

HB 3023 - H AMD 1247

By Representative Jacks

ADOPTED 02/18/2010

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 70.148.005 and 1990 c 64 s 1 are each amended to read
4 as follows:

5 (1) The legislature finds that:

6 (a) Final regulations adopted by the United States environmental
7 protection agency (EPA) require owners and operators of underground
8 petroleum storage tanks to demonstrate financial responsibility for
9 accidental releases of petroleum as a precondition to continued
10 ownership and operation of such tanks;

11 (b) Financial responsibility is demonstrated through the purchase
12 of pollution liability insurance or an acceptable alternative such as
13 coverage under a state financial responsibility program, in the amount
14 of at least five hundred thousand dollars per occurrence and one
15 million dollars annual aggregate depending upon the nature, use, and
16 number of tanks owned or operated;

17 (c) Many owners and operators of underground petroleum storage
18 tanks cannot purchase pollution liability insurance either because
19 private insurance is unavailable at any price or because owners and
20 operators cannot meet the rigid underwriting standards of existing
21 insurers, nor can many owners and operators meet the strict regulatory
22 standards imposed for alternatives to the purchase of insurance;
23 ((and))

24 (d) Without a state financial responsibility program for owners and
25 operators of underground petroleum storage tanks, many tank owners and
26 operators will be forced to discontinue the ownership and operation of
27 these tanks; and

28 (e) Safeguarding funding for the pollution liability insurance
29 program trust account is necessary to maintain federal funding for the
30 state underground storage tanks program.

1 (2) The purpose of this chapter is to create a state financial
2 responsibility program meeting EPA standards for owners and operators
3 of underground petroleum storage tanks in a manner that:

4 (a) Minimizes state involvement in pollution liability claims
5 management and insurance administration;

6 (b) Protects the state of Washington from unwanted and
7 unanticipated liability for accidental release claims;

8 (c) Creates incentives for private insurers to provide needed
9 liability insurance; and

10 (d) Parallels generally accepted principles of insurance and risk
11 management.

12 To that end, this chapter establishes a temporary program to
13 provide pollution liability reinsurance at a price that will encourage
14 a private insurance company or risk retention group to sell pollution
15 liability insurance in accordance with the requirements of this chapter
16 to owners and operators of underground petroleum storage tanks, thereby
17 allowing the owners and operators to comply with the financial
18 responsibility regulations of the EPA.

19 (3) It is not the intent of this chapter to permit owners and
20 operators of underground petroleum storage tanks to obtain pollution
21 liability insurance without regard to the quality or condition of their
22 storage tanks or without regard to the risk management practices of
23 tank owners and operators, nor is it the intent of this chapter to
24 provide coverage or funding for past or existing petroleum releases.
25 Further, it is the intent of the legislature that the program follow
26 generally accepted insurance underwriting and actuarial principles and
27 to deviate from those principles only to the extent necessary and
28 within the tax revenue limits provided, to make pollution liability
29 insurance reasonably affordable and available to owners and operators
30 who meet the requirements of this chapter, particularly to those owners
31 and operators whose underground storage tanks meet a vital economic
32 need within the affected community.

33 (4) The pollution liability insurance program established by this
34 chapter and chapter 70.149 RCW is merged into the department.

35 **Sec. 2.** RCW 70.148.010 and 1990 c 64 s 2 are each amended to read
36 as follows:

1 Unless the context requires otherwise, the definitions in this
2 section apply throughout this chapter.

3 (1) "Accidental release" means any sudden or nonsudden release of
4 petroleum arising from operating an underground storage tank that
5 results in a need for corrective action, bodily injury, or property
6 damage neither expected nor intended by the owner or operator.

7 (2) "Director" means the (~~Washington pollution liability insurance~~
8 ~~program~~) director of the department or the director's appointed
9 representative.

10 (3) "Bodily injury" means bodily injury, sickness, or disease
11 sustained by any person, including death at any time resulting from the
12 injury, sickness, or disease.

13 (4) "Corrective action" means those actions reasonably required to
14 be undertaken by the insured to remove, treat, neutralize, contain, or
15 clean up an accidental release in order to comply with any statute,
16 ordinance, rule, regulation, directive, order, or similar legal
17 requirement of the United States, the state of Washington, or any
18 political subdivision of the United States or the state of Washington
19 in effect at the time of an accidental release. "Corrective action"
20 includes, when agreed to in writing, in advance by the insurer, action
21 to remove, treat, neutralize, contain, or clean up an accidental
22 release to avert, reduce, or eliminate the liability of the insured for
23 corrective action, bodily injury, or property damage. "Corrective
24 action" also includes actions reasonably necessary to monitor, assess,
25 and evaluate an accidental release.

26 "Corrective action" does not include:

- 27 (a) Replacement or repair of storage tanks or other receptacles;
28 (b) Replacement or repair of piping, connections, and valves of
29 storage tanks or other receptacles;
30 (c) Excavation or backfilling done in conjunction with (a) or (b)
31 of this subsection; or
32 (d) Testing for a suspected accidental release if the results of
33 the testing indicate that there has been no accidental release.

34 (5) "Defense costs" include the costs of legal representation,
35 expert fees, and related costs and expenses incurred in defending
36 against claims or actions brought by or on behalf of:

- 37 (a) The United States, the state of Washington, or any political

1 subdivision of the United States or state of Washington to require
2 corrective action or to recover costs of corrective action; or

3 (b) A third party for bodily injury or property damage caused by an
4 accidental release.

5 (6) (~~"Washington pollution liability insurance program" or~~
6 ~~"program" means the reinsurance program created by this chapter.~~)
7 "Department" means the Washington state department of ecology.

8 (7) "Insured" means the owner or operator who is provided insurance
9 coverage in accordance with this chapter.

10 (8) "Insurer" means the insurance company or risk retention group
11 licensed or qualified to do business in Washington and authorized by
12 the (~~director~~) department to provide insurance coverage in accordance
13 with this chapter.

14 (9) "Loss reserve" means the amount traditionally set aside by
15 commercial liability insurers for costs and expenses related to claims
16 that have been made. "Loss reserve" does not include losses that have
17 been incurred but not reported to the insurer.

18 (10) "Occurrence" means an accident, including continuous or
19 repeated exposure to conditions, that results in a release from an
20 underground storage tank.

21 (11) "Operator" means a person in control of, or having
22 responsibility for, the daily operation of an underground storage tank.

23 (12) "Owner" means a person who owns an underground storage tank.

24 (13) "Person" means an individual, trust, firm, joint stock
25 company, corporation (including government corporation), partnership,
26 association, consortium, joint venture, commercial entity, state,
27 municipality, commission, political subdivision of a state, interstate
28 body, the federal government, or any department or agency of the
29 federal government.

30 (14) "Petroleum" means crude oil or any fraction of crude oil that
31 is liquid at standard conditions of temperature and pressure, which
32 means at sixty degrees Fahrenheit and 14.7 pounds per square inch
33 absolute and includes gasoline, kerosene, heating oils, and diesel
34 fuels.

35 (15) "Pollution liability insurance program" or "program" means the
36 reinsurance program created by this chapter.

37 (16) "Property damage" means:

1 (a) Physical injury to, destruction of, or contamination of
2 tangible property, including the loss of use of the property resulting
3 from the injury, destruction, or contamination; or

4 (b) Loss of use of tangible property that has not been physically
5 injured, destroyed, or contaminated but has been evacuated, withdrawn
6 from use, or rendered inaccessible because of an accidental release.

