
ENGROSSED HOUSE BILL 3023

State of Washington

61st Legislature

2010 Regular Session

By Representatives Jacks, Chandler, Kretz, Hunt, Blake, and Wallace;
by request of Pollution Liability Insurance Agency and Department of
Ecology

Read first time 01/20/10. Referred to Committee on General
Government Appropriations.

1 AN ACT Relating to consolidating the state's pollution liability
2 insurance agency within the department of ecology; amending RCW
3 70.148.005, 70.148.010, 70.148.020, 70.148.025, 70.148.030, 70.148.035,
4 70.148.040, 70.148.050, 70.148.060, 70.148.070, 70.148.080, 70.148.090,
5 70.148.130, 70.148.140, 70.148.150, 70.148.160, 70.148.170, 70.149.010,
6 70.149.030, 70.149.040, 70.149.050, 70.149.060, 70.149.090, and
7 70.149.120; reenacting and amending RCW 43.21B.110; adding a new
8 section to chapter 70.149 RCW; adding a new section to chapter 70.148
9 RCW; creating a new section; providing an effective date; and providing
10 expiration dates.

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

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

14 (1) The legislature finds that:

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

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

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

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

18 (e) Safeguarding funding for the pollution liability insurance
19 program trust account is necessary to maintain federal funding for the
20 state underground storage tanks program.

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

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

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

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

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

32 To that end, this chapter establishes a temporary program to
33 provide pollution liability reinsurance at a price that will encourage
34 a private insurance company or risk retention group to sell pollution
35 liability insurance in accordance with the requirements of this chapter
36 to owners and operators of underground petroleum storage tanks, thereby
37 allowing the owners and operators to comply with the financial
38 responsibility regulations of the EPA.

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

15 (4) The pollution liability insurance program established by this
16 chapter and chapter 70.149 RCW is merged into the department.

17 **Sec. 2.** RCW 70.148.010 and 1990 c 64 s 2 are each amended to read
18 as follows:

19 Unless the context requires otherwise, the definitions in this
20 section apply throughout this chapter.

21 (1) "Accidental release" means any sudden or nonsudden release of
22 petroleum arising from operating an underground storage tank that
23 results in a need for corrective action, bodily injury, or property
24 damage neither expected nor intended by the owner or operator.

25 (2) "Director" means the (~~Washington pollution liability insurance~~
26 ~~program~~) director of the department or the director's appointed
27 representative.

28 (3) "Bodily injury" means bodily injury, sickness, or disease
29 sustained by any person, including death at any time resulting from the
30 injury, sickness, or disease.

31 (4) "Corrective action" means those actions reasonably required to
32 be undertaken by the insured to remove, treat, neutralize, contain, or
33 clean up an accidental release in order to comply with any statute,
34 ordinance, rule, regulation, directive, order, or similar legal
35 requirement of the United States, the state of Washington, or any
36 political subdivision of the United States or the state of Washington
37 in effect at the time of an accidental release. "Corrective action"

1 includes, when agreed to in writing, in advance by the insurer, action
2 to remove, treat, neutralize, contain, or clean up an accidental
3 release to avert, reduce, or eliminate the liability of the insured for
4 corrective action, bodily injury, or property damage. "Corrective
5 action" also includes actions reasonably necessary to monitor, assess,
6 and evaluate an accidental release.

7 "Corrective action" does not include:

8 (a) Replacement or repair of storage tanks or other receptacles;

9 (b) Replacement or repair of piping, connections, and valves of
10 storage tanks or other receptacles;

11 (c) Excavation or backfilling done in conjunction with (a) or (b)
12 of this subsection; or

13 (d) Testing for a suspected accidental release if the results of
14 the testing indicate that there has been no accidental release.

15 (5) "Defense costs" include the costs of legal representation,
16 expert fees, and related costs and expenses incurred in defending
17 against claims or actions brought by or on behalf of:

18 (a) The United States, the state of Washington, or any political
19 subdivision of the United States or state of Washington to require
20 corrective action or to recover costs of corrective action; or

21 (b) A third party for bodily injury or property damage caused by an
22 accidental release.

23 (6) (~~("Washington – pollution – liability – insurance – program" – or~~
24 ~~"program" – means – the – reinsurance – program – created – by – this – chapter.~~)
25 "Department" means the Washington state department of ecology.

26 (7) "Insured" means the owner or operator who is provided insurance
27 coverage in accordance with this chapter.

28 (8) "Insurer" means the insurance company or risk retention group
29 licensed or qualified to do business in Washington and authorized by
30 the (~~director~~) department to provide insurance coverage in accordance
31 with this chapter.

32 (9) "Loss reserve" means the amount traditionally set aside by
33 commercial liability insurers for costs and expenses related to claims
34 that have been made. "Loss reserve" does not include losses that have
35 been incurred but not reported to the insurer.

36 (10) "Occurrence" means an accident, including continuous or
37 repeated exposure to conditions, that results in a release from an
38 underground storage tank.

1 (11) "Operator" means a person in control of, or having
2 responsibility for, the daily operation of an underground storage tank.

3 (12) "Owner" means a person who owns an underground storage tank.

4 (13) "Person" means an individual, trust, firm, joint stock
5 company, corporation (including government corporation), partnership,
6 association, consortium, joint venture, commercial entity, state,
7 municipality, commission, political subdivision of a state, interstate
8 body, the federal government, or any department or agency of the
9 federal government.

10 (14) "Petroleum" means crude oil or any fraction of crude oil that
11 is liquid at standard conditions of temperature and pressure, which
12 means at sixty degrees Fahrenheit and 14.7 pounds per square inch
13 absolute and includes gasoline, kerosene, heating oils, and diesel
14 fuels.

15 (15) "Pollution liability insurance program" or "program" means the
16 reinsurance program created by this chapter.

17 (16) "Property damage" means:

18 (a) Physical injury to, destruction of, or contamination of
19 tangible property, including the loss of use of the property resulting
20 from the injury, destruction, or contamination; or

21 (b) Loss of use of tangible property that has not been physically
22 injured, destroyed, or contaminated but has been evacuated, withdrawn
23 from use, or rendered inaccessible because of an accidental release.

24 ((+16+)) (17) "Release" means the emission, discharge, disposal,
25 dispersal, seepage, or escape of petroleum from an underground storage
26 tank into or upon land, groundwater, surface water, subsurface soils,
27 or the atmosphere.

