

---

SUBSTITUTE HOUSE BILL 1266

---

State of Washington                      65th Legislature                      2017 Regular Session

By House Environment (originally sponsored by Representatives Peterson, Young, and Fitzgibbon)

READ FIRST TIME 02/09/17.

1            AN ACT Relating to petroleum storage tank systems; amending RCW  
2 70.149.010, 70.149.020, 70.149.030, 70.149.040, 70.149.070, and  
3 64.70.020; and creating new sections.

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

5            **Sec. 1.** RCW 70.149.010 and 1995 c 20 s 1 are each amended to  
6 read as follows:

7            It is the intent of the legislature to establish a temporary  
8 regulatory program to assist owners and operators of ((heating-oil  
9 tanks)) petroleum storage tank systems. The legislature finds that it  
10 is in the best interests of all citizens for ((heating-oil-tanks))  
11 petroleum storage tank systems to be operated safely and for tank  
12 leaks or spills to be dealt with expeditiously. The legislature  
13 further finds that it is necessary to protect tank owners from the  
14 financial hardship related to damaged heating oil tanks. The problem  
15 is especially acute because owners and operators of heating oil tanks  
16 used for space heating have been unable to obtain pollution liability  
17 insurance or insurance has been unaffordable.

18            **Sec. 2.** RCW 70.149.020 and 1995 c 20 s 2 are each amended to  
19 read as follows:

1 This chapter may be known and cited as the Washington state  
2 (~~heating oil~~) pollution liability protection act.

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

5 (~~Unless the context clearly requires otherwise,~~) The  
6 definitions in this section apply throughout this chapter unless the  
7 context clearly requires otherwise.

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

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

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

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

31 (i) Replacement or repair of heating oil tanks or other  
32 receptacles; or

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

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

1 (a) The United States, the state of Washington, or a political  
2 subdivision of the United States or state of Washington to require  
3 corrective action or to recover costs of corrective action; or

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

6 (5) "Director" means the director of the Washington state  
7 pollution liability insurance agency or the director's appointed  
8 representative.

9 (6) "Environmental covenant" has the same meaning as defined in  
10 RCW 64.70.020.

11 (7) "Facility" has the same meaning as defined in RCW  
12 70.105D.020.

13 (8) "Heating oil" means any petroleum product used for space  
14 heating in oil-fired furnaces, heaters, and boilers, including stove  
15 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)) (9) "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  
26 generation of electrical energy.

27 ((+8)) (10) "Independent remedial action" has the same meaning  
28 as defined in RCW 70.105D.020.

29 (11) "Occurrence" means an accident, including continuous or  
30 repeated exposure to conditions, that results in a release from a  
31 heating oil tank.

32 ((+9)) (12) "Owner or operator" means a person in control of, or  
33 having responsibility for, the daily operation of a ((heating oil  
34 tank)) petroleum storage tank system.

35 ((+10)) (13) "Petroleum" means any petroleum-based substance  
36 including crude oil or any fraction that is liquid at standard  
37 conditions of temperature and pressure. The term "petroleum"  
38 includes, but is not limited to, petroleum and petroleum-based  
39 substances comprised of a complex blend of hydrocarbons, such as  
40 motor fuels, jet fuels, distillate fuel oils, residual fuel oils,

1 lubricants, petroleum solvents, used oils, and heating oils. The term  
2 "petroleum" does not include propane, asphalt, or any other petroleum  
3 product that is not liquid at standard conditions of temperature and  
4 pressure. Standard conditions of temperature and pressure are at  
5 sixty degrees Fahrenheit and 14.7 pounds per square inch absolute.

6 (14) "Petroleum storage tank system" means a storage tank system  
7 that contains petroleum or a mixture of petroleum with de minimis  
8 quantities of other substances. The systems include those containing  
9 motor fuels, jet fuels, distillate fuel oils, residual fuel oils,  
10 lubricants, petroleum solvents, used oils, and heating oils.  
11 "Petroleum storage tank system" does not include any storage tank  
12 system regulated under chapter 70.105 RCW.

13 (15) "Pollution liability insurance agency" means the Washington  
14 state pollution liability insurance agency.

15 ~~((11))~~ (16) "Property damage" means:

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

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

22 ~~((12))~~ (17) "Release" means a spill, leak, emission, escape, or  
23 leaching into the environment.

24 ~~((13))~~ (18) "Remedial action" has the same meaning as defined  
25 in RCW 70.105D.020.

26 (19) "Remedial action costs" means reasonable costs that are  
27 attributable to or associated with a remedial action.