7 ~~((+16+))~~ (17) "Release" means the emission, discharge, disposal,
8 dispersal, seepage, or escape of petroleum from an underground storage
9 tank into or upon land, groundwater, surface water, subsurface soils,
10 or the atmosphere.

11 ~~((+17+))~~ (18) "Surplus reserve" means the amount traditionally set
12 aside by commercial property and casualty insurance companies to
13 provide financial protection from unexpected losses and to serve, in
14 part, as a measure of an insurance company's net worth.

15 ~~((+18+))~~ (19) "Tank" means a stationary device, designed to contain
16 an accumulation of petroleum, that is constructed primarily of
17 nonearthen materials such as wood, concrete, steel, or plastic that
18 provides structural support.

19 ~~((+19+))~~ (20) "Underground storage tank" means any one or a
20 combination of tanks including underground pipes connected to the tank,
21 that is used to contain an accumulation of petroleum and the volume of
22 which (including the volume of the underground pipes connected to the
23 tank) is ten percent or more beneath the surface of the ground.

24 **Sec. 3.** RCW 70.148.020 and 2006 c 276 s 1 are each amended to read
25 as follows:

26 (1) The pollution liability insurance program trust account is
27 established in the custody of the state treasurer. All funds
28 appropriated for this chapter and all premiums collected for
29 reinsurance shall be deposited in the account. Expenditures from the
30 account shall be used exclusively for the purposes of this chapter
31 including payment of costs of administering the pollution liability
32 insurance and underground storage tank community assistance programs.
33 Expenditures for payment of administrative and operating costs of the
34 ~~((agency))~~ program are subject to the allotment procedures under
35 chapter 43.88 RCW and may be made only after appropriation by statute.
36 No appropriation is required for other expenditures from the account.

1 (2) Each calendar quarter, the ~~((director))~~ department shall report
2 to the insurance commissioner the loss and surplus reserves required
3 for the calendar quarter. The ~~((director))~~ department shall notify the
4 department of revenue of this amount by the fifteenth day of each
5 calendar quarter.

6 (3) Each calendar quarter the ~~((director))~~ department shall
7 determine the amount of reserves necessary to fund commitments made to
8 provide financial assistance under RCW 70.148.130 to the extent that
9 the financial assistance reserves do not jeopardize the operations and
10 liabilities of the pollution liability insurance program. The
11 ~~((director))~~ department shall notify the department of revenue of this
12 amount by the fifteenth day of each calendar quarter. The ~~((director))~~
13 department may immediately establish an initial financial assistance
14 reserve of five million dollars from available revenues. The
15 ~~((director))~~ department may not expend more than fifteen million
16 dollars for the financial assistance program.

17 ~~((During the 2005-2007 fiscal biennium, the legislature may
18 transfer from the pollution liability insurance program trust account
19 to the state general fund such amounts as reflect the excess fund
20 balance of the account.~~

21 ~~(5))~~) This section expires June 1, 2013.

22 **Sec. 4.** RCW 70.148.025 and 1995 c 20 s 12 are each amended to read
23 as follows:

24 The ~~((director))~~ department shall provide reinsurance through the
25 pollution liability insurance program trust account to the heating oil
26 pollution liability protection program under chapter 70.149 RCW.

27 **Sec. 5.** RCW 70.148.030 and 1994 sp.s. c 9 s 805 are each amended
28 to read as follows:

29 (1) The ~~((Washington))~~ pollution liability insurance program is
30 ~~((created as an independent agency of the state. The administrative
31 head and appointing authority of the program shall be the director who
32 shall be appointed by the governor, with the consent of the senate, and
33 shall serve at the pleasure of the governor. The salary for this
34 office shall be set by the governor pursuant to RCW 43.03.040. The
35 director shall appoint a deputy director. The director, deputy
36 director, and up to three other employees are exempt from the civil~~

1 ~~service law, chapter 41.06 RCW~~) merged into the department. The
2 administrative head must be appointed by the director. The
3 administrative head of the program and up to three other employees are
4 exempt from the civil service law, chapter 41.06 RCW, and serve at the
5 pleasure of the director.

6 (2) The pollution liability insurance program shall be closely
7 aligned with programs related to underground storage tanks and toxic
8 cleanup.

9 (3) The director shall employ such other staff as are necessary to
10 fulfill the responsibilities and duties of the ((~~director~~)) department.
11 The staff is subject to the civil service law, chapter 41.06 RCW. In
12 addition, the director may contract with third parties for services
13 necessary to carry out its activities where this will promote economy,
14 avoid duplication of effort, and make best use of available expertise.
15 To the extent necessary to protect the state from unintended liability
16 and ensure quality program and contract design, the director shall
17 contract with an organization or organizations with demonstrated
18 experience and ability in managing and designing pollution liability
19 insurance and with an organization or organizations with demonstrated
20 experience and ability in managing and designing pollution liability
21 reinsurance. The director shall enter into such contracts after
22 competitive bid but need not select the lowest bid. The contracting
23 activity is not subject to the competitive contracting provisions of
24 RCW 41.06.142. Any such contractor or consultant is prohibited from
25 releasing, publishing, or otherwise using any information made
26 available to it under its contractual responsibility without specific
27 permission of the ((~~program~~)) director. The director may call upon
28 other agencies of the state to provide technical support and available
29 information as necessary to assist the director in meeting the
30 director's responsibilities under this chapter. Agencies shall supply
31 this support and information as promptly as circumstances permit.

32 ((+3)) (4) The director may appoint ad hoc technical advisory
33 committees to obtain expertise necessary to fulfill the purposes of
34 this chapter.

35 **Sec. 6.** RCW 70.148.035 and 1990 c 64 s 11 are each amended to read
36 as follows:

37 The ((~~director~~)) department may design the program to cover the

1 costs incurred in determining whether a proposed applicant for
2 pollution insurance under the program meets the underwriting standards
3 of the insurer. In covering such costs the ((~~director~~)) department
4 shall consider the financial resources of the applicant, shall take
5 into consideration the economic impact of the discontinued use of the
6 applicant's storage tank upon the affected community, shall provide
7 coverage within the revenue limits provided under this chapter, and
8 shall limit coverage of such costs to the extent that coverage would be
9 detrimental to providing affordable insurance under the program.

10 **Sec. 7.** RCW 70.148.040 and 1990 c 64 s 5 are each amended to read
11 as follows:

12 The ((~~director~~)) department may adopt rules consistent with this
13 chapter to carry out the purposes of this chapter. All rules shall be
14 adopted in accordance with chapter 34.05 RCW.

15 **Sec. 8.** RCW 70.148.050 and 2006 c 276 s 2 are each amended to read
16 as follows:

17 The ((~~director~~)) department has the following powers and duties:

18 (1) To design and from time to time revise a reinsurance contract
19 providing coverage to an insurer meeting the requirements of this
20 chapter. Before initially entering into a reinsurance contract, the
21 ((~~director~~)) department shall prepare an actuarial report describing
22 the various reinsurance methods considered by the ((~~director~~))
23 department and describing each method's costs. In designing the
24 reinsurance contract the ((~~director~~)) department shall consider common
25 insurance industry reinsurance contract provisions and shall design the
26 contract in accordance with the following guidelines:

27 (a) The contract shall provide coverage to the insurer for the
28 liability risks of owners and operators of underground storage tanks
29 for third party bodily injury and property damage and corrective action
30 that are underwritten by the insurer.