28 ((+17+)) (18) "Surplus reserve" means the amount traditionally set
29 aside by commercial property and casualty insurance companies to
30 provide financial protection from unexpected losses and to serve, in
31 part, as a measure of an insurance company's net worth.

32 ((+18+)) (19) "Tank" means a stationary device, designed to contain
33 an accumulation of petroleum, that is constructed primarily of
34 nonearthen materials such as wood, concrete, steel, or plastic that
35 provides structural support.

36 ((+19+)) (20) "Underground storage tank" means any one or a
37 combination of tanks including underground pipes connected to the tank,

1 that is used to contain an accumulation of petroleum and the volume of
2 which (including the volume of the underground pipes connected to the
3 tank) is ten percent or more beneath the surface of the ground.

4 **Sec. 3.** RCW 70.148.020 and 2006 c 276 s 1 are each amended to read
5 as follows:

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

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

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

33 ~~(4) ((During the 2005-2007 fiscal biennium, the legislature may~~
34 ~~transfer from the pollution liability insurance program trust account~~
35 ~~to the state general fund such amounts as reflect the excess fund~~
36 ~~balance of the account.~~

37 ~~(5))~~ This section expires June 1, 2013.

1 **Sec. 4.** RCW 70.148.025 and 1995 c 20 s 12 are each amended to read
2 as follows:

3 The (~~director~~) department shall provide reinsurance through the
4 pollution liability insurance program trust account to the heating oil
5 pollution liability protection program under chapter 70.149 RCW.

6 **Sec. 5.** RCW 70.148.030 and 1994 sp.s. c 9 s 805 are each amended
7 to read as follows:

8 (1) The (~~Washington~~) pollution liability insurance program is
9 (~~created as an independent agency of the state. The administrative~~
10 ~~head and appointing authority of the program shall be the director who~~
11 ~~shall be appointed by the governor, with the consent of the senate, and~~
12 ~~shall serve at the pleasure of the governor. The salary for this~~
13 ~~office shall be set by the governor pursuant to RCW 43.03.040. The~~
14 ~~director shall appoint a deputy director. The director, deputy~~
15 ~~director, and up to three other employees are exempt from the civil~~
16 ~~service law, chapter 41.06 RCW)) merged into the department. The
17 administrative head must be appointed by the director. The
18 administrative head of the program and up to three other employees are
19 exempt from the civil service law, chapter 41.06 RCW, and serve at the
20 pleasure of the director.~~

21 (2) The pollution liability insurance program shall be closely
22 aligned with programs related to underground storage tanks and toxic
23 cleanup.

24 (3) The director shall employ such other staff as are necessary to
25 fulfill the responsibilities and duties of the (~~director~~) department.
26 The staff is subject to the civil service law, chapter 41.06 RCW. In
27 addition, the director may contract with third parties for services
28 necessary to carry out its activities where this will promote economy,
29 avoid duplication of effort, and make best use of available expertise.
30 To the extent necessary to protect the state from unintended liability
31 and ensure quality program and contract design, the director shall
32 contract with an organization or organizations with demonstrated
33 experience and ability in managing and designing pollution liability
34 insurance and with an organization or organizations with demonstrated
35 experience and ability in managing and designing pollution liability
36 reinsurance. The director shall enter into such contracts after
37 competitive bid but need not select the lowest bid. The contracting

1 activity is not subject to the competitive contracting provisions of
2 RCW 41.06.142. Any such contractor or consultant is prohibited from
3 releasing, publishing, or otherwise using any information made
4 available to it under its contractual responsibility without specific
5 permission of the ((program)) director. The director may call upon
6 other agencies of the state to provide technical support and available
7 information as necessary to assist the director in meeting the
8 director's responsibilities under this chapter. Agencies shall supply
9 this support and information as promptly as circumstances permit.

10 ((+3)) (4) The director may appoint ad hoc technical advisory
11 committees to obtain expertise necessary to fulfill the purposes of
12 this chapter.

13 **Sec. 6.** RCW 70.148.035 and 1990 c 64 s 11 are each amended to read
14 as follows:

15 The ((director)) department may design the program to cover the
16 costs incurred in determining whether a proposed applicant for
17 pollution insurance under the program meets the underwriting standards
18 of the insurer. In covering such costs the ((director)) department
19 shall consider the financial resources of the applicant, shall take
20 into consideration the economic impact of the discontinued use of the
21 applicant's storage tank upon the affected community, shall provide
22 coverage within the revenue limits provided under this chapter, and
23 shall limit coverage of such costs to the extent that coverage would be
24 detrimental to providing affordable insurance under the program.

25 **Sec. 7.** RCW 70.148.040 and 1990 c 64 s 5 are each amended to read
26 as follows:

27 The ((director)) department may adopt rules consistent with this
28 chapter to carry out the purposes of this chapter. All rules shall be
29 adopted in accordance with chapter 34.05 RCW.

30 **Sec. 8.** RCW 70.148.050 and 2006 c 276 s 2 are each amended to read
31 as follows:

32 The ((director)) department has the following powers and duties:

33 (1) To design and from time to time revise a reinsurance contract
34 providing coverage to an insurer meeting the requirements of this
35 chapter. Before initially entering into a reinsurance contract, the

1 ((~~director~~)) department shall prepare an actuarial report describing
2 the various reinsurance methods considered by the ((~~director~~))
3 department and describing each method's costs. In designing the
4 reinsurance contract the ((~~director~~)) department shall consider common
5 insurance industry reinsurance contract provisions and shall design the
6 contract in accordance with the following guidelines:

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

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

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

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

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

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

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

37 (5) To monitor the activities of the insurer to ensure compliance

1 with this chapter and protect the program from excessive loss exposure
2 resulting from claims mismanagement by the insurer.

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

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

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

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

19 **Sec. 9.** RCW 70.148.060 and 2005 c 274 s 341 are each amended to
20 read as follows:

21 (1) All examination and proprietary reports and information
22 obtained by the ((~~director~~)) department and the ((~~director's~~))
23 department's staff in soliciting bids from insurers and in monitoring
24 the insurer selected by the ((~~director~~)) department shall not be made
25 public or otherwise disclosed to any person, firm, corporation, agency,
26 association, governmental body, or other entity.

