
SUBSTITUTE HOUSE BILL 2872

State of Washington **65th Legislature** **2018 Regular Session**

By House Environment (originally sponsored by Representatives Peterson, Young, and Ortiz-Self)

READ FIRST TIME 02/02/18.

1 AN ACT Relating to the sustainability of the residential home
2 heating oil program; and amending RCW 70.149.040.

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

4 **Sec. 1.** RCW 70.149.040 and 2017 c 23 s 4 are each amended to
5 read as follows:

6 The director shall:

7 (1) Design a program, consistent with RCW 70.149.120, for
8 providing pollution liability insurance for heating oil tanks that
9 provides up to sixty thousand dollars per occurrence coverage and
10 aggregate limits, not to exceed fifteen million dollars each calendar
11 year, and protects the state of Washington from unwanted or
12 unanticipated liability for accidental release claims;

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

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

20 (4) Employ and discharge, at his or her discretion, agents,
21 attorneys, consultants, companies, organizations, and employees as

1 deemed necessary, and to prescribe their duties and powers, and fix
2 their compensation;

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

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

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

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

15 (9) Implement a program to provide advice and technical
16 assistance on the administrative and technical requirements of this
17 chapter and chapter 70.105D RCW to persons who are conducting or
18 otherwise interested in independent remedial actions at facilities
19 where there is a suspected or confirmed release from the following
20 petroleum storage tank systems: A heating oil tank; a decommissioned
21 heating oil tank; an abandoned heating oil tank; or a petroleum
22 storage tank system identified by the department of ecology based on
23 the relative risk posed by the release to human health and the
24 environment, as determined under chapter 70.105D RCW, or other
25 factors identified by the department of ecology.

26 (a) Such advice or assistance is advisory only, and is not
27 binding on the pollution liability insurance agency or the department
28 of ecology. As part of this advice and assistance, the pollution
29 liability insurance agency may provide written opinions on whether
30 independent remedial actions or proposals for these actions meet the
31 substantive requirements of chapter 70.105D RCW, or whether the
32 pollution liability insurance agency believes further remedial action
33 is necessary at the facility. As part of this advice and assistance,
34 the pollution liability insurance agency may also observe independent
35 remedial actions.

36 (b) The agency is authorized to collect, from persons requesting
37 advice and assistance, the costs incurred by the agency in providing
38 such advice and assistance. The costs may include travel costs and
39 expenses associated with review of reports and preparation of written

1 opinions and conclusions. Funds from cost reimbursement must be
2 deposited in the heating oil pollution liability trust account.

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

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

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

13 (12) Study if appropriate user fees to supplement program funding
14 are necessary and develop recommendations for legislation to
15 authorize such fees;

16 (13) Establish requirements, including deadlines not to exceed
17 ninety days, for reporting to the pollution liability insurance
18 agency a suspected or confirmed release from a heating oil tank,
19 including a decommissioned or abandoned heating oil tank, that may
20 pose a threat to human health or the environment by the owner or
21 operator of the heating oil tank or the owner of the property where
22 the release occurred;

23 (14) Within ninety days of receiving information and having a
24 reasonable basis to believe that there may be a release from a
25 heating oil tank, including decommissioned or abandoned heating oil
26 tanks, that may pose a threat to human health or the environment,
27 perform an initial investigation to determine at a minimum whether
28 such a release has occurred and whether further remedial action is
29 necessary under chapter 70.105D RCW. The initial investigation may
30 include, but is not limited to, inspecting, sampling, or testing. The
31 director may retain contractors to perform an initial investigation
32 on the agency's behalf;

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

39 (16) For any property where an environmental covenant has been
40 established as part of the remedial action approved under subsection

1 (9) of this section, periodically review the environmental covenant
2 for effectiveness. The director shall perform a review at least once
3 every five years after an environmental covenant is recorded.

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