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**SUBSTITUTE HOUSE BILL 2475**

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**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)

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

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

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

(1) The legislature finds that:

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

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

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

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

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

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

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

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

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

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

(3) It is not the intent of this chapter to permit owners and operators of underground petroleum storage tanks to obtain pollution liability insurance without regard to the quality or condition of their storage tanks or without regard to the risk management practices of tank owners and operators, nor is it the intent of this chapter to provide coverage or funding for past or existing petroleum releases. Further, it is the intent of the legislature that the program follow generally accepted insurance underwriting and actuarial principles and to deviate from those principles only to the extent necessary and within the tax revenue limits provided, to make pollution liability insurance reasonably affordable and available to owners and operators who meet the requirements of this chapter, particularly to those owners and operators whose underground storage tanks meet a vital economic need within the affected community.

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

The director has the following powers and duties:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Chapter 48.03 RCW pertaining to examinations;

(b) RCW 48.05.250 pertaining to annual reports;

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

(d) Chapter 48.13 RCW pertaining to investments;

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

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

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

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