27 (2) Subsection (1) of this section notwithstanding, the
28 ((~~director~~)) department may furnish all or part of examination reports
29 prepared by the ((~~director~~)) department or by any person, firm,
30 corporation, association, or other entity preparing the reports on
31 behalf of the ((~~director~~)) department to:

32 (a) The Washington state insurance commissioner;

33 (b) A person or organization officially connected with the insurer
34 as officer, director, attorney, auditor, or independent attorney or
35 independent auditor; and

36 (c) The attorney general in his or her role as legal advisor to the
37 ((~~director~~)) department.

1 (3) Subsection (1) of this section notwithstanding, the
2 ((~~director~~)) department may furnish all or part of the examination or
3 proprietary reports or information obtained by the ((~~director~~))
4 department to:

5 (a) The Washington state insurance commissioner; and

6 (b) A person, firm, corporation, association, governmental body, or
7 other entity with whom the ((~~director~~)) department has contracted for
8 services necessary to perform his or her official duties.

9 (4) Examination reports and proprietary information obtained by the
10 ((~~director~~)) department and the ((~~director's~~)) department's staff are
11 not subject to public disclosure under chapter 42.56 RCW.

12 (5) A person who violates any provision of this section is guilty
13 of a gross misdemeanor.

14 **Sec. 10.** RCW 70.148.070 and 1990 c 64 s 8 are each amended to read
15 as follows:

16 (1) In selecting an insurer to provide pollution liability
17 insurance coverage to owners and operators of underground storage
18 tanks, the ((~~director~~)) department shall evaluate bids based upon
19 criteria established by the ((~~director~~)) department that shall include:

20 (a) The insurer's ability to underwrite pollution liability
21 insurance;

22 (b) The insurer's ability to settle pollution liability claims
23 quickly and efficiently;

24 (c) The insurer's estimate of underwriting and claims adjustment
25 expenses;

26 (d) The insurer's estimate of premium rates for providing coverage;

27 (e) The insurer's ability to manage and invest premiums; and

28 (f) The insurer's ability to provide risk management guidance to
29 insureds.

30 The ((~~director~~)) department shall select the bidder most qualified
31 to provide insurance consistent with this chapter and need not select
32 the bidder submitting the least expensive bid. The ((~~director~~))
33 department may consider bids by groups of insurers and management
34 companies who propose to act in concert in providing coverage and who
35 otherwise meet the requirements of this chapter.

36 (2) The successful bidder shall agree to provide liability

1 insurance coverage to owners and operators of underground storage tanks
2 for third party bodily injury and property damage and corrective action
3 consistent with the following minimum standards:

4 (a) The insurer shall provide coverage for defense costs.

5 (b) The insurer shall collect a deductible from the insured for
6 corrective action in an amount approved by the ((~~director~~)) department.

7 (c) The insurer shall provide coverage for accidental releases in
8 the amount of five hundred thousand dollars per occurrence and one
9 million dollars annual aggregate but no more than one million dollars
10 per occurrence and two million dollars annual aggregate exclusive of
11 defense costs.

12 (d) The insurer shall require insurance applicants to meet at least
13 the following underwriting standards before issuing coverage to the
14 applicant:

15 (i) The applicant must be in compliance with statutes, ordinances,
16 rules, regulations, and orders governing the ownership and operation of
17 underground storage tanks as identified by the ((~~director~~)) department
18 by rule; and

19 (ii) The applicant must exercise adequate underground storage tank
20 risk management as specified by the ((~~director~~)) department by rule.

21 (e) The insurer may exclude coverage for losses arising before the
22 effective date of coverage, and the ((~~director~~)) department may adopt
23 rules establishing standards for determining whether a loss was
24 incurred before the effective date of coverage.

25 (f) The insurer may exclude coverage for bodily injury, property
26 damage, and corrective action as permitted by the ((~~director~~))
27 department by rule.

28 (g) The insurer shall use a variable rate schedule approved by the
29 ((~~director~~)) department taking into account tank type, tank age, and
30 other factors specified by the ((~~director~~)) department.

31 (3) The ((~~director~~)) department shall adopt all rules necessary to
32 implement this section. In developing and adopting rules governing
33 rates, deductibles, underwriting standards, and coverage conditions,
34 limitations, and exclusions, the ((~~director~~)) department shall balance
35 the owner and operator's need for coverage with the need to maintain
36 the actuarial integrity of the program, shall take into consideration
37 the economic impact of the discontinued use of a storage tank upon the
38 affected community, and shall consult with the ((~~standing~~)) ad hoc

1 technical advisory committees established under RCW 70.148.030(~~(+3)~~)
2 ~~(4). ((In developing and adopting rules governing coverage exclusions~~
3 ~~affecting corrective action, the director shall consult with the~~
4 ~~Washington state department of ecology.))~~

5 (4) Notwithstanding the definitions contained in RCW 70.148.010,
6 the ~~((director))~~ department may permit an insurer to use different
7 words or phrases describing the coverage provided under the program.
8 In permitting such deviations from the definitions contained in RCW
9 70.148.010, the ~~((director))~~ department shall consider the regulations
10 adopted by the United States environmental protection agency requiring
11 financial responsibility by owners and operators of underground
12 petroleum storage tanks.

13 (5) Owners and operators of underground storage tanks or sites
14 containing underground storage tanks where a preexisting release has
15 been identified or where the owner or operator knows of a preexisting
16 release are eligible for coverage under the program subject to the
17 following conditions:

18 (a) The owner or operator must have a plan for proceeding with
19 corrective action; and

20 (b) If the owner or operator files a claim with the insurer, the
21 owner or operator has the burden of proving that the claim is not
22 related to a preexisting release until the owner or operator
23 demonstrates to the satisfaction of the ~~((director))~~ department that
24 corrective action has been completed.

25 (6) ~~((When))~~ Within thirty days of a reinsurance contract ~~((has~~
26 ~~been))~~ being entered into by the ~~((agency))~~ department and insurance
27 companies, ~~((the director shall notify the department of ecology of the~~
28 ~~letting of the contract. Within thirty days of that notification,))~~
29 the department ~~((of ecology))~~ shall notify all known owners and
30 operators of petroleum underground storage tanks that appropriate
31 levels of financial responsibility must be established by October 26,
32 1990, in accordance with federal environmental protection agency
33 requirements, and that insurance under the program is available. All
34 owners and operators of petroleum underground storage tanks must also
35 be notified that declaration of method of financial responsibility or
36 intent to seek to be insured under the program must be made to the
37 state by November 1, 1990. If the declaration of method of financial
38 responsibility is not made by November 1, 1990, the department ~~((of~~

1 ~~ecology~~) shall, pursuant to chapter 90.76 RCW, prohibit the owner or
2 operator of an underground storage tank from obtaining a tank tag or
3 receiving petroleum products until such time as financial
4 responsibility has been established.

