
SUBSTITUTE HOUSE BILL 2475

State of Washington

66th Legislature

2020 Regular Session

By House Environment & Energy (originally sponsored by Representatives Mead, DeBolt, Peterson, Doglio, and Lekanoff; by request of Pollution Liability Insurance Agency)

READ FIRST TIME 01/24/20.

1 AN ACT Relating to the underground storage tank reinsurance
2 program; amending RCW 70.148.005, 70.148.050, 70.148.020, and
3 70.148.090; and adding a new section to chapter 70.148 RCW.

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

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

7 (1) The legislature finds that:

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

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

19 (c) Many owners and operators of underground petroleum storage
20 tanks cannot purchase pollution liability insurance either because
21 private insurance is unavailable at any price or because owners and

1 operators cannot meet the rigid underwriting standards of existing
2 insurers, nor can many owners and operators meet the strict
3 regulatory standards imposed for alternatives to the purchase of
4 insurance; and

5 (d) Without a state financial responsibility program for owners
6 and operators of underground petroleum storage tanks, many tank
7 owners and operators will be forced to discontinue the ownership and
8 operation of these tanks.

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

12 (a) Minimizes state involvement in pollution liability claims
13 management and insurance administration;

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

16 (c) Creates incentives for private insurers to provide needed
17 liability insurance; and

18 (d) Parallels generally accepted principles of insurance and risk
19 management.

20 To that end, this chapter establishes a temporary program to
21 provide pollution liability reinsurance at a price that will
22 encourage a private insurance company or risk retention group to sell
23 pollution liability insurance in accordance with the requirements of
24 this chapter to owners and operators of underground petroleum storage
25 tanks, thereby allowing the owners and operators to comply with the
26 financial responsibility regulations of the EPA. In the event that
27 private insurance is not available in the state, this chapter
28 provides an emergency program to address the need of owners and
29 operators of underground petroleum storage tanks to demonstrate
30 financial responsibility so that businesses may continue to operate.

31 (3) It is not the intent of this chapter to permit owners and
32 operators of underground petroleum storage tanks to obtain pollution
33 liability insurance without regard to the quality or condition of
34 their storage tanks or without regard to the risk management
35 practices of tank owners and operators, nor is it the intent of this
36 chapter to provide coverage or funding for past or existing petroleum
37 releases. Further, it is the intent of the legislature that the
38 program follow generally accepted insurance underwriting and
39 actuarial principles and to deviate from those principles only to the
40 extent necessary and within the tax revenue limits provided, to make

1 pollution liability insurance reasonably affordable and available to
2 owners and operators who meet the requirements of this chapter,
3 particularly to those owners and operators whose underground storage
4 tanks meet a vital economic need within the affected community.

5 **Sec. 2.** RCW 70.148.050 and 2006 c 276 s 2 are each amended to
6 read as follows:

7 The director has the following powers and duties:

8 (1) To design and from time to time revise a reinsurance contract
9 providing coverage to an insurer meeting the requirements of this
10 chapter. Before initially entering into a reinsurance contract, the
11 director shall prepare an actuarial report describing the various
12 reinsurance methods considered by the director and describing each
13 method's costs. In designing the reinsurance contract the director
14 shall consider common insurance industry reinsurance contract
15 provisions and shall design the contract in accordance with the
16 following guidelines:

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

21 (b) In the event of an insolvency of the insurer, the reinsurance
22 contract shall provide reinsurance payable directly to the insurer or
23 to its liquidator, receiver, or successor on the basis of the
24 liability of the insurer in accordance with the reinsurance contract.
25 In no event may the program be liable for or provide coverage for
26 that portion of any covered loss that is the responsibility of the
27 insurer whether or not the insurer is able to fulfill the
28 responsibility.

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

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

36 (2) To design and implement a structure of periodic premiums due
37 the director from the insurer that takes full advantage of revenue
38 collections and projected revenue collections to ensure affordable
39 premiums to the insured consistent with sound actuarial principles.

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

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

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

12 (6) To monitor the success of the program and periodically make
13 such reports and recommendations to the legislature as the director
14 deems appropriate, and to annually publish a financial report on the
15 pollution liability insurance program trust account showing, among
16 other things, administrative and other expenses paid from the fund.

