

SENATE BILL NO. 284

INTRODUCED BY WELDON, GILBERT
BY REQUEST OF THE DEPARTMENT OF
HEALTH AND ENVIRONMENTAL SCIENCES

IN THE SENATE

JANUARY 30, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON NATURAL RESOURCES.
	FIRST READING.
FEBRUARY 17, 1993	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 18, 1993	PRINTING REPORT.
	SECOND READING, DO PASS.
FEBRUARY 19, 1993	ENGROSSING REPORT.
	THIRD READING, NOT PASSED.
FEBRUARY 20, 1993	ON MOTION, PREVIOUS ACTION RECONSIDERED.
FEBRUARY 22, 1993	ON MOTION, CONSIDERATION PASSED FOR THE DAY
FEBRUARY 23, 1993	SECOND READING, DO PASS.
	ENGROSSING REPORT.
FEBRUARY 24, 1993	THIRD READING, PASSED. AYES, 30; NOES, 19.
	TRANSMITTED TO HOUSE.

IN THE HOUSE

MARCH 1, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON NATURAL RESOURCES.
	FIRST READING.
MARCH 11, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
MARCH 13, 1993	SECOND READING, CONCURRED IN.

MARCH 16, 1993

THIRD READING, CONCURRED IN.
AYES, 81; NOES, 19.

MARCH 17, 1993

RETURNED TO SENATE.

IN THE SENATE

MARCH 18, 1993

RECEIVED FROM HOUSE.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 *Senate* BILL NO. *284*
2 INTRODUCED BY *J. A. Weldon Gilbert*
3 BY REQUEST OF THE DEPARTMENT OF
4 HEALTH AND ENVIRONMENTAL SCIENCES
5

6 A BILL FOR AN ACT ENTITLED: "AN ACT EXTENDING PERMIT
7 AUTHORITY OF THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL
8 SCIENCES TO ANY PERSON WHO INSTALLS, REPAIRS, MODIFIES, OR
9 CLOSES AN UNDERGROUND STORAGE TANK SYSTEM; EXTENDING THE
10 PERMIT OBLIGATION TO THE INSTALLATION, REPAIR, OR
11 MODIFICATION OF EXTERNAL LEAK DETECTION DEVICES AND CATHODIC
12 PROTECTION SYSTEMS; CLARIFYING THE APPLICABILITY OF
13 UNDERGROUND STORAGE TANK LAW TO ALL PARTS OF UNDERGROUND
14 STORAGE TANK SYSTEMS; AMENDING SECTIONS 75-11-202,
15 75-11-203, 75-11-204, 75-11-209, 75-11-210, 75-11-211,
16 75-11-212, 75-11-213, 75-11-217, 75-11-218, 75-11-220, AND
17 75-11-224, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE
18 AND AN APPLICABILITY DATE."
19

20 STATEMENT OF INTENT

21 A statement of intent is required for this bill because
22 the bill gives the department of health and environmental
23 sciences authority to adopt rules for all components of
24 underground tank systems and because it delegates authority
25 to the department to license persons who install, repair, or

1 modify leak detection devices that are external to and not
2 attached to underground storage tank systems, including
3 persons who install, repair, or modify cathodic protection
4 systems. The legislature intends that the department use
5 this authority to require compliance with the department's
6 rules for the proper installation and management of all
7 components of underground storage tank systems.

8 The definition of underground storage tank is expanded
9 to include the word "system", which will serve to make it
10 clearer to the regulated community that all parts of
11 underground storage tank systems, including piping, are
12 subject to regulation.

13 The legislature intends to require licensed workers for
14 installation, repair, modification, and closure work
15 performed on all components of underground storage tank
16 systems. The legislature also intends to extend the
17 permitting requirements to all individuals who perform
18 installation, repair, or modification of underground storage
19 tank systems and to not limit compliance responsibility
20 solely to owners and operators.

21
22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

23 Section 1. Section 75-11-202, MCA, is amended to read:

24 "75-11-202. Findings and purpose. (1) Leaking
25 underground storage tanks tank systems have been identified

as a significant source of underground contamination and as a potential hazard for fire and explosion. Government and industry studies show that a major cause of leaking underground storage tanks is improper installation or closure. Proper installation or closure requires specialized knowledge, training, and experience.

(2) To protect the health of Montana citizens and the quality of state waters and other natural resources, it is the intent of the legislature to require permits for the installation or closure of underground storage tanks tank systems; to limit the conduct of these activities to persons with demonstrated competence, training, and experience; and to assess fees to support state and local administration of permitting, licensing, and inspection activities."

Section 2. Section 75-11-203, MCA, is amended to read:

"75-11-203. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

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

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

(3) "Department" means the department of health and 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 system, including excavation, tank placement, backfilling, and piping of underground portions of the underground storage tank system that store or convey regulated substances. Installation also includes repair or modification of an underground storage tank system through such means as tank relining or the repair or replacement of valves, fillpipes, piping, vents, or in-tank liquid-level monitoring systems. Installation also means installation, repair, or modification of a leak detection device that is external to and not attached to the underground storage tank system and the installation, repair, or modification of a cathodic protection system.

(b) The terms do not include:

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

~~(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~~ installs or

1 closes underground storage tanks tank systems.

2 (6) "License" means a license issued by the department
3 under 75-11-210 to conduct the installation or closure of
4 underground storage tanks tank systems and the installation
5 of leak detection devices or cathodic protection systems.

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

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

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

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

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

20 (12) "Underground storage tank" or "underground storage
21 tank system" means an underground storage tank, as defined
22 in 75-10-403, and, for purposes of this part, includes a
23 leak detection device that is external to and not attached
24 to an underground storage tank system."

25 **Section 3.** Section 75-11-204, MCA, is amended to read:

1 "75-11-204. Rulemaking authority. The department may
2 adopt rules governing the installation and closure of
3 underground storage tanks tank systems. Rules may include
4 but are not limited to the following:

5 (1) the requirements for issuance, denial, renewal,
6 modification, suspension, and revocation of permits for the
7 installation and closure of underground storage tanks tank
8 systems;

9 (2) the requirements for issuance, denial, renewal,
10 modification, suspension, and revocation of licenses for
11 underground storage tank system installers;

12 (3) the requirements for examination and training of
13 underground storage tank system installers;

14 (4) the requirements for qualifications of inspectors,
15 use of inspectors, and methods for conducting an inspection;

16 (5) a schedule of fees for obtaining licenses and
17 license renewals by underground storage tank system
18 installers;

19 (6) a schedule of fees for the review of applications
20 for underground storage tank system permits;

21 (7) a schedule of fees for inspection of installations
22 or closures; and

23 (8) the mechanism for remittance of inspection or
24 permitting fees to local governments."

25 **Section 4.** Section 75-11-209, MCA, is amended to read:

"75-11-209. Permits -- requirement for licensed installer. (1) An--owner--or--operator--of--an-underground storage-tank A person may not install or close, or cause to be installed or closed, an underground storage tank system without a permit issued by the department as provided in 75-11-212.

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

(a) inspected by a department inspector or a designated local inspector as provided in 75-11-213; or

(b) exempt from the requirement for a licensed installer, as provided in 75-11-217."

Section 5. Section 75-11-210, MCA, is amended to read:

"75-11-210. Licensing -- interim licenses -- regular licenses. (1) An installer may not install or close an underground storage tank system unless he that person has a valid license issued by the department.

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

~~(3)(2)~~ The department shall grant an installer a regular license~~,beginning-October-1,1990,~~ if the installer demonstrates competency and experience in the installation and closure of underground storage tanks tank systems, passes a written examination conducted by the department, and pays the license fee established by department rule.

