

HOUSE BILL 537

Introduced by Harper

2/02	Introduced
2/02	Referred to Natural Resources
2/03	Fiscal Note Requested
2/08	Fiscal Note Received
2/09	Fiscal Note Printed
	Died in Committee

1 HOUSE BILL NO. 537
2 INTRODUCED BY Harper
3 BY REQUEST OF THE DEPARTMENT OF
4 HEALTH AND ENVIRONMENTAL SCIENCES

5
6 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR
7 LICENSING OF UNDERGROUND STORAGE TANK INSTALLERS; TO PROVIDE
8 FOR PERMITTING OF INSTALLATIONS AND CLOSURES OF UNDERGROUND
9 STORAGE TANKS; TO PROVIDE FOR INSPECTIONS DURING TANK
10 INSTALLATIONS OR CLOSURES; TO CREATE AN UNDERGROUND STORAGE
11 TANK LICENSE AND PERMIT ACCOUNT; TO PROVIDE AN EXEMPTION
12 FROM THE SUNRISE AUDIT REQUIREMENT; AND PROVIDING EFFECTIVE
13 DATES AND AN APPLICABILITY PROVISION."

14
15 STATEMENT OF INTENT

16 It is the intent of the legislature that the department
17 of health and environmental sciences adopt rules necessary
18 to govern the installation and closure of underground
19 storage tanks, including rules governing permits for
20 installations and closures, licenses and requirements for
21 tank installers, and inspections and inspectors.

22
23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

24 NEW SECTION. Section 1. Short title. [Sections 1
25 through 18] may be cited as the "Montana Underground Storage

1 Tank Installer Licensing and Permitting Act".

2 NEW SECTION. Section 2. Findings and purpose. (1)
3 Leaking underground storage tanks have been identified as a
4 significant source of underground contamination and as a
5 potential hazard for fire and explosion. Government and
6 industry studies show that a major cause of leaking
7 underground storage tanks is improper installation or
8 closure. Proper installation or closure requires
9 specialized knowledge, training, and experience.

10 (2) To protect the health of Montana citizens and the
11 quality of state waters and other natural resources, it is
12 the intent of the legislature to require permits for the
13 installation or closure of underground storage tanks and to
14 limit the conduct of these activities to persons with
15 demonstrated competence, training, and experience.

16 NEW SECTION. Section 3. Definitions. As used in
17 [sections 1 through 18], unless the context requires
18 otherwise, the following definitions apply:

19 (1) "Board" means the board of health and environmental
20 sciences provided for in 2-15-2104.

21 (2) "Closure" or "to close" means the process of
22 properly removing or filling in place an underground storage
23 tank that is no longer in service.

24 (3) "Department" means the department of health and
25 environmental sciences provided for in Title 2, chapter 15,

part 21.

(4) (a) "Installation" or "to install" means the placement of an underground storage tank, including excavation, tank placement, backfilling, and piping of underground portions of the underground storage tank that store or convey regulated substances. Installation also includes repair or modification of an underground storage tank through such means as tank relining or the repair or replacement of valves, fillpipes, piping, vents, or in-tank liquid-level monitoring systems.

(b) The terms do not include:

(i) the process of conducting a precision (tightness) test to establish the integrity of the underground storage tank;

(ii) the installation of a leak detection device that is external to and not attached to the underground storage tank; or

(iii) the installation and maintenance of a cathodic protection system.

(5) "Installer" means an individual who is engaged in the business of installation or closure of underground storage tanks.

(6) "License" means a license issued by the department under [section 6] to conduct the installation or closure of underground storage tanks.

(7) "Licensed installer" means an individual who holds a valid underground storage tank installer license.

(8) "Operator" means a person in control of or having responsibility for the operation, maintenance, or management of an underground storage tank.

(9) "Owner" means a person who owns an underground storage tank used for the storage, use, or dispensing of regulated substances.

(10) "Person" means an individual, firm, trust, estate, partnership, company, association, corporation (whether organized for profit or not), city, town, local governmental entity, or any other governmental or private entity.

(11) "Regulated substance" means a regulated substance as defined in 75-10-403.

(12) "Underground storage tank" means an underground storage tank as defined in 75-10-403.