5 **Sec. 11.** RCW 70.148.080 and 1990 c 64 s 9 are each amended to read
6 as follows:

7 If the insurer cancels or refuses to issue or renew a policy, the
8 affected owner or operator may appeal the insurer's decision to the
9 director or the director's designee. The director or the director's
10 designee shall conduct a brief adjudicative proceeding under chapter
11 34.05 RCW.

12 **Sec. 12.** RCW 70.148.090 and 1990 c 64 s 10 are each amended to
13 read as follows:

14 (1) The activities and operations of the program are exempt from
15 the provisions and requirements of Title 48 RCW and to the extent of
16 their participation in the program, the activities and operations of
17 the insurer selected by the ((~~director~~)) department to provide
18 liability insurance coverage to owners and operators of underground
19 storage tanks are exempt from the requirements of Title 48 RCW except
20 for:

- 21 (a) Chapter 48.03 RCW pertaining to examinations;
- 22 (b) RCW 48.05.250 pertaining to annual reports;
- 23 (c) Chapter 48.12 RCW pertaining to assets and liabilities;
- 24 (d) Chapter 48.13 RCW pertaining to investments;
- 25 (e) Chapter 48.30 RCW pertaining to deceptive, false, or fraudulent
26 acts or practices; and
- 27 (f) Chapter 48.92 RCW pertaining to liability risk retention.

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

1 **Sec. 13.** RCW 70.148.130 and 2005 c 428 s 2 are each amended to
2 read as follows:

3 (1) Subject to the conditions and limitations of RCW 70.148.120
4 through 70.148.170, the ((~~director~~)) department shall establish and
5 manage a program for providing financial assistance to public and
6 private owners and operators of underground storage tanks who have been
7 certified by the governing body of the county, city, or town in which
8 the tanks are located as meeting a vital local government, public
9 health or safety need. In providing such financial assistance the
10 ((~~director~~)) department shall:

11 (a) Require owners and operators, including local government owners
12 and operators, to demonstrate serious financial hardship;

13 (b) Limit assistance to only that amount necessary to supplement
14 applicant financial resources;

15 (c) Limit assistance to no more than two hundred thousand dollars
16 in value for any one underground storage tank site of which amount no
17 more than seventy-five thousand dollars in value may be provided for
18 corrective action; and

19 (d) Whenever practicable, provide assistance through the direct
20 payment of contractors and other professionals for labor, materials,
21 and other services.

22 (2)(a) Except as otherwise provided in RCW 70.148.120 through
23 70.148.170, no grant of financial assistance may be used for any
24 purpose other than for corrective action and repair, replacement,
25 reconstruction, and improvement of underground storage tanks and tank
26 sites. If at any time prior to providing financial assistance or in
27 the course of providing such assistance, it appears to the ((~~director~~))
28 department that corrective action costs may exceed seventy-five
29 thousand dollars, the ((~~director~~)) department may not provide further
30 financial assistance until the owner or operator has developed and
31 implemented a corrective action plan with the department ((~~of~~
32 ~~ecology~~)).

33 (b) A grant of financial assistance may also be made to an owner or
34 operator that has discontinued using underground petroleum storage
35 tanks due to economic hardship. An owner or operator may receive a
36 grant up to two hundred thousand dollars per retailing location if:

37 (i) The property is located in an underserved rural area;

1 (ii) The property was previously used by a private owner or
2 operator to provide motor vehicle fuel; and

3 (iii) The property is at least ten miles from the nearest motor
4 vehicle fuel service station.

5 (3) When requests for financial assistance exceed available funds,
6 the ~~((director))~~ department shall give preference to providing
7 assistance first to those underground storage tank sites which
8 constitute the sole source of petroleum products in remote rural
9 communities.

10 (4) The ~~((director shall consult with the department of ecology in
11 approving — financial — assistance — for — corrective — action — to — ensure
12 compliance with regulations governing underground petroleum storage
13 tanks — and — corrective — action))~~ department, in approving financial
14 assistance for corrective action, shall ensure compliance with rules
15 governing underground petroleum storage tanks and corrective action.

16 (5) The ~~((director))~~ department shall approve or disapprove
17 applications for financial assistance within sixty days of receipt of
18 a completed application meeting the requirements of RCW 70.148.120
19 through 70.148.170. The certification by local government of an owner
20 or operator shall not preclude the ~~((director))~~ department from
21 disapproving an application for financial assistance if the
22 ~~((director))~~ department finds that such assistance would not meet the
23 purposes of RCW 70.148.120 through 70.148.170.

24 (6) The ~~((director))~~ department may adopt all rules necessary to
25 implement the financial assistance program and shall consult with the
26 technical advisory committee established under RCW 70.148.030 in
27 developing such rules and in reviewing applications for financial
28 assistance.

29 **Sec. 14.** RCW 70.148.140 and 1991 c 4 s 3 are each amended to read
30 as follows:

31 (1) To qualify for financial assistance, a private owner or
32 operator retailing petroleum products to the public must:

33 (a) First apply for insurance from the pollution liability
34 insurance program and request financial assistance in a form and manner
35 required by the ~~((director))~~ department;

36 (b) If the ~~((director))~~ department makes a preliminary
37 determination of possible eligibility for financial assistance, apply

1 to the appropriate governing body of the city or town in which the
2 tanks are located or in the case where the tanks are located outside of
3 the jurisdiction of a city or town, then to the appropriate governing
4 body of the county in which the tanks are located, for a determination
5 by the governing body of the city, town, or county that the continued
6 operation of the tanks meets a vital local government, or public health
7 or safety need; and

8 (c) Qualify for insurance coverage from the pollution liability
9 insurance program if such financial assistance were to be provided.

10 (2) In consideration for financial assistance and prior to
11 receiving such assistance the owner and operator must enter into an
12 agreement with the state whereby the owner and operator agree:

13 (a) To sell petroleum products to the public;

14 (b) To maintain the tank site for use in the retail sale of
15 petroleum products for a period of not less than fifteen years from the
16 date of agreement;

17 (c) To sell petroleum products to local government entities within
18 the affected community on a cost-plus basis periodically negotiated
19 between the owner and operator and the city, town, or county in which
20 the tanks are located; and

21 (d) To maintain compliance with state underground storage tank
22 financial responsibility and environmental regulations.