~~(4)(3)~~ The department shall conduct written examinations for the purpose of qualifying individuals to receive an underground storage tank system installer license. The department shall determine the times and locations of the examinations and shall provide public notice of the examinations.

~~(5)(4)~~ An underground storage tank system installer license is valid for a period not to exceed 3 years and is subject to periodic renewal as prescribed by department rule.

~~(6)(5)~~ As a condition of renewal, the department may require that an installer demonstrate continuing competency in the installation and closure of tanks tank systems.

~~(7)(6)~~ An installer need not be a Montana resident to qualify for a license."

Section 6. Section 75-11-211, MCA, is amended to read:

"75-11-211. Denial, modification, suspension, or revocation of license -- grounds. (1) The department may deny, modify, condition, suspend, or revoke a license if the

1 installer:

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

4 (b) fails to pay a license fee;

5 (c) commits fraud or deceit with respect to the license
6 application;

7 (d) has had a similar license suspended or revoked in
8 another state or territory; or

9 (e) violates any state or federal law, rule, permit, or
10 order relating to the installation or closure of an
11 underground storage tank system.

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

19 **Section 7.** Section 75-11-212, MCA, is amended to read:

20 "75-11-212. Permits -- application procedure --
21 issuance. (1) Before the installation or closure of an
22 underground storage tank system, the owner or operator shall
23 file a permit application with the department on forms
24 provided by the department. The time between the filing of a
25 permit application with the department and the installation

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

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

7 (a) the date of the underground storage tank system
8 installation or closure;

9 (b) the location of the underground storage tank system
10 installation or closure;

11 (c) the type of construction of the underground storage
12 tank system;

13 (d) the contents of the underground storage tank system
14 being closed or the anticipated contents of the tank being
15 installed; and

16 (e) the name of the licensed installer who will be
17 installing or closing the underground storage tank system
18 or, if the owner or operator is not going to have the
19 underground storage tank system installed or closed by a
20 licensed installer, the estimated date for inspection by the
21 department.

22 (3) After receipt of a completed application that meets
23 the requirements of this section and any rules adopted under
24 75-11-204(1), the department shall issue the permit."

25 **Section 8.** Section 75-11-213, MCA, is amended to read:

"75-11-213. Inspection of installations and closures -- fee. (1) After being issued a permit, an owner or operator may obtain an inspection by the department in lieu of obtaining the services of a licensed installer. The owner or operator shall provide timely notice to the department of the date and location of the underground storage tank system installation or closure and shall establish with the department the time when an inspection may be conducted.

(2) An owner or operator may conduct an installation or closure under this section only if an inspector is present.

(3) An inspection fee must be paid by the owner or operator to the department to cover the costs associated with an inspection. The inspection is not considered complete until the owner or operator pays the fee.

(4) Department officials or local government officers, such as local health officers, sanitarians, local fire chiefs, or other persons designated or hired by the department, shall conduct inspections on behalf of the department.

(5) The department shall pay the person conducting an inspection on the department's behalf, as provided in subsection (4), from the underground storage tank system license and permit account established in 75-11-227 up to 80% of any fee collected by the department for the inspection. When an inspection is conducted by an officer of

a county or city, the payment must be made by the department to the appropriate county or city treasurer. A county or city shall use payments received under this section only for costs incurred in conducting inspections under this section.

(6) 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 by the owner or operator for 3 years after the date of closure.

(7) 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 tank systems."

Section 9. Section 75-11-217, MCA, is amended to read:

"75-11-217. **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 system but is not required to obtain the services of a licensed installer."

Section 10. Section 75-11-218, MCA, is amended to read:

"75-11-218. **Administrative enforcement.** (1) When the department believes that a person has violated this part, a

1 rule adopted thereunder under this part, or a permit
 2 provision, it may serve written notice of the violation on
 3 the person or his the person's agent. The notice must
 4 specify the alleged violation and the facts that constitute
 5 the alleged violation. The notice may include an order to
 6 provide information pertaining to the installation or
 7 closure or an order to take necessary corrective action
 8 within a reasonable time as stated in the order. The notice
 9 and order may be signed and served by a department inspector
 10 if it is personally given to the person or to his the
 11 person's agent. Every other notice and order must be signed
 12 by the director of the department or his the director's
 13 deputy and must be served by certified mail upon the person
 14 or his the person's agent. The order becomes final unless,
 15 within 30 days after the notice is served, the person
 16 requests in writing a hearing before the board. On receipt
 17 of the request, the board shall schedule a hearing. Service
 18 by mail is complete on the date of mailing.

19 (2) If, pursuant to a hearing held under subsection
 20 (1), the board finds that a violation has occurred, it shall
 21 either affirm or modify the department's order. An order
 22 issued by the department or the board may prescribe the date
 23 by which the violation must cease and may prescribe time
 24 limits for particular action. If, after a hearing, the board
 25 finds that no a violation has not occurred, it shall rescind

1 the department's order.

2 (3) Instead In addition to or instead of issuing an
 3 order pursuant to subsection (1), the department may either:

4 (a) require the alleged violator to appear before the
 5 board for a hearing at a time and place specified in the
 6 notice and answer the charges described in the notice of
 7 violation; or

8 (b) initiate action under 75-11-219, 75-11-223, or
 9 75-11-224.

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

14 **Section 11.** Section 75-11-220, MCA, is amended to read:

15 "75-11-220. **Imminent hazard.** Upon receipt of evidence
 16 that the installation or closure of an underground storage
 17 tank system may present an imminent and substantial danger
 18 to public health or the environment, the department may
 19 commence administrative or judicial proceedings to
 20 immediately abate the danger or to restrain, order, or
 21 enjoin any person from causing the danger. The department
 22 may take other judicial or administrative action as may be
 23 necessary."

24 **Section 12.** Section 75-11-224, MCA, is amended to read:

25 "75-11-224. **Criminal penalties.** (1) Any owner or

1 operator who knowingly installs or closes an underground
2 storage tank system without a permit and either an
3 inspection or the use of the services of a licensed
4 installer as required in 75-11-209; any installer who
5 knowingly installs or closes an underground storage tank
6 system without being licensed; or any person who knowingly
7 makes any false statements or representations in any
8 application, permit, report, licensing form, or other
9 document filed or maintained as required by this part or
10 required by rules adopted under this part is subject to a
11 fine not to exceed \$10,000 for each violation or
12 imprisonment not to exceed 6 months, or both. Each day of
13 violation constitutes a separate violation.

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

19 (3) Action under this section does not bar enforcement
20 of this part, rules adopted under this part, orders of the
21 department or the board, or terms of a license or permit by
22 injunction or other appropriate remedy."

23 NEW SECTION. Section 13. Applicability. [This act]
24 applies to installations, closures, and all other activities
25 described in Title 75, chapter 11, part 2, that require

1 either a permit or a license beginning on October 1, 1993.
2 NEW SECTION. Section 14. Effective date. [This act] is
3 effective on 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 SB0284, as introduced.


DESCRIPTION OF PROPOSED LEGISLATION: An act extending permit authority to the Department of Health and Environmental Sciences to any person who installs, repairs, modifies, or closes an underground storage tank system; extending the permit obligations to the installation, repair, or modification of external leak detection devices and cathodic protection systems; and clarifying the applicability of underground storage tank law to all parts of underground storage tank systems.