28 ~~((14))~~ (20) "Tank" means a stationary device, designed to  
29 contain an accumulation of heating oil, that is constructed primarily  
30 of nonearthen materials such as concrete, steel, fiberglass, or  
31 plastic that provides structural support.

32 ~~((15))~~ (21) "Third-party liability" means the liability of a  
33 heating oil tank owner to another person due to property damage or  
34 personal injury that results from a leak or spill.

35 **Sec. 4.** RCW 70.149.040 and 2009 c 560 s 11 are each amended to  
36 read as follows:

37 The director shall:

38 (1) Design a program, consistent with RCW 70.149.120, for  
39 providing pollution liability insurance for heating oil tanks that

1 provides up to sixty thousand dollars per occurrence coverage and  
2 aggregate limits, and protects the state of Washington from unwanted  
3 or unanticipated liability for accidental release claims;

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

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

11 (4) Employ and discharge, at his or her discretion, agents,  
12 attorneys, consultants, companies, organizations, and employees as  
13 deemed necessary, and to prescribe their duties and powers, and fix  
14 their compensation;

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

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

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

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

27 (9) Implement a program to provide advice and technical  
28 assistance (~~to owners and operators of active and abandoned heating~~  
29 ~~oil tanks if contamination from an active or abandoned heating oil~~  
30 ~~tank is suspected. Advice and assistance regarding administrative and~~  
31 ~~technical requirements may include observation of testing or site~~  
32 ~~assessment and review of the results of reports. If the director~~  
33 ~~finds that contamination is not present or that the contamination is~~  
34 ~~apparently minor and not a threat to human health or the environment,~~  
35 ~~the director may provide written opinions and conclusions on the~~  
36 ~~results of the investigation to owners and operators of active and~~  
37 ~~abandoned heating oil tanks)) on the administrative and technical  
38 requirements of this chapter and chapter 70.105D RCW to persons who  
39 are conducting or otherwise interested in independent remedial  
40 actions at facilities where there is a suspected or confirmed release~~

1 from the following petroleum storage tank systems: A heating oil  
2 tank; a decommissioned heating oil tank; an abandoned heating oil  
3 tank; or a petroleum storage tank system identified by the department  
4 of ecology based on the relative risk posed by the release to human  
5 health and the environment, as determined under chapter 70.105D RCW,  
6 or other factors identified by the department of ecology.

7 (a) Such advice or assistance is advisory only, and is not  
8 binding on the pollution liability insurance agency or the department  
9 of ecology. As part of this advice and assistance, the pollution  
10 liability insurance agency may provide written opinions on whether  
11 independent remedial actions or proposals for these actions meet the  
12 substantive requirements of chapter 70.105D RCW, or whether the  
13 pollution liability insurance agency believes further remedial action  
14 is necessary at the facility. As part of this advice and assistance,  
15 the pollution liability insurance agency may also observe independent  
16 remedial actions.

17 (b) The agency is authorized to collect, from persons requesting  
18 advice and assistance, the costs incurred by the agency in providing  
19 such advice and assistance. The costs may include travel costs and  
20 expenses associated with review of reports and preparation of written  
21 opinions and conclusions. Funds from cost reimbursement must be  
22 deposited in the heating oil pollution liability trust account.

23 (c) The state of Washington, the pollution liability insurance  
24 agency, and its officers and employees are immune from all liability,  
25 and no cause of action arises from any act or omission in providing,  
26 or failing to provide, such advice, opinion, conclusion, or  
27 assistance;

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

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

33 (12) Study if appropriate user fees to supplement program funding  
34 are necessary and develop recommendations for legislation to  
35 authorize such fees;

36 (13) Establish requirements, including deadlines not to exceed  
37 ninety days, for reporting to the pollution liability insurance  
38 agency a suspected or confirmed release from a heating oil tank,  
39 including a decommissioned or abandoned heating oil tank, that may  
40 pose a threat to human health or the environment by the owner or

1 operator of the heating oil tank or the owner of the property where  
2 the release occurred;

3 (14) Within ninety days of receiving information and having a  
4 reasonable basis to believe that there may be a release from a  
5 heating oil tank, including decommissioned or abandoned heating oil  
6 tanks, that may pose a threat to human health or the environment,  
7 perform an initial investigation to determine at a minimum whether  
8 such a release has occurred and whether further remedial action is  
9 necessary under chapter 70.105D RCW. The initial investigation may  
10 include, but is not limited to, inspecting, sampling, or testing. The  
11 director may retain contractors to perform an initial investigation  
12 on the agency's behalf;

13 (15) For any written opinion issued under subsection (9) of this  
14 section requiring an environmental covenant as part of the remedial  
15 action, consult with, and seek comment from, a city or county  
16 department with land use planning authority for real property subject  
17 to the environmental covenant prior to the property owner recording  
18 the environmental covenant; and

19 (16) For any property where an environmental covenant has been  
20 established as part of the remedial action approved under subsection  
21 (9) of this section, periodically review the environmental covenant  
22 for effectiveness. The director shall perform a review at least once  
23 every five years after an environmental covenant is recorded.