31 (b) In the event of an insolvency of the insurer, the reinsurance
32 contract shall provide reinsurance payable directly to the insurer or
33 to its liquidator, receiver, or successor on the basis of the liability
34 of the insurer in accordance with the reinsurance contract. In no
35 event may the program be liable for or provide coverage for that

1 portion of any covered loss that is the responsibility of the insurer
2 whether or not the insurer is able to fulfill the responsibility.

3 (c) The total limit of liability for reinsurance coverage shall not
4 exceed one million dollars per occurrence and two million dollars
5 annual aggregate for each policy underwritten by the insurer less the
6 ultimate net loss retained by the insurer as defined and provided for
7 in the reinsurance contract.

8 (d) Disputes between the insurer and the insurance program shall be
9 settled through arbitration.

10 (2) To design and implement a structure of periodic premiums due
11 the ((~~director~~)) department from the insurer that takes full advantage
12 of revenue collections and projected revenue collections to ensure
13 affordable premiums to the insured consistent with sound actuarial
14 principles.

15 (3) To periodically review premium rates for reinsurance to
16 determine whether revenue appropriations supporting the program can be
17 reduced without substantially increasing the insured's premium costs.

18 (4) To solicit bids from insurers and select an insurer to provide
19 pollution liability insurance to owners and operators of underground
20 storage tanks for third party bodily injury and property damage and
21 corrective action.

22 (5) To monitor the activities of the insurer to ensure compliance
23 with this chapter and protect the program from excessive loss exposure
24 resulting from claims mismanagement by the insurer.

25 (6) To monitor the success of the program and periodically make
26 such reports and recommendations to the legislature as the ((~~director~~))
27 department deems appropriate, and to annually publish a financial
28 report on the pollution liability insurance program trust account
29 showing, among other things, administrative and other expenses paid
30 from the fund.

31 (7) To annually report the financial and loss experience of the
32 insurer as to policies issued under the program and the financial and
33 loss experience of the program to the legislature.

34 (8) To enter into contracts with public and private agencies to
35 assist the ((~~director~~)) department in ((~~his or her~~)) its duties to
36 design, revise, monitor, and evaluate the program and to provide
37 technical or professional assistance to the ((~~director~~)) department.

1 (9) To examine the affairs, transactions, accounts, records,
2 documents, and assets of insurers as the ((~~director~~)) department deems
3 advisable.

4 **Sec. 9.** RCW 70.148.060 and 2005 c 274 s 341 are each amended to
5 read as follows:

6 (1) All examination and proprietary reports and information
7 obtained by the ((~~director~~)) department and the ((~~director's~~))
8 department's staff in soliciting bids from insurers and in monitoring
9 the insurer selected by the ((~~director~~)) department shall not be made
10 public or otherwise disclosed to any person, firm, corporation, agency,
11 association, governmental body, or other entity.

12 (2) Subsection (1) of this section notwithstanding, the
13 ((~~director~~)) department may furnish all or part of examination reports
14 prepared by the ((~~director~~)) department or by any person, firm,
15 corporation, association, or other entity preparing the reports on
16 behalf of the ((~~director~~)) department to:

- 17 (a) The Washington state insurance commissioner;
- 18 (b) A person or organization officially connected with the insurer
19 as officer, director, attorney, auditor, or independent attorney or
20 independent auditor; and
- 21 (c) The attorney general in his or her role as legal advisor to the
22 ((~~director~~)) department.

23 (3) Subsection (1) of this section notwithstanding, the
24 ((~~director~~)) department may furnish all or part of the examination or
25 proprietary reports or information obtained by the ((~~director~~))
26 department to:

- 27 (a) The Washington state insurance commissioner; and
- 28 (b) A person, firm, corporation, association, governmental body, or
29 other entity with whom the ((~~director~~)) department has contracted for
30 services necessary to perform his or her official duties.

31 (4) Examination reports and proprietary information obtained by the
32 ((~~director~~)) department and the ((~~director's~~)) department's staff are
33 not subject to public disclosure under chapter 42.56 RCW.

34 (5) A person who violates any provision of this section is guilty
35 of a gross misdemeanor.

1 **Sec. 10.** RCW 70.148.070 and 1990 c 64 s 8 are each amended to read
2 as follows:

3 (1) In selecting an insurer to provide pollution liability
4 insurance coverage to owners and operators of underground storage
5 tanks, the ~~((director))~~ department shall evaluate bids based upon
6 criteria established by the ~~((director))~~ department that shall include:

7 (a) The insurer's ability to underwrite pollution liability
8 insurance;

9 (b) The insurer's ability to settle pollution liability claims
10 quickly and efficiently;

11 (c) The insurer's estimate of underwriting and claims adjustment
12 expenses;

13 (d) The insurer's estimate of premium rates for providing coverage;

14 (e) The insurer's ability to manage and invest premiums; and

15 (f) The insurer's ability to provide risk management guidance to
16 insureds.

17 The ~~((director))~~ department shall select the bidder most qualified
18 to provide insurance consistent with this chapter and need not select
19 the bidder submitting the least expensive bid. The ~~((director))~~
20 department may consider bids by groups of insurers and management
21 companies who propose to act in concert in providing coverage and who
22 otherwise meet the requirements of this chapter.

23 (2) The successful bidder shall agree to provide liability
24 insurance coverage to owners and operators of underground storage tanks
25 for third party bodily injury and property damage and corrective action
26 consistent with the following minimum standards:

27 (a) The insurer shall provide coverage for defense costs.

28 (b) The insurer shall collect a deductible from the insured for
29 corrective action in an amount approved by the ~~((director))~~ department.

30 (c) The insurer shall provide coverage for accidental releases in
31 the amount of five hundred thousand dollars per occurrence and one
32 million dollars annual aggregate but no more than one million dollars
33 per occurrence and two million dollars annual aggregate exclusive of
34 defense costs.

35 (d) The insurer shall require insurance applicants to meet at least
36 the following underwriting standards before issuing coverage to the
37 applicant:

1 (i) The applicant must be in compliance with statutes, ordinances,
2 rules, regulations, and orders governing the ownership and operation of
3 underground storage tanks as identified by the ~~((director))~~ department
4 by rule; and

5 (ii) The applicant must exercise adequate underground storage tank
6 risk management as specified by the ~~((director))~~ department by rule.

7 (e) The insurer may exclude coverage for losses arising before the
8 effective date of coverage, and the ~~((director))~~ department may adopt
9 rules establishing standards for determining whether a loss was
10 incurred before the effective date of coverage.

11 (f) The insurer may exclude coverage for bodily injury, property
12 damage, and corrective action as permitted by the ~~((director))~~
13 department by rule.

14 (g) The insurer shall use a variable rate schedule approved by the
15 ~~((director))~~ department taking into account tank type, tank age, and
16 other factors specified by the ~~((director))~~ department.