NEW SECTION. Section 4. Rulemaking authority. The department may adopt rules governing the installation and closure of underground storage tanks. Rules may include but are not limited to the following:

(1) the requirements for issuance, denial, renewal, modification, suspension, and revocation of permits for the installation and closure of underground storage tanks;

(2) the requirements for issuance, denial, renewal, modification, suspension, and revocation of licenses for

1 underground storage tank installers;

2 (3) the requirements for examination and training of
3 underground storage tank installers; and

4 (4) the requirements for use of inspectors in addition
5 to or as an alternative to the use of licensed installers,
6 qualification of inspectors, and methods for conducting an
7 inspection.

8 NEW SECTION. Section 5. Permits -- requirement for
9 licensed installer. (1) An owner or operator of an
10 underground storage tank may not install or close, or cause
11 to be installed or closed, an underground storage tank
12 without a permit issued by the department as provided in
13 [section 8].

14 (2) In addition to obtaining a permit, an owner or
15 operator shall obtain the services of a licensed installer
16 for the installation or closure of an underground storage
17 tank unless the installation or closure is:

18 (a) inspected by a department inspector or a designated
19 local inspector pursuant to the rules of the department; or

20 (b) exempt from the requirement for a licensed
21 installer, as provided in [section 10].

22 NEW SECTION. Section 6. Licensing -- interim licenses
23 -- regular licenses. (1) An installer may not install or
24 close an underground storage tank unless he has a valid
25 license issued by the department.

1 (2) From April 1, 1990, through September 30, 1990, the
2 department shall grant an installer an interim license if
3 the installer submits, on a form supplied by the department,
4 information demonstrating competency and experience in the
5 installation and closure of underground storage tanks. All
6 interim licenses expire on October 1, 1990.

7 (3) The department shall grant an installer a regular
8 license, beginning October 1, 1990, if the installer
9 demonstrates competency and experience in the installation
10 and closure of underground storage tanks and passes a
11 written examination conducted by the department.

12 (4) The department shall conduct written examinations
13 for the purpose of qualifying individuals to receive an
14 underground storage tank installer license. The department
15 shall determine the times and locations of the examinations
16 and shall provide public notice of the examinations.

17 (5) An underground storage tank installer license is
18 valid for a period not to exceed 3 years and is subject to
19 periodic renewal as prescribed by department rule.

20 (6) As a condition of renewal, the department may
21 require that an installer demonstrate continuing competency
22 in the installation and closure of tanks.

23 (7) An installer need not be a Montana resident to
24 qualify for a license.

25 NEW SECTION. Section 7. Denial, modification,

suspension, or revocation of license -- grounds. (1) The department may deny, modify, condition, suspend, or revoke a license if the installer:

(a) fails to achieve a passing grade on a written examination;

(b) commits fraud or deceit with respect to the license application;

(c) has had a similar license suspended or revoked in another state or territory; or

(d) violates any state or federal law, rule, permit, or order relating to the installation or closure of an underground storage tank.

(2) If the department modifies, conditions, suspends, or revokes a license, it shall inform the applicant or licensee in writing of the reason for the action. The installer may request a hearing before the board. If the board grants a hearing, the hearing must be held in accordance with the provisions of the Montana Administrative Procedure Act.

NEW SECTION. Section 8. Permits -- application procedure -- issuance. (1) Before the installation or closure of an underground storage tank, the owner or operator shall file a permit application with the department on forms provided by the department. The time between the filing of a permit application with the department and the

installation or closure may be provided by department rule. The department may provide by rule for emergency permits to apply to emergency conditions pertaining to the installation or closure of underground storage tanks.

(2) The permit application must, at a minimum, require the owner or operator to provide information concerning:

(a) the date of the tank installation or closure;

(b) the location of the tank installation or closure;

(c) the type of construction of the tank;

(d) the contents of the tank being closed or the anticipated contents of the tank being installed; and

(e) the name of the licensed installer who will be installing or closing the underground storage tank, unless:

(i) the installation is exempt under [section 10]; or

(ii) the department has provided by rule for exemption by reason of inspection and an inspection has been arranged.

(3) After receipt of a completed application that meets the requirements of this section and any rules adopted under [section 4(1)], the department shall issue the permit.

NEW SECTION. Section 9. Inspection of installations and closures. (1) Department officials may, and local government officers (such as local health officers, sanitarians, and local fire chiefs, designated by the department) shall, conduct inspections on behalf of the department.