23 (3) The agreement shall be filed as a real property lien against
24 the tank site with the county auditor (~~(of the county))~~ of the county
25 in which the tanks are located. If the owner or operator transfers his
26 or her interest in such property, the new owner or operator must agree
27 to abide by the agreement or any financial assistance provided under
28 RCW 70.148.120 through 70.148.170 shall be immediately repaid to the
29 state by the owner or operator who received such assistance.

30 (4) As determined by the (~~director~~) department, if an owner or
31 operator materially breaches the agreement, any financial assistance
32 provided shall be immediately repaid by such owner or operator.

33 (5) The agreement between an owner and operator and the state
34 required under this section shall expire fifteen years from the date of
35 entering into the agreement.

36 **Sec. 15.** RCW 70.148.150 and 1991 c 4 s 4 are each amended to read
37 as follows:

1 (1) To qualify for financial assistance, a public owner or operator
2 must:

3 (a) First apply for insurance from the pollution liability
4 insurance program and request financial assistance in a form and manner
5 required by the ((~~director~~)) department;

6 (b) Provide to the ((~~director~~)) department a copy of the resolution
7 by the governing body of the city, town, or county having jurisdiction,
8 finding that the continued operation of the tanks is necessary to
9 maintain vital local public health, education, or safety needs;

10 (c) Qualify for insurance coverage from the pollution liability
11 insurance program if such financial assistance were to be provided.

12 (2) The ((~~director~~)) department shall give priority to and shall
13 encourage local government entities to consolidate multiple operational
14 underground storage tank sites into as few sites as possible. For this
15 purpose, the ((~~director~~)) department may provide financial assistance
16 for the establishment of a new local government underground storage
17 tank site contingent upon the closure of other operational sites in
18 accordance with environmental regulations. Within the per site
19 financial limits imposed under RCW 70.148.120 through 70.148.170, the
20 ((~~director~~)) department may authorize financial assistance for the
21 closure of operational sites when closure is for the purpose of
22 consolidation.

23 **Sec. 16.** RCW 70.148.160 and 1991 c 4 s 5 are each amended to read
24 as follows:

25 To qualify for financial assistance, a rural hospital ((~~as defined~~
26 ~~in RCW 18.89.020~~)), owning or operating an underground storage tank
27 must:

28 (1) First apply for insurance from the pollution liability
29 insurance program and request financial assistance in a form and manner
30 required by the ((~~director~~)) department;

31 (2) Apply to the governing body of the city, town, or county in
32 which the hospital is located for certification that the continued
33 operation of the tank or tanks is necessary to maintain vital local
34 public health or safety needs;

35 (3) Qualify for insurance coverage from the pollution liability
36 insurance program if such financial assistance were to be provided; and

1 (4) Agree to provide charity care (~~as defined in RCW 70.39.020~~)
2 in an amount of equivalent value to the financial assistance provided
3 under RCW 70.148.120 through 70.148.170. The (~~director~~) department
4 shall consult with the department of health to monitor and determine
5 the time period over which such care should be expected to be provided
6 in the local community.

7 **Sec. 17.** RCW 70.148.170 and 1991 c 4 s 6 are each amended to read
8 as follows:

9 (1) The (~~director~~) department shall develop and distribute to
10 appropriate cities, towns, and counties a form for use by the local
11 government in making the certification required for all private owner
12 and operator financial assistance along with instructions on the use of
13 such form.

14 (2) In certifying a private owner or operator retailing petroleum
15 products to the public as meeting vital local government, public health
16 or safety needs, the local government shall:

17 (a) Consider and find that other retail suppliers of petroleum
18 products are located remote from the local community;

19 (b) Consider and find that the owner or operator requesting
20 certification is capable of faithfully fulfilling the agreement
21 required for financial assistance;

22 (c) Designate the local government official who will be responsible
23 for negotiating the price of petroleum products to be sold on a cost-
24 plus basis to the local government entities in the affected communities
25 and the entities eligible to receive petroleum products at such price;
26 and

27 (d) State the vital need or needs that the owner or operator meets.

28 (3) In certifying a hospital as meeting local public health and
29 safety needs the local government shall:

30 (a) Consider and find that the continued use of the underground
31 storage tank by the hospital is necessary; and

32 (b) Consider and find that the hospital provides health care
33 services to the poor and otherwise provides charity care.

34 (4) The (~~director~~) department shall notify the governing body of
35 the city, town, or county providing certification when financial
36 assistance for a private owner or operator has been approved.

1 **Sec. 18.** RCW 70.149.010 and 1995 c 20 s 1 are each amended to read
2 as follows:

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

13 (2) The pollution liability insurance program established by this
14 chapter and chapter 70.148 RCW is merged into the department.

15 **Sec. 19.** RCW 70.149.030 and 1995 c 20 s 3 are each amended to read
16 as follows:

17 Unless the context clearly requires otherwise, the definitions in
18 this section apply throughout this chapter.

19 (1) "Accidental release" means a sudden or nonsudden release of
20 heating oil, occurring after July 23, 1995, from operating a heating
21 oil tank that results in bodily injury, property damage, or a need for
22 corrective action, neither expected nor intended by the owner or
23 operator.

24 (2) "Bodily injury" means bodily injury, sickness, or disease
25 sustained by a person, including death at any time, resulting from the
26 injury, sickness, or disease.

27 (3)(a) "Corrective action" means those actions reasonably required
28 to be undertaken by the insured to remove, treat, neutralize, contain,
29 or clean up an accidental release in order to comply with a statute,
30 ordinance, rule, regulation, directive, order, or similar legal
31 requirement, in effect at the time of an accidental release, of the
32 United States, the state of Washington, or a political subdivision of
33 the United States or the state of Washington. "Corrective action"
34 includes, where agreed to in writing, in advance by the insurer, action
35 to remove, treat, neutralize, contain, or clean up an accidental
36 release to avert, reduce, or eliminate the liability of the insured for

1 corrective action, bodily injury, or property damage. "Corrective
2 action" also includes actions reasonably necessary to monitor, assess,
3 and evaluate an accidental release.