ASSUMPTIONS:**Department of Health and Environmental Sciences:**

1. Passage of this bill will require that approximately 20 persons currently installing, repairing and modifying cathodic protection systems be examined and licensed during FY94. Since licensees are required to renew their licenses annually, 20 license renewals will be collected during FY95. Under the DHES current licensing fee schedule, the examination fee is \$50 per person and the annual license renewal fee is \$25. Therefore, the DHES will realize an increase in revenue of \$1,000 (20 examination fees @ \$50) in FY94 and \$500 (20 annual renewal fees @ \$25) during FY95 from persons who wish to become licensed to install, repair or modify cathodic protection systems.
2. Passage of this bill will require that persons who install soil vapor monitoring to be licensed. Since 197 persons are already licensed as "installers" and are capable of installing vapor monitoring wells without any additional licensing requirements, the DHES anticipates that only 20 additional licenses will be issued during FY94. Under the DHES current fee schedule, the collection of 20 examination fees at \$50 per person will generate \$1,000 during FY94. The collection of 20 annual renewal fees at \$25 per person will generate \$500 during FY95 from persons who wish to install vapor monitoring wells, but who are not interested in doing other tank handling operations requiring a license.
3. Since existing law administered by the Department of Natural Resources and Conservation (DNRC) requires that groundwater monitoring wells may be constructed only by a "licensed monitoring well contractor" who is duly licensed by DNRC, the DHES will not need to examine and license individuals who construct groundwater monitoring wells. The DHES anticipates that approximately 60 groundwater monitoring well systems will be installed each fiscal year. The DHES will not collect license examination fees or renewal fees from the individuals licensed by DNRC.
4. Approximately 180 additional permits will need to be issued each fiscal year during the biennium (60 permits for the installation of cathodic protection systems, 60 permits for the installation of vapor monitoring wells, and 60 permits for the installation of groundwater monitoring wells). Using the \$35 permit review fee for tank modification requests established by the DHES current fee schedule, permit review fees of \$6,300 will be collected for the review of 180 permit applications during each fiscal year of the biennium.
5. Existing state law provides that a tank owner must obtain the services of a licensed tank inspector when a licensed installer is not used. Because of the technical aspects and knowledge required for the installation of monitoring wells and the design and installation of cathodic protection systems, the DHES does not anticipate that more than 5 tank owners each year will

(Continued)

 2-4-93
DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

 2/6/93
JEFF WELDON, PRIMARY SPONSOR DATE
Fiscal Note for SB0284, as introduced
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undertake the installation of cathodic protection systems and/or monitoring wells. Assuming that 5 tank owners each year request an inspection their own work with an average inspection time of 16 hours per inspection, the DHES would have to provide a total of 80 hours of inspection services each fiscal year. At the currently scheduled charge of \$40 per hour, the total inspection fees collected would generate \$3,200 in revenue.

6. The revenue (FY94 - \$11,500 and FY95 - \$10,500) generated from the collection of additional examination and licensing fees and permit review fees will be used to cover increased operating costs associated with an increased workload; e.g., filing fees and hearing costs associated with the adoption of rules and regulations, program costs associated with the production of study guides, examination booklets, licensing certificates and the periodic inspection of the additional installers, travel and per diem costs for staff members to complete inspections, increased postage costs, the procurement of additional materials and supplies used to review and issue permits, the cost of contracted inspection services performed by local health and fire agencies, and legal fees and court costs associated with enforcement activities.
7. The UST Program state special revenue appropriation would be increased by \$11,500 in FY94 and \$10,500 in FY95.

Department of Transportation:

8. This bill only changes licensing requirements for installers of ancillary equipment for underground storage tanks. DoT currently utilizes licensed installers to install the complete underground storage tank systems, including ancillary equipment such as piping and leak detectors. Therefore, there should be no fiscal impact to DoT as a result of this legislation.

FISCAL IMPACT: DHES

	<u>FY '94</u>			<u>FY '95</u>		
<u>Expenditures:</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>	<u>Current Law</u>	<u>Proposed Law</u>	<u>Difference</u>
Personal Services	369,787	369,787	0	370,128	370,128	0
Operating Expenses	202,018	213,518	11,500	201,227	211,727	10,500
Equipment	4,517	4,517	0	4,533	4,533	0
Grants	<u>312,604</u>	<u>312,604</u>	<u>0</u>	<u>312,604</u>	<u>312,604</u>	<u>0</u>
Total	888,926	900,426	11,500	888,492	898,992	10,500
 <u>Funding:</u>						
Installer Lic & Permit Acc.	126,647	138,147	11,500	159,820	170,320	10,500
Hazardous Waste-CERCLA	54,167	54,167	0	54,167	54,167	0
UST Leak Prevention Program	545,612	545,612	0	512,005	512,005	0
Underground Storage Tank	<u>162,500</u>	<u>162,500</u>	<u>0</u>	<u>162,500</u>	<u>162,500</u>	<u>0</u>
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 <u>Revenues:</u>						
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(continued)

SB 284

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION: Program projections indicate that there are only 800 large commercial tanks to which the addition of cathodic protection and the addition of external detection could be added economically, thereby extending the operational life of the tanks beyond the federally-mandated December 1998 design standards compliance deadline. If upgrading of the 800 tanks is accomplished so that approximately one-fifth of the tanks are upgraded each year, current program staff levels should be sufficient. The increased revenues from additional examination and permit review fees should cover any additional operating costs. However, if tank owners wait until the last minute to upgrade the tanks, the current resources will be insufficient and additional technical staff may be required to provide timely review and inspection of upgrading activities.

SB 284

APPROVED BY COMM. ON
NATURAL RESOURCES

SENATE BILL NO. 284

INTRODUCED BY WELDON, GILBERT

BY REQUEST OF THE DEPARTMENT OF

HEALTH AND ENVIRONMENTAL SCIENCES

A BILL FOR AN ACT ENTITLED: "AN ACT EXTENDING PERMIT
AUTHORITY OF THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL
SCIENCES TO ANY PERSON WHO INSTALLS, REPAIRS, MODIFIES, OR
CLOSES AN UNDERGROUND STORAGE TANK SYSTEM; EXTENDING THE
PERMIT OBLIGATION TO THE INSTALLATION, REPAIR, OR
MODIFICATION OF EXTERNAL LEAK DETECTION DEVICES AND CATHODIC
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The definition of underground storage tank is expanded
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permitting requirements to all individuals who perform
installation, repair, or modification of underground storage
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(2) To protect the health of Montana citizens and the quality of state waters and other natural resources, it is the intent of the legislature to require permits for the installation or closure of underground storage tanks tank systems; to limit the conduct of these activities to persons with demonstrated competence, training, and experience; and to assess fees to support state and local administration of permitting, licensing, and inspection activities."

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"75-11-203. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

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

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

(3) "Department" means the department of health and 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 system, including excavation, tank placement, backfilling, and piping of underground portions of the underground storage tank system that store or convey regulated substances. Installation ~~also~~ includes repair or modification of an underground storage tank system through such means as tank relining or the repair or replacement of valves, fillpipes, piping, vents, or in-tank liquid-level monitoring systems. Installation also means installation, repair, or modification of a leak detection device that is external to and not attached to the underground storage tank system and the installation, repair, or modification of a cathodic protection system.

(b) The terms do not include:

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

~~(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~~ installs or

1 closes underground storage tanks tank systems.

2 (6) "License" means a license issued by the department
3 under 75-11-210 to conduct the installation or closure of
4 underground storage tanks tank systems and the installation
5 of leak detection devices or cathodic protection systems.

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

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

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

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

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

20 (12) "Underground storage tank" or "underground storage
21 tank system" means an underground storage tank, as defined
22 in 75-10-403, and, for purposes of this part, includes a
23 leak detection device that is external to and not attached
24 to an underground storage tank system."

