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**SUBSTITUTE SENATE BILL 5475**

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**State of Washington**

**60th Legislature**

**2007 Regular Session**

**By** Senate Committee on Water, Energy & Telecommunications (originally sponsored by Senators Poulsen, Honeyford, Regala and Kohl-Welles; by request of Department of Ecology)

READ FIRST TIME 02/01/07.

1       AN ACT Relating to underground storage tanks; amending RCW  
2 90.76.005, 90.76.010, 90.76.020, 90.76.050, 90.76.070, 90.76.080,  
3 90.76.090, 90.76.110, 43.21B.300, 43.131.393, and 43.131.394; and  
4 repealing RCW 90.76.120.

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

6       **Sec. 1.** RCW 90.76.005 and 1989 c 346 s 1 are each amended to read  
7 as follows:

8       The legislature finds that leaking underground storage tanks  
9 containing petroleum and other regulated substances pose a serious  
10 threat to human health and the environment. To address this threat,  
11 the legislature intends for the department of ecology to establish an  
12 underground storage tank program designed, operated, and enforced in a  
13 manner that, at a minimum, meets the requirements for delegation of the  
14 federal underground storage tank program of the resource conservation  
15 and recovery act of 1976, as amended (42 U.S.C. Sec. 6901, et seq.).  
16 The legislature intends that statewide requirements for underground  
17 storage tanks adopted by the department be consistent with and no less  
18 stringent than the (~~objectives outlined~~) requirements in the federal

1 regulations and the underground storage tank compliance act of 2005 (42  
2 U.S.C. Sec. 15801 et seq., Energy Policy Act of 2005, P.L. 109-58,  
3 Title XV, subtitle B).

4 The legislature further finds that certain areas of the state  
5 possess physical characteristics that make them especially vulnerable  
6 to threats from leaking underground storage tanks and that in these  
7 environmentally sensitive areas, local requirements more stringent than  
8 the statewide requirements may apply.

9 **Sec. 2.** RCW 90.76.010 and 1998 c 155 s 1 are each amended to read  
10 as follows:

11 Unless the context clearly requires otherwise, the definitions in  
12 this section apply throughout this chapter.

13 (1) "Department" means the department of ecology.

14 (2) "Director" means the director of the department.

15 (3) "Facility compliance tag" means a marker, constructed of metal,  
16 plastic, or other durable material, that clearly identifies all  
17 qualifying underground storage tanks on the particular site for which  
18 it is issued.

19 (4) "Federal act" means the federal resource conservation and  
20 recovery act, as amended (42 U.S.C. Sec. 6901, et seq.).

21 (5) "Federal regulations" means the underground storage tanks  
22 regulations (40 C.F.R. Secs. 280 and 281) adopted by the United States  
23 environmental protection agency under the federal act.

24 (6) "License" means the master business license underground storage  
25 tank endorsement issued by the department of licensing.

26 (7) "Underground storage tank compliance act of 2005" means Title  
27 XV and subtitle B of P.L. 109-58 (42 U.S.C. Sec. 15801 et seq.) which  
28 have amended the federal resource conservation and recovery act's  
29 subtitle I.

30 (8) "Underground storage tank system" means an underground storage  
31 tank, connected underground piping, underground ancillary equipment,  
32 and containment system, if any.

33 Except as provided in this section and any rules adopted by the  
34 department under this chapter, the definitions contained in the federal  
35 regulations apply to the terms in this chapter.

1       **Sec. 3.** RCW 90.76.020 and 1998 c 155 s 2 are each amended to read  
2 as follows:

3       (1) The department shall adopt rules establishing requirements for  
4 all underground storage tanks that are regulated under the federal act,  
5 taking into account the various classes or categories of tanks to be  
6 regulated. The rules must be consistent with and no less stringent  
7 than the federal regulations and the underground storage tank  
8 compliance act of 2005 and consist of requirements for the following:

9       (a) New underground storage tank system design, construction,  
10 installation, and notification;

11       (b) Upgrading existing underground storage tank systems;

12       (c) General operating requirements;

13       (d) Release detection;

14       (e) Release reporting;

15       (f) Out-of-service underground storage tank systems and closure;  
16 (~~and~~)

17       (g) Financial responsibility for underground storage tanks  
18 containing regulated substances; and

19       (h) Ground water protection measures, including secondary  
20 containment and monitoring for installation or replacement of all  
21 underground storage tank systems or components, such as tanks and  
22 pipng, installed after July 1, 2007, and under dispenser spill  
23 containment for installation or replacement of all dispenser systems  
24 installed after July 1, 2007.

