
SENATE BILL 6659

State of Washington

61st Legislature

2010 Regular Session

By Senators Fraser, Morton, and Rockefeller; by request of Pollution Liability Insurance Agency and Department of Ecology

Read first time 01/20/10. Referred to Committee on Environment, Water & Energy.

1 AN ACT Relating to consolidating the state's pollution liability
2 insurance agency within the department of ecology; amending RCW
3 70.148.005, 70.148.010, 70.148.020, 70.148.025, 70.148.030, 70.148.035,
4 70.148.040, 70.148.050, 70.148.060, 70.148.070, 70.148.080, 70.148.090,
5 70.148.130, 70.148.140, 70.148.150, 70.148.160, 70.148.170, 70.149.010,
6 70.149.030, 70.149.040, 70.149.050, 70.149.060, 70.149.090, and
7 70.149.120; reenacting and amending RCW 43.21B.110; adding a new
8 section to chapter 70.149 RCW; adding a new section to chapter 70.148
9 RCW; creating a new section; providing an effective date; and providing
10 expiration dates.

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

12 **Sec. 1.** RCW 70.148.005 and 1990 c 64 s 1 are each amended to read
13 as follows:

14 (1) The legislature finds that:

15 (a) Final regulations adopted by the United States environmental
16 protection agency (EPA) require owners and operators of underground
17 petroleum storage tanks to demonstrate financial responsibility for
18 accidental releases of petroleum as a precondition to continued
19 ownership and operation of such tanks;

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

7 (c) Many owners and operators of underground petroleum storage
8 tanks cannot purchase pollution liability insurance either because
9 private insurance is unavailable at any price or because owners and
10 operators cannot meet the rigid underwriting standards of existing
11 insurers, nor can many owners and operators meet the strict regulatory
12 standards imposed for alternatives to the purchase of insurance; and

13 (d) Without a state financial responsibility program for owners and
14 operators of underground petroleum storage tanks, many tank owners and
15 operators will be forced to discontinue the ownership and operation of
16 these tanks.

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

20 (a) Minimizes state involvement in pollution liability claims
21 management and insurance administration;

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

24 (c) Creates incentives for private insurers to provide needed
25 liability insurance; and

26 (d) Parallels generally accepted principles of insurance and risk
27 management.

28 To that end, this chapter establishes a temporary program to
29 provide pollution liability reinsurance at a price that will encourage
30 a private insurance company or risk retention group to sell pollution
31 liability insurance in accordance with the requirements of this chapter
32 to owners and operators of underground petroleum storage tanks, thereby
33 allowing the owners and operators to comply with the financial
34 responsibility regulations of the EPA.

35 (3) It is not the intent of this chapter to permit owners and
36 operators of underground petroleum storage tanks to obtain pollution
37 liability insurance without regard to the quality or condition of their
38 storage tanks or without regard to the risk management practices of

1 tank owners and operators, nor is it the intent of this chapter to
2 provide coverage or funding for past or existing petroleum releases.
3 Further, it is the intent of the legislature that the program follow
4 generally accepted insurance underwriting and actuarial principles and
5 to deviate from those principles only to the extent necessary and
6 within the tax revenue limits provided, to make pollution liability
7 insurance reasonably affordable and available to owners and operators
8 who meet the requirements of this chapter, particularly to those owners
9 and operators whose underground storage tanks meet a vital economic
10 need within the affected community.

11 (4) The pollution liability insurance program established by this
12 chapter and chapter 70.149 RCW is located within the department.

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

15 Unless the context requires otherwise, the definitions in this
16 section apply throughout this chapter.

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

21 (2) "Director" means the (~~Washington pollution liability insurance~~
22 ~~program~~) director of the department or the director's appointed
23 representative.