25 **Section 3.** Section 75-11-204, MCA, is amended to read:

1 "75-11-204. Rulemaking authority. The department may
2 adopt rules governing the installation and closure of
3 underground storage tanks tank systems. Rules may include
4 but are not limited to the following:

5 (1) the requirements for issuance, denial, renewal,
6 modification, suspension, and revocation of permits for the
7 installation and closure of underground storage tanks tank
8 systems;

9 (2) the requirements for issuance, denial, renewal,
10 modification, suspension, and revocation of licenses for
11 underground storage tank system installers;

12 (3) the requirements for examination and training of
13 underground storage tank system installers;

14 (4) the requirements for qualifications of inspectors,
15 use of inspectors, and methods for conducting an inspection;

16 (5) a schedule of fees for obtaining licenses and
17 license renewals by underground storage tank system
18 installers;

19 (6) a schedule of fees for the review of applications
20 for underground storage tank system permits;

21 (7) a schedule of fees for inspection of installations
22 or closures; and

23 (8) the mechanism for remittance of inspection or
24 permitting fees to local governments."

25 **Section 4.** Section 75-11-209, MCA, is amended to read:

1 "75-11-209. Permits -- requirement for licensed
2 installer. (1) An--owner--or--operator--of--an-underground
3 storage-tank A person may not install or close, or cause to
4 be installed or closed, an underground storage tank system
5 without a permit issued by the department as provided in
6 75-11-212.

7 (2) In addition to obtaining a permit, an owner or
8 operator shall obtain the services of a licensed installer
9 for the installation or closure of an underground storage
10 tank system unless the installation or closure is:

11 (a) inspected by a department inspector or a designated
12 local inspector as provided in 75-11-213; or

13 (b) exempt from the requirement for a licensed
14 installer, as provided in 75-11-217."

15 **Section 5.** Section 75-11-210, MCA, is amended to read:

16 "75-11-210. Licensing -- interim licenses -- regular
17 licenses. (1) An installer may not install or close an
18 underground storage tank system unless he that person has a
19 valid license issued by the department.

20 ~~(2) -- From April 1, 1990, through September 30, 1990, the~~
21 ~~department shall grant an installer an interim license if~~
22 ~~the installer submits, on a form supplied by the department,~~
23 ~~information demonstrating competency and experience in the~~
24 ~~installation and closure of underground storage tanks. All~~
25 ~~interim licenses expire on October 1, 1990.~~

1 ~~(3)(2)~~ The department shall grant an installer a
2 regular license ~~beginning October 1, 1990~~, if the installer
3 demonstrates competency and experience in the installation
4 and closure of underground storage tanks tank systems,
5 passes a written examination conducted by the department,
6 and pays the license fee established by department rule.

7 ~~(4)(3)~~ The department shall conduct written
8 examinations for the purpose of qualifying individuals to
9 receive an underground storage tank system installer
10 license. The department shall determine the times and
11 locations of the examinations and shall provide public
12 notice of the examinations.

13 ~~(5)(4)~~ An underground storage tank system installer
14 license is valid for a period not to exceed 3 years and is
15 subject to periodic renewal as prescribed by department
16 rule.

17 ~~(6)(5)~~ As a condition of renewal, the department may
18 require that an installer demonstrate continuing competency
19 in the installation and closure of tanks tank systems.

20 ~~(7)(6)~~ An installer need not be a Montana resident to
21 qualify for a license."

22 **Section 6.** Section 75-11-211, MCA, is amended to read:

23 "75-11-211. Denial, modification, suspension, or
24 revocation of license -- grounds. (1) The department may
25 deny, modify, condition, suspend, or revoke a license if the

1 installer:

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

4 (b) fails to pay a license fee;

5 (c) commits fraud or deceit with respect to the license
6 application;

7 (d) has had a similar license suspended or revoked in
8 another state or territory; or

9 (e) violates any state or federal law, rule, permit, or
10 order relating to the installation or closure of an
11 underground storage tank system.

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

19 **Section 7.** Section 75-11-212, MCA, is amended to read:

20 "75-11-212. Permits -- application procedure --
21 issuance. (1) Before the installation or closure of an
22 underground storage tank system, the owner or operator OR
23 THE OWNER'S OR OPERATOR'S DESIGNATED LICENSED UNDERGROUND
24 STORAGE TANK INSTALLER OR REMOVER shall file a permit
25 application with the department on forms provided by the

1 department. The time between the filing of a permit
2 application with the department and the installation or
3 closure may be provided by department rule. The department
4 may provide by rule for emergency permits to apply to
5 emergency conditions pertaining to the installation or
6 closure of underground storage tanks.

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

9 (a) the date of the underground storage tank system
10 installation or closure;

11 (b) the location of the underground storage tank system
12 installation or closure;

13 (c) the type of construction of the underground storage
14 tank system;

15 (d) the contents of the underground storage tank system
16 being closed or the anticipated contents of the tank being
17 installed; and

18 (e) the name of the licensed installer who will be
19 installing or closing the underground storage tank system
20 or, if the owner or operator is not going to have the
21 underground storage tank system installed or closed by a
22 licensed installer, the estimated date for inspection by the
23 department.

24 (3) After receipt of a completed application that meets
25 the requirements of this section and any rules adopted under

1 75-11-204(1), the department shall issue the permit."

2 **Section 8.** Section 75-11-213, MCA, is amended to read:

3 "75-11-213. Inspection of installations and closures --
4 fee. (1) After being issued a permit, an owner or operator
5 may obtain an inspection by the department in lieu of
6 obtaining the services of a licensed installer. The owner or
7 operator shall provide timely notice to the department of
8 the date and location of the underground storage tank system
9 installation or closure and shall establish with the
10 department the time when an inspection may be conducted.

11 (2) An owner or operator may conduct an installation or
12 closure under this section only if an inspector is present.

13 (3) An inspection fee must be paid by the owner or
14 operator to the department to cover the costs associated
15 with an inspection. The inspection is not considered
16 complete until the owner or operator pays the fee.

17 (4) Department officials or local government officers,
18 such as local health officers, sanitarians, local fire
19 chiefs, or other persons designated or hired by the
20 department, shall conduct inspections on behalf of the
21 department.

22 (5) The department shall pay the person conducting an
23 inspection on the department's behalf, as provided in
24 subsection (4), from the underground storage tank system
25 license and permit account established in 75-11-227 up to

1 80% of any fee collected by the department for the
2 inspection. When an inspection is conducted by an officer of
3 a county or city, the payment must be made by the department
4 to the appropriate county or city treasurer. A county or
5 city shall use payments received under this section only for
6 costs incurred in conducting inspections under this section.

7 (6) A copy of an installation inspection report must be
8 kept on file by the owner or operator for as long as the
9 department may require by rule. A copy of a closure
10 inspection report must be kept by the owner or operator for
11 3 years after the date of closure.

12 (7) The department may enter and inspect the premises
13 or any appurtenant property of an owner or operator at any
14 time to ensure compliance with laws or rules pertaining to
15 underground storage tanks tank systems."

16 **Section 9.** Section 75-11-217, MCA, is amended to read:

17 "75-11-217. Exemption. The owner or operator of a farm
18 or residential tank with a capacity of 1,100 gallons or less
19 that is used for storing motor fuel for noncommercial
20 purposes or a tank used for storing heating oil for
21 consumptive use on the premises where stored shall obtain a
22 permit for the installation or closure of the tank system
23 but is not required to obtain the services of a licensed
24 installer."