17 (3) The ~~((director))~~ department shall adopt all rules necessary to
18 implement this section. In developing and adopting rules governing
19 rates, deductibles, underwriting standards, and coverage conditions,
20 limitations, and exclusions, the ~~((director))~~ department shall balance
21 the owner and operator's need for coverage with the need to maintain
22 the actuarial integrity of the program, shall take into consideration
23 the economic impact of the discontinued use of a storage tank upon the
24 affected community, and shall consult with the ~~((standing))~~ ad hoc
25 technical advisory committees established under RCW 70.148.030~~((+3))~~
26 (4). ~~((In developing and adopting rules governing coverage exclusions~~
27 ~~affecting corrective action, the director shall consult with the~~
28 ~~Washington state department of ecology.))~~

29 (4) Notwithstanding the definitions contained in RCW 70.148.010,
30 the ~~((director))~~ department may permit an insurer to use different
31 words or phrases describing the coverage provided under the program.
32 In permitting such deviations from the definitions contained in RCW
33 70.148.010, the ~~((director))~~ department shall consider the regulations
34 adopted by the United States environmental protection agency requiring
35 financial responsibility by owners and operators of underground
36 petroleum storage tanks.

37 (5) Owners and operators of underground storage tanks or sites
38 containing underground storage tanks where a preexisting release has

1 been identified or where the owner or operator knows of a preexisting
2 release are eligible for coverage under the program subject to the
3 following conditions:

4 (a) The owner or operator must have a plan for proceeding with
5 corrective action; and

6 (b) If the owner or operator files a claim with the insurer, the
7 owner or operator has the burden of proving that the claim is not
8 related to a preexisting release until the owner or operator
9 demonstrates to the satisfaction of the ((director)) department that
10 corrective action has been completed.

11 (6) ((When)) Within thirty days of a reinsurance contract ((has
12 been)) being entered into by the ((agency)) department and insurance
13 companies, ((the director shall notify the department of ecology of the
14 letting of the contract. Within thirty days of that notification,))
15 the department ((of ecology)) shall notify all known owners and
16 operators of petroleum underground storage tanks that appropriate
17 levels of financial responsibility must be established by October 26,
18 1990, in accordance with federal environmental protection agency
19 requirements, and that insurance under the program is available. All
20 owners and operators of petroleum underground storage tanks must also
21 be notified that declaration of method of financial responsibility or
22 intent to seek to be insured under the program must be made to the
23 state by November 1, 1990. If the declaration of method of financial
24 responsibility is not made by November 1, 1990, the department ((of
25 ecology)) shall, pursuant to chapter 90.76 RCW, prohibit the owner or
26 operator of an underground storage tank from obtaining a tank tag or
27 receiving petroleum products until such time as financial
28 responsibility has been established.

29 **Sec. 11.** RCW 70.148.080 and 1990 c 64 s 9 are each amended to read
30 as follows:

31 If the insurer cancels or refuses to issue or renew a policy, the
32 affected owner or operator may appeal the insurer's decision to the
33 director or the director's designee. The director or the director's
34 designee shall conduct a brief adjudicative proceeding under chapter
35 34.05 RCW.

1 **Sec. 12.** RCW 70.148.090 and 1990 c 64 s 10 are each amended to
2 read as follows:

3 (1) The activities and operations of the program are exempt from
4 the provisions and requirements of Title 48 RCW and to the extent of
5 their participation in the program, the activities and operations of
6 the insurer selected by the ((~~director~~)) department to provide
7 liability insurance coverage to owners and operators of underground
8 storage tanks are exempt from the requirements of Title 48 RCW except
9 for:

- 10 (a) Chapter 48.03 RCW pertaining to examinations;
- 11 (b) RCW 48.05.250 pertaining to annual reports;
- 12 (c) Chapter 48.12 RCW pertaining to assets and liabilities;
- 13 (d) Chapter 48.13 RCW pertaining to investments;
- 14 (e) Chapter 48.30 RCW pertaining to deceptive, false, or fraudulent
15 acts or practices; and
- 16 (f) Chapter 48.92 RCW pertaining to liability risk retention.

17 (2) To the extent of their participation in the program, the
18 insurer selected by the ((~~director~~)) department to provide liability
19 insurance coverage to owners and operators of underground storage tanks
20 shall not participate in the Washington insurance guaranty association
21 nor shall the association be liable for coverage provided to owners and
22 operators of underground storage tanks issued in connection with the
23 program.

24 **Sec. 13.** RCW 70.148.130 and 2005 c 428 s 2 are each amended to
25 read as follows:

26 (1) Subject to the conditions and limitations of RCW 70.148.120
27 through 70.148.170, the ((~~director~~)) department shall establish and
28 manage a program for providing financial assistance to public and
29 private owners and operators of underground storage tanks who have been
30 certified by the governing body of the county, city, or town in which
31 the tanks are located as meeting a vital local government, public
32 health or safety need. In providing such financial assistance the
33 ((~~director~~)) department shall:

34 (a) Require owners and operators, including local government owners
35 and operators, to demonstrate serious financial hardship;

36 (b) Limit assistance to only that amount necessary to supplement
37 applicant financial resources;

1 (c) Limit assistance to no more than two hundred thousand dollars
2 in value for any one underground storage tank site of which amount no
3 more than seventy-five thousand dollars in value may be provided for
4 corrective action; and

5 (d) Whenever practicable, provide assistance through the direct
6 payment of contractors and other professionals for labor, materials,
7 and other services.

8 (2)(a) Except as otherwise provided in RCW 70.148.120 through
9 70.148.170, no grant of financial assistance may be used for any
10 purpose other than for corrective action and repair, replacement,
11 reconstruction, and improvement of underground storage tanks and tank
12 sites. If at any time prior to providing financial assistance or in
13 the course of providing such assistance, it appears to the ~~((director))~~
14 department that corrective action costs may exceed seventy-five
15 thousand dollars, the ~~((director))~~ department may not provide further
16 financial assistance until the owner or operator has developed and
17 implemented a corrective action plan with the department ~~((of~~
18 ~~ecology))~~.

19 (b) A grant of financial assistance may also be made to an owner or
20 operator that has discontinued using underground petroleum storage
21 tanks due to economic hardship. An owner or operator may receive a
22 grant up to two hundred thousand dollars per retailing location if:

23 (i) The property is located in an underserved rural area;

24 (ii) The property was previously used by a private owner or
25 operator to provide motor vehicle fuel; and

26 (iii) The property is at least ten miles from the nearest motor
27 vehicle fuel service station.

28 (3) When requests for financial assistance exceed available funds,
29 the ~~((director))~~ department shall give preference to providing
30 assistance first to those underground storage tank sites which
31 constitute the sole source of petroleum products in remote rural
32 communities.

33 (4) The ~~((director shall consult with the department of ecology in~~
34 ~~approving financial assistance for corrective action to ensure~~
35 ~~compliance with regulations governing underground petroleum storage~~
36 ~~tanks and corrective action))~~ department, in approving financial
37 assistance for corrective action, shall ensure compliance with rules
38 governing underground petroleum storage tanks and corrective action.

1 (5) The ((~~director~~)) department shall approve or disapprove
2 applications for financial assistance within sixty days of receipt of
3 a completed application meeting the requirements of RCW 70.148.120
4 through 70.148.170. The certification by local government of an owner
5 or operator shall not preclude the ((~~director~~)) department from
6 disapproving an application for financial assistance if the
7 ((~~director~~)) department finds that such assistance would not meet the
8 purposes of RCW 70.148.120 through 70.148.170.

9 (6) The ((~~director~~)) department may adopt all rules necessary to
10 implement the financial assistance program and shall consult with the
11 technical advisory committee established under RCW 70.148.030 in
12 developing such rules and in reviewing applications for financial
13 assistance.

