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HOUSE BILL 2678

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State of Washington

59th Legislature

2006 Regular Session

By Representatives Kagi, Kretz, B. Sullivan and Ericks; by request of Pollution Liability Insurance Agency

Read first time 01/12/2006. Referred to Committee on Financial Institutions & Insurance.

1 AN ACT Relating to the pollution liability insurance agency;  
2 amending RCW 70.148.005, 70.148.020, 70.148.050, and 70.149.010;  
3 reenacting and amending RCW 43.79A.040; repealing RCW 70.148.900,  
4 70.149.900, and 82.23A.902; repealing 2000 c 16 s 4 and 1998 c 245 s  
5 178 (uncodified); repealing 2000 c 16 s 5 and 1997 c 8 s 3  
6 (uncodified); repealing 2005 c 428 s 4 (uncodified); and providing an  
7 effective date.

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

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

11 (1) The legislature finds that:

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

17 (b) Financial responsibility is demonstrated through the purchase  
18 of pollution liability insurance or an acceptable alternative such as  
19 coverage under a state financial responsibility program, in the amount

1 of at least five hundred thousand dollars per occurrence and one  
2 million dollars annual aggregate depending upon the nature, use, and  
3 number of tanks owned or operated;

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

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

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

17 (a) Minimizes state involvement in pollution liability claims  
18 management and insurance administration;

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

21 (c) Creates incentives for private insurers to provide needed  
22 liability insurance; and

23 (d) Parallels generally accepted principles of insurance and risk  
24 management.

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

32 (3) It is not the intent of this chapter to permit owners and  
33 operators of underground petroleum storage tanks to obtain pollution  
34 liability insurance without regard to the quality or condition of their  
35 storage tanks or without regard to the risk management practices of  
36 tank owners and operators, nor is it the intent of this chapter to  
37 provide coverage or funding for past or existing petroleum releases.  
38 Further, it is the intent of the legislature that the program follow

1 generally accepted insurance underwriting and actuarial principles and  
2 to deviate from those principles only to the extent necessary and  
3 within the tax revenue limits provided, to make pollution liability  
4 insurance reasonably affordable and available to owners and operators  
5 who meet the requirements of this chapter, particularly to those owners  
6 and operators whose underground storage tanks meet a vital economic  
7 need within the affected community.

8       **Sec. 2.** RCW 70.148.020 and 2005 c 518 s 942 are each amended to  
9 read as follows:

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

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

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

35       (4) During the 2005-2007 fiscal biennium, the legislature may  
36 transfer from the pollution liability insurance program trust account

1 to the state general fund such amounts as reflect the excess fund  
2 balance of the account.

3 ~~((5) This section expires June 1, 2007.)~~

4 **Sec. 3.** RCW 70.148.050 and 1998 c 245 s 115 are each amended to  
5 read as follows:

6 The director has the following powers and duties:

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

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

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

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

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

34 (2) To design and implement a structure of periodic premiums due  
35 the director from the insurer that takes full advantage of revenue  
36 collections and projected revenue collections to ensure affordable  
37 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 be  
3 reduced without substantially increasing the insured's premium costs.

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

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

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

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

19 ~~(8) ((To evaluate the effects of the program upon the private  
20 market for liability insurance for owners and operators of underground  
21 storage tanks and make recommendations to the legislature on the  
22 necessity for continuing the program to ensure availability of such  
23 coverage.~~

24 ~~(9))~~ To enter into contracts with public and private agencies to  
25 assist the director in his or her duties to design, revise, monitor,  
26 and evaluate the program and to provide technical or professional  
27 assistance to the director.

28 ~~((+10))~~ (9) To examine the affairs, transactions, accounts,  
29 records, documents, and assets of insurers as the director deems  
30 advisable.

31 **Sec. 4.** RCW 70.149.010 and 1995 c 20 s 1 are each amended to read  
32 as follows:

33 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 **Sec. 5.** RCW 43.79A.040 and 2005 c 424 s 18, 2005 c 402 s 8, 2005  
7 c 215 s 10, and 2005 c 16 s 2 are each reenacted and amended to read as  
8 follows:

9 (1) Money in the treasurer's trust fund may be deposited, invested,  
10 and reinvested by the state treasurer in accordance with RCW 43.84.080  
11 in the same manner and to the same extent as if the money were in the  
12 state treasury.

