S-5641.1

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**SUBSTITUTE SENATE BILL 6256**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**State of Washington 66th Legislature 2020 Regular Session**

**By** Senate Environment, Energy & Technology (originally sponsored by Senators Wellman, Short, and Hasegawa; by request of Pollution Liability Insurance Agency)

AN ACT Relating to the heating oil insurance program; amending RCW 70.149.010, 70.149.040, 70.340.010, 70.340.020, 70.340.030, 70.340.050, 70.340.060, 70.340.090, and 70.340.130; adding a new section to chapter 70.149 RCW; and repealing RCW 70.149.050.

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

**Sec.**  RCW 70.149.010 and 2017 c 23 s 1 are each amended to read as follows:

((~~It is the intent of the legislature to establish a temporary regulatory program to assist owners and operators of petroleum storage tank systems.~~)) The legislature finds that it is in the best interests of all citizens for petroleum storage tank systems to be operated safely and for tank leaks or spills to be dealt with expeditiously. The legislature finds that it is appropriate for an agency with expertise in petroleum to provide technical advice and assistance to owners or operators when there has been a release. The legislature further finds that while it is necessary to protect tank owners from the financial hardship related to damaged heating oil tanks, support can be provided through the agency's revolving loan and grant program in chapter 70.340 RCW. ((~~The problem is especially acute because owners and operators of heating oil tanks used for space heating have been unable to obtain pollution liability insurance or insurance has been unaffordable.~~)) Therefore, the legislature intends to transition the pollution liability insurance program for heating oil tanks to a revolving loan and grant program, while maintaining the pollution liability insurance program for existing registrants.

**Sec.**  RCW 70.149.040 and 2018 c 194 s 3 are each amended to read as follows:

The director shall:

(1) Design and implement a process to close out existing claims under the heating oil pollution liability insurance program((~~, consistent with RCW 70.149.120, for~~)). During this process, the director has authority to maintain the program providing pollution liability insurance for heating oil tanks that provides up to sixty thousand dollars per occurrence coverage and aggregate limits, not to exceed fifteen million dollars each calendar year((~~, and protects the state of Washington from unwanted or unanticipated liability for accidental release claims~~)). Claims received under the existing policy, which would result in payment in excess of fifteen million dollars in a calendar year may be paid out in the next calendar year. The heating oil pollution liability insurance program shall not register heating oil tanks for coverage under the heating oil pollution liability insurance program after July 1, 2020;

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

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

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

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

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

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

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

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

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

(b) The agency is authorized to collect, from persons requesting advice and assistance, the costs incurred by the agency in providing such advice and assistance. The costs may include travel costs and expenses associated with review of reports and preparation of written opinions and conclusions. Funds from cost reimbursement must be deposited in the heating oil pollution liability trust account.

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

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

((~~(11)~~)) (9) Monitor agency expenditures and seek to minimize costs and maximize benefits to ensure responsible financial stewardship;

((~~(12)~~)) (10) Study if appropriate user fees to supplement program funding are necessary and develop recommendations for legislation to authorize such fees;

((~~(13)~~)) (11) Establish requirements, including deadlines not to exceed ninety days, for reporting to the pollution liability insurance agency a suspected or confirmed release from a heating oil tank, including a decommissioned or abandoned heating oil tank, that may pose a threat to human health or the environment by the owner or operator of the heating oil tank or the owner of the property where the release occurred;

((~~(14)~~)) (12) Within ninety days of receiving information and having a reasonable basis to believe that there may be a release from a heating oil tank, including decommissioned or abandoned heating oil tanks, that may pose a threat to human health or the environment, perform an initial investigation to determine at a minimum whether such a release has occurred and whether further remedial action is necessary under chapter 70.105D RCW. The initial investigation may include, but is not limited to, inspecting, sampling, or testing. The director may retain contractors to perform an initial investigation on the agency's behalf;

((~~(15)~~)) (13) For any written opinion issued under subsection ((~~(9)~~)) (7) of this section requiring an environmental covenant as part of the remedial action, consult with, and seek comment from, a city or county department with land use planning authority for real property subject to the environmental covenant prior to the property owner recording the environmental covenant; and

((~~(16)~~)) (14) For any property where an environmental covenant has been established as part of the remedial action approved under subsection ((~~(9)~~)) (7) of this section, periodically review the environmental covenant for effectiveness. The director shall perform a review at least once every five years after an environmental covenant is recorded.

NEW SECTION. **Sec.**  A new section is added to chapter 70.149 RCW to read as follows:

To ensure the adoption of rules will not delay the process to close out existing claims under the heating oil pollution liability insurance program, the pollution liability insurance agency may continue to process claims through interpretative guidance pending adoption of rules.

