S-4379.1

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**SECOND SUBSTITUTE SENATE BILL 6187**

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**State of Washington 64th Legislature 2016 Regular Session**

**By** Senate Ways & Means (originally sponsored by Senators Litzow, Ranker, Fraser, and Sheldon; by request of Pollution Liability Insurance Agency)

AN ACT Relating to the authority of the pollution liability insurance agency; amending RCW 70.148.020, 70.148.900, 70.149.900, 82.23A.020, and 82.23A.902; reenacting and amending RCW 43.84.092; adding a new chapter to Title 70 RCW; creating a new section; repealing RCW 70.148.120, 70.148.130, 70.148.140, 70.148.150, 70.148.160, and 70.148.170; providing an effective date; and providing expiration dates.

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

NEW SECTION. **Sec.**  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) Remediate past releases; (2) upgrade, replace, or remove petroleum underground storage tank systems to prevent future releases; and (3) install new infrastructure or retrofit existing infrastructure for dispensing renewable or alternative energy.

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

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

(4) "Owner" means any person who owns a petroleum underground storage tank system.

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

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

(8) "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) "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.

NEW SECTION. **Sec.**  (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 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.

(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.

NEW SECTION. **Sec.**  (1) A recipient of a loan or grant may not use these funds to conduct remedial actions of a release or threatened release from a petroleum underground storage tank system requiring financial assurances under chapter 90.76 RCW or subtitle I of the solid waste disposal act (42 U.S.C., chapter 82, subchapter IX) unless the owner or operator:

(a) Agrees to first expend all moneys available under the required financial assurances;

(b) Demonstrates that all moneys available under the required financial assurances have been expended; or

(c) Demonstrates that a claim has been made under the required financial assurances and the claim has been rejected by the provider.

(2) A recipient must use a loan or grant for a project that develops and acquires assets that have a useful life of at least thirteen years.

NEW SECTION. **Sec.**  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 loan and grant recipients and manage the work conducted under section 3(1) of this act.

(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.

NEW SECTION. **Sec.**  (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. 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 section 5 of this act. 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).

NEW SECTION. **Sec.**  (1) The agency may file a lien against the underground storage tank facility if the agency incurs remedial action costs and those costs are unrecovered by the agency.

(a) A lien filed under this section may not exceed the remedial action costs incurred by the agency.

(b) A lien filed under this section has priority in rank over all other privileges, liens, monetary encumbrances, or other security interests affecting the real property, whenever incurred, filed, or recorded, except for local and special district property tax assessments.

(2) Before filing a lien under this section, the agency shall give notice of its intent to file a lien to the owner of the underground storage tank facility on which the lien is to be filed, mortgagees, and lien holders of record.

(a) The agency shall send the notice by certified mail to the underground storage tank facility owner and mortgagees of record at the addresses listed in the recorded documents. If the underground storage tank facility owner is unknown or if a mailed notice is returned as undeliverable, the agency shall provide notice by posting a legal notice in the newspaper of largest circulation in the county in which the site is located. The notice must provide:

(i) A statement of the purpose of the lien;

(ii) A brief description of the real property to be affected by the lien; and

(iii) A statement of the remedial action costs incurred by the agency.

(b) If the agency has reason to believe that exigent circumstances require the filing of a lien prior to giving notice under this subsection, the agency may file the lien immediately. Exigent circumstances include, but are not limited to, an imminent bankruptcy filing by the underground storage tank facility owner or the imminent transfer or sale of the real property subject to lien by the underground storage tank facility owner, or both.

(3) A lien filed under this section is effective when a statement of lien is filed with the county auditor in the county where the underground storage tank facility is located. The statement of lien must include a description of the real property subject to lien and the amount of the lien.

(4) Unless the agency determines it is in the public interest to remove the lien, the lien continues until the liabilities for the remedial action costs have been satisfied through sale of the real property, foreclosure, or other means agreed to by the agency. Any action for foreclosure of the lien must be brought by the attorney general in a civil action in the court having jurisdiction and in the manner prescribed for judicial foreclosure of a mortgage under chapter 61.24 RCW.

(5) The agency may not file a lien under this section against an underground storage tank facility owned by a local government.

NEW SECTION. **Sec.**  (1) The pollution liability insurance agency underground storage tank revolving account is created in the state treasury. All receipts from sources identified under subsection (2) of this section must be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for items identified under subsection (3) of this section.

(2) The following receipts must be deposited into the account:

(a) All moneys appropriated by the legislature to pay for the agency's operating costs to carry out the purposes of this chapter;

(b) All moneys appropriated by the legislature to provide loans and grants under section 3 of this act;

(c) Any repayment of loans provided under section 3 of this act;

(d) All moneys appropriated by the legislature to conduct remedial actions under section 6 of this act;

(e) Any recovery of the costs of remedial actions conducted under section 6 of this act;

(f) Any grants provided by the federal government to the agency to achieve the purposes of this chapter; and

(g) Any other deposits made from a public or private entity to achieve the purposes of this chapter.