25 **Section 10.** Section 75-11-218, MCA, is amended to read:

"75-11-218. Administrative enforcement. (1) When the department believes that a person has violated this part, a rule adopted thereunder under this part, or a permit provision, it may serve written notice of the violation on the person or his the person's 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 the person's agent. Every other notice and order must be signed by the director of the department or his the director's deputy and must be served by certified mail upon the person or his the person's 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 a violation has not occurred, it shall rescind the department's order.

(3) Instead In addition to or 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 of violation; or

(b) initiate action under 75-11-219, 75-11-223, or 75-11-224.

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

Section 11. Section 75-11-220, MCA, is amended to read:

"75-11-220. Imminent hazard. Upon receipt of evidence that the installation or closure of an underground storage tank system may present an imminent and substantial danger to public health or the environment, the department may commence administrative or judicial proceedings to immediately abate the danger or to restrain, order, or enjoin any person from causing the danger. The department may take other judicial or administrative action as may be necessary."

1 **Section 12.** Section 75-11-224, MCA, is amended to read:

2 "75-11-224. Criminal penalties. (1) Any owner or
3 operator who knowingly installs or closes an underground
4 storage tank system without a permit and either an
5 inspection or the use of the services of a licensed
6 installer as required in 75-11-209; any installer who
7 knowingly installs or closes an underground storage tank
8 system without being licensed; or any person who knowingly
9 makes any false statements or representations in any
10 application, permit, report, licensing form, or other
11 document filed or maintained as required by this part or
12 required by rules adopted under this part is subject to a
13 fine not to exceed \$10,000 for each violation or
14 imprisonment not to exceed 6 months, or both. Each day of
15 violation constitutes a separate violation.

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

21 (3) Action under this section does not bar enforcement
22 of this part, rules adopted under this part, orders of the
23 department or the board, or terms of a license or permit by
24 injunction or other appropriate remedy."

25 NEW SECTION. **Section 13.** Applicability. [This act]

1 applies to installations, closures, and all other activities
2 described in Title 75, chapter 11, part 2, that require
3 either a permit or a license beginning on October 1, 1993.

4 NEW SECTION. **Section 14.** Effective date. [This act] is
5 effective on passage and approval.

-End-

1 SENATE BILL NO. 284

2 INTRODUCED BY WELDON, GILBERT

3 BY REQUEST OF THE DEPARTMENT OF

4 HEALTH AND ENVIRONMENTAL SCIENCES

5

6 A BILL FOR AN ACT ENTITLED: "AN ACT EXTENDING PERMIT
7 AUTHORITY OF THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL
8 SCIENCES TO ANY PERSON WHO INSTALLS, REPAIRS, MODIFIES, OR
9 CLOSES AN UNDERGROUND STORAGE TANK SYSTEM; EXTENDING THE
10 PERMIT OBLIGATION TO THE INSTALLATION, REPAIR, OR
11 MODIFICATION OF EXTERNAL LEAK DETECTION DEVICES AND CATHODIC
12 PROTECTION SYSTEMS; CLARIFYING THE APPLICABILITY OF
13 UNDERGROUND STORAGE TANK LAW TO ALL PARTS OF UNDERGROUND
14 STORAGE TANK SYSTEMS; AMENDING SECTIONS 75-11-202,
15 75-11-203, 75-11-204, 75-11-209, 75-11-210, 75-11-211,
16 75-11-212, 75-11-213, 75-11-217, 75-11-218, 75-11-220, AND
17 75-11-224, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE
18 AND AN APPLICABILITY DATE."

19

20 STATEMENT OF INTENT

21 A statement of intent is required for this bill because
22 the bill gives the department of health and environmental
23 sciences authority to adopt rules for all components of
24 underground tank systems and because it delegates authority
25 to the department to license persons who install, repair, or

1 modify leak detection devices that are external to and not
2 attached to underground storage tank systems, including
3 persons who install, repair, or modify cathodic protection
4 systems. The legislature intends that the department use
5 this authority to require compliance with the department's
6 rules for the proper installation and management of all
7 components of underground storage tank systems.

8 The definition of underground storage tank is expanded
9 to include the word "system", which will serve to make it
10 clearer to the regulated community that all parts of
11 underground storage tank systems, including piping, are
12 subject to regulation.

13 The legislature intends to require licensed workers for
14 installation, repair, modification, and closure work
15 performed on all components of underground storage tank
16 systems. The legislature also intends to extend the
17 permitting requirements to all individuals who perform
18 installation, repair, or modification of underground storage
19 tank systems and to not limit compliance responsibility
20 solely to owners and operators.

21

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

23 Section 1. Section 75-11-202, MCA, is amended to read:

24 "75-11-202. Findings and purpose. (1) Leaking
25 underground storage tanks tank systems have been identified

1 as a significant source of underground contamination and as
 2 a potential hazard for fire and explosion. Government and
 3 industry studies show that a major cause of leaking
 4 underground storage tanks is improper installation or
 5 closure. Proper installation or closure requires specialized
 6 knowledge, training, and experience.

7 (2) To protect the health of Montana citizens and the
 8 quality of state waters and other natural resources, it is
 9 the intent of the legislature to require permits for the
 10 installation or closure of underground storage tanks tank
 11 systems; to limit the conduct of these activities to persons
 12 with demonstrated competence, training, and experience; and
 13 to assess fees to support state and local administration of
 14 permitting, licensing, and inspection activities."

15 **Section 2.** Section 75-11-203, MCA, is amended to read:

16 "75-11-203. Definitions. As used in this part, unless
 17 the context requires otherwise, the following definitions
 18 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,

1 part 21.

2 (4) (a) "Installation" or "to install" means the
 3 placement of an underground storage tank system, including
 4 excavation, tank placement, backfilling, and piping of
 5 underground portions of the underground storage tank system
 6 that store or convey regulated substances. Installation also
 7 includes repair or modification of an underground storage
 8 tank system through such means as tank relining or the
 9 repair or replacement of valves, fillpipes, piping, vents,
 10 or in-tank liquid-level monitoring systems. Installation
 11 also means installation, repair, or modification of a leak
 12 detection device that is external to and not attached to the
 13 underground storage tank system and the installation,
 14 repair, or modification of a cathodic protection system.

15 (b) The terms do not include:

16 ~~{i}~~ the process of conducting a precision (tightness)
 17 test to establish the integrity of the underground storage
 18 tank system;

19 ~~{ii}~~ ~~the installation of a leak detection device that is~~
 20 ~~external to and not attached to the underground storage~~
 21 ~~tank; or~~

22 ~~{iii}~~ ~~the installation and maintenance of a cathodic~~
 23 ~~protection system;~~

24 (5) "Installer" means an individual who ~~is engaged in~~
 25 ~~the business of installation or closure of~~ installs or

1 closes underground storage tanks tank systems.

2 (6) "License" means a license issued by the department
3 under 75-11-210 to conduct the installation or closure of
4 underground storage tanks tank systems and the installation
5 of leak detection devices or cathodic protection systems.

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

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

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

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

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

20 (12) "Underground storage tank" or "underground storage
21 tank system" means an underground storage tank, as defined
22 in 75-10-403, and, for purposes of this part, includes a
23 leak detection device that is external to and not attached
24 to an underground storage tank system."

