisory Committee created for the PLIA Insurance Program in adopting rules and reviewing applications for financial assistance.

Financial assistance cannot be provided unless owners and operators, including local government owners and operators, demonstrate serious financial hardship. Assistance is limited to that amount necessary to supplement owner and operator financial resources and cannot be provided in an amount exceeding \$150,000 of which amount no more than \$75,000 can be expended for clean-ups.

The director may provide financial assistance only for clean-ups and UST upgrades. If it appears that clean-up costs will exceed \$75,000, no financial assistance may be provided until the owner or operator develops and implements a clean-up plan with the Department of Ecology. When requests for assistance exceed available funds, the director must give preference to assisting UST sites that constitute the sole source of petroleum products in remote rural communities.

Private owners and operators who retail petroleum products may qualify by filing an application with PLIA requesting insurance and financial assistance; by obtaining a certification from the appropriate local government entity that the continued operation of the private UST site meets vital local government, public health and safety needs; and by qualifying for PLIA insurance coverage should the assistance be granted. The local government must find that

other retailers are located remote from the local community and the owner or operator is capable of faithfully fulfilling promises required in exchange for assistance.

In consideration for state financial assistance, a private retailer of petroleum products must agree to sell petroleum products to the public; must maintain the UST site for retail sales for a period of 15 years; must enter into an agreement with the local government to supply petroleum products at a negotiated price on a cost-plus basis; and must maintain compliance with environmental regulations. The agreement must be filed as a real property lien against the UST site. If the property is transferred, the new owner and operator must comply with the agreement. If the agreement is breached, the owner and operator who received assistance must immediately repay the State for assistance.

Local government entities may qualify for assistance by filing an application with PLIA requesting insurance and financial assistance; by producing a resolution from the appropriate governing body of a city, town, or county finding that the continued operation of the local government UST's meets vital local public health, education, or safety needs; and by qualifying for PLIA insurance should assistance be provided. The director may authorize funding of a new local government UST site and funding for closure of existing operational UST sites if the local government is consolidating several operational sites.

Rural hospitals may qualify for assistance by filing an application with PLIA requesting insurance and financial assistance; by obtaining a certification from the appropriate local government body that the continued operation of the UST is needed for vital local health and safety needs; and by qualifying for PLIA insurance should assistance be provided. In addition, the rural hospital must agree to provide charity care in the local community in an amount equivalent to the state assistance provided. Such charity care must be provided over a period of time determined by the director in consultation with the Department of Health.

Revenue to fund financial assistance is provided by authorizing the director to set aside additional reserves from the petroleum products tax which funds the PLIA Insurance Program to the extent such additional reserves do not jeopardize the insurance program. The director may immediately set aside \$5 million for financial assistance. Total funding for the assistance program cannot exceed \$15 million.

Substitute Bill Compared to Original Bill: The substitute bill is similar to the original bill in concept and funding only. The local government advisory committee is removed. Local government authority to make loans and grants to UST owners and operators is removed. The State provides and controls financial assistance. New funding conditions and limits are imposed. Financial assistance is provided in the form of grants conditioned upon agreements from private owners and operators that return equivalent benefits to the local community to avoid unconstitutional lending of credit or gifts of public funds. Local governments may obtain financial assistance in keeping with the stated objective of alleviating adverse consequences upon performance of vital governmental functions. Rural hospitals may obtain assistance in return for providing charity care over a period of time appropriate for the hospital receiving assistance. Greater funding authority and control is placed with PLIA and technical changes are made.

Fiscal Note: Requested.

Effective Date of Substitute Bill: The bill contains an emergency clause and takes effect immediately.

Testimony For: (Original Bill): Many service stations in small rural communities across the state have closed or are threatened with closure because of the high costs of complying with underground storage tank regulations. As a consequence, these communities may be forced to drive 30 to 50 miles to obtain gas for personal, business, and agricultural needs. Emergency vehicles including police, fire and medical vehicles which have relied upon local service stations must search for expensive alternative means of obtaining fuel. Small towns do not have the financial ability to install, upgrade, or clean-up their petroleum storage tank sites needed to provide fuel for government vehicles. The closure of local gas stations also encourages farmers and others in local communities to purchase small storage tanks for personal fuel needs which are placed above ground to avoid environmental regulations thus creating explosion and fire hazards and creating more numerous threats to the environment. If state funds were provided to assist owners and operators in complying with environmental laws, essential government services, local economies, and agricultural operations would not be threatened.

Testimony Against: (Original Bill): While recognizing the needs of small rural communities, environmentalists question the funding for clean-up given the public's adoption of Initiative 97 requiring those responsible for pollution to pay for clean-up. In addition, funding for clean-up removes the threat of liability for clean-up that creates incentives

for careful management of underground storage tanks. Any assistance for upgrading tanks should be limited to extreme need and subject to strict controls. In particular, creating a committee representative of beneficiaries of state assistance to approve applications for assistance will create inherent conflicts of interest.

Witnesses: Tim Hamilton, Auto United Trade Organization (Pro); Randy Ray, Washington Assn. of Wheat Growers (Pro); Stan Finkelstein, Assn. of Washington Cities (Pro); Terry Husseman, Dept. of Ecology; Jim Sims, Director of Pollution Liability Insurance Agency; and Bruce Wishart, Sierra Club (Con).