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

27 (4) "Corrective action" means those actions reasonably required to
28 be undertaken by the insured to remove, treat, neutralize, contain, or
29 clean up an accidental release in order to comply with any statute,
30 ordinance, rule, regulation, directive, order, or similar legal
31 requirement of the United States, the state of Washington, or any
32 political subdivision of the United States or the state of Washington
33 in effect at the time of an accidental release. "Corrective action"
34 includes, when agreed to in writing, in advance by the insurer, action
35 to remove, treat, neutralize, contain, or clean up an accidental
36 release to avert, reduce, or eliminate the liability of the insured for

1 corrective action, bodily injury, or property damage. "Corrective
2 action" also includes actions reasonably necessary to monitor, assess,
3 and evaluate an accidental release.

4 "Corrective action" does not include:

5 (a) Replacement or repair of storage tanks or other receptacles;

6 (b) Replacement or repair of piping, connections, and valves of
7 storage tanks or other receptacles;

8 (c) Excavation or backfilling done in conjunction with (a) or (b)
9 of this subsection; or

10 (d) Testing for a suspected accidental release if the results of
11 the testing indicate that there has been no accidental release.

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

15 (a) The United States, the state of Washington, or any political
16 subdivision of the United States or state of Washington to require
17 corrective action or to recover costs of corrective action; or

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

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

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

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

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

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

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

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

1 (13) "Person" means an individual, trust, firm, joint stock
2 company, corporation (including government corporation), partnership,
3 association, consortium, joint venture, commercial entity, state,
4 municipality, commission, political subdivision of a state, interstate
5 body, the federal government, or any department or agency of the
6 federal government.

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

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

14 (16) "Property damage" means:

15 (a) Physical injury to, destruction of, or contamination of
16 tangible property, including the loss of use of the property resulting
17 from the injury, destruction, or contamination; or

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

21 ~~((+16+))~~ (17) "Release" means the emission, discharge, disposal,
22 dispersal, seepage, or escape of petroleum from an underground storage
23 tank into or upon land, groundwater, surface water, subsurface soils,
24 or the atmosphere.

25 ~~((+17+))~~ (18) "Surplus reserve" means the amount traditionally set
26 aside by commercial property and casualty insurance companies to
27 provide financial protection from unexpected losses and to serve, in
28 part, as a measure of an insurance company's net worth.

29 ~~((+18+))~~ (19) "Tank" means a stationary device, designed to contain
30 an accumulation of petroleum, that is constructed primarily of
31 nonearthen materials such as wood, concrete, steel, or plastic that
32 provides structural support.

33 ~~((+19+))~~ (20) "Underground storage tank" means any one or a
34 combination of tanks including underground pipes connected to the tank,
35 that is used to contain an accumulation of petroleum and the volume of
36 which (including the volume of the underground pipes connected to the
37 tank) is ten percent or more beneath the surface of the ground.

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

3 (1) The pollution liability insurance program trust account is
4 established in the custody of the state treasurer. All funds
5 appropriated for this chapter and all premiums collected for
6 reinsurance shall be deposited in the account. Expenditures from the
7 account shall be used exclusively for the purposes of this chapter
8 including payment of costs of administering the pollution liability
9 insurance and underground storage tank community assistance programs.
10 Expenditures for payment of administrative and operating costs of the
11 ~~((agency))~~ program are subject to the allotment procedures under
12 chapter 43.88 RCW and may be made only after appropriation by statute.
13 No appropriation is required for other expenditures from the account.

14 (2) Each calendar quarter, the ~~((director))~~ department shall report
15 to the insurance commissioner the loss and surplus reserves required
16 for the calendar quarter. The ~~((director))~~ department shall notify the
17 department of revenue of this amount by the fifteenth day of each
18 calendar quarter.

19 (3) Each calendar quarter the ~~((director))~~ department shall
20 determine the amount of reserves necessary to fund commitments made to
21 provide financial assistance under RCW 70.148.130 to the extent that
22 the financial assistance reserves do not jeopardize the operations and
23 liabilities of the pollution liability insurance program. The
24 ~~((director))~~ department shall notify the department of revenue of this
25 amount by the fifteenth day of each calendar quarter. The ~~((director))~~
26 department may immediately establish an initial financial assistance
27 reserve of five million dollars from available revenues. The
28 ~~((director))~~ department may not expend more than fifteen million
29 dollars for the financial assistance program.