14 **Sec. 14.** RCW 70.148.140 and 1991 c 4 s 3 are each amended to read
15 as follows:

16 (1) To qualify for financial assistance, a private owner or
17 operator retailing petroleum products to the public must:

18 (a) First apply for insurance from the pollution liability
19 insurance program and request financial assistance in a form and manner
20 required by the ((~~director~~)) department;

21 (b) If the ((~~director~~)) department makes a preliminary
22 determination of possible eligibility for financial assistance, apply
23 to the appropriate governing body of the city or town in which the
24 tanks are located or in the case where the tanks are located outside of
25 the jurisdiction of a city or town, then to the appropriate governing
26 body of the county in which the tanks are located, for a determination
27 by the governing body of the city, town, or county that the continued
28 operation of the tanks meets a vital local government, or public health
29 or safety need; and

30 (c) Qualify for insurance coverage from the pollution liability
31 insurance program if such financial assistance were to be provided.

32 (2) In consideration for financial assistance and prior to
33 receiving such assistance the owner and operator must enter into an
34 agreement with the state whereby the owner and operator agree:

35 (a) To sell petroleum products to the public;

36 (b) To maintain the tank site for use in the retail sale of

1 petroleum products for a period of not less than fifteen years from the
2 date of agreement;

3 (c) To sell petroleum products to local government entities within
4 the affected community on a cost-plus basis periodically negotiated
5 between the owner and operator and the city, town, or county in which
6 the tanks are located; and

7 (d) To maintain compliance with state underground storage tank
8 financial responsibility and environmental regulations.

9 (3) The agreement shall be filed as a real property lien against
10 the tank site with the county auditor (~~((of the county))~~) of the county
11 in which the tanks are located. If the owner or operator transfers his
12 or her interest in such property, the new owner or operator must agree
13 to abide by the agreement or any financial assistance provided under
14 RCW 70.148.120 through 70.148.170 shall be immediately repaid to the
15 state by the owner or operator who received such assistance.

16 (4) As determined by the (~~(director)~~) department, if an owner or
17 operator materially breaches the agreement, any financial assistance
18 provided shall be immediately repaid by such owner or operator.

19 (5) The agreement between an owner and operator and the state
20 required under this section shall expire fifteen years from the date of
21 entering into the agreement.

22 **Sec. 15.** RCW 70.148.150 and 1991 c 4 s 4 are each amended to read
23 as follows:

24 (1) To qualify for financial assistance, a public owner or operator
25 must:

26 (a) First apply for insurance from the pollution liability
27 insurance program and request financial assistance in a form and manner
28 required by the (~~(director)~~) department;

29 (b) Provide to the (~~(director)~~) department a copy of the resolution
30 by the governing body of the city, town, or county having jurisdiction,
31 finding that the continued operation of the tanks is necessary to
32 maintain vital local public health, education, or safety needs;

33 (c) Qualify for insurance coverage from the pollution liability
34 insurance program if such financial assistance were to be provided.

35 (2) The (~~(director)~~) department shall give priority to and shall
36 encourage local government entities to consolidate multiple operational
37 underground storage tank sites into as few sites as possible. For this

1 purpose, the ((~~director~~)) department may provide financial assistance
2 for the establishment of a new local government underground storage
3 tank site contingent upon the closure of other operational sites in
4 accordance with environmental regulations. Within the per site
5 financial limits imposed under RCW 70.148.120 through 70.148.170, the
6 ((~~director~~)) department may authorize financial assistance for the
7 closure of operational sites when closure is for the purpose of
8 consolidation.

9 **Sec. 16.** RCW 70.148.160 and 1991 c 4 s 5 are each amended to read
10 as follows:

11 To qualify for financial assistance, a rural hospital ((~~as defined~~
12 ~~in RCW 18.89.020~~)), owning or operating an underground storage tank
13 must:

14 (1) First apply for insurance from the pollution liability
15 insurance program and request financial assistance in a form and manner
16 required by the ((~~director~~)) department;

17 (2) Apply to the governing body of the city, town, or county in
18 which the hospital is located for certification that the continued
19 operation of the tank or tanks is necessary to maintain vital local
20 public health or safety needs;

21 (3) Qualify for insurance coverage from the pollution liability
22 insurance program if such financial assistance were to be provided; and

23 (4) Agree to provide charity care ((~~as defined in RCW 70.39.020~~))
24 in an amount of equivalent value to the financial assistance provided
25 under RCW 70.148.120 through 70.148.170. The ((~~director~~)) department
26 shall consult with the department of health to monitor and determine
27 the time period over which such care should be expected to be provided
28 in the local community.

29 **Sec. 17.** RCW 70.148.170 and 1991 c 4 s 6 are each amended to read
30 as follows:

31 (1) The ((~~director~~)) department shall develop and distribute to
32 appropriate cities, towns, and counties a form for use by the local
33 government in making the certification required for all private owner
34 and operator financial assistance along with instructions on the use of
35 such form.

1 (2) In certifying a private owner or operator retailing petroleum
2 products to the public as meeting vital local government, public health
3 or safety needs, the local government shall:

4 (a) Consider and find that other retail suppliers of petroleum
5 products are located remote from the local community;

6 (b) Consider and find that the owner or operator requesting
7 certification is capable of faithfully fulfilling the agreement
8 required for financial assistance;

9 (c) Designate the local government official who will be responsible
10 for negotiating the price of petroleum products to be sold on a cost-
11 plus basis to the local government entities in the affected communities
12 and the entities eligible to receive petroleum products at such price;
13 and

14 (d) State the vital need or needs that the owner or operator meets.

15 (3) In certifying a hospital as meeting local public health and
16 safety needs the local government shall:

17 (a) Consider and find that the continued use of the underground
18 storage tank by the hospital is necessary; and

19 (b) Consider and find that the hospital provides health care
20 services to the poor and otherwise provides charity care.

21 (4) The (~~director~~) department shall notify the governing body of
22 the city, town, or county providing certification when financial
23 assistance for a private owner or operator has been approved.

24 **Sec. 18.** RCW 70.149.010 and 1995 c 20 s 1 are each amended to read
25 as follows:

26 (1) It is the intent of the legislature to establish a temporary
27 regulatory program to assist owners and operators of heating oil tanks.
28 The legislature finds that it is in the best interests of all citizens
29 for heating oil tanks to be operated safely and for tank leaks or
30 spills to be dealt with expeditiously. The legislature further finds
31 that it is necessary to protect tank owners from the financial hardship
32 related to damaged heating oil tanks. The problem is especially acute
33 because owners and operators of heating oil tanks used for space
34 heating have been unable to obtain pollution liability insurance or
35 insurance has been unaffordable.

36 (2) The pollution liability insurance program established by this
37 chapter and chapter 70.148 RCW is merged into the department.

1 **Sec. 19.** RCW 70.149.030 and 1995 c 20 s 3 are each amended to read
2 as follows:

3 Unless the context clearly requires otherwise, the definitions in
4 this section apply throughout this chapter.

5 (1) "Accidental release" means a sudden or nonsudden release of
6 heating oil, occurring after July 23, 1995, from operating a heating
7 oil tank that results in bodily injury, property damage, or a need for
8 corrective action, neither expected nor intended by the owner or
9 operator.