25       (2) The department shall adopt rules:

26       (a) Establishing physical site criteria to be used in designating  
27 local environmentally sensitive areas;

28       (b) Establishing procedures for local government application for  
29 this designation; and

30       (c) Establishing procedures for local government adoption and  
31 department approval of rules more stringent than the statewide  
32 standards in these designated areas.

33       (3) The department shall establish by rule an administrative and  
34 enforcement program that is consistent with and no less stringent than  
35 the program required under the federal regulations in the areas of:

36       (a) Compliance monitoring, including procedures for recordkeeping  
37 and a program for systematic inspections;

38       (b) Enforcement;

1 (c) Public participation; ~~((and))~~

2 (d) Information sharing;

3 (e) Owner and operator training; and

4 (f) Delivery prohibition for underground storage tank systems or  
5 facilities that are determined by the department to be ineligible to  
6 receive regulated substances.

7 (4) The department shall establish a program that provides for the  
8 annual licensing of underground storage tanks. The license shall take  
9 the form of a tank endorsement on the facility's annual master business  
10 license issued by the department of licensing. A tank is not eligible  
11 for a license unless the owner or operator can demonstrate compliance  
12 with the requirements of this chapter and the annual tank fees have  
13 been remitted. The department may revoke a tank license if a facility  
14 is not in compliance with this chapter, or any rules adopted under this  
15 chapter. The master business license shall be displayed by the tank  
16 owner or operator in a location clearly identifiable.

17 (5)(a) The department shall issue a one-time "facility compliance  
18 tag" to ~~((correspond with the December 22, 1998, underground storage~~  
19 ~~tank compliance deadline for corrosion, spill, and overflow protection.~~  
20 ~~Facility compliance tags may only be issued for))~~ underground storage  
21 tank facilities that have installed the equipment required to meet  
22 corrosion protection, spill prevention, ~~((and))~~ overflow ~~((protection~~  
23 ~~standards that are required by December 22, 1998, and at the time of~~  
24 ~~tag issuance))~~ prevention, leak detection standards, have demonstrated  
25 financial responsibility, and have paid annual tank fees. The facility  
26 shall continue to maintain compliance with corrosion protection, spill  
27 prevention, ~~((and))~~ overflow ~~((protection))~~ prevention and leak  
28 detection standards, ~~((and))~~ financial responsibility, and have  
29 remitted annual tank fees to display a facility compliance tag. The  
30 facility compliance tag shall be displayed on or near the fire  
31 emergency shutoff device, or in the absence of such a device in close  
32 proximity to the fill pipes and clearly identifiable to persons  
33 delivering regulated substance to underground storage tanks.

34 (b) The department may revoke a facility compliance tag if a  
35 facility is not in compliance with the requirements ~~((needed to obtain~~  
36 ~~or display the tag))~~ of this chapter, or any rules adopted under this  
37 chapter.

1       (6) The department may place a red tag on a tank at a facility if  
2 the department determines that the owner or operator is not in  
3 compliance with this chapter or the rules adopted under this chapter  
4 regarding the compliance requirements related to that tank. Removal of  
5 a red tag without authorization from the department is a violation of  
6 this chapter.

7       (7) The department may establish programs to certify persons who  
8 install or decommission underground storage tank systems or conduct  
9 inspections, testing, closure, cathodic protection, interior tank  
10 lining, corrective action, site assessments, or other activities  
11 required under this chapter. Certification programs shall be designed  
12 to ensure that each certification will be effective in all  
13 jurisdictions of the state.

14       ~~((7))~~ (8) When adopting rules under this chapter, the department  
15 shall consult with the state building code council to ensure  
16 coordination with the building and fire codes adopted under chapter  
17 19.27 RCW.