25 **Section 3.** Section 75-11-204, MCA, is amended to read:

1 "75-11-204. Rulemaking authority. The department may
2 adopt rules governing the installation and closure of
3 underground storage tanks tank systems. Rules may include
4 but are not limited to the following:

5 (1) the requirements for issuance, denial, renewal,
6 modification, suspension, and revocation of permits for the
7 installation and closure of underground storage tanks tank
8 systems;

9 (2) the requirements for issuance, denial, renewal,
10 modification, suspension, and revocation of licenses for
11 underground storage tank system installers;

12 (3) the requirements for examination and training of
13 underground storage tank system installers;

14 (4) the requirements for qualifications of inspectors,
15 use of inspectors, and methods for conducting an inspection;

16 (5) a schedule of fees for obtaining licenses and
17 license renewals by underground storage tank system
18 installers;

19 (6) a schedule of fees for the review of applications
20 for underground storage tank system permits;

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22 or closures; and

23 (8) the mechanism for remittance of inspection or
24 permitting fees to local governments."

25 **Section 4.** Section 75-11-209, MCA, is amended to read:

1 "75-11-209. Permits -- requirement for licensed
2 installer. (1) ~~An owner or operator of an underground~~
3 ~~storage tank~~ A person may not install or close, or cause to
4 be installed or closed, an underground storage tank system
5 without a permit issued by the department as provided in
6 75-11-212.

7 (2) In addition to obtaining a permit, an owner or
8 operator shall obtain the services of a licensed installer
9 for the installation or closure of an underground storage
10 tank system unless the installation or closure is:

11 (a) inspected by a department inspector or a designated
12 local inspector as provided in 75-11-213; or

13 (b) exempt from the requirement for a licensed
14 installer, as provided in 75-11-217."

15 **Section 5.** Section 75-11-210, MCA, is amended to read:

16 "75-11-210. Licensing -- interim licenses -- regular
17 licenses. (1) An installer may not install or close an
18 underground storage tank system unless he that person has a
19 valid license issued by the department.

20 ~~(2) -- From April 17, 1990, through September 30, 1990, the~~
21 ~~department shall grant an installer an interim license if~~
22 ~~the installer submits, on a form supplied by the department,~~
23 ~~information demonstrating competency and experience in the~~
24 ~~installation and closure of underground storage tanks. All~~
25 ~~interim licenses expire on October 17, 1990.~~

1 ~~(3)(2)~~ The department shall grant an installer a
2 regular license ~~beginning October 17, 1990,~~ if the installer
3 demonstrates competency and experience in the installation
4 and closure of underground storage tanks tank systems,
5 passes a written examination conducted by the department,
6 and pays the license fee established by department rule.

7 ~~(4)(3)~~ The department shall conduct written
8 examinations for the purpose of qualifying individuals to
9 receive an underground storage tank system installer
10 license. The department shall determine the times and
11 locations of the examinations and shall provide public
12 notice of the examinations.

13 ~~(5)(4)~~ An underground storage tank system installer
14 license is valid for a period not to exceed 3 years and is
15 subject to periodic renewal as prescribed by department
16 rule.

17 ~~(6)(5)~~ As a condition of renewal, the department may
18 require that an installer demonstrate continuing competency
19 in the installation and closure of tanks tank systems.

20 ~~(7)(6)~~ An installer need not be a Montana resident to
21 qualify for a license."

22 **Section 6.** Section 75-11-211, MCA, is amended to read:

23 "75-11-211. Denial, modification, suspension, or
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25 deny, modify, condition, suspend, or revoke a license if the

1 installer:

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

4 (b) fails to pay a license fee;

5 (c) commits fraud or deceit with respect to the license
6 application;

7 (d) has had a similar license suspended or revoked in
8 another state or territory; or

9 (e) violates any state or federal law, rule, permit, or
10 order relating to the installation or closure of an
11 underground storage tank system.

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

19 **Section 7.** Section 75-11-212, MCA, is amended to read:

20 "75-11-212. Permits -- application procedure --
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23 THE OWNER'S OR OPERATOR'S DESIGNATED LICENSED UNDERGROUND
24 STORAGE TANK INSTALLER OR REMOVER shall file a permit
25 application with the department on forms provided by the

1 department. The time between the filing of a permit
2 application with the department and the installation or
3 closure may be provided by department rule. The department
4 may provide by rule for emergency permits to apply to
5 emergency conditions pertaining to the installation or
6 closure of underground storage tanks.

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

9 (a) the date of the underground storage tank system
10 installation or closure;

11 (b) the location of the underground storage tank system
12 installation or closure;

13 (c) the type of construction of the underground storage
14 tank system;

15 (d) the contents of the underground storage tank system
16 being closed or the anticipated contents of the tank being
17 installed; and

18 (e) the name of the licensed installer who will be
19 installing or closing the underground storage tank system
20 or, if the owner or operator is not going to have the
21 underground storage tank system installed or closed by a
22 licensed installer, the estimated date for inspection by the
23 department.

24 (3) After receipt of a completed application that meets
25 the requirements of this section and any rules adopted under

1 75-11-204(1), the department shall issue the permit."

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3 "75-11-213. Inspection of installations and closures --
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6 obtaining the services of a licensed installer. The owner or
7 operator shall provide timely notice to the department of
8 the date and location of the underground storage tank system
9 installation or closure and shall establish with the
10 department the time when an inspection may be conducted.

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12 closure under this section only if an inspector is present.

13 (3) An inspection fee must be paid by the owner or
14 operator to the department to cover the costs associated
15 with an inspection. The inspection is not considered
16 complete until the owner or operator pays the fee.

17 (4) Department officials or local government officers,
18 such as local health officers, sanitarians, local fire
19 chiefs, or other persons designated or hired by the
20 department, shall conduct inspections on behalf of the
21 department.

22 (5) The department shall pay the person conducting an
23 inspection on the department's behalf, as provided in
24 subsection (4), from the underground storage tank system
25 license and permit account established in 75-11-227 up to

1 80% of any fee collected by the department for the
2 inspection. When an inspection is conducted by an officer of
3 a county or city, the payment must be made by the department
4 to the appropriate county or city treasurer. A county or
5 city shall use payments received under this section only for
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9 department may require by rule. A copy of a closure
10 inspection report must be kept by the owner or operator for
11 3 years after the date of closure.

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17 "75-11-217. **Exemption.** The owner or operator of a farm
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20 purposes or a tank used for storing heating oil for
21 consumptive use on the premises where stored shall obtain a
22 permit for the installation or closure of the tank system
23 but is not required to obtain the services of a licensed
24 installer."

25 **Section 10.** Section 75-11-218, MCA, is amended to read:

"75-11-218. Administrative enforcement. (1) When the department believes that a person has violated this part, a rule adopted thereunder under this part, or a permit provision, it may serve written notice of the violation on the person or his the person's 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 the person's agent. Every other notice and order must be signed by the director of the department or his the director's deputy and must be served by certified mail upon the person or his the person's 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 a violation has not occurred, it shall rescind the department's order.

(3) Instead In addition to or 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 of violation; or

(b) initiate action under 75-11-219, 75-11-223, or 75-11-224.

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

Section 11. Section 75-11-220, MCA, is amended to read:

"75-11-220. Imminent hazard. Upon receipt of evidence that the installation or closure of an underground storage tank system may present an imminent and substantial danger to public health or the environment, the department may commence administrative or judicial proceedings to immediately abate the danger or to restrain, order, or enjoin any person from causing the danger. The department may take other judicial or administrative action as may be necessary."

Section 12. Section 75-11-224, MCA, is amended to read:

"75-11-224. Criminal penalties. (1) Any owner or operator who knowingly installs or closes an underground storage tank system without a permit and either an inspection or the use of the services of a licensed installer as required in 75-11-209; any installer who knowingly installs or closes an underground storage tank system without being licensed; or any person who knowingly makes any false statements or representations in any application, permit, report, licensing form, or other document filed or maintained as required by this part or required by rules adopted under this part is subject to a fine not to exceed \$10,000 for each violation or imprisonment not to exceed 6 months, or both. Each day of violation constitutes a separate violation.