10 (2) "Bodily injury" means bodily injury, sickness, or disease
11 sustained by a person, including death at any time, resulting from the
12 injury, sickness, or disease.

13 (3)(a) "Corrective action" means those actions reasonably required
14 to be undertaken by the insured to remove, treat, neutralize, contain,
15 or clean up an accidental release in order to comply with a statute,
16 ordinance, rule, regulation, directive, order, or similar legal
17 requirement, in effect at the time of an accidental release, of the
18 United States, the state of Washington, or a political subdivision of
19 the United States or the state of Washington. "Corrective action"
20 includes, where agreed to in writing, in advance by the insurer, action
21 to remove, treat, neutralize, contain, or clean up an accidental
22 release to avert, reduce, or eliminate the liability of the insured for
23 corrective action, bodily injury, or property damage. "Corrective
24 action" also includes actions reasonably necessary to monitor, assess,
25 and evaluate an accidental release.

26 (b) "Corrective action" does not include:

27 (i) Replacement or repair of heating oil tanks or other
28 receptacles; or

29 (ii) Replacement or repair of piping, connections, and valves of
30 tanks or other receptacles.

31 (4) "Defense costs" include the costs of legal representation,
32 expert fees, and related costs and expenses incurred in defending
33 against claims or actions brought by or on behalf of:

34 (a) The United States, the state of Washington, or a political
35 subdivision of the United States or state of Washington to require
36 corrective action or to recover costs of corrective action; or

37 (b) A third party for bodily injury or property damage caused by an
38 accidental release.

1 (5) "Department" means the Washington state department of ecology.
2 (6) "Director" means the director of the (~~Washington state~~
3 ~~pollution liability insurance agency~~) department or the director's
4 appointed representative.
5 (~~(6)~~) (7) "Heating oil" means any petroleum product used for
6 space heating in oil-fired furnaces, heaters, and boilers, including
7 stove oil, diesel fuel, or kerosene. "Heating oil" does not include
8 petroleum products used as fuels in motor vehicles, marine vessels,
9 trains, buses, aircraft, or any off-highway equipment not used for
10 space heating, or for industrial processing or the generation of
11 electrical energy.
12 (~~(7)~~) (8) "Heating oil tank" means a tank and its connecting
13 pipes, whether above or below ground, or in a basement, with pipes
14 connected to the tank for space heating of human living or working
15 space on the premises where the tank is located. "Heating oil tank"
16 does not include a decommissioned or abandoned heating oil tank, or a
17 tank used solely for industrial process heating purposes or generation
18 of electrical energy.
19 (~~(8)~~) (9) "Occurrence" means an accident, including continuous or
20 repeated exposure to conditions, that results in a release from a
21 heating oil tank.
22 (~~(9)~~) (10) "Owner or operator" means a person in control of, or
23 having responsibility for, the daily operation of a heating oil tank.
24 (~~(10)~~) (11) "Pollution liability insurance (~~agency~~) program" or
25 "program" means the Washington state pollution liability insurance
26 (~~agency~~) program located within the department.
27 (~~(11)~~) (12) "Property damage" means:
28 (a) Physical injury to, destruction of, or contamination of
29 tangible property, including the loss of use of the property resulting
30 from the injury, destruction, or contamination; or
31 (b) Loss of use of tangible property that has not been physically
32 injured, destroyed, or contaminated but has been evacuated, withdrawn
33 from use, or rendered inaccessible because of an accidental release.
34 (~~(12)~~) (13) "Release" means a spill, leak, emission, escape, or
35 leaching into the environment.
36 (~~(13)~~) (14) "Remedial action costs" means reasonable costs that
37 are attributable to or associated with a remedial action.

1 ((+14)) (15) "Tank" means a stationary device, designed to contain
2 an accumulation of heating oil, that is constructed primarily of
3 nonearthen materials such as concrete, steel, fiberglass, or plastic
4 that provides structural support.

5 ((+15)) (16) "Third-party liability" means the liability of a
6 heating oil tank owner to another person due to property damage or
7 personal injury that results from a leak or spill.

8 **Sec. 20.** RCW 70.149.040 and 2009 c 560 s 11 are each amended to
9 read as follows:

10 The ((director)) department shall:

11 (1) Design a program, consistent with RCW 70.149.120, for providing
12 pollution liability insurance for heating oil tanks that provides up to
13 sixty thousand dollars per occurrence coverage and aggregate limits,
14 and protects the state of Washington from unwanted or unanticipated
15 liability for accidental release claims. The department shall require
16 a competitive bid process for cleanups covered under the insurance
17 program. The department shall also implement additional cost control
18 measures that provide the most efficient and effective use of program
19 funds;

20 (2) Administer, implement, and enforce the provisions of this
21 chapter. To assist in administration of the program, the director is
22 authorized to appoint up to two employees who are exempt from the civil
23 service law, chapter 41.06 RCW, and who shall serve at the pleasure of
24 the director;

25 (3) Administer the heating oil pollution liability trust account,
26 as established under RCW 70.149.070;

27 (4) Employ and discharge, at ((his or her)) its discretion, agents,
28 attorneys, consultants, companies, organizations, and employees as
29 deemed necessary, and to prescribe their duties and powers, and fix
30 their compensation;

31 (5) Adopt rules under chapter 34.05 RCW as necessary to carry out
32 the provisions of this chapter;

33 (6) Design and from time to time revise a reinsurance contract
34 providing coverage to an insurer or insurers meeting the requirements
35 of this chapter. The ((director)) department is authorized to provide
36 reinsurance through the pollution liability insurance program trust
37 account;

1 (7) Solicit bids from insurers and select an insurer to provide
2 pollution liability insurance for third-party bodily injury and
3 property damage, and corrective action to owners and operators of
4 heating oil tanks;

5 (8) Register, and design a means of accounting for, operating
6 heating oil tanks;

7 (9) Implement a program to provide advice and technical assistance
8 to owners and operators of active and abandoned heating oil tanks if
9 contamination from an active or abandoned heating oil tank is
10 suspected. Advice and assistance regarding administrative and
11 technical requirements may include observation of testing or site
12 assessment and review of the results of reports. If the ((~~director~~))
13 department finds that contamination is not present or that the
14 contamination is apparently minor and not a threat to human health or
15 the environment, the ((~~director~~)) department may provide written
16 opinions and conclusions on the results of the investigation to owners
17 and operators of active and abandoned heating oil tanks. The
18 ((~~agency~~)) department is authorized to collect, from persons requesting
19 advice and assistance, the costs incurred by the ((~~agency~~)) department
20 in providing such advice and assistance. The costs may include travel
21 costs and expenses associated with review of reports and preparation of
22 written opinions and conclusions. Funds from cost reimbursement must
23 be deposited in the heating oil pollution liability trust account. The
24 state of Washington, the department, the pollution liability insurance
25 ((~~agency~~)) program, and its officers and employees are immune from all
26 liability, and no cause of action arises from any act or omission in
27 providing, or failing to provide, such advice, opinion, conclusion, or
28 assistance;

29 (10) Establish a public information program to provide information
30 regarding liability, technical, and environmental requirements
31 associated with active and abandoned heating oil tanks;

32 (11) Monitor ((~~agency~~)) program expenditures and seek to minimize
33 costs and maximize benefits to ensure responsible financial
34 stewardship;

35 (12) Study if appropriate user fees to supplement program funding
36 are necessary and develop recommendations for legislation to authorize
37 such fees.