18       **Sec. 4.** RCW 90.76.050 and 1998 c 155 s 4 are each amended to read  
19 as follows:

20       ~~(1) ((Between June 11, 1998, and December 22, 1998, persons~~  
21 ~~delivering regulated substances to underground storage tanks shall not~~  
22 ~~deliver to facilities that do not have an underground storage tank~~  
23 ~~license. This subsection expires December 22, 1998.~~

24       ~~(2) After December 22, 1998,)~~ A person~~((s))~~ delivering regulated  
25 substances to underground storage tanks shall not deliver or deposit  
26 regulated substances to underground storage tanks or facilities that do  
27 not have a facility compliance tag displayed as required in RCW  
28 90.76.020(5)(a). Additionally, a person delivering regulated  
29 substances to underground storage tanks shall not deliver or deposit  
30 regulated substances to an individual underground storage tank on which  
31 the department has placed a red tag under RCW 90.76.020(6).

32       (2) An owner or operator of an underground storage tank system or  
33 facility shall not accept delivery or deposit of regulated substances  
34 to that underground storage tank system or facility, if the system does  
35 not have a facility compliance tag displayed as required in RCW  
36 90.76.020(5)(a). Additionally, an owner or operator of an underground

1 storage tank system or facility shall not accept delivery or deposit of  
2 regulated substances to an individual underground storage tank on which  
3 the department has placed a red tag under RCW 90.76.020(6).

4 (3) A supplier shall not refuse to deliver regulated substances to  
5 an underground storage tank regulated under this chapter on the basis  
6 of its potential to leak contents where the facility (~~is either~~  
7 ~~tagged~~) displays a valid facility compliance tag as required in this  
8 chapter (~~or is in compliance with federal underground storage tank~~  
9 ~~regulations and any state or local regulations then in effect~~), and  
10 the department has not placed a red tag on the underground storage  
11 tank. This section does not apply to a supplier who does not directly  
12 transfer a regulated substance into an underground storage tank.

13 **Sec. 5.** RCW 90.76.070 and 1989 c 346 s 8 are each amended to read  
14 as follows:

15 The director may seek appropriate injunctive or other judicial  
16 relief by filing an action in Thurston county superior court or issue  
17 such order as the director deems appropriate to:

18 (1) Enjoin any threatened or continuing violation of this chapter  
19 or rules adopted under this chapter;

20 (2) Restrain immediately and effectively a person from engaging in  
21 unauthorized activity that results in a violation of any requirement of  
22 this chapter or rules adopted under this chapter and is endangering or  
23 causing damage to public health or the environment;

24 (3) Require compliance with requests for information, access,  
25 testing, or monitoring under RCW 90.76.060; or

26 (4) Assess and recover civil penalties authorized under RCW  
27 90.76.080.

28 **Sec. 6.** RCW 90.76.080 and 1995 c 403 s 639 are each amended to  
29 read as follows:

30 (1) (~~Except as provided in RCW 43.05.060 through 43.05.080 and~~  
31 ~~43.05.150~~) A person who fails to notify the department pursuant to  
32 tank notification requirements or who submits false information is  
33 subject to a civil penalty not to exceed five thousand dollars per  
34 violation.

35 (2) (~~Except as provided in RCW 43.05.060 through 43.05.080 and~~

1 ~~43.05.150,~~) A person who violates this chapter or rules adopted under  
2 this chapter is subject to a civil penalty not to exceed five thousand  
3 dollars for each tank per day of violation.

4 (3) A person incurring a penalty under this chapter or rules  
5 adopted under this chapter may apply to the department in writing for  
6 the remission or mitigation of the penalty as set out in RCW  
7 43.21B.300. A person also may appeal a penalty directly to the  
8 pollution control hearings board in accordance with RCW 43.21B.300.

9 **Sec. 7.** RCW 90.76.090 and 1998 c 155 s 6 are each amended to read  
10 as follows:

11 (1) An annual tank fee of one hundred twenty dollars per tank is  
12 effective ~~((from))~~ July 1, ~~((1998, to June 30, 1999))~~ 2007, to June 30,  
13 2008. An annual tank fee of one hundred forty dollars per tank is  
14 effective from July 1, 2008, to June 30, 2009. Effective July 1, 2009,  
15 the annual tank fee will increase up to one hundred sixty dollars per  
16 tank unless the department has received sufficient additional federal  
17 grant funding to offset the increased cost of implementation of the  
18 underground storage tank compliance act of 2005 (Title XV, Subtitle B  
19 of the energy policy act of 2005). Annually, beginning on July 1,  
20 ~~((1999))~~ 2010, and upon a finding by the department that a fee increase  
21 is necessary, the previous tank fee amount may be increased up to the  
22 fiscal growth factor for the next year. The fiscal growth factor is  
23 calculated by the office of financial management under RCW 43.135.025  
24 for the upcoming biennium. The department shall use the fiscal growth  
25 factor to calculate the fee for the next year and shall publish the new  
26 fee by March 1st before the year for which the new fee is effective.  
27 The new tank fee is effective from July 1st to June 30th of every year.  
28 The tank fee shall be paid by every person who:

- 29 (a) Owns an underground storage tank located in this state; and  
30 (b) Was required to provide notification to the department under  
31 the federal act.