4 (b) "Corrective action" does not include:

5 (i) Replacement or repair of heating oil tanks or other
6 receptacles; or

7 (ii) Replacement or repair of piping, connections, and valves of
8 tanks or other receptacles.

9 (4) "Defense costs" include the costs of legal representation,
10 expert fees, and related costs and expenses incurred in defending
11 against claims or actions brought by or on behalf of:

12 (a) The United States, the state of Washington, or a political
13 subdivision of the United States or state of Washington to require
14 corrective action or to recover costs of corrective action; or

15 (b) A third party for bodily injury or property damage caused by an
16 accidental release.

17 (5) "Department" means the Washington state department of ecology.

18 (6) "Director" means the director of the (~~Washington-state~~
19 ~~pollution-liability-insurance-agency~~) department or the director's
20 appointed representative.

21 ~~((6))~~ (7) "Heating oil" means any petroleum product used for
22 space heating in oil-fired furnaces, heaters, and boilers, including
23 stove oil, diesel fuel, or kerosene. "Heating oil" does not include
24 petroleum products used as fuels in motor vehicles, marine vessels,
25 trains, buses, aircraft, or any off-highway equipment not used for
26 space heating, or for industrial processing or the generation of
27 electrical energy.

28 ~~((7))~~ (8) "Heating oil tank" means a tank and its connecting
29 pipes, whether above or below ground, or in a basement, with pipes
30 connected to the tank for space heating of human living or working
31 space on the premises where the tank is located. "Heating oil tank"
32 does not include a decommissioned or abandoned heating oil tank, or a
33 tank used solely for industrial process heating purposes or generation
34 of electrical energy.

35 ~~((8))~~ (9) "Occurrence" means an accident, including continuous or
36 repeated exposure to conditions, that results in a release from a
37 heating oil tank.

1 ~~((9))~~ (10) "Owner or operator" means a person in control of, or
2 having responsibility for, the daily operation of a heating oil tank.

3 ~~((10))~~ (11) "Pollution liability insurance ~~((agency))~~ program" or
4 "program" means the Washington state pollution liability insurance
5 ~~((agency))~~ program located within the department.

6 ~~((11))~~ (12) "Property damage" means:

7 (a) Physical injury to, destruction of, or contamination of
8 tangible property, including the loss of use of the property resulting
9 from the injury, destruction, or contamination; or

10 (b) Loss of use of tangible property that has not been physically
11 injured, destroyed, or contaminated but has been evacuated, withdrawn
12 from use, or rendered inaccessible because of an accidental release.

13 ~~((12))~~ (13) "Release" means a spill, leak, emission, escape, or
14 leaching into the environment.

15 ~~((13))~~ (14) "Remedial action costs" means reasonable costs that
16 are attributable to or associated with a remedial action.

17 ~~((14))~~ (15) "Tank" means a stationary device, designed to contain
18 an accumulation of heating oil, that is constructed primarily of
19 nonearthen materials such as concrete, steel, fiberglass, or plastic
20 that provides structural support.

21 ~~((15))~~ (16) "Third-party liability" means the liability of a
22 heating oil tank owner to another person due to property damage or
23 personal injury that results from a leak or spill.

24 **Sec. 20.** RCW 70.149.040 and 2009 c 560 s 11 are each amended to
25 read as follows:

26 The ~~((director))~~ department shall:

27 (1) Design a program, consistent with RCW 70.149.120, for providing
28 pollution liability insurance for heating oil tanks that provides up to
29 sixty thousand dollars per occurrence coverage and aggregate limits,
30 and protects the state of Washington from unwanted or unanticipated
31 liability for accidental release claims. The department shall require
32 a competitive bid process for cleanups covered under the insurance
33 program. The department shall also implement additional cost control
34 measures that provide the most efficient and effective use of program
35 funds;

36 (2) Administer, implement, and enforce the provisions of this
37 chapter. To assist in administration of the program, the director is

1 authorized to appoint up to two employees who are exempt from the civil
2 service law, chapter 41.06 RCW, and who shall serve at the pleasure of
3 the director;

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

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

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

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

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

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

23 (9) Implement a program to provide advice and technical assistance
24 to owners and operators of active and abandoned heating oil tanks if
25 contamination from an active or abandoned heating oil tank is
26 suspected. Advice and assistance regarding administrative and
27 technical requirements may include observation of testing or site
28 assessment and review of the results of reports. If the ((director))
29 department finds that contamination is not present or that the
30 contamination is apparently minor and not a threat to human health or
31 the environment, the ((director)) department may provide written
32 opinions and conclusions on the results of the investigation to owners
33 and operators of active and abandoned heating oil tanks. The
34 ((agency)) department is authorized to collect, from persons requesting
35 advice and assistance, the costs incurred by the ((agency)) department
36 in providing such advice and assistance. The costs may include travel
37 costs and expenses associated with review of reports and preparation of
38 written opinions and conclusions. Funds from cost reimbursement must

1 be deposited in the heating oil pollution liability trust account. The
2 state of Washington, the department, the pollution liability insurance
3 (~~agency~~) program, and its officers and employees are immune from all
4 liability, and no cause of action arises from any act or omission in
5 providing, or failing to provide, such advice, opinion, conclusion, or
6 assistance;

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

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

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

16 **Sec. 21.** RCW 70.149.050 and 1995 c 20 s 5 are each amended to read
17 as follows:

18 (1) In selecting an insurer to provide pollution liability
19 insurance coverage to owners and operators of heating oil tanks used
20 for space heating, the (~~director~~) department shall evaluate bids
21 based upon criteria established by the (~~director~~) department that
22 shall include:

23 (a) The insurer's ability to underwrite pollution liability
24 insurance;

25 (b) The insurer's ability to settle pollution liability claims
26 quickly and efficiently;

27 (c) The insurer's estimate of underwriting and claims adjustment
28 expenses;

29 (d) The insurer's estimate of premium rates for providing coverage;

30 (e) The insurer's ability to manage and invest premiums; and

31 (f) The insurer's ability to provide risk management guidance to
32 insureds.

33 (2) The (~~director~~) department shall select the bidder most
34 qualified to provide insurance consistent with this chapter and need
35 not select the bidder submitting the least expensive bid. The
36 (~~director~~) department may consider bids by groups of insurers and

1 management companies who propose to act in concert in providing
2 coverage and who otherwise meet the requirements of this chapter.