(3) Moneys in the account may be used by the agency only to carry out the purposes of this chapter including, but not limited to:

(a) The costs of the agency and department of health to carry out the purposes of this chapter;

(b) Loans and grants under section 3 of this act;

(c) Remedial actions under section 6 of this act; and

(d) State match requirements for grants provided to the agency by the federal government.

NEW SECTION. **Sec.**  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 section 8 of this act 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 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;

(4) For each underground storage tank facility where the agency conducted remedial actions under section 6 of this act 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 section 7 of this act, 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.

NEW SECTION. **Sec.**  The agency must adopt rules under chapter 34.05 RCW necessary to carry out the provisions of this chapter. To accelerate remedial actions, the agency shall enter into a memorandum of agreement with the department of health under section 5 of this act within one year of the effective date of this section. To ensure the adoption of rules will not delay the award of a loan or grant, the agency may implement the underground storage tank revolving program through interpretative guidance pending adoption of rules.

NEW SECTION. **Sec.**  Officers, employees, and authorized representatives of the agency and the department of health, and the state of Washington are immune from civil liability and no cause of action of any nature may arise from any act or omission in exercising powers and duties under this chapter.

NEW SECTION. **Sec.**  Nothing in this chapter limits the authority of the department of ecology under chapter 70.105D RCW.

NEW SECTION. **Sec.**  (1) Sections 1 through 12 of this act expire July 1, 2030.

(2) The expiration of sections 1 through 12 of this act does not terminate any of the following rights, obligations, authorities or any provision necessary to carry out:

(a) The repayment of loans due and payable to the lender or the state of Washington;

(b) The resolution of any cost recovery action or the initiation of any action or other collection process to recover defaulted loan moneys due to the state of Washington; and

(c) The resolution of any action or the initiation of any action to recover the agency's remedial actions costs under section 7 of this act.

(3) On July 1, 2030, the pollution liability insurance agency underground storage tank revolving account and all moneys due that account revert to, and accrue to the benefit of, the department of health.

NEW SECTION. **Sec.**  If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

**Sec.**  RCW 70.148.020 and 2013 2nd sp.s. c 4 s 993 are each amended to read as follows:

(1) The pollution liability insurance program trust account is established in the custody of the state treasurer. All funds appropriated for this chapter and all premiums collected for reinsurance shall be deposited in the account. Except as provided in chapter 70.--‑ RCW (the new chapter created in section 22 of this act), expenditures from the account shall be used exclusively for the purposes of this chapter including payment of costs of administering the pollution liability insurance and underground storage tank community assistance programs. Expenditures for payment of administrative and operating costs of the agency are subject to the allotment procedures under chapter 43.88 RCW and may be made only after appropriation by statute. No appropriation is required for other expenditures from the account.

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

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

~~(4) During the 2013-2015 fiscal biennium, the legislature may transfer from the pollution liability insurance program trust account to the state general fund such amounts as reflect the excess fund balance of the account.~~

~~(5)~~)) This section expires July 1, ((~~2020~~)) 2030.

**Sec.**  RCW 70.148.900 and 2012 1st sp.s. c 3 s 2 are each amended to read as follows:

This chapter expires July 1, ((~~2020~~)) 2030.

**Sec.**  RCW 70.149.900 and 2012 1st sp.s. c 3 s 3 are each amended to read as follows:

This chapter expires July 1, ((~~2020~~)) 2030.

**Sec.**  RCW 82.23A.020 and 2012 1st sp.s. c 3 s 5 are each amended to read as follows:

(1) A tax is imposed on the privilege of possession of petroleum products in this state. The rate of the tax shall be thirty one-hundredths of one percent multiplied by the wholesale value of the petroleum product. After July 1, 2021, the rate of tax is fifteen one-hundredths of one percent multiplied by the wholesale value of the petroleum product. For purposes of determining the tax imposed under this section for petroleum products introduced at the rack, the wholesale value is determined when the petroleum product is removed at the rack unless the removal is to an exporter licensed under chapter ((~~82.36 or~~)) 82.38 RCW for direct delivery to a destination outside of the state. For all other cases, the wholesale value is determined upon the first nonbulk possession in the state.

(2) Except as identified in section 21 of this act, moneys collected under this chapter shall be deposited in the pollution liability insurance program trust account under RCW 70.148.020.

(3) Chapter 82.32 RCW applies to the tax imposed in this chapter. The tax due dates, reporting periods, and return requirements applicable to chapter 82.04 RCW apply equally to the tax imposed in this chapter.

(4) Within thirty days after the end of each calendar quarter the department shall determine the "quarterly balance," which shall be the cash balance in the pollution liability insurance program trust account as of the last day of that calendar quarter, after excluding the reserves determined for that quarter under RCW 70.148.020(2) ((~~and (3)~~)). Balance determinations by the department under this section are final and shall not be used to challenge the validity of any tax imposed under this section. For each subsequent calendar quarter, tax shall be imposed under this section during the entire calendar quarter unless:

(a) Tax was imposed under this section during the immediately preceding calendar quarter, and the most recent quarterly balance is more than fifteen million dollars; or

(b) Tax was not imposed under this section during the immediately preceding calendar quarter, and the most recent quarterly balance is more than seven million five hundred thousand dollars.