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

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

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

1 The ((director)) department shall provide reinsurance through the
2 pollution liability insurance program trust account to the heating oil
3 pollution liability protection program under chapter 70.149 RCW.

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

6 (1) The ((Washington)) pollution liability insurance program is
7 ~~((created as an independent agency of the state. The administrative~~
8 ~~head and appointing authority of the program shall be the director who~~
9 ~~shall be appointed by the governor, with the consent of the senate, and~~
10 ~~shall serve at the pleasure of the governor. The salary for this~~
11 ~~office shall be set by the governor pursuant to RCW 43.03.040. The~~
12 ~~director shall appoint a deputy director. The director, deputy~~
13 ~~director, and up to three other employees are exempt from the civil~~
14 ~~service law, chapter 41.06 RCW)) located within the department. The
15 administrative head must be appointed by the director. The
16 administrative head of the program and up to three other employees are
17 exempt from the civil service law, chapter 41.06 RCW, and serve at the
18 pleasure of the director.~~

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

1 other agencies of the state to provide technical support and available
2 information as necessary to assist the director in meeting the
3 director's responsibilities under this chapter. Agencies shall supply
4 this support and information as promptly as circumstances permit.

5 (3) The director may appoint ad hoc technical advisory committees
6 to obtain expertise necessary to fulfill the purposes of this chapter.

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

9 The ((~~director~~)) department may design the program to cover the
10 costs incurred in determining whether a proposed applicant for
11 pollution insurance under the program meets the underwriting standards
12 of the insurer. In covering such costs the ((~~director~~)) department
13 shall consider the financial resources of the applicant, shall take
14 into consideration the economic impact of the discontinued use of the
15 applicant's storage tank upon the affected community, shall provide
16 coverage within the revenue limits provided under this chapter, and
17 shall limit coverage of such costs to the extent that coverage would be
18 detrimental to providing affordable insurance under the program.

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

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

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

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

27 (1) To design and from time to time revise a reinsurance contract
28 providing coverage to an insurer meeting the requirements of this
29 chapter. Before initially entering into a reinsurance contract, the
30 ((~~director~~)) department shall prepare an actuarial report describing
31 the various reinsurance methods considered by the ((~~director~~))
32 department and describing each method's costs. In designing the
33 reinsurance contract the ((~~director~~)) department shall consider common
34 insurance industry reinsurance contract provisions and shall design the
35 contract in accordance with the following guidelines:

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

5 (b) In the event of an insolvency of the insurer, the reinsurance
6 contract shall provide reinsurance payable directly to the insurer or
7 to its liquidator, receiver, or successor on the basis of the liability
8 of the insurer in accordance with the reinsurance contract. In no
9 event may the program be liable for or provide coverage for that
10 portion of any covered loss that is the responsibility of the insurer
11 whether or not the insurer is able to fulfill the responsibility.

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

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

19 (2) To design and implement a structure of periodic premiums due
20 the ((director)) department from the insurer that takes full advantage
21 of revenue collections and projected revenue collections to ensure
22 affordable premiums to the insured consistent with sound actuarial
23 principles.

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

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

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

34 (6) To monitor the success of the program and periodically make
35 such reports and recommendations to the legislature as the ((director))
36 department deems appropriate, and to annually publish a financial
37 report on the pollution liability insurance program trust account

1 showing, among other things, administrative and other expenses paid
2 from the fund.

3 (7) To annually report the financial and loss experience of the
4 insurer as to policies issued under the program and the financial and
5 loss experience of the program to the legislature.

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

10 (9) To examine the affairs, transactions, accounts, records,
11 documents, and assets of insurers as the ((director)) department deems
12 advisable.