3 (3) Owners and operators of heating oil tanks, or sites containing
4 heating oil tanks where a preexisting release has been identified or
5 where the owner or operator knows of a preexisting release are eligible
6 for coverage under the program subject to the following conditions:

7 (a) The owner or operator must have a plan for proceeding with
8 corrective action; and

9 (b) If the owner or operator files a claim with the insurer, the
10 owner or operator has the burden of proving that the claim is not
11 related to a preexisting release until the owner or operator
12 demonstrates to the satisfaction of the ((~~director~~)) department that
13 corrective action has been completed.

14 **Sec. 22.** RCW 70.149.060 and 1995 c 20 s 6 are each amended to read
15 as follows:

16 (1) The activities and operations of the program are exempt from
17 the provisions and requirements of Title 48 RCW and to the extent of
18 their participation in the program, the activities and operations of
19 the insurer selected by the ((~~director~~)) department to provide
20 liability insurance coverage to owners and operators of heating oil
21 tanks are exempt from the requirements of Title 48 RCW except for:

- 22 (a) Chapter 48.03 RCW pertaining to examinations;
- 23 (b) RCW 48.05.250 pertaining to annual reports;
- 24 (c) Chapter 48.12 RCW pertaining to assets and liabilities;
- 25 (d) Chapter 48.13 RCW pertaining to investments;
- 26 (e) Chapter 48.30 RCW pertaining to deceptive, false, or fraudulent
27 acts or practices; and
- 28 (f) Chapter 48.92 RCW pertaining to liability risk retention.

29 (2) To the extent of their participation in the program, the
30 insurer selected by the ((~~director~~)) department to provide liability
31 insurance coverage to owners and operators of heating oil tanks shall
32 not participate in the Washington insurance guaranty association nor
33 shall the association be liable for coverage provided to owners and
34 operators of heating oil tanks issued in connection with the program.

35 **Sec. 23.** RCW 70.149.090 and 2005 c 274 s 342 are each amended to
36 read as follows:

1 The following shall be confidential and exempt under chapter 42.56
2 RCW, subject to the conditions set forth in this section:

3 (1) All examination and proprietary reports and information
4 obtained by the (~~director~~) department and the (~~director's~~)
5 department's staff in soliciting bids from insurers and in monitoring
6 the insurer selected by the (~~director~~) department may not be made
7 public or otherwise disclosed to any person, firm, corporation, agency,
8 association, governmental body, or other entity.

9 (2) All information obtained by the (~~director~~) department or the
10 (~~director's~~) department's staff related to registration of heating
11 oil tanks to be insured may not be made public or otherwise disclosed
12 to any person, firm, corporation, agency, association, governmental
13 body, or other entity.

14 (3) The (~~director~~) department may furnish all or part of
15 examination reports prepared by the (~~director~~) department or by any
16 person, firm, corporation, association, or other entity preparing the
17 reports on behalf of the director to:

18 (a) The Washington state insurance commissioner;

19 (b) A person or organization officially connected with the insurer
20 as officer, director, attorney, auditor, or independent attorney or
21 independent auditor; and

22 (c) The attorney general in his or her role as legal advisor to the
23 (~~director~~) department.

24 **Sec. 24.** RCW 70.149.120 and 2007 c 240 s 2 are each amended to
25 read as follows:

26 (1) The (~~pollution liability insurance agency~~) department shall
27 identify design criteria for heating oil tanks that provide superior
28 protection against future leaks as compared to standard steel tank
29 designs. Any tank designs identified under this section must either be
30 constructed with fiberglass or offer at least an equivalent level of
31 protection against leaks as a standard fiberglass design.

32 (2) The (~~pollution liability insurance agency~~) department shall
33 reimburse any owner or operator, who is participating in the program
34 created in this chapter and who has experienced an occurrence or
35 remedial action, for the difference in price between a standard steel
36 heating tank and a new heating oil tank that satisfies the design

1 standards identified under subsection (1) of this section, if the owner
2 or operator chooses or is required to replace his or her tank at the
3 time of the occurrence or remedial action.

4 (3) Any new heating oil tank reimbursement provided under this
5 section must be funded within the amount of per occurrence coverage
6 provided to the owner or operator under RCW 70.149.040.

7 NEW SECTION. **Sec. 25.** A new section is added to chapter 70.149
8 RCW to read as follows:

9 (1) The following decisions by the department regarding the heating
10 oil pollution liability insurance program may be appealed to the
11 pollution control hearings board: Denial of eligibility for coverage;
12 amount of payment allowed for corrective action; amount of payment
13 allowed for property damage; and amount of payment allowed for a third-
14 party claim.

15 (2) A party aggrieved by a decision of the department regarding
16 denial of eligibility for coverage; amount of payment allowed for
17 corrective action; amount of payment allowed for property damage; or
18 the amount of payment allowed for a third-party claim may appeal the
19 decision to the pollution control hearings board within thirty days of
20 the decision. Review of such a decision must be conducted in
21 accordance with chapter 43.21B RCW. The pollution control hearings
22 board may hear such an appeal as a short board appeal pursuant to RCW
23 43.21B.305. Any subsequent appeal of a decision of the pollution
24 control hearings board shall be obtained in accordance with RCW
25 43.21B.180.

26 (3) If the appeal to the pollution control hearings board is not
27 received within thirty days after the decision, no further
28 consideration will be given to the appeal.

29 **Sec. 26.** RCW 43.21B.110 and 2009 c 456 s 16, 2009 c 332 s 18, and
30 2009 c 183 s 17 are each reenacted and amended to read as follows:

31 (1) The hearings board shall only have jurisdiction to hear and
32 decide appeals from the following decisions of the department, the
33 director, local conservation districts, and the air pollution control
34 boards or authorities as established pursuant to chapter 70.94 RCW, or
35 local health departments:

1 (a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431,
2 70.105.080, 70.107.050, 88.46.090, 90.03.600, 90.46.270, 90.48.144,
3 90.56.310, and 90.56.330.

4 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
5 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070,
6 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

7 (c) A final decision by the department or director made under
8 chapter 183, Laws of 2009.

9 (d) Except as provided in RCW 90.03.210(2), the issuance,
10 modification, or termination of any permit, certificate, or license by
11 the department or any air authority in the exercise of its
12 jurisdiction, including the issuance or termination of a waste disposal
13 permit, the denial of an application for a waste disposal permit, the
14 modification of the conditions or the terms of a waste disposal permit,
15 or a decision to approve or deny an application for a solid waste
16 permit exemption under RCW 70.95.300.