32 This fee is not required of persons who have (i) permanently closed  
33 their tanks, and (ii) if required, have completed corrective action in  
34 accordance with the rules adopted under this chapter.

35 (2) The department may authorize the imposition of additional  
36 annual local tank fees in environmentally sensitive areas designated

1 under RCW 90.76.040. Annual local tank fees may not exceed fifty  
2 percent of the annual state tank fee.

3 (3) State and local tank fees collected under this section shall be  
4 deposited in the account established under RCW 90.76.100.

5 (4) Other than the annual local tank fee authorized for  
6 environmentally sensitive areas, no local government may levy an annual  
7 tank fee on the ownership or operation of an underground storage tank.

8 **Sec. 8.** RCW 90.76.110 and 1991 c 83 s 1 are each amended to read  
9 as follows:

10 (1) Except as provided in RCW 90.76.040 and subsections (2), (3),  
11 (4), and (5) of this section, the rules adopted under this chapter  
12 supersede and preempt any state or local underground storage tank law,  
13 ordinance, or resolution governing any aspect of regulation covered by  
14 the rules adopted under this chapter.

15 (2) Provisions of the (~~uniform~~) international fire code adopted  
16 under chapter 19.27 RCW, which are not more stringent than, and do not  
17 directly conflict with, rules adopted under this chapter are not  
18 superseded or preempted.

19 (3) Local laws, ordinances, and resolutions pertaining to local  
20 authority to take immediate action in response to a release of a  
21 regulated substance are not superseded or preempted.

22 (4) City, town, or county underground storage tank ordinances that  
23 are more stringent than the federal regulations and the uniform codes  
24 adopted under chapter 19.27 RCW and that (~~are~~) were in effect on or  
25 before November 1, 1988, are not superseded or preempted. (~~A city,~~  
26 ~~town, or county with an ordinance that meets these criteria shall~~  
27 ~~notify the department of the existence of that ordinance by July 1,~~  
28 ~~1989.))~~

29 (5) Local laws, ordinances, and resolutions pertaining to permits  
30 and fees for the use of underground storage tanks in street right of  
31 ways that were in existence prior to July 1, 1990, are not superseded  
32 or preempted.

33 **Sec. 9.** RCW 43.21B.300 and 2004 c 204 s 4 are each amended to read  
34 as follows:

35 (1) Any civil penalty provided in RCW 18.104.155, 70.94.431,  
36 70.105.080, 70.107.050, 88.46.090, 90.03.600, 90.48.144, 90.56.310, and



1 90.56.330 and chapter 90.76 RCW shall be imposed by a notice in  
2 writing, either by certified mail with return receipt requested or by  
3 personal service, to the person incurring the penalty from the  
4 department or the local air authority, describing the violation with  
5 reasonable particularity. Within thirty days after the notice is  
6 received, the person incurring the penalty may apply in writing to the  
7 department or the authority for the remission or mitigation of the  
8 penalty. Upon receipt of the application, the department or authority  
9 may remit or mitigate the penalty upon whatever terms the department or  
10 the authority in its discretion deems proper. The department or the  
11 authority may ascertain the facts regarding all such applications in  
12 such reasonable manner and under such rules as it may deem proper and  
13 shall remit or mitigate the penalty only upon a demonstration of  
14 extraordinary circumstances such as the presence of information or  
15 factors not considered in setting the original penalty.

16 (2) Any penalty imposed under this section may be appealed to the  
17 pollution control hearings board in accordance with this chapter if the  
18 appeal is filed with the hearings board and served on the department or  
19 authority thirty days after the date of receipt by the person penalized  
20 of the notice imposing the penalty or thirty days after the date of  
21 receipt of the notice of disposition of the application for relief from  
22 penalty.

