

HOUSE BILL REPORT

EHB 3023

As Passed House:
February 18, 2010

Title: An act relating to consolidating the state's pollution liability insurance agency within the department of ecology.

Brief Description: Consolidating the pollution liability insurance agency within the department of ecology.

Sponsors: Representatives Jacks, Chandler, Kretz, Hunt, Blake and Wallace; by request of Pollution Liability Insurance Agency and Department of Ecology.

Brief History:

Committee Activity:

General Government Appropriations: 2/4/10, 2/5/10 [DP].

Floor Activity:

Passed House: 2/18/10, 59-32.

Brief Summary of Engrossed Bill

- Merges the Pollution Liability Insurance Agency into the Department of Ecology.

HOUSE COMMITTEE ON GENERAL GOVERNMENT APPROPRIATIONS

Majority Report: Do pass. Signed by 10 members: Representatives Darneille, Chair; Takko, Vice Chair; Blake, Dunshee, Hudgins, Kenney, Pedersen, Sells, Van De Wege and Williams.

Minority Report: Do not pass. Signed by 3 members: Representatives McCune, Ranking Minority Member; Klippert and Short.

Staff: Owen Rowe (786-7391).

Background:

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

In 1989 the Legislature created the Pollution Liability Insurance Agency (PLIA). The PLIA was established to meet the requirements of the United States Environmental Protection Agency for owners and operators of underground storage tanks (UST) to demonstrate financial responsibility for the clean-up of contamination from spills or releases of petroleum. In 1995 the duties of the PLIA were expanded to owners and operators of heating oil tanks. The PLIA offers insurance coverage for cleanup of contamination from active heating oil tanks that are registered prior to contamination occurring.

The PLIA provides secondary insurance to insurance companies that insure owners and operators of UST and heating oil tanks. The objective of the PLIA is to improve the availability and affordability of pollution liability insurance for owners and operators of UST by selling reinsurance at a price significantly below the private market price for similar insurance. The discount is passed to owners and operators of UST through reduced insurance premiums and increased availability of insurance.

The PLIA also provides financial assistance to public and private owners and operators of UST that are certified as meeting vital local government public health and safety needs. Financial assistance may only be provided to owners and operators who demonstrate serious financial hardship. The financial assistance may be used only for clean-ups and upgrades after a clean-up plan is filed with the Department of Ecology (DOE).

The PLIA and its programs are funded through: a pollution liability fee, imposed on dealers making sales of heating oil to home owners or consumers which is deposited into the Heating Oil Pollution Liability Trust Account; and an excise tax on the wholesale value of petroleum that is deposited into the Pollution Liability Insurance Program Trust Account.

The PLIA and the Pollution Liability Insurance Program (PLI Program) are set to expire on June 1, 2013.

Summary of Engrossed Bill:

The PLIA, its duties, and the PLI Program are merged into the DOE. The Director of the DOE is the Director of the PLIA or the Director's appointed representative. The Director of the DOE must appoint the administrative head of the PLI Program. The administrative head of the PLI Program and up to three other employees are exempt from the state civil service laws. The PLI Program will be closely aligned with programs related to USTs and toxic cleanups in the DOE.

The contracts, obligations, rules, and businesses currently before the PLIA continue in effect and will be acted upon by the PLI Program as a part of the DOE. The Director of the Office of Financial Management (OFM) will make decisions when questions arise as to the transfer of personnel, funds, and tangible property used for the administration and implementation of the transferred duties and functions. In addition, the Director of the OFM must certify apportionments of budgeted funds to affected agencies, the State Auditor, and State Treasurer, if necessary.

The DOE is required to develop a competitive bid process for cleanups under the PLI Program. Additionally, the DOE is required to implement cost control measures that provide the most efficient and effective use of PLI Program funds.

Certain decisions made by the DOE regarding the Heating Oil Pollution Liability Program, such as denial of eligibility for coverage, amount of payment allowed for corrective action and property damage, and third party claims are appealable to the Pollution Control Hearings Board within 30 days of the decision. An appeal that includes a penalty of \$15,000 or less may be heard as a short board appeal.

By September 1, 2011, the DOE must provide a report and recommendations for legislation to the Governor and Legislature about consolidation of the PLIA within the DOE. The report must also discuss needed statutory changes to make the consolidation more effective and efficient; organizational structure of the insurance program; the appeals process; information management; coordination of the insurance program, UST rule, and toxic cleanup program; 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; the effect of requiring a competitive bid process and cost control measures under the Heating Oil Pollution Liability Program; and reauthorization of the PLI Program by July 1, 2013.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect July 1, 2010.

Staff Summary of Public Testimony:

(In support) The Pollution Liability Insurance Agency (PLIA) is a six-person cabinet level agency that is moved into the Department of Ecology (DOE) and is intended to be policy neutral. The bill is part of the Governor's natural resource agency reform effort to cut bureaucracy and streamline administrative processes. This move is an opportunity to increase customer service and to streamline back office functions. Merging these agencies makes sense, but don't anticipate savings immediately, the real benefit of the merger will become apparent over time. The DOE will support the PLIA with its greater capacity for public outreach and customer service. The PLIA is a good fit with the DOE's Toxic Clean-up Program. The DOE will be able to provide the PLIA with technical assistance on toxic clean-ups, which could potentially speed up clean-ups and save money.

(Opposed) We support government reform and efficiency; this bill does neither. We have concerns about moving an agency with a single focus into a multi-faceted agency like the Department of Ecology. There is no compelling reason to move the PLIA into the DOE. We have concern about mission creep with this move, and the potential for an impact to the PLIA's dedicated accounts. We are customers of the PLIA, we work closely with them, and we helped propose the creation of the PLIA to make sure low cost insurance was available for this purpose. This bill goes about merging these two agencies in a backwards manner. This bill moves the agencies together and then mandates a study on the effectiveness of the move. There are no savings to the state from this move, because the

PLIA is not supported by state funds. Put this bill down, and have the PLIA and the DOE work together to come up with a plan.

Persons Testifying: (In support) Jon Mankowski, Office of the Governor; Polly Zehn, Department of Ecology; and Lynn Gooding.

(Opposed) Greg Hanon, Western States Petroleum Association; and Charlie Brown, Washington Oil Marketers Association.

Persons Signed In To Testify But Not Testifying: None.