13 (2) All income received from investment of the treasurer's trust  
14 fund shall be set aside in an account in the treasury trust fund to be  
15 known as the investment income account.

16 (3) The investment income account may be utilized for the payment  
17 of purchased banking services on behalf of treasurer's trust funds  
18 including, but not limited to, depository, safekeeping, and  
19 disbursement functions for the state treasurer or affected state  
20 agencies. The investment income account is subject in all respects to  
21 chapter 43.88 RCW, but no appropriation is required for payments to  
22 financial institutions. Payments shall occur prior to distribution of  
23 earnings set forth in subsection (4) of this section.

24 (4)(a) Monthly, the state treasurer shall distribute the earnings  
25 credited to the investment income account to the state general fund  
26 except under (b) and (c) of this subsection.

27 (b) The following accounts and funds shall receive their  
28 proportionate share of earnings based upon each account's or fund's  
29 average daily balance for the period: The Washington promise  
30 scholarship account, the college savings program account, the  
31 Washington advanced college tuition payment program account, the  
32 agricultural local fund, the American Indian scholarship endowment  
33 fund, the foster care scholarship endowment fund, the foster care  
34 endowed scholarship trust fund, the students with dependents grant  
35 account, the basic health plan self-insurance reserve account, the  
36 contract harvesting revolving account, the Washington state combined  
37 fund drive account, the commemorative works account, the Washington

1 international exchange scholarship endowment fund, the developmental  
2 disabilities endowment trust fund, the energy account, the fair fund,  
3 the fruit and vegetable inspection account, the future teachers  
4 conditional scholarship account, the game farm alternative account, the  
5 grain inspection revolving fund, the juvenile accountability incentive  
6 account, the law enforcement officers' and fire fighters' plan 2  
7 expense fund, the local tourism promotion account, the produce railcar  
8 pool account, the rural rehabilitation account, the stadium and  
9 exhibition center account, the youth athletic facility account, the  
10 self-insurance revolving fund, the sulfur dioxide abatement account,  
11 the children's trust fund, the Washington horse racing commission  
12 Washington bred owners' bonus fund account, the Washington horse racing  
13 commission class C purse fund account, the individual development  
14 account program account, the Washington horse racing commission  
15 operating account (earnings from the Washington horse racing commission  
16 operating account must be credited to the Washington horse racing  
17 commission class C purse fund account), the pollution liability  
18 insurance program trust account, and the life sciences discovery fund.  
19 However, the earnings to be distributed shall first be reduced by the  
20 allocation to the state treasurer's service fund pursuant to RCW  
21 43.08.190.

22 (c) The following accounts and funds shall receive eighty percent  
23 of their proportionate share of earnings based upon each account's or  
24 fund's average daily balance for the period: The advanced right of way  
25 revolving fund, the advanced environmental mitigation revolving  
26 account, the city and county advance right-of-way revolving fund, the  
27 federal narcotics asset forfeitures account, the high occupancy vehicle  
28 account, the local rail service assistance account, and the  
29 miscellaneous transportation programs account.

30 (5) In conformance with Article II, section 37 of the state  
31 Constitution, no trust accounts or funds shall be allocated earnings  
32 without the specific affirmative directive of this section.

33 NEW SECTION. **Sec. 6.** The following acts or parts of acts are each  
34 repealed:

35 (1) RCW 70.148.900 (Expiration of chapter) and 2000 c 16 s 1, 1995  
36 c 12 s 2, & 1989 c 383 s 13;

1 (2) RCW 70.149.900 (Expiration of chapter) and 2000 c 16 s 2 & 1995  
2 c 20 s 14; and

3 (3) RCW 82.23A.902 (Expiration date--1996 c 88) and 2000 c 16 s 3  
4 & 1996 c 88 s 3.

5 NEW SECTION. **Sec. 7.** The following acts or parts of acts are each  
6 repealed:

7 (1) 2000 c 16 s 4 & 1998 c 245 s 178 (uncodified);

8 (2) 2000 c 16 s 5 & 1997 c 8 s 3 (uncodified); and

9 (3) 2005 c 428 s 4 (uncodified).

10 NEW SECTION. **Sec. 8.** Section 5 of this act takes effect July 1,  
11 2006.

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