23 (3) A penalty shall become due and payable on the later of:

24 (a) Thirty days after receipt of the notice imposing the penalty;

25 (b) Thirty days after receipt of the notice of disposition on  
26 application for relief from penalty, if such an application is made; or

27 (c) Thirty days after receipt of the notice of decision of the  
28 hearings board if the penalty is appealed.

29 (4) If the amount of any penalty is not paid to the department  
30 within thirty days after it becomes due and payable, the attorney  
31 general, upon request of the department, shall bring an action in the  
32 name of the state of Washington in the superior court of Thurston  
33 county, or of any county in which the violator does business, to  
34 recover the penalty. If the amount of the penalty is not paid to the  
35 authority within thirty days after it becomes due and payable, the  
36 authority may bring an action to recover the penalty in the superior  
37 court of the county of the authority's main office or of any county in

1 which the violator does business. In these actions, the procedures and  
2 rules of evidence shall be the same as in an ordinary civil action.

3 (5) All penalties recovered shall be paid into the state treasury  
4 and credited to the general fund except those penalties imposed  
5 pursuant to RCW 18.104.155, which shall be credited to the reclamation  
6 account as provided in RCW 18.104.155(7), RCW 70.94.431, the  
7 disposition of which shall be governed by that provision, RCW  
8 70.105.080, which shall be credited to the hazardous waste control and  
9 elimination account~~((7))~~ created by RCW 70.105.180, ~~((and))~~ RCW  
10 90.56.330, which shall be credited to the coastal protection fund  
11 created by RCW 90.48.390, and RCW 90.76.080, which shall be credited to  
12 the underground storage tank account created by RCW 90.76.100.

13 **Sec. 10.** RCW 43.131.393 and 1998 c 155 s 7 are each amended to  
14 read as follows:

15 The underground storage tank program shall be terminated on July 1,  
16 ~~((2009))~~ 2019, as provided in RCW 43.131.394.

17 **Sec. 11.** RCW 43.131.394 and 1998 c 155 s 8 are each amended to  
18 read as follows:

19 The following acts or parts of acts, as now existing or hereafter  
20 amended, are each repealed, effective July 1, ~~((2010))~~ 2020:

21 (1) RCW 90.76.005 and 2006 c ... s 1 (section 1 of this act) & 1989  
22 c 346 s 1;

23 (2) RCW 90.76.010 and 2006 c ... s 2 (section 2 of this act), 1998  
24 c 155 s 1, & 1989 c 346 s 2;

25 (3) RCW 90.76.020 and 2006 c ... s 3 (section 3 of this act), 1998  
26 c 155 s 2, & 1989 c 346 s 3;

27 (4) RCW 90.76.040 and 1998 c 155 s 3 & 1989 c 346 s 5;

28 (5) RCW 90.76.050 and 2006 c ... s 4 (section 4 of this act), 1998  
29 c 155 s 4, & 1989 c 346 s 6;

30 (6) RCW 90.76.060 and 1998 c 155 s 5 & 1989 c 346 s 7;

31 (7) RCW 90.76.070 and 2006 c ... s 5 (section 5 of this act) & 1989  
32 c 346 s 8;

33 (8) RCW 90.76.080 and 2006 c ... s 6 (section 6 of this act), 1995  
34 c 403 s 639, & 1989 c 346 s 9;

35 (9) RCW 90.76.090 and 2006 c ... s 7 (section 7 of this act), 1998  
36 c 155 s 6, & 1989 c 346 s 10;

1 (10) RCW 90.76.100 and 1991 sp.s. c 13 s 72 & 1989 c 346 s 11;  
2 (11) RCW 90.76.110 and 2006 c ... s 8 (section 8 of this act), 1991  
3 c 83 s 1, & 1989 c 346 s 12;  
4 (12) (~~RCW 90.76.120 and 1989 c 346 s 13;~~  
5 ~~(13)~~) RCW 90.76.900 and 1989 c 346 s 15;  
6 (~~(14)~~) (13) RCW 90.76.901 and 1989 c 346 s 14; and  
7 (~~(15)~~) (14) RCW 90.76.902 and 1989 c 346 s 18.

8 NEW SECTION. Sec. 12. RCW 90.76.120 (Annual report) and 1989 c  
9 346 s 13 are each repealed.

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