17 (e) Decisions of local health departments regarding the grant or
18 denial of solid waste permits pursuant to chapter 70.95 RCW.

19 (f) Decisions of local health departments regarding the issuance
20 and enforcement of permits to use or dispose of biosolids under RCW
21 70.95J.080.

22 (g) Decisions of the department regarding waste-derived fertilizer
23 or micronutrient fertilizer under RCW 15.54.820, and decisions of the
24 department regarding waste-derived soil amendments under RCW 70.95.205.

25 (h) Decisions of local conservation districts related to the denial
26 of approval or denial of certification of a dairy nutrient management
27 plan; conditions contained in a plan; application of any dairy nutrient
28 management practices, standards, methods, and technologies to a
29 particular dairy farm; and failure to adhere to the plan review and
30 approval timelines in RCW 90.64.026.

31 (i) Any other decision by the department or an air authority which
32 pursuant to law must be decided as an adjudicative proceeding under
33 chapter 34.05 RCW.

34 (j) Regarding the heating oil pollution liability insurance program
35 described in chapter 70.149 RCW, any decision by the department
36 regarding: Denial of eligibility for coverage; amount of payment
37 allowed for corrective action; amount of payment allowed for property

1 damage; and amount of payment allowed for a third-party claim. The
2 pollution control hearings board may hear such an appeal as a short
3 board appeal pursuant to RCW 43.21B.305.

4 (2) The following hearings shall not be conducted by the hearings
5 board:

6 (a) Hearings required by law to be conducted by the shorelines
7 hearings board pursuant to chapter 90.58 RCW.

8 (b) Hearings conducted by the department pursuant to RCW 70.94.332,
9 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, 70.148.080, and
10 90.44.180.

11 (c) Appeals of decisions by the department under RCW 90.03.110 and
12 90.44.220.

13 (d) Hearings conducted by the department to adopt, modify, or
14 repeal rules.

15 (e) Appeals of decisions by the department as provided in chapter
16 43.21L RCW.

17 (3) Review of rules and regulations adopted by the hearings board
18 shall be subject to review in accordance with the provisions of the
19 administrative procedure act, chapter 34.05 RCW.

20 NEW SECTION. Sec. 27. By September 1, 2011, the department of
21 ecology shall submit a report to the governor and appropriate
22 legislative committees that include findings on the consolidation of
23 the pollution liability insurance agency within the department of
24 ecology and recommendations for legislation in 2012, including draft
25 legislation, if needed, to implement the recommendations and strategies
26 identified in the report. In the report, the department of ecology
27 shall discuss:

28 (1) Statutory changes that would ensure that the pollution
29 liability insurance program's consolidation within the department of
30 ecology is efficient and effective;

31 (2) The organizational structure of the pollution liability
32 insurance program;

33 (3) The appeals process;

34 (4) Information management;

35 (5) Coordination of the pollution liability insurance program,
36 underground storage tanks rule, and toxics cleanup program;

1 (6) Whether participants utilizing the program under chapter 70.149
2 RCW should be required to continue using oil for home heating for a
3 certain period of time or compensate the fund;

4 (7) The effect of requiring a competitive bid process and other
5 cost control measures as required in RCW 70.149.040; and

6 (8) Reauthorization of the pollution liability insurance program by
7 July 1, 2013.

8 NEW SECTION. **Sec. 28.** A new section is added to chapter 70.148
9 RCW to read as follows:

10 (1) The pollution liability insurance agency is transferred to the
11 department.

12 (2)(a) All reports, documents, surveys, books, records, files,
13 papers, or written material in the possession of the pollution
14 liability insurance agency shall be delivered to the custody of the
15 department of ecology. All cabinets, furniture, office equipment,
16 motor vehicles, and other tangible property employed by the pollution
17 liability insurance agency shall be transferred to the department of
18 ecology. All funds, credits, or other assets held by the pollution
19 liability insurance agency shall be assigned to the department of
20 ecology.

21 (b) Any appropriations made to the pollution liability insurance
22 agency shall be transferred and credited to the department of ecology.

23 (c) If any question arises as to the transfer of any personnel,
24 funds, books, documents, records, papers, files, equipment, or other
25 tangible property used or held in the exercise of the powers and the
26 performance of the duties and functions transferred, the director of
27 financial management shall make a determination as to the proper
28 allocation and certify the same to the state agencies concerned.

29 (3) All employees of the pollution liability insurance agency are
30 transferred to the jurisdiction of the department of ecology. All
31 employees classified under chapter 41.06 RCW, the state civil service
32 law, are assigned to the department of ecology to perform their usual
33 duties upon the same terms as formerly, without any loss of rights,
34 subject to any action that may be appropriate thereafter in accordance
35 with the laws and rules governing state civil service.

36 (4) All rules and all pending business before the pollution
37 liability insurance agency shall be continued and acted upon by the

1 pollution liability insurance program as part of the department of
2 ecology. All existing contracts and obligations shall remain in full
3 force and shall be performed by the pollution liability insurance
4 program as part of the department of ecology.

5 (5) The transfer of the powers, duties, functions, and personnel of
6 the pollution liability insurance agency to the department of ecology
7 under this act shall not affect the validity of any activity performed
8 before the effective date of this section or the effective date of the
9 consolidation.

10 (6) If apportionments of budgeted funds are required because of the
11 consolidation directed by this section, the director of financial
12 management shall certify the apportionments to the affected agencies,
13 the state auditor, and the state treasurer. Each of these shall make
14 the appropriate transfer and adjustments in funds and appropriation
15 accounts and equipment records in accordance with the certification.

16 (7) All classified employees of the pollution liability insurance
17 agency assigned to the department of ecology under this act whose
18 positions are within an existing bargaining unit description at the
19 department of ecology shall become a part of the existing bargaining
20 unit at the department of ecology and shall be considered an
21 appropriate inclusion or modification of the existing bargaining unit
22 under the provisions of chapter 41.80 RCW.

23 NEW SECTION. **Sec. 29.** This act takes effect July 1, 2010.

24 NEW SECTION. **Sec. 30.** (1) Sections 1 through 26 and 28 of this
25 act expire June 1, 2013.

26 (2) Section 27 of this act expires January 1, 2012.

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