**Sec.**  RCW 70.340.010 and 2016 c 161 s 1 are each amended to read as follows:

(1) The legislature intends for the pollution liability insurance agency to establish a revolving loan and grant program to assist owners and operators of petroleum underground storage tank systems to: ((~~(1)~~)) (a) Remediate past releases; ((~~(2)~~)) (b) upgrade, replace, or remove petroleum underground storage tank systems to prevent future releases; and ((~~(3)~~)) (c) install new infrastructure or retrofit existing infrastructure for dispensing or using renewable or alternative energy.

(2) Furthermore, the legislature intends for the revolving loan and grant program to assist owners and operators of heating oil tanks to: (a) Remediate past releases; or (b) prevent future releases by upgrading, replacing, decommissioning, or removing heating oil systems.

**Sec.**  RCW 70.340.020 and 2016 c 161 s 2 are each amended to read as follows:

The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Agency" means the Washington state pollution liability insurance agency.

(2) "Heating oil tank" means a tank and its connecting pipes, whether above or below ground, or in a basement, with pipes connected to the tank for space heating of human living or working space on the premises where the tank is located.

(3) "Local government" means any political subdivision of the state, including a town, city, county, special purpose district, or other municipal corporation.

((~~(3)~~)) (4) "Operator" means any person in control of, or having responsibility for, the daily operation of a petroleum underground storage tank system, including a heating oil tank system.

((~~(4)~~)) (5) "Owner" means any person who owns a petroleum underground storage tank system, including a heating oil tank system.

((~~(5)~~)) (6) "Petroleum underground storage tank system" means an underground storage tank system regulated under chapter 90.76 RCW or subtitle I of the solid waste disposal act (42 U.S.C. chapter 82, subchapter IX) that is used for storing petroleum.

((~~(6)~~)) (7) "Release" has the same meaning as defined in RCW 70.105D.020.

((~~(7)~~)) (8) "Remedial action" has the same meaning as defined in RCW 70.105D.020.

((~~(8)~~)) (9) "Underground storage tank facility" means the location where one or more underground storage tank systems are installed. A facility encompasses all contiguous real property under common ownership associated with the operation of the underground storage tank system or systems.

((~~(9)~~)) (10) "Underground storage tank system" means an underground storage tank, connected underground piping, underground ancillary equipment, and containment system, if any, and includes any aboveground ancillary equipment connected to the underground storage tank or piping, such as dispensers.

**Sec.**  RCW 70.340.030 and 2016 c 161 s 3 are each amended to read as follows:

(1) The agency shall establish an underground storage tank revolving loan and grant program to provide loans or grants to owners or operators to:

(a) Conduct remedial actions in accordance with chapter 70.105D RCW, including investigations and cleanups of any release or threatened release of a hazardous substance at or affecting an underground storage tank facility, provided that at least one of the releases or threatened releases involves petroleum;

(b) Upgrade, replace, or permanently close a petroleum underground storage tank system in accordance with chapter 90.76 RCW or subtitle I of the solid waste disposal act (42 U.S.C., chapter 82, subchapter IX), as applicable;

(c) Install new infrastructure or retrofit existing infrastructure at an underground storage tank facility for dispensing or using renewable or alternative energy for motor vehicles, including electric vehicle charging stations, when conducted in conjunction with either (a) or (b) of this subsection; ((~~or~~))

(d) Install and subsequently remove a temporary petroleum aboveground storage tank system in compliance with applicable laws, when conducted in conjunction with either (a) or (b) of this subsection;

(e) Conduct remedial actions in accordance with chapter 70.105D RCW, including investigation and cleanup of any release or threatened releases of petroleum from a heating oil tank; or

(f) Prevent future releases by upgrading, replacing, decommissioning, or removing a heating oil tank.

(2) The maximum amount that may be loaned or granted under this program to an owner or operator for a single underground storage tank facility is two million dollars and for a single heating oil tank seventy-five thousand dollars.

**Sec.**  RCW 70.340.050 and 2016 c 161 s 5 are each amended to read as follows:

The agency shall partner and enter into a memorandum of agreement with the department of health to implement the revolving loan and grant program.

(1) The agency shall ((~~select~~)) approve recipients for loans and grants ((~~recipients~~)), structure funding offers to protect applicants with limited economic resources, and manage the work conducted under RCW 70.340.030(1).

(2) The department of health shall administer the loans and grants to qualified recipients as determined by the agency.

(3) The department of health may collect, from persons requesting financial assistance, loan origination fees to cover costs incurred by the department of health in operating the financial assistance program.

(4) The agency may use the moneys in the pollution liability insurance agency underground storage tank revolving account to fund the department of health's operating costs for the program.

**Sec.**  RCW 70.340.060 and 2016 c 161 s 6 are each amended to read as follows:

(1) The agency may conduct remedial actions and investigate or clean up a release or threatened release of a hazardous substance at or affecting an underground storage tank facility if the following conditions are met:

(a) The owner or operator received a loan or grant for the underground storage tank facility under the revolving program created in this chapter for two million dollars or less;

(b) The remedial actions are conducted in accordance with the rules adopted under chapter 70.105D RCW;

(c) The owner of real property subject to the remedial actions provides consent for the agency to:

(i) Recover the remedial action costs from the owner; and

(ii) Enter upon the real property to conduct remedial actions limited to those authorized by the owner or operator. Remedial actions must be focused on maintaining the economic vitality of the property. The agency or the agency's authorized representatives shall give reasonable notice before entering property unless an emergency prevents the notice; and

(d) The owner of the underground storage tank facility consents to the agency filing a lien on the underground storage tank facility to recover the agency's remedial action costs.