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

(3) Action under this section does not bar enforcement of this part, rules adopted under this part, orders of the department or the board, or terms of a license or permit by injunction or other appropriate remedy."

NEW SECTION. Section 13. Applicability. [This act]

applies to installations, closures, and all other activities described in Title 75, chapter 11, part 2, that require either a permit or a license beginning on October 1, 1993.

NEW SECTION. Section 14. Effective date. [This act] is effective on passage and approval.

-End-

1 SENATE BILL NO. 284

2 INTRODUCED BY WELDON, GILBERT

3 BY REQUEST OF THE DEPARTMENT OF

4 HEALTH AND ENVIRONMENTAL SCIENCES

5
6 A BILL FOR AN ACT ENTITLED: "AN ACT EXTENDING PERMIT
7 AUTHORITY OF THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL
8 SCIENCES TO ANY PERSON WHO INSTALLS, REPAIRS, MODIFIES, OR
9 CLOSES AN UNDERGROUND STORAGE TANK SYSTEM; EXTENDING THE
10 PERMIT OBLIGATION TO THE INSTALLATION, REPAIR, OR
11 MODIFICATION OF EXTERNAL LEAK DETECTION DEVICES AND CATHODIC
12 PROTECTION SYSTEMS; CLARIFYING THE APPLICABILITY OF
13 UNDERGROUND STORAGE TANK LAW TO ALL PARTS OF UNDERGROUND
14 STORAGE TANK SYSTEMS; AMENDING SECTIONS 75-11-202,
15 75-11-203, 75-11-204, 75-11-209, 75-11-210, 75-11-211,
16 75-11-212, 75-11-213, 75-11-217, 75-11-218, 75-11-220, AND
17 75-11-224, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE
18 AND AN APPLICABILITY DATE."

19
20 STATEMENT OF INTENT

21 A statement of intent is required for this bill because
22 the bill gives the department of health and environmental
23 sciences authority to adopt rules for all components of
24 underground tank systems and because it delegates authority
25 to the department to license persons who install, repair, or

1 modify leak detection devices that are external to and not
2 attached to underground storage tank systems, including
3 persons who install, repair, or modify cathodic protection
4 systems. The legislature intends that the department use
5 this authority to require compliance with the department's
6 rules for the proper installation and management of all
7 components of underground storage tank systems.

8 The definition of underground storage tank is expanded
9 to include the word "system", which will serve to make it
10 clearer to the regulated community that all parts of
11 underground storage tank systems, including piping, are
12 subject to regulation.

13 The legislature intends to require licensed workers for
14 installation, repair, modification, and closure work
15 performed on all components of underground storage tank
16 systems. The legislature also intends to extend the
17 permitting requirements to all individuals who perform
18 installation, repair, or modification of underground storage
19 tank systems and to not limit compliance responsibility
20 solely to owners and operators.

21
22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

23 Section 1. Section 75-11-202, MCA, is amended to read:

24 "75-11-202. Findings and purpose. (1) Leaking
25 underground storage tanks tank systems have been identified

1 as a significant source of underground contamination and as
2 a potential hazard for fire and explosion. Government and
3 industry studies show that a major cause of leaking
4 underground storage tanks is improper installation or
5 closure. Proper installation or closure requires specialized
6 knowledge, training, and experience.

7 (2) To protect the health of Montana citizens and the
8 quality of state waters and other natural resources, it is
9 the intent of the legislature to require permits for the
10 installation or closure of underground storage tanks tank
11 systems; to limit the conduct of these activities to persons
12 with demonstrated competence, training, and experience; and
13 to assess fees to support state and local administration of
14 permitting, licensing, and inspection activities."

15 **Section 2.** Section 75-11-203, MCA, is amended to read:

16 "75-11-203. **Definitions.** As used in this part, unless
17 the context requires otherwise, the following definitions
18 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,

1 part 21.

2 (4) (a) "Installation" or "to install" means the
3 placement of an underground storage tank system, including
4 excavation, tank placement, backfilling, and piping of
5 underground portions of the underground storage tank system
6 that store or convey regulated substances. Installation also
7 includes repair or modification of an underground storage
8 tank system through such means as tank relining or the
9 repair or replacement of valves, fillpipes, piping, vents,
10 or in-tank liquid-level monitoring systems. Installation
11 also means installation, repair, or modification of a leak
12 detection device that is external to and not attached to the
13 underground storage tank system and the installation,
14 repair, or modification of a cathodic protection system.

15 (b) The terms do not include:

16 ~~{+}~~ the process of conducting a precision (tightness)
17 test to establish the integrity of the underground storage
18 tank system.

19 ~~{+}~~ the installation of a leak-detection device that is
20 external to and not attached to the underground storage
21 tank; or

22 ~~{+}~~ the installation and maintenance of a cathodic
23 protection system.

24 (5) "Installer" means an individual who is engaged in
25 the business of installation or closure of installs or

1 closes underground storage tanks tank systems.

2 (6) "License" means a license issued by the department
3 under 75-11-210 to conduct the installation or closure of
4 underground storage tanks tank systems and the installation
5 of leak detection devices or cathodic protection systems.

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

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

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

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

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

20 (12) "Underground storage tank" or "underground storage
21 tank system" means an underground storage tank, as defined
22 in 75-10-403, and, for purposes of this part, includes a
23 leak detection device that is external to and not attached
24 to an underground storage tank system."

25 **Section 3.** Section 75-11-204, MCA, is amended to read:

1 "75-11-204. Rulemaking authority. The department may
2 adopt rules governing the installation and closure of
3 underground storage tanks tank systems. Rules may include
4 but are not limited to the following:

5 (1) the requirements for issuance, denial, renewal,
6 modification, suspension, and revocation of permits for the
7 installation and closure of underground storage tanks tank
8 systems;

9 (2) the requirements for issuance, denial, renewal,
10 modification, suspension, and revocation of licenses for
11 underground storage tank system installers;

12 (3) the requirements for examination and training of
13 underground storage tank system installers;

14 (4) the requirements for qualifications of inspectors,
15 use of inspectors, and methods for conducting an inspection;

16 (5) a schedule of fees for obtaining licenses and
17 license renewals by underground storage tank system
18 installers;

19 (6) a schedule of fees for the review of applications
20 for underground storage tank system permits;

21 (7) a schedule of fees for inspection of installations
22 or closures; and

23 (8) the mechanism for remittance of inspection or
24 permitting fees to local governments."

25 **Section 4.** Section 75-11-209, MCA, is amended to read:

"75-11-209. Permits -- requirement for licensed installer. (1) ~~An--owner--or--operator--of--an-underground storage-tank~~ A person may not install or close, or cause to be installed or closed, an underground storage tank system without a permit issued by the department as provided in 75-11-212.

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

(a) inspected by a department inspector or a designated local inspector as provided in 75-11-213; or

(b) exempt from the requirement for a licensed installer, as provided in 75-11-217."

Section 5. Section 75-11-210, MCA, is amended to read:

"75-11-210. Licensing -- interim licenses -- regular licenses. (1) An installer may not install or close an underground storage tank system unless he that person has a valid license issued by the department.