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

15 (1) All examination and proprietary reports and information
16 obtained by the ((director)) department and the ((director's))
17 department's staff in soliciting bids from insurers and in monitoring
18 the insurer selected by the ((director)) department shall not be made
19 public or otherwise disclosed to any person, firm, corporation, agency,
20 association, governmental body, or other entity.

21 (2) Subsection (1) of this section notwithstanding, the
22 ((director)) department may furnish all or part of examination reports
23 prepared by the ((director)) department or by any person, firm,
24 corporation, association, or other entity preparing the reports on
25 behalf of the ((director)) department to:

- 26 (a) The Washington state insurance commissioner;
- 27 (b) A person or organization officially connected with the insurer
28 as officer, director, attorney, auditor, or independent attorney or
29 independent auditor; and
- 30 (c) The attorney general in his or her role as legal advisor to the
31 ((director)) department.

32 (3) Subsection (1) of this section notwithstanding, the
33 ((director)) department may furnish all or part of the examination or
34 proprietary reports or information obtained by the ((director))
35 department to:

- 36 (a) The Washington state insurance commissioner; and

1 (b) A person, firm, corporation, association, governmental body, or
2 other entity with whom the ((~~director~~)) department has contracted for
3 services necessary to perform his or her official duties.

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

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

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

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

15 (a) The insurer's ability to underwrite pollution liability
16 insurance;

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

19 (c) The insurer's estimate of underwriting and claims adjustment
20 expenses;

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

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

23 (f) The insurer's ability to provide risk management guidance to
24 insureds.

25 The ((~~director~~)) department shall select the bidder most qualified
26 to provide insurance consistent with this chapter and need not select
27 the bidder submitting the least expensive bid. The ((~~director~~))
28 department may consider bids by groups of insurers and management
29 companies who propose to act in concert in providing coverage and who
30 otherwise meet the requirements of this chapter.

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

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

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

1 (c) The insurer shall provide coverage for accidental releases in
2 the amount of five hundred thousand dollars per occurrence and one
3 million dollars annual aggregate but no more than one million dollars
4 per occurrence and two million dollars annual aggregate exclusive of
5 defense costs.

6 (d) The insurer shall require insurance applicants to meet at least
7 the following underwriting standards before issuing coverage to the
8 applicant:

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

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

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

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

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

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

37 (4) Notwithstanding the definitions contained in RCW 70.148.010,
38 the ~~((director))~~ department may permit an insurer to use different

1 words or phrases describing the coverage provided under the program.
2 In permitting such deviations from the definitions contained in RCW
3 70.148.010, the ((director)) department shall consider the regulations
4 adopted by the United States environmental protection agency requiring
5 financial responsibility by owners and operators of underground
6 petroleum storage tanks.

7 (5) Owners and operators of underground storage tanks or sites
8 containing underground storage tanks where a preexisting release has
9 been identified or where the owner or operator knows of a preexisting
10 release are eligible for coverage under the program subject to the
11 following conditions:

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

14 (b) If the owner or operator files a claim with the insurer, the
15 owner or operator has the burden of proving that the claim is not
16 related to a preexisting release until the owner or operator
17 demonstrates to the satisfaction of the ((director)) department that
18 corrective action has been completed.

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

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

3 If the insurer cancels or refuses to issue or renew a policy, the
4 affected owner or operator may appeal the insurer's decision to the
5 director or the director's designee. The director or the director's
6 designee shall conduct a brief adjudicative proceeding under chapter
7 34.05 RCW.

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

10 (1) The activities and operations of the program are exempt from
11 the provisions and requirements of Title 48 RCW and to the extent of
12 their participation in the program, the activities and operations of
13 the insurer selected by the ((director)) department to provide
14 liability insurance coverage to owners and operators of underground
15 storage tanks are exempt from the requirements of Title 48 RCW except
16 for:

- 17 (a) Chapter 48.03 RCW pertaining to examinations;
- 18 (b) RCW 48.05.250 pertaining to annual reports;
- 19 (c) Chapter 48.12 RCW pertaining to assets and liabilities;
- 20 (d) Chapter 48.13 RCW pertaining to investments;
- 21 (e) Chapter 48.30 RCW pertaining to deceptive, false, or fraudulent
22 acts or practices; and
- 23 (f) Chapter 48.92 RCW pertaining to liability risk retention.

