
SENATE BILL 6139

State of Washington

58th Legislature

2004 Regular Session

By Senator Morton

Read first time 01/12/2004. Referred to Committee on Natural Resources, Energy & Water.

1 AN ACT Relating to underground petroleum storage tanks; and
2 amending RCW 70.148.005, 70.148.020, 70.149.010, 70.149.040,
3 70.149.070, and 70.149.080.

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 read
6 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 amount
16 of at least five hundred thousand dollars per occurrence and one
17 million dollars annual aggregate depending upon the nature, use, and
18 number of tanks owned or operated;

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

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

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

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

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

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

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

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

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

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

5 **Sec. 2.** RCW 70.148.020 and 1999 c 73 s 1 are each amended to read
6 as follows:

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

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

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

32 ~~(4))~~) This section expires June 1, ((2001-[2007])) 2007.

33 **Sec. 3.** RCW 70.149.010 and 1995 c 20 s 1 are each amended to read
34 as follows:

35 It is the intent of the legislature to establish a ((temporary))
36 regulatory program to assist owners and operators of heating oil tanks.

1 The legislature finds that it is in the best interests of all citizens
2 for heating oil tanks to be operated safely and for tank leaks or
3 spills to be dealt with expeditiously. The legislature further finds
4 that it is necessary to protect tank owners from the financial hardship
5 related to damaged heating oil tanks. The problem is especially acute
6 because owners and operators of heating oil tanks used for space
7 heating have been unable to obtain pollution liability insurance or
8 insurance has been unaffordable.

9 **Sec. 4.** RCW 70.149.040 and 1997 c 8 s 1 are each amended to read
10 as follows:

11 The director shall:

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

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

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

24 (4) Employ and discharge, at his or her discretion, agents,
25 attorneys, consultants, companies, organizations, and employees as
26 deemed necessary, and to prescribe their duties and powers, and fix
27 their compensation;

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

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

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

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

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

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

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

29 (12) Create an advisory committee of stakeholders to advise the
30 director on all aspects of program operations and fees authorized by
31 this chapter. The committee should meet at least quarterly, or more
32 frequently at the discretion of the director; and

33 (13) If necessary, adopt appropriate user fees to supplement
34 program funding.

35 **Sec. 5.** RCW 70.149.070 and 1997 c 8 s 2 are each amended to read
36 as follows:

37 (1) The heating oil pollution liability trust account is created in

1 the custody of the state treasurer. All receipts from the pollution
2 liability insurance fee collected under RCW 70.149.080 and reinsurance
3 premiums shall be deposited into the account. Expenditures from the
4 account may be used only for the purposes set out under this chapter.
5 Only the director or the director's designee may authorize expenditures
6 from the account. The account is subject to allotment procedures under
7 chapter 43.88 RCW, but no appropriation is required for expenditures.
8 Any residue in the account shall be transferred at the end of the
9 (~~biennium~~) calendar year to the pollution liability insurance program
10 trust account.

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

- 13 (a) Corrective action costs;
- 14 (b) Third-party liability claims;
- 15 (c) Costs associated with claims administration;
- 16 (d) Purchase of an insurance policy to cover all registered heating
17 oil tanks, and reinsurance of the policy; and
- 18 (e) Administrative expenses of the program, including personnel,
19 equipment, supplies, and providing advice and technical assistance.

20 **Sec. 6.** RCW 70.149.080 and 1995 c 20 s 8 are each amended to read
21 as follows:

22 (1) A pollution liability insurance fee of (~~six tenths of one~~) up
23 to one and two-tenths cents per gallon of heating oil purchased within
24 the state shall be imposed on every special fuel dealer, as the term is
25 defined in chapter 82.38 RCW, making sales of heating oil to a user or
26 consumer.

27 (2) The pollution liability insurance fee shall be remitted by the
28 special fuel dealer to the department of licensing (~~with payment of~~
29 ~~the special fuel dealer tax~~).

30 (3) The fee proceeds shall be used for the specific regulatory
31 purposes of this chapter.

32 (4) The fee imposed by this section shall not apply to heating oil
33 exported or sold for export from the state.

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