(2) The agency may conduct the remedial actions authorized under subsection (1) of this section using the moneys in the pollution liability insurance agency underground storage tank revolving account, as required under RCW 70.340.050. However, for any remedial action where the owner or operator has received a loan or grant, the agency may not expend more than the difference between the amount loaned or granted and two million dollars.

((~~(3) The agency may request informal advice and assistance and written opinions on the sufficiency of remedial actions from the department of ecology under RCW 70.105D.030(1)(i).~~))

**Sec.**  RCW 70.340.090 and 2016 c 161 s 9 are each amended to read as follows:

By September 1st of each even-numbered year, the agency must provide the office of financial management and the appropriate legislative committees a report on the agency's activities supported by expenditures from the pollution liability insurance agency underground storage tank revolving account. The report must at a minimum include:

(1) The amount of money the legislature appropriated from the pollution liability insurance agency underground storage tank revolving account under RCW 70.340.080 during the last biennium;

(2) For the previous biennium, the total number of loans and grants, the amounts loaned or granted, sites cleaned up, petroleum underground storage tank systems or heating oil tanks upgraded, replaced, or permanently closed, and jobs preserved;

(3) For each loan and grant awarded during the previous biennium, the name of the recipient, the location of the underground storage tank facility, a description of the project and its status, the amount loaned, and the amount repaid. For loans and grants awarded for heating oil tanks, only the general location, status, amount loaned, and the amount repaid must be provided;

(4) For each underground storage tank facility where the agency conducted remedial actions under RCW 70.340.060 during the previous biennium, the name and location of the site, the amount of money used to conduct the remedial actions, the status of remedial actions, whether liens were filed against the underground storage tank facility under RCW 70.340.070, and the amount of money recovered; and

(5) The operating costs of the agency and department of health to carry out the purposes of this chapter during the last biennium.

**Sec.**  RCW 70.340.130 and 2017 3rd sp.s. c 4 s 6015 are each amended to read as follows:

(1) On July 1, 2016, if the cash balance amount in the pollution liability insurance program trust account exceeds seven million five hundred thousand dollars after excluding the reserves under RCW 70.148.020(2), the state treasurer shall transfer the amount exceeding seven million five hundred thousand dollars, up to a transfer of ten million dollars, from the pollution liability insurance program trust account into the pollution liability insurance agency underground storage tank revolving account. If ten million dollars is not available to be transferred on July 1, 2016, then by the end of fiscal year 2017, if the cash balance amount in the pollution liability insurance program trust account exceeds seven million five hundred thousand dollars after excluding the reserves under RCW 70.148.020(2), the state treasurer shall transfer the amount exceeding seven million five hundred thousand dollars from the pollution liability insurance program trust account into the pollution liability insurance agency underground storage tank revolving account. The total amount transferred in fiscal year 2017 from the pollution liability insurance program trust account into the pollution liability insurance agency underground storage tank revolving account may not exceed ten million dollars.

(2) ((~~On~~)) Beginning July 1, 2017, ((~~and every two years thereafter at the start of each successive~~)) during the fiscal biennium and each successive fiscal biennium, if the cash balance amount in the pollution liability insurance program trust account exceeds seven million five hundred thousand dollars, the state treasurer ((~~shall~~)) is authorized, upon request of the agency, to transfer the amount exceeding seven million five hundred thousand dollars after excluding the reserves under RCW 70.148.020(2), up to a transfer of twenty million dollars, from the pollution liability insurance program trust account into the pollution liability insurance agency underground storage tank revolving account. ((~~If twenty million dollars is not available to be transferred at the beginning of the first fiscal year of the biennium, by the end of the subsequent fiscal year, if the cash balance amount in the pollution liability insurance program trust account exceeds seven million five hundred thousand dollars after excluding the reserves under RCW 70.148.020(2), the state treasurer shall transfer the amount exceeding seven million five hundred thousand dollars from the pollution liability insurance program trust account into the pollution liability insurance agency underground storage tank revolving account.~~)) The agency may request transfers only as needed to maximize the amount transferred in a fiscal biennium from the pollution liability insurance program trust account into the pollution liability insurance agency underground storage tank revolving account. The total amount transferred in a fiscal biennium from the pollution liability insurance program trust account into the pollution liability insurance agency underground storage tank revolving account may not exceed twenty million dollars.

NEW SECTION. **Sec.**  RCW 70.149.050 (Selection of insurer to provide pollution liability insurance—Eligibility for coverage) and 1995 c 20 s 5 are each repealed.

**--- END ---**