17 (7) To annually report the financial and loss experience of the
18 insurer as to policies issued under the program and the financial and
19 loss experience of the program to the legislature.

20 (8) To enter into contracts with public and private agencies to
21 assist the director in his or her duties to design, revise, monitor,
22 and evaluate the program and to provide technical or professional
23 assistance to the director.

24 (9) To examine the affairs, transactions, accounts, records,
25 documents, and assets of insurers as the director deems advisable.

26 (10) To design, in consultation with the office of financial
27 management, an emergency program to assist owners and operators of
28 underground storage tanks in meeting the federal financial
29 responsibility requirements in the event that a private insurer
30 withdraws from the Washington pollution liability insurance program.

31 (11) To determine, assess, and collect moneys sufficient to cover
32 the direct and indirect costs of implementing the emergency program,
33 including initial program development costs. The moneys may be
34 collected from underground storage tank owners and operators who are
35 using the emergency program. All moneys collected under this section
36 must be deposited in the pollution liability insurance program trust
37 account created in RCW 70.148.020.

38 NEW SECTION. Sec. 3. A new section is added to chapter 70.148
39 RCW to read as follows:

1 (1) The director may implement an emergency program, as designed
2 under RCW 70.148.050.

3 (2) At the legislative session following implementation of an
4 emergency program, the director must provide to the legislature a
5 report on the options available to assist owners and operators in
6 using one or a combination of mechanisms to demonstrate financial
7 responsibility for underground storage tanks. The report must
8 include, but is not limited to: Discussion of a state run insurance
9 program; alternative options to a state run insurance program; an
10 evaluation and recommendation of the finances required to develop and
11 implement a new financial responsibility model that complies with the
12 federal financial responsibility requirements in 40 C.F.R. Part 280,
13 subpart H; and recommendations for legislation necessary to implement
14 actions needed to meet federal financial responsibility requirements
15 in 40 C.F.R. Part 280, subpart H.

16 **Sec. 4.** RCW 70.148.020 and 2019 c 413 s 7034 are each amended to
17 read as follows:

18 (1) The pollution liability insurance program trust account is
19 established in the custody of the state treasurer. All funds
20 appropriated for this chapter and all premiums collected for
21 reinsurance shall be deposited in the account. Except as provided in
22 chapter 70.340 RCW, expenditures from the account shall be used
23 exclusively for the purposes of this chapter including payment of
24 costs of administering the pollution liability insurance program and
25 (~~(underground storage tank community assistance)~~) emergency
26 program(~~s~~). Expenditures for payment of administrative and
27 operating costs of the agency are subject to the allotment procedures
28 under chapter 43.88 RCW and may be made only after appropriation by
29 statute. No appropriation is required for other expenditures from the
30 account.

31 (2) Each calendar quarter, the director shall report to the
32 insurance commissioner the loss and surplus reserves required for the
33 calendar quarter. The director shall notify the department of revenue
34 of this amount by the fifteenth day of each calendar quarter.

35 (3) During the 2019-2021 fiscal biennium, the legislature may
36 make appropriations from the pollution liability insurance program
37 trust account for the leaking tank model remedies activity.

38 (~~((4) This section expires July 1, 2030.))~~)

1 **Sec. 5.** RCW 70.148.090 and 1990 c 64 s 10 are each amended to
2 read as follows:

3 (1) The activities and operations of the program are exempt from
4 the provisions and requirements of Title 48 RCW (~~and to~~).

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

10 (a) Chapter 48.03 RCW pertaining to examinations;

11 (b) RCW 48.05.250 pertaining to annual reports;

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

13 (d) Chapter 48.13 RCW pertaining to investments;

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

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

17 (~~(2)~~) (3) To the extent of their participation in the program,
18 the insurer selected by the director to provide liability insurance
19 coverage to owners and operators of underground storage tanks shall
20 not participate in the Washington insurance guaranty association nor
21 shall the association be liable for coverage provided to owners and
22 operators of underground storage tanks issued in connection with the
23 program.

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