24 (2) To the extent of their participation in the program, the
25 insurer selected by the ((director)) department to provide liability
26 insurance coverage to owners and operators of underground storage tanks
27 shall not participate in the Washington insurance guaranty association
28 nor shall the association be liable for coverage provided to owners and
29 operators of underground storage tanks issued in connection with the
30 program.

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

33 (1) Subject to the conditions and limitations of RCW 70.148.120
34 through 70.148.170, the ((director)) department shall establish and
35 manage a program for providing financial assistance to public and
36 private owners and operators of underground storage tanks who have been

1 certified by the governing body of the county, city, or town in which
2 the tanks are located as meeting a vital local government, public
3 health or safety need. In providing such financial assistance the
4 (~~director~~) department shall:

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

7 (b) Limit assistance to only that amount necessary to supplement
8 applicant financial resources;

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

13 (d) Whenever practicable, provide assistance through the direct
14 payment of contractors and other professionals for labor, materials,
15 and other services.

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

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

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

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

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

36 (3) When requests for financial assistance exceed available funds,
37 the (~~director~~) department shall give preference to providing

1 assistance first to those underground storage tank sites which
2 constitute the sole source of petroleum products in remote rural
3 communities.

4 (4) The (~~director shall consult with the department of ecology in~~
5 ~~approving financial assistance for corrective action to ensure~~
6 ~~compliance with regulations governing underground petroleum storage~~
7 ~~tanks and corrective action~~) department, in approving financial
8 assistance for corrective action, shall ensure compliance with rules
9 governing underground petroleum storage tanks and corrective action.

10 (5) The (~~director~~) department shall approve or disapprove
11 applications for financial assistance within sixty days of receipt of
12 a completed application meeting the requirements of RCW 70.148.120
13 through 70.148.170. The certification by local government of an owner
14 or operator shall not preclude the (~~director~~) department from
15 disapproving an application for financial assistance if the
16 (~~director~~) department finds that such assistance would not meet the
17 purposes of RCW 70.148.120 through 70.148.170.

18 (6) The (~~director~~) department may adopt all rules necessary to
19 implement the financial assistance program and shall consult with the
20 technical advisory committee established under RCW 70.148.030 in
21 developing such rules and in reviewing applications for financial
22 assistance.

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

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

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

30 (b) If the (~~director~~) department makes a preliminary
31 determination of possible eligibility for financial assistance, apply
32 to the appropriate governing body of the city or town in which the
33 tanks are located or in the case where the tanks are located outside of
34 the jurisdiction of a city or town, then to the appropriate governing
35 body of the county in which the tanks are located, for a determination
36 by the governing body of the city, town, or county that the continued

1 operation of the tanks meets a vital local government, or public health
2 or safety need; and

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

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

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

9 (b) To maintain the tank site for use in the retail sale of
10 petroleum products for a period of not less than fifteen years from the
11 date of agreement;

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

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

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

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

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

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

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

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

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

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

7 (2) The ((~~director~~)) department shall give priority to and shall
8 encourage local government entities to consolidate multiple operational
9 underground storage tank sites into as few sites as possible. For this
10 purpose, the ((~~director~~)) department may provide financial assistance
11 for the establishment of a new local government underground storage
12 tank site contingent upon the closure of other operational sites in
13 accordance with environmental regulations. Within the per site
14 financial limits imposed under RCW 70.148.120 through 70.148.170, the
15 ((~~director~~)) department may authorize financial assistance for the
16 closure of operational sites when closure is for the purpose of
17 consolidation.

