EFFECTIVE DATE: 6/10/04 - Except section 3, which becomes effective 7/1/04.

Passed by the Senate March 8, 2004
YEAS 49  NAYS 0

BRAD OWEN
President of the Senate

Passed by the House March 3, 2004
YEAS 95  NAYS 0

FRANK CHOPP
Speaker of the House of Representatives


CERTIFICATE
I, Milton H. Doumit, Jr., Secretary of the Senate of the State of Washington, do hereby certify that the attached is SUBSTITUTE SENATE BILL 6286 as passed by the Senate and the House of Representatives on the dates hereon set forth.

MILTON H. DOUMIT JR.
Secretary

FILED
March 29, 2004 - 3:02 p.m.

GARY F. LOCKE
Governor of the State of Washington

Secretary of State
State of Washington
AN ACT Relating to heating oil tank liability protection; amending RCW 70.149.040, 70.149.070, 70.149.080, and 82.23A.010; and providing an effective date.

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

Sec. 1. RCW 70.149.040 and 1997 c 8 s 1 are each amended to read as follows:

The director shall:

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

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

(3) Administer the heating oil pollution liability trust account, as established under RCW 70.149.070;
(4) Employ and discharge, at his or her discretion, agents, attorneys, consultants, companies, organizations, and employees as deemed necessary, and to prescribe their duties and powers, and fix their compensation;

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

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

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

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

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

(11) Monitor agency expenditures and seek to minimize costs and maximize benefits to ensure responsible financial stewardship;

(12) Create an advisory committee of stakeholders to advise the director on all aspects of program operations and fees authorized by this chapter, including pollution prevention programs. The advisory committee must have one member each from the Pacific Northwest oil heat council, the Washington oil marketers association, the western states petroleum association, and the department of ecology and three members from among the owners of home heating oil tanks registered with the pollution liability insurance agency who are generally representative of the geographical distribution and types of registered owners. The committee should meet at least quarterly, or more frequently at the discretion of the director; and

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

Sec. 2. RCW 70.149.070 and 1997 c 8 s 2 are each amended to read as follows:

(1) The heating oil pollution liability trust account is created in the custody of the state treasurer. All receipts from the pollution liability insurance fee collected under RCW 70.149.080 and reinsurance premiums shall be deposited into the account. Expenditures from the account may be used only for the purposes set out under this chapter. Only the director or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but no appropriation is required for expenditures. Any residue in the account in excess of funds needed to meet administrative costs for January of the following year shall be transferred at the end of the ((biennium)) calendar year to the pollution liability insurance program trust account.

(2) Money in the account may be used by the director for the following purposes:
   (a) Corrective action costs;
   (b) Third-party liability claims;
(c) Costs associated with claims administration;
(d) Purchase of an insurance policy to cover all registered heating oil tanks, and reinsurance of the policy; and
(e) Administrative expenses of the program, including personnel, equipment, supplies, and providing advice and technical assistance.

Sec. 3. RCW 70.149.080 and 1995 c 20 s 8 are each amended to read as follows:
(1) A pollution liability insurance fee of ((six-tenths of one)) one and two-tenths cents per gallon of heating oil purchased within the state shall be imposed on every special fuel dealer, as the term is defined in chapter 82.38 RCW, making sales of heating oil to a user or consumer.
(2) The pollution liability insurance fee shall be remitted by the special fuel dealer to the department of licensing ((with payment of the special fuel dealer tax)).
(3) The fee proceeds shall be used for the specific regulatory purposes of this chapter.
(4) The fee imposed by this section shall not apply to heating oil exported or sold for export from the state.

Sec. 4. RCW 82.23A.010 and 1989 c 383 s 15 are each amended to read as follows:
Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.
(1) "Petroleum product" means plant condensate, lubricating oil, gasoline, aviation fuel, kerosene, diesel motor fuel, benzol, fuel oil, residual oil, ((liquefied or liquefiable gases such as butane, ethane, and propane,)) and every other product derived from the refining of crude oil, but the term does not include crude oil or liquefiable gases.
(2) "Possession" means the control of a petroleum product located within this state and includes both actual and constructive possession. "Actual possession" occurs when the person with control has physical possession. "Constructive possession" occurs when the person with control does not have physical possession. "Control" means the power to sell or use a petroleum product or to authorize the sale or use by another.
(3) "Previously taxed petroleum product" means a petroleum product in respect to which a tax has been paid under this chapter and that has not been remanufactured or reprocessed in any manner (other than mere repackaging or recycling for beneficial reuse) since the tax was paid.

(4) "Wholesale value" means fair market wholesale value, determined as nearly as possible according to the wholesale selling price at the place of use of similar products of like quality and character, in accordance with rules of the department.

(5) Except for terms defined in this section, the definitions in chapters 82.04, 82.08, and 82.12 RCW apply to this chapter.

NEW SECTION. Sec. 5. Section 3 of this act takes effect July 1, 2004.
Passed by the Senate March 8, 2004.
Approved by the Governor March 29, 2004.
Filed in Office of Secretary of State March 29, 2004.