(2) A copy of an installation inspection report must be kept on file by the owner or operator for as long as the department may require by rule. A copy of a closure inspection report must be kept on file by the owner or operator for 3 years after the date of the closure.

(3) The department may enter and inspect the premises or any appurtenant property of an owner or operator at any time to ensure compliance with laws or rules pertaining to underground storage tanks.

NEW SECTION. Section 10. Exemption. The owner or operator of a farm or residential tank with a capacity of 1,100 gallons or less that is used for storing motor fuel for noncommercial purposes or a tank used for storing heating oil for consumptive use on the premises where stored shall obtain a permit for the installation or closure of the tank but is not required to obtain the services of a licensed installer.

NEW SECTION. Section 11. Administrative enforcement.
(1) When the department believes that a person has violated [sections 1 through 18], a rule adopted thereunder, or a permit provision, it may serve written notice of the violation on the person or his agent. The notice must specify the alleged violation and the facts that constitute the alleged violation. The notice may include an order to provide information pertaining to the installation or

closure or an order to take necessary corrective action within a reasonable time as stated in the order. The notice and order may be signed and served by a department inspector if it is personally given to the person or to his agent. Every other notice and order must be signed by the director of the department or his deputy and must be served by certified mail upon the person or his agent. The order becomes final unless, within 30 days after the notice is served, the person requests in writing a hearing before the board. On receipt of the request, the board shall schedule a hearing. Service by mail is complete on the date of mailing.

(2) If, pursuant to a hearing held under subsection (1), the board finds that a violation has occurred, it shall either affirm or modify the department's order. An order issued by the department or the board may prescribe the date by which the violation must cease and may prescribe time limits for particular action. If, after a hearing, the board finds that no violation has occurred, it shall rescind the department's order.

(3) Instead of issuing an order pursuant to subsection (1), the department may either:

(a) require the alleged violator to appear before the board for a hearing at a time and place specified in the notice and answer the charges described in the notice or

1 violation; or

2 (b) initiate action under [section 12, 14, or 15].

3 (4) This section does not prevent the board or
4 department from attempting to obtain voluntary compliance
5 through issuance of a warning, a conference, or any other
6 appropriate administrative or judicial means.

7 NEW SECTION. Section 12. Injunctions. The department
8 may institute and maintain in the name of the state actions
9 for injunctive relief as provided in Title 27, chapter 19,
10 to:

11 (1) immediately restrain any person from engaging in
12 any unauthorized activity that is endangering public health
13 or causing damage to the environment;

14 (2) enjoin a violation of [sections 1 through 18], a
15 rule adopted under [sections 1 through 18], or an order of
16 the department or the board; or

17 (3) require compliance with [sections 1 through 18], a
18 rule adopted under [sections 1 through 18], or an order of
19 the department or the board.

20 NEW SECTION. Section 13. Imminent hazard. Upon receipt
21 of evidence that the installation or closure of an
22 underground storage tank may present an imminent and
23 substantial danger to public health or the environment, the
24 department may commence administrative or judicial
25 proceedings to immediately abate the danger or to restrain,

1 order, or enjoin any person from causing the danger. The
2 department may take other judicial or administrative action
3 as may be necessary.

4 NEW SECTION. Section 14. Civil penalties. (1) Any
5 person who violates any provision of [sections 1 through
6 18], a rule adopted under [sections 1 through 18], or an
7 order of the department or the board is subject to a civil
8 penalty not to exceed \$10,000 per violation. Each day of
9 violation of [sections 1 through 18], a rule adopted under
10 [sections 1 through 18], or an order constitutes a separate
11 violation.

12 (2) The department may institute and maintain in the
13 name of the state any enforcement proceedings under this
14 section. Upon request of the department, the attorney
15 general or the county attorney of the county where the
16 violation occurred shall petition the district court to
17 impose, assess, and recover the civil penalty.

18 (3) Action under this section does not bar:

19 (a) enforcement of [sections 1 through 18], rules
20 adopted under [sections 1 through 18], orders of the
21 department or the board, or terms of a license or permit by
22 injunction or other appropriate remedy; or

23 (b) action under [section 15].