1 **Sec. 21.** RCW 70.149.050 and 1995 c 20 s 5 are each amended to read
2 as follows:

3 (1) In selecting an insurer to provide pollution liability
4 insurance coverage to owners and operators of heating oil tanks used
5 for space heating, the ((~~director~~)) department shall evaluate bids
6 based upon criteria established by the ((~~director~~)) department that
7 shall include:

8 (a) The insurer's ability to underwrite pollution liability
9 insurance;

10 (b) The insurer's ability to settle pollution liability claims
11 quickly and efficiently;

12 (c) The insurer's estimate of underwriting and claims adjustment
13 expenses;

14 (d) The insurer's estimate of premium rates for providing coverage;

15 (e) The insurer's ability to manage and invest premiums; and

16 (f) The insurer's ability to provide risk management guidance to
17 insureds.

18 (2) The ((~~director~~)) department shall select the bidder most
19 qualified to provide insurance consistent with this chapter and need
20 not select the bidder submitting the least expensive bid. The
21 ((~~director~~)) department may consider bids by groups of insurers and
22 management companies who propose to act in concert in providing
23 coverage and who otherwise meet the requirements of this chapter.

24 (3) Owners and operators of heating oil tanks, or sites containing
25 heating oil tanks where a preexisting release has been identified or
26 where the owner or operator knows of a preexisting release are eligible
27 for coverage under the program subject to the following conditions:

28 (a) The owner or operator must have a plan for proceeding with
29 corrective action; and

30 (b) If the owner or operator files a claim with the insurer, the
31 owner or operator has the burden of proving that the claim is not
32 related to a preexisting release until the owner or operator
33 demonstrates to the satisfaction of the ((~~director~~)) department that
34 corrective action has been completed.

35 **Sec. 22.** RCW 70.149.060 and 1995 c 20 s 6 are each amended to read
36 as follows:

37 (1) The activities and operations of the program are exempt from

1 the provisions and requirements of Title 48 RCW and to the extent of
2 their participation in the program, the activities and operations of
3 the insurer selected by the ((~~director~~)) department to provide
4 liability insurance coverage to owners and operators of heating oil
5 tanks are exempt from the requirements of Title 48 RCW except for:

6 (a) Chapter 48.03 RCW pertaining to examinations;

7 (b) RCW 48.05.250 pertaining to annual reports;

8 (c) Chapter 48.12 RCW pertaining to assets and liabilities;

9 (d) Chapter 48.13 RCW pertaining to investments;

10 (e) Chapter 48.30 RCW pertaining to deceptive, false, or fraudulent
11 acts or practices; and

12 (f) Chapter 48.92 RCW pertaining to liability risk retention.

13 (2) To the extent of their participation in the program, the
14 insurer selected by the ((~~director~~)) department to provide liability
15 insurance coverage to owners and operators of heating oil tanks shall
16 not participate in the Washington insurance guaranty association nor
17 shall the association be liable for coverage provided to owners and
18 operators of heating oil tanks issued in connection with the program.

19 **Sec. 23.** RCW 70.149.090 and 2005 c 274 s 342 are each amended to
20 read as follows:

21 The following shall be confidential and exempt under chapter 42.56
22 RCW, subject to the conditions set forth in this section:

23 (1) All examination and proprietary reports and information
24 obtained by the ((~~director~~)) department and the ((~~director's~~))
25 department's staff in soliciting bids from insurers and in monitoring
26 the insurer selected by the ((~~director~~)) department may not be made
27 public or otherwise disclosed to any person, firm, corporation, agency,
28 association, governmental body, or other entity.

29 (2) All information obtained by the ((~~director~~)) department or the
30 ((~~director's~~)) department's staff related to registration of heating
31 oil tanks to be insured may not be made public or otherwise disclosed
32 to any person, firm, corporation, agency, association, governmental
33 body, or other entity.

34 (3) The ((~~director~~)) department may furnish all or part of
35 examination reports prepared by the ((~~director~~)) department or by any
36 person, firm, corporation, association, or other entity preparing the
37 reports on behalf of the director to:

- 1 (a) The Washington state insurance commissioner;
- 2 (b) A person or organization officially connected with the insurer
3 as officer, director, attorney, auditor, or independent attorney or
4 independent auditor; and
- 5 (c) The attorney general in his or her role as legal advisor to the
6 (~~director~~) department.

7 **Sec. 24.** RCW 70.149.120 and 2007 c 240 s 2 are each amended to
8 read as follows:

9 (1) The (~~pollution liability insurance agency~~) department shall
10 identify design criteria for heating oil tanks that provide superior
11 protection against future leaks as compared to standard steel tank
12 designs. Any tank designs identified under this section must either be
13 constructed with fiberglass or offer at least an equivalent level of
14 protection against leaks as a standard fiberglass design.

15 (2) The (~~pollution liability insurance agency~~) department shall
16 reimburse any owner or operator, who is participating in the program
17 created in this chapter and who has experienced an occurrence or
18 remedial action, for the difference in price between a standard steel
19 heating tank and a new heating oil tank that satisfies the design
20 standards identified under subsection (1) of this section, if the owner
21 or operator chooses or is required to replace his or her tank at the
22 time of the occurrence or remedial action.

23 (3) Any new heating oil tank reimbursement provided under this
24 section must be funded within the amount of per occurrence coverage
25 provided to the owner or operator under RCW 70.149.040.

26 NEW SECTION. **Sec. 25.** A new section is added to chapter 70.149
27 RCW to read as follows:

28 (1) The following decisions by the department regarding the heating
29 oil pollution liability insurance program may be appealed to the
30 pollution control hearings board: Denial of eligibility for coverage;
31 amount of payment allowed for corrective action; amount of payment
32 allowed for property damage; and amount of payment allowed for a third-
33 party claim.

34 (2) A party aggrieved by a decision of the department regarding
35 denial of eligibility for coverage; amount of payment allowed for
36 corrective action; amount of payment allowed for property damage; or

1 the amount of payment allowed for a third-party claim may appeal the
2 decision to the pollution control hearings board within thirty days of
3 the decision. Review of such a decision must be conducted in
4 accordance with chapter 43.21B RCW. The pollution control hearings
5 board may hear such an appeal as a short board appeal pursuant to RCW
6 43.21B.305. Any subsequent appeal of a decision of the pollution
7 control hearings board shall be obtained in accordance with RCW
8 43.21B.180.

9 (3) If the appeal to the pollution control hearings board is not
10 received within thirty days after the decision, no further
11 consideration will be given to the appeal.

12 **Sec. 26.** RCW 43.21B.110 and 2009 c 456 s 16, 2009 c 332 s 18, and
13 2009 c 183 s 17 are each reenacted and amended to read as follows:

14 (1) The hearings board shall only have jurisdiction to hear and
15 decide appeals from the following decisions of the department, the
16 director, local conservation districts, and the air pollution control
17 boards or authorities as established pursuant to chapter 70.94 RCW, or
18 local health departments:

19 (a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431,
20 70.105.080, 70.107.050, 88.46.090, 90.03.600, 90.46.270, 90.48.144,
21 90.56.310, and 90.56.330.

22 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
23 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070,
24 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

25 (c) A final decision by the department or director made under
26 chapter 183, Laws of 2009.