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

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

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

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

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

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

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

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

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

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

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

16 (c) Designate the local government official who will be responsible
17 for negotiating the price of petroleum products to be sold on a cost-
18 plus basis to the local government entities in the affected communities
19 and the entities eligible to receive petroleum products at such price;
20 and

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

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

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

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

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

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

33 (1) It is the intent of the legislature to establish a temporary
34 regulatory program to assist owners and operators of heating oil tanks.
35 The legislature finds that it is in the best interests of all citizens
36 for heating oil tanks to be operated safely and for tank leaks or
37 spills to be dealt with expeditiously. The legislature further finds

1 that it is necessary to protect tank owners from the financial hardship
2 related to damaged heating oil tanks. The problem is especially acute
3 because owners and operators of heating oil tanks used for space
4 heating have been unable to obtain pollution liability insurance or
5 insurance has been unaffordable.

6 (2) The pollution liability insurance program established by this
7 chapter and chapter 70.148 RCW is located within the department.

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

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

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

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

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

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

34 (i) Replacement or repair of heating oil tanks or other
35 receptacles; or

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

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

4 (a) The United States, the state of Washington, or a political
5 subdivision of the United States or state of Washington to require
6 corrective action or to recover costs of corrective action; or

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

9 (5) "Department" means the Washington state department of ecology.

10 (6) "Director" means the director of the (~~Washington state~~
11 ~~pollution liability insurance agency~~) department or the director's
12 appointed representative.

13 ((+6)) (7) "Heating oil" means any petroleum product used for
14 space heating in oil-fired furnaces, heaters, and boilers, including
15 stove oil, diesel fuel, or kerosene. "Heating oil" does not include
16 petroleum products used as fuels in motor vehicles, marine vessels,
17 trains, buses, aircraft, or any off-highway equipment not used for
18 space heating, or for industrial processing or the generation of
19 electrical energy.

20 ((+7)) (8) "Heating oil tank" means a tank and its connecting
21 pipes, whether above or below ground, or in a basement, with pipes
22 connected to the tank for space heating of human living or working
23 space on the premises where the tank is located. "Heating oil tank"
24 does not include a decommissioned or abandoned heating oil tank, or a
25 tank used solely for industrial process heating purposes or generation
26 of electrical energy.

27 ((+8)) (9) "Occurrence" means an accident, including continuous or
28 repeated exposure to conditions, that results in a release from a
29 heating oil tank.

30 ((+9)) (10) "Owner or operator" means a person in control of, or
31 having responsibility for, the daily operation of a heating oil tank.

32 ((+10)) (11) "Pollution liability insurance (~~agency~~) program" or
33 "program" means the Washington state pollution liability insurance
34 (~~agency~~) program located within the department.

35 ((+11)) (12) "Property damage" means:

36 (a) Physical injury to, destruction of, or contamination of
37 tangible property, including the loss of use of the property resulting
38 from the injury, destruction, or contamination; or

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

4 ((+12+)) (13) "Release" means a spill, leak, emission, escape, or
5 leaching into the environment.

6 ((+13+)) (14) "Remedial action costs" means reasonable costs that
7 are attributable to or associated with a remedial action.

8 ((+14+)) (15) "Tank" means a stationary device, designed to contain
9 an accumulation of heating oil, that is constructed primarily of
10 nonearthen materials such as concrete, steel, fiberglass, or plastic
11 that provides structural support.

12 ((+15+)) (16) "Third-party liability" means the liability of a
13 heating oil tank owner to another person due to property damage or
14 personal injury that results from a leak or spill.

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

17 The ((director)) department shall:

18 (1) Design a program, consistent with RCW 70.149.120, for providing
19 pollution liability insurance for heating oil tanks that provides up to
20 sixty thousand dollars per occurrence coverage and aggregate limits,
21 and protects the state of Washington from unwanted or unanticipated
22 liability for accidental release claims;

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

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

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

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

36 (6) Design and from time to time revise a reinsurance contract
37 providing coverage to an insurer or insurers meeting the requirements

1 of this chapter. The ((~~director~~)) department is authorized to provide
2 reinsurance through the pollution liability insurance program trust
3 account;

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

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

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

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

35 (11) Monitor ((~~agency~~)) program expenditures and seek to minimize
36 costs and maximize benefits to ensure responsible financial
37 stewardship;

1 (12) Study if appropriate user fees to supplement program funding
2 are necessary and develop recommendations for legislation to authorize
3 such fees.