~~{2}--From-April-17-1990-through-September-30-1990-the department-shall-grant-an-installer-an-interim-license-if the-installer-submits-on-a-form-supplied-by-the-department information--demonstrating--competency-and-experience-in-the installation-and-closure-of-underground-storage--tanks--All interim-licenses-expire-on-October-17-1990-~~

~~{3}{2}~~ The department shall grant an installer a regular license ~~beginning-October-17-1990~~, if the installer demonstrates competency and experience in the installation and closure of underground storage tanks tank systems, passes a written examination conducted by the department, and pays the license fee established by department rule.

~~{4}{3}~~ The department shall conduct written examinations for the purpose of qualifying individuals to receive an underground storage tank system installer license. The department shall determine the times and locations of the examinations and shall provide public notice of the examinations.

~~{5}{4}~~ An underground storage tank system installer license is valid for a period not to exceed 3 years and is subject to periodic renewal as prescribed by department rule.

~~{6}{5}~~ As a condition of renewal, the department may require that an installer demonstrate continuing competency in the installation and closure of tanks tank systems.

~~{7}{6}~~ An installer need not be a Montana resident to qualify for a license."

Section 6. Section 75-11-211, MCA, is amended to read:

"75-11-211. Denial, modification, suspension, or revocation of license -- grounds. (1) The department may deny, modify, condition, suspend, or revoke a license if the

1 installer:

2 (a) fails to achieve a passing grade on a written

3 examination;

4 (b) fails to pay a license fee;

5 (c) commits fraud or deceit with respect to the license

6 application;

7 (d) has had a similar license suspended or revoked in

8 another state or territory; or

9 (e) violates any state or federal law, rule, permit, or

10 order relating to the installation or closure of an

11 underground storage tank system.

12 (2) If the department modifies, conditions, suspends,

13 or revokes a license, it shall inform the applicant or

14 license holder in writing of the reason for the action. The

15 installer may request a hearing before the board. If the

16 board grants a hearing, the hearing must be held in

17 accordance with the provisions of the Montana Administrative

18 Procedure Act."

19 **Section 7.** Section 75-11-212, MCA, is amended to read:

20 "75-11-212. Permits -- application procedure --

21 issuance. (1) Before the installation or closure of an

22 underground storage tank system, the owner or operator OR

23 THE OWNER'S OR OPERATOR'S DESIGNATED LICENSED UNDERGROUND

24 STORAGE TANK INSTALLER OR REMOVER shall file a permit

25 application with the department on forms provided by the

1 department. The time between the filing of a permit

2 application with the department and the installation or

3 closure may be provided by department rule. The department

4 may provide by rule for emergency permits to apply to

5 emergency conditions pertaining to the installation or

6 closure of underground storage tanks.

7 (2) The permit application must, at a minimum, require

8 the owner or operator to provide information concerning:

9 (a) the date of the underground storage tank system

10 installation or closure;

11 (b) the location of the underground storage tank system

12 installation or closure;

13 (c) the type of construction of the underground storage

14 tank system;

15 (d) the contents of the underground storage tank system

16 being closed or the anticipated contents of the tank being

17 installed; and

18 (e) the name of the licensed installer who will be

19 installing or closing the underground storage tank system

20 or, if the owner or operator is not going to have the

21 underground storage tank system installed or closed by a

22 licensed installer, the estimated date for inspection by the

23 department.

24 (3) After receipt of a completed application that meets

25 the requirements of this section and any rules adopted under

1 75-11-204(1), the department shall issue the permit."

2 **Section 8.** Section 75-11-213, MCA, is amended to read:

3 "75-11-213. Inspection of installations and closures --
4 fee. (1) After being issued a permit, an owner or operator
5 may obtain an inspection by the department in lieu of
6 obtaining the services of a licensed installer. The owner or
7 operator shall provide timely notice to the department of
8 the date and location of the underground storage tank system
9 installation or closure and shall establish with the
10 department the time when an inspection may be conducted.

11 (2) An owner or operator may conduct an installation or
12 closure under this section only if an inspector is present.

13 (3) An inspection fee must be paid by the owner or
14 operator to the department to cover the costs associated
15 with an inspection. The inspection is not considered
16 complete until the owner or operator pays the fee.

17 (4) Department officials or local government officers,
18 such as local health officers, sanitarians, local fire
19 chiefs, or other persons designated or hired by the
20 department, shall conduct inspections on behalf of the
21 department.

22 (5) The department shall pay the person conducting an
23 inspection on the department's behalf, as provided in
24 subsection (4), from the underground storage tank system
25 license and permit account established in 75-11-227 up to

1 80% of any fee collected by the department for the
2 inspection. When an inspection is conducted by an officer of
3 a county or city, the payment must be made by the department
4 to the appropriate county or city treasurer. A county or
5 city shall use payments received under this section only for
6 costs incurred in conducting inspections under this section.

7 (6) A copy of an installation inspection report must be
8 kept on file by the owner or operator for as long as the
9 department may require by rule. A copy of a closure
10 inspection report must be kept by the owner or operator for
11 3 years after the date of closure.

12 (7) The department may enter and inspect the premises
13 or any appurtenant property of an owner or operator at any
14 time to ensure compliance with laws or rules pertaining to
15 underground storage tanks tank systems."

16 **Section 9.** Section 75-11-217, MCA, is amended to read:

17 "75-11-217. **Exemption.** The owner or operator of a farm
18 or residential tank with a capacity of 1,100 gallons or less
19 that is used for storing motor fuel for noncommercial
20 purposes or a tank used for storing heating oil for
21 consumptive use on the premises where stored shall obtain a
22 permit for the installation or closure of the tank system
23 but is not required to obtain the services of a licensed
24 installer."

25 **Section 10.** Section 75-11-218, MCA, is amended to read:

1 "75-11-218. Administrative enforcement. (1) When the
 2 department believes that a person has violated this part, a
 3 rule adopted thereunder under this part, or a permit
 4 provision, it may serve written notice of the violation on
 5 the person or his the person's agent. The notice must
 6 specify the alleged violation and the facts that constitute
 7 the alleged violation. The notice may include an order to
 8 provide information pertaining to the installation or
 9 closure or an order to take necessary corrective action
 10 within a reasonable time as stated in the order. The notice
 11 and order may be signed and served by a department inspector
 12 if it is personally given to the person or to his the
 13 person's agent. Every other notice and order must be signed
 14 by the director of the department or his the director's
 15 deputy and must be served by certified mail upon the person
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 17 within 30 days after the notice is served, the person
 18 requests in writing a hearing before the board. On receipt
 19 of the request, the board shall schedule a hearing. Service
 20 by mail is complete on the date of mailing.

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 22 (1), the board finds that a violation has occurred, it shall
 23 either affirm or modify the department's order. An order
 24 issued by the department or the board may prescribe the date
 25 by which the violation must cease and may prescribe time

1 limits for particular action. If, after a hearing, the board
 2 finds that no a violation has not occurred, it shall rescind
 3 the department's order.

4 (3) ~~instead~~ In addition to or instead of issuing an
 5 order pursuant to subsection (1), the department may either:

6 (a) require the alleged violator to appear before the
 7 board for a hearing at a time and place specified in the
 8 notice and answer the charges described in the notice of
 9 violation; or

10 (b) initiate action under 75-11-219, 75-11-223, or
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 13 department from attempting to obtain voluntary compliance
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(2) A person convicted of a second or subsequent criminal violation is subject to a fine not to exceed \$20,000 for each violation or imprisonment not to exceed 1 year, or both. Each day of violation constitutes a separate violation.

(3) Action under this section does not bar enforcement of this part, rules adopted under this part, orders of the department or the board, or terms of a license or permit by injunction or other appropriate remedy."

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-End-