24 NEW SECTION. Section 15. Criminal penalties. (1) Any
25 owner or operator who knowingly installs or closes an

1 underground storage tank without a permit and either an
 2 inspection by a designated inspector, if such an inspection
 3 is required by department rule, or the use of the services
 4 of a licensed installer as required in [section 5]; any
 5 installer who knowingly installs or closes an underground
 6 storage tank without being licensed; or any person who
 7 knowingly makes any false statements or representations in
 8 any application, permit, report, licensing form, or other
 9 document filed or maintained as required by [sections 1
 10 through 18] or required by rules adopted under [sections 1
 11 through 18] is subject to a fine not to exceed \$10,000 for
 12 each violation or imprisonment not to exceed 6 months, or
 13 both. Each day of violation constitutes a separate
 14 violation.

15 (2) A person convicted of a second or subsequent
 16 criminal violation is subject to a fine not to exceed
 17 \$20,000 for each violation or imprisonment not to exceed 1
 18 year, or both. Each day of violation constitutes a separate
 19 violation.

20 (3) Action under this section does not bar enforcement
 21 of [sections 1 through 18], rules adopted under [sections 1
 22 through 18], orders of the department or the board, terms of
 23 a license or permit by injunction or other appropriate
 24 remedy.

25 NEW SECTION. **Section 16.** Compliance with other laws --

1 **limitation on local ordinances.** (1) Nothing in [sections 1
 2 through 18] limits or alters the responsibility of an owner,
 3 operator, or installer to comply with all other state laws
 4 or rules.

5 (2) Ordinances adopted by local government units
 6 requiring the use of installation or closure permits,
 7 licensed installers, or both, may be no less stringent than
 8 the requirements of [sections 1 through 18].

9 NEW SECTION. **Section 17.** Application of other law. (1)
 10 The provisions of [sections 1 through 18] and rules adopted
 11 under [sections 1 through 18] govern if they conflict with
 12 other provisions of Montana law or any action taken by the
 13 department under the other provisions of law.

14 (2) The remedies provided for in [sections 1 through
 15 18] are cumulative with other remedies provided by law.

16 NEW SECTION. **Section 18.** Underground storage tank
 17 license and permit account. (1) There is an underground
 18 storage tank license and permit account within the state
 19 special revenue fund established in 17-2-102.

20 (2) There must be paid into the account all revenues
 21 from penalties or damages collected under [sections 1
 22 through 18].

23 (3) Appropriations may be made from the account only
 24 for the administration of the underground storage tank
 25 program.

1 NEW SECTION. **Section 19.** Applicability. Requirements
2 for an owner or operator to have a permit for the
3 installation or closure of an underground storage tank, as
4 specified in [sections 1 through 18], apply only after the
5 department has received a biennial appropriation of no less
6 than \$50,000 to administer a permit program under the
7 provisions of [sections 1 through 18].

8 NEW SECTION. **Section 20.** Exemption from sunrise audit
9 requirement. [This act] is exempt from the legislative audit
10 committee report provided for in 2-8-203.

11 NEW SECTION. **Section 21.** Effective dates. (1)
12 [Sections 1 through 3 and 5 through 19] are effective April
13 1, 1990.

14 (2) [Sections 4, 20, and this section] are effective on
15 passage and approval.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB537, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

This legislation, "An Act to provide for licensing of underground storage tank installers; to provide for permitting of installations and closures of underground storage tanks; to provide for inspections during tank installations or closures; to create an underground storage tank license and permit account; to provide an exemption from the sunrise audit requirement; and providing effective dates and an applicability provision," requires individuals who install, repair, retrofit, or close underground storage tank (UST) systems to be licensed by the state with exceptions.

ASSUMPTIONS:

This program will be administered by the UST program which is 75% federally funded. The cost of administering the installer's licensing program will be absorbed into the present UST program.

Fund Impact:

All monies will be placed into a special revenue fund set up by this legislation. All bills for costs incurred by this legislation will be paid from the fund.

Effect on County or Local Revenue or Expenditure:

There is no revenue or expenditures to the county or local governments and therefore no effect.


RAY SHACKLEFORD, BUDGET DIRECTOR
OFFICE OF BUDGET AND PROGRAM PLANNING

2/8/89
DATE


HAL HARPER, PRIMARY SPONSOR

2/09/89
DATE

Fiscal Note for HB537, as introduced

HB 537