24 **Sec. 5.** RCW 70.149.070 and 2004 c 203 s 2 are each amended to  
25 read as follows:

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

38 (2) Money in the account may be used by the director for the  
39 following purposes:

- 1 (a) Corrective action costs;
- 2 (b) Third-party liability claims;
- 3 (c) Costs associated with claims administration;
- 4 (d) Purchase of an insurance policy to cover all registered
- 5 heating oil tanks, and reinsurance of the policy; and
- 6 (e) Administrative expenses of the program, including personnel,
- 7 equipment, supplies, and providing advice and technical assistance.

8 **Sec. 6.** RCW 64.70.020 and 2007 c 104 s 3 are each amended to  
9 read as follows:

10 The definitions in this section apply throughout this chapter  
11 unless the context clearly requires otherwise.

12 (1) "Activity or use limitations" means restrictions or  
13 obligations created under this chapter with respect to real property.

14 (2) "Agency" means either the department of ecology, the  
15 pollution liability insurance agency, or the United States  
16 environmental protection agency, whichever determines or approves the  
17 environmental response project pursuant to which the environmental  
18 covenant is created.

19 (3)(a) "Common interest community" means a condominium,  
20 cooperative, or other real property with respect to which a person,  
21 by virtue of the person's ownership of a parcel of real property, is  
22 obligated to pay property taxes or insurance premiums, or for  
23 maintenance, or improvement of other real property described in a  
24 recorded covenant that creates the common interest community.

25 (b) "Common interest community" includes but is not limited to:

26 (i) An association of apartment owners as defined in RCW  
27 64.32.010;

28 (ii) A unit owners' association as defined in RCW 64.34.020 and  
29 organized under RCW 64.34.300;

30 (iii) A master association as provided in RCW 64.34.276;

31 (iv) A subassociation as provided in RCW 64.34.278; and

32 (v) A homeowners' association as defined in RCW 64.38.010.

33 (4) "Environmental covenant" means a servitude arising under an  
34 environmental response project that imposes activity or use  
35 limitations.

36 (5) "Environmental response project" means a plan or work  
37 performed for environmental remediation of real property and  
38 conducted:



1 (a) Under a federal or state program governing environmental  
2 remediation of real property, including chapters 43.21C, 64.44,  
3 70.95, 70.98, 70.105, 70.105D, 90.48, and 90.52 RCW;

4 (b) Incident to closure of a solid or hazardous waste management  
5 unit, if the closure is conducted with approval of an agency; or

6 (c) Under the state voluntary clean-up program authorized under  
7 chapter 70.105D RCW or technical assistance program authorized under  
8 chapter 70.149 RCW.

9 (6) "Holder" means the grantee of an environmental covenant as  
10 specified in RCW 64.70.030(1).

11 (7) "Person" means an individual, corporation, business trust,  
12 estate, trust, partnership, limited liability company, association,  
13 joint venture, public corporation, government, governmental  
14 subdivision, agency, or instrumentality, or any other legal or  
15 commercial entity.

16 (8) "Record," used as a noun, means information that is inscribed  
17 on a tangible medium or that is stored in an electronic or other  
18 medium and is retrievable in perceivable form.

19 (9) "State" means a state of the United States, the District of  
20 Columbia, Puerto Rico, the United States Virgin Islands, or any  
21 territory or insular possession subject to the jurisdiction of the  
22 United States.

23 NEW SECTION. **Sec. 7.** To ensure the adoption of rules will not  
24 delay the implementation of remedial actions, the pollution liability  
25 insurance agency may implement the technical advice and assistance  
26 program expansion to include petroleum storage tank systems through  
27 interpretive guidance pending adoption of rules.

28 NEW SECTION. **Sec. 8.** The pollution liability insurance agency  
29 may not expand the technical advice and assistance program to include  
30 petroleum storage tank systems until January 1, 2018. The pollution  
31 liability insurance agency may include heating oil tanks, including  
32 abandoned and decommissioned tanks, in the technical advice and  
33 assistance program as of the effective date of this section.

--- END ---