

SENATE BILL REPORT

SB 6659

As of January 29, 2010

Title: An act relating to consolidating the state's pollution liability insurance agency within the department of ecology.

Brief Description: Consolidating the pollution liability insurance agency within the department of ecology.

Sponsors: Senators Fraser, Morton and Rockefeller; by request of Pollution Liability Insurance Agency and Department of Ecology.

Brief History:

Committee Activity: Environment, Water & Energy: 1/29/10.

SENATE COMMITTEE ON ENVIRONMENT, WATER & ENERGY

Staff: Jan Odano (786-7486)

Background: In 1989 the Legislature created the Pollution Liability Insurance Agency (PLIA). PLIA was initially established to meet the requirements of the Environmental Protection Agency for owners and operators of underground storage tanks (UST) to demonstrate financial responsibility for the clean-up of contamination from spills or releases of petroleum. In 1995 the duties of PLIA were expanded to owners and operators of heating oil tanks. PLIA offers insurance coverage for cleanup of contamination from active heating oil tanks that are registered in the program prior to contamination occurring.

PLIA provides insurance to insurance companies that insure owners and operators of UST and heating oil tanks. The objective of PLIA is to improve the availability and affordability of pollution liability insurance for owners and operators of UST by selling reinsurance at a price significantly below the private market price for similar insurance. The discount is passed to owners and operators of UST through reduced insurance premiums and increased availability of insurance.

PLIA also provides financial assistance to public and private owners and operators of UST that are certified as meeting vital local government public health and safety needs. Financial assistance may only be provided to owners and operators who demonstrate serious financial hardship. The financial assistance may be used only for clean-ups and upgrades after a clean-up plan is filed with the Department of Ecology (Department).

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

PLIA and its programs are funded through: a pollution liability fee imposed on dealers making sales of heating oil to a home owner or a consumer which is deposited into the Heating Oil Pollution Liability Trust Account; and an excise tax on the wholesale value of petroleum which is deposited into the Pollution Liability Insurance Program Trust Account.

PLIA and the pollution liability insurance program are set to expire on June 1, 2013.

Summary of Bill: PLIA, its duties, and the pollution liability insurance program are transferred to the Department. The Director of PLIA is the Director of the Department or the Director's appointed representative. The Director of the Department must appoint the administrative head of the Pollution Liability Insurance Program. The administrative head of the program and up to three other employees are exempt from the state civil service laws. Contracting with third parties for services is not subject to competitive contracting provisions under state civil service law.

The contracts, obligations, rules, and businesses currently before PLIA continue in effect and will be acted upon by the pollution liability program as a part of the Department. The Director of the Office of Financial Management (OFM) will make decisions when questions arise as to the transfer of personnel, funds, and tangible property used for the administration and implementation of the transferred duties and functions. In addition, the Director of OFM must certify apportionments of budgeted funds to affected agencies, the State Auditor, and State Treasurer, if necessary.

Certain decisions made by the Department regarding the heating oil pollution liability program, such as denial of eligibility for coverage, amount of payment allowed for corrective action and property damage, and third party claims are appealable to the pollution control hearings board within 30 days of the decision. An appeal that includes a penalty of \$15,000 or less may be heard as a short board appeal.

By September 1, 2011, the Department must provide a report and recommendations for legislation to the Governor and Legislature about consolidation of PLIA within the Department. The report must also discuss needed statutory changes to make the consolidation more effective and efficient; organizational structure of the insurance program; the appeals process; information management; coordination of the insurance program, UST rule, and toxic cleanup program; and reauthorization of the pollution liability insurance program by July 1, 2013.

Appropriation: None.

Fiscal Note: Requested on January 20, 2010.

Committee/Commission/Task Force Created: No.

Effective Date: The bill takes effect on July 1, 2010.

Staff Summary of Public Testimony: PRO: This bill is part of the Governor's package to streamline government. It is not about PLIA's performance or immediate cost-savings; it's

about streamlining government and becoming more efficient. Streamlining government is based on the goals of cutting bureaucracy, consolidating similar functions and delivering 21st century service. It makes sense to integrate regulatory programs, those that inspect and clean-up, with this insurance program.

CON: There is no efficiency or cost-savings gained by this bill. There is no compelling reason to merge PLIA into Ecology. PLIA is fully supported by fees on the petroleum industry and has been very successful.

OTHER: It is a good idea to make PLIA a part of the UST program at Ecology. However, the bill doesn't address this. It doesn't make sense to merge and then study. There are some policy changes that should be addressed in the bill. This is a well run program but as the program has evolved from petroleum to more about heating oil, there are some issues that need to be worked out. There needs to be oversight of contractors to keep costs in check. There needs to be more than one insurance carrier enrolled in the program to keep costs down.

Persons Testifying: PRO: John Mankowski, Governor's Office; Lynn Gooding, Pollution Liability Insurance Agency; Polly Zehm, Ecology.

CON: Greg Hanon, Western States Petroleum Association.

OTHER: Charlie Brown, WA Oil Marketers Association; Christophe Allen, Acme Fuel Co.