27 (d) Except as provided in RCW 90.03.210(2), the issuance,
28 modification, or termination of any permit, certificate, or license by
29 the department or any air authority in the exercise of its
30 jurisdiction, including the issuance or termination of a waste disposal
31 permit, the denial of an application for a waste disposal permit, the
32 modification of the conditions or the terms of a waste disposal permit,
33 or a decision to approve or deny an application for a solid waste
34 permit exemption under RCW 70.95.300.

35 (e) Decisions of local health departments regarding the grant or
36 denial of solid waste permits pursuant to chapter 70.95 RCW.

1 (f) Decisions of local health departments regarding the issuance
2 and enforcement of permits to use or dispose of biosolids under RCW
3 70.95J.080.

4 (g) Decisions of the department regarding waste-derived fertilizer
5 or micronutrient fertilizer under RCW 15.54.820, and decisions of the
6 department regarding waste-derived soil amendments under RCW 70.95.205.

7 (h) Decisions of local conservation districts related to the denial
8 of approval or denial of certification of a dairy nutrient management
9 plan; conditions contained in a plan; application of any dairy nutrient
10 management practices, standards, methods, and technologies to a
11 particular dairy farm; and failure to adhere to the plan review and
12 approval timelines in RCW 90.64.026.

13 (i) Any other decision by the department or an air authority which
14 pursuant to law must be decided as an adjudicative proceeding under
15 chapter 34.05 RCW.

16 (j) Regarding the heating oil pollution liability insurance program
17 described in chapter 70.149 RCW, any decision by the department
18 regarding: Denial of eligibility for coverage; amount of payment
19 allowed for corrective action; amount of payment allowed for property
20 damage; and amount of payment allowed for a third-party claim. The
21 pollution control hearings board may hear such an appeal as a short
22 board appeal pursuant to RCW 43.21B.305.

23 (2) The following hearings shall not be conducted by the hearings
24 board:

25 (a) Hearings required by law to be conducted by the shorelines
26 hearings board pursuant to chapter 90.58 RCW.

27 (b) Hearings conducted by the department pursuant to RCW 70.94.332,
28 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, 70.148.080, and
29 90.44.180.

30 (c) Appeals of decisions by the department under RCW 90.03.110 and
31 90.44.220.

32 (d) Hearings conducted by the department to adopt, modify, or
33 repeal rules.

34 (e) Appeals of decisions by the department as provided in chapter
35 43.21L RCW.

36 (3) Review of rules and regulations adopted by the hearings board
37 shall be subject to review in accordance with the provisions of the
38 administrative procedure act, chapter 34.05 RCW.

1 NEW SECTION. **Sec. 27.** By September 1, 2011, the department of
2 ecology shall submit a report to the governor and appropriate
3 legislative committees that include findings on the consolidation of
4 the pollution liability insurance agency within the department of
5 ecology and recommendations for legislation in 2012, including draft
6 legislation, if needed, to implement the recommendations and strategies
7 identified in the report. In the report, the department of ecology
8 shall discuss:

9 (1) Statutory changes that would ensure that the pollution
10 liability insurance program's consolidation within the department of
11 ecology is efficient and effective;

12 (2) The organizational structure of the pollution liability
13 insurance program;

14 (3) The appeals process;

15 (4) Information management;

16 (5) Coordination of the pollution liability insurance program,
17 underground storage tanks rule, and toxics cleanup program;

18 (6) Whether participants utilizing the program under chapter 70.149
19 RCW should be required to continue using oil for home heating for a
20 certain period of time or compensate the fund;

21 (7) The effect of requiring a competitive bid process and other
22 cost control measures as required in RCW 70.149.040; and

23 (8) Reauthorization of the pollution liability insurance program by
24 July 1, 2013.

25 NEW SECTION. **Sec. 28.** A new section is added to chapter 70.148
26 RCW to read as follows:

27 (1) The pollution liability insurance agency is transferred to the
28 department.

29 (2)(a) All reports, documents, surveys, books, records, files,
30 papers, or written material in the possession of the pollution
31 liability insurance agency shall be delivered to the custody of the
32 department of ecology. All cabinets, furniture, office equipment,
33 motor vehicles, and other tangible property employed by the pollution
34 liability insurance agency shall be transferred to the department of
35 ecology. All funds, credits, or other assets held by the pollution
36 liability insurance agency shall be assigned to the department of
37 ecology.

1 (b) Any appropriations made to the pollution liability insurance
2 agency shall be transferred and credited to the department of ecology.

3 (c) If any question arises as to the transfer of any personnel,
4 funds, books, documents, records, papers, files, equipment, or other
5 tangible property used or held in the exercise of the powers and the
6 performance of the duties and functions transferred, the director of
7 financial management shall make a determination as to the proper
8 allocation and certify the same to the state agencies concerned.

9 (3) All employees of the pollution liability insurance agency are
10 transferred to the jurisdiction of the department of ecology. All
11 employees classified under chapter 41.06 RCW, the state civil service
12 law, are assigned to the department of ecology to perform their usual
13 duties upon the same terms as formerly, without any loss of rights,
14 subject to any action that may be appropriate thereafter in accordance
15 with the laws and rules governing state civil service.

16 (4) All rules and all pending business before the pollution
17 liability insurance agency shall be continued and acted upon by the
18 pollution liability insurance program as part of the department of
19 ecology. All existing contracts and obligations shall remain in full
20 force and shall be performed by the pollution liability insurance
21 program as part of the department of ecology.

22 (5) The transfer of the powers, duties, functions, and personnel of
23 the pollution liability insurance agency to the department of ecology
24 under this act shall not affect the validity of any activity performed
25 before the effective date of this section or the effective date of the
26 consolidation.

27 (6) If apportionments of budgeted funds are required because of the
28 consolidation directed by this section, the director of financial
29 management shall certify the apportionments to the affected agencies,
30 the state auditor, and the state treasurer. Each of these shall make
31 the appropriate transfer and adjustments in funds and appropriation
32 accounts and equipment records in accordance with the certification.

33 (7) All classified employees of the pollution liability insurance
34 agency assigned to the department of ecology under this act whose
35 positions are within an existing bargaining unit description at the
36 department of ecology shall become a part of the existing bargaining
37 unit at the department of ecology and shall be considered an

1 appropriate inclusion or modification of the existing bargaining unit
2 under the provisions of chapter 41.80 RCW.

3 NEW SECTION. **Sec. 29.** This act takes effect July 1, 2010.

4 NEW SECTION. **Sec. 30.** (1) Sections 1 through 26 and 28 of this
5 act expire June 1, 2013.

6 (2) Section 27 of this act expires January 1, 2012."

7 Correct the title.

EFFECT: Adds intent language that states that safeguarding funding for the pollution liability insurance program trust account is necessary to maintain federal funding for the state underground storage tanks program.

Clarifies that the pollution liability insurance agency (PLIA) will be "merged into" the department of ecology (DOE), rather than "located within" the DOE.

Adds language that the pollution liability insurance program shall be closely aligned with programs related to underground storage tanks and toxic cleanups in the DOE.

Instructs the DOE to require a competitive bid process for cleanups covered under the pollution liability insurance program.

Requires the DOE to implement cost control measures that provide the most efficient and effective use of program funds.

Adds reporting requirements to the consolidation report to address whether participants utilizing the heating oil pollution liability program should be required to continue using oil for home heating for a certain period of time or to compensate the fund, and on the effect of requiring a competitive bid process and cost control measures under the heating oil pollution liability program.

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