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

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

11 (a) The insurer's ability to underwrite pollution liability
12 insurance;

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

15 (c) The insurer's estimate of underwriting and claims adjustment
16 expenses;

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

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

19 (f) The insurer's ability to provide risk management guidance to
20 insureds.

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

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

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

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

1 **Sec. 22.** RCW 70.149.060 and 1995 c 20 s 6 are each amended to read
2 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 heating oil
8 tanks are exempt from the requirements of Title 48 RCW except for:

9 (a) Chapter 48.03 RCW pertaining to examinations;

10 (b) RCW 48.05.250 pertaining to annual reports;

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

12 (d) Chapter 48.13 RCW pertaining to investments;

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

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

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

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

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

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

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

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

5 (a) The Washington state insurance commissioner;

6 (b) A person or organization officially connected with the insurer
7 as officer, director, attorney, auditor, or independent attorney or
8 independent auditor; and

9 (c) The attorney general in his or her role as legal advisor to the
10 ~~((director))~~ department.

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

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

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

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

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

32 (1) The following decisions by the department regarding the heating
33 oil pollution liability insurance program may be appealed to the
34 pollution control hearings board: Denial of eligibility for coverage;
35 amount of payment allowed for corrective action; amount of payment

1 allowed for property damage; and amount of payment allowed for a third-
2 party claim.

3 (2) A party aggrieved by a decision of the department regarding
4 denial of eligibility for coverage; amount of payment allowed for
5 corrective action; amount of payment allowed for property damage; or
6 the amount of payment allowed for a third-party claim may appeal the
7 decision to the pollution control hearings board within thirty days of
8 the decision. Review of such a decision must be conducted in
9 accordance with chapter 43.21B RCW. The pollution control hearings
10 board may hear such an appeal as a short board appeal pursuant to RCW
11 43.21B.305. Any subsequent appeal of a decision of the pollution
12 control hearings board shall be obtained in accordance with RCW
13 43.21B.180.

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

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

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

24 (a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431,
25 70.105.080, 70.107.050, 88.46.090, 90.03.600, 90.46.270, 90.48.144,
26 90.56.310, and 90.56.330.

27 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
28 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070,
29 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

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

32 (d) Except as provided in RCW 90.03.210(2), the issuance,
33 modification, or termination of any permit, certificate, or license by
34 the department or any air authority in the exercise of its
35 jurisdiction, including the issuance or termination of a waste disposal
36 permit, the denial of an application for a waste disposal permit, the

1 modification of the conditions or the terms of a waste disposal permit,
2 or a decision to approve or deny an application for a solid waste
3 permit exemption under RCW 70.95.300.

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

6 (f) Decisions of local health departments regarding the issuance
7 and enforcement of permits to use or dispose of biosolids under RCW
8 70.95J.080.

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

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

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

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

28 (2) The following hearings shall not be conducted by the hearings
29 board:

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

32 (b) Hearings conducted by the department pursuant to RCW 70.94.332,
33 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, 70.148.080, and
34 90.44.180.

35 (c) Appeals of decisions by the department under RCW 90.03.110 and
36 90.44.220.

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

1 (e) Appeals of decisions by the department as provided in chapter
2 43.21L RCW.

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

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

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

17 (2) The organizational structure of the pollution liability
18 insurance program;

19 (3) The appeals process;

20 (4) Information management;

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

23 (6) 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

1 liability insurance agency shall be assigned to the department of
2 ecology.

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

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

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

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

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

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

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

1 unit at the department of ecology and shall be considered an
2 appropriate inclusion or modification of the existing bargaining unit
3 under the provisions of chapter 41.80 RCW.

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

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

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

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