**Sec.**  RCW 82.23A.902 and 2012 1st sp.s. c 3 s 6 are each amended to read as follows:

This chapter expires July 1, ((~~2020~~)) 2030, coinciding with the expiration of chapter 70.148 RCW.

**Sec.**  RCW 43.84.092 and 2015 3rd sp.s. c 44 s 107 and 2015 3rd sp.s. c 12 s 3 are each reenacted and amended to read as follows:

(1) All earnings of investments of surplus balances in the state treasury shall be deposited to the treasury income account, which account is hereby established in the state treasury.

(2) The treasury income account shall be utilized to pay or receive funds associated with federal programs as required by the federal cash management improvement act of 1990. The treasury income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for refunds or allocations of interest earnings required by the cash management improvement act. Refunds of interest to the federal treasury required under the cash management improvement act fall under RCW 43.88.180 and shall not require appropriation. The office of financial management shall determine the amounts due to or from the federal government pursuant to the cash management improvement act. The office of financial management may direct transfers of funds between accounts as deemed necessary to implement the provisions of the cash management improvement act, and this subsection. Refunds or allocations shall occur prior to the distributions of earnings set forth in subsection (4) of this section.

(3) Except for the provisions of RCW 43.84.160, the treasury income account may be utilized for the payment of purchased banking services on behalf of treasury funds including, but not limited to, depository, safekeeping, and disbursement functions for the state treasury and affected state agencies. The treasury income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for payments to financial institutions. Payments shall occur prior to distribution of earnings set forth in subsection (4) of this section.

(4) Monthly, the state treasurer shall distribute the earnings credited to the treasury income account. The state treasurer shall credit the general fund with all the earnings credited to the treasury income account except:

(a) The following accounts and funds shall receive their proportionate share of earnings based upon each account's and fund's average daily balance for the period: The aeronautics account, the aircraft search and rescue account, the Alaskan Way viaduct replacement project account, the brownfield redevelopment trust fund account, the budget stabilization account, the capital vessel replacement account, the capitol building construction account, the Cedar River channel construction and operation account, the Central Washington University capital projects account, the charitable, educational, penal and reformatory institutions account, the cleanup settlement account, the Columbia river basin water supply development account, the Columbia river basin taxable bond water supply development account, the Columbia river basin water supply revenue recovery account, the common school construction fund, the community forest trust account, the connecting Washington account, the county arterial preservation account, the county criminal justice assistance account, the deferred compensation administrative account, the deferred compensation principal account, the department of licensing services account, the department of retirement systems expense account, the developmental disabilities community trust account, the diesel idle reduction account, the drinking water assistance account, the drinking water assistance administrative account, the drinking water assistance repayment account, the Eastern Washington University capital projects account, the Interstate 405 express toll lanes operations account, the education construction fund, the education legacy trust account, the election account, the electric vehicle charging infrastructure account, the energy freedom account, the energy recovery act account, the essential rail assistance account, The Evergreen State College capital projects account, the federal forest revolving account, the ferry bond retirement fund, the freight mobility investment account, the freight mobility multimodal account, the grade crossing protective fund, the public health services account, the high capacity transportation account, the state higher education construction account, the higher education construction account, the highway bond retirement fund, the highway infrastructure account, the highway safety fund, the high occupancy toll lanes operations account, the hospital safety net assessment fund, the industrial insurance premium refund account, the judges' retirement account, the judicial retirement administrative account, the judicial retirement principal account, the local leasehold excise tax account, the local real estate excise tax account, the local sales and use tax account, the marine resources stewardship trust account, the medical aid account, the mobile home park relocation fund, the motor vehicle fund, the motorcycle safety education account, the multimodal transportation account, the multiuse roadway safety account, the municipal criminal justice assistance account, the natural resources deposit account, the oyster reserve land account, the pension funding stabilization account, the perpetual surveillance and maintenance account, the pollution liability insurance agency underground storage tank revolving account, the public employees' retirement system plan 1 account, the public employees' retirement system combined plan 2 and plan 3 account, the public facilities construction loan revolving account beginning July 1, 2004, the public health supplemental account, the public works assistance account, the Puget Sound capital construction account, the Puget Sound ferry operations account, the Puget Sound taxpayer accountability account, the real estate appraiser commission account, the recreational vehicle account, the regional mobility grant program account, the resource management cost account, the rural arterial trust account, the rural mobility grant program account, the rural Washington loan fund, the site closure account, the skilled nursing facility safety net trust fund, the small city pavement and sidewalk account, the special category C account, the special wildlife account, the state employees' insurance account, the state employees' insurance reserve account, the state investment board expense account, the state investment board commingled trust fund accounts, the state patrol highway account, the state route number 520 civil penalties account, the state route number 520 corridor account, the state wildlife account, the supplemental pension account, the Tacoma Narrows toll bridge account, the teachers' retirement system plan 1 account, the teachers' retirement system combined plan 2 and plan 3 account, the tobacco prevention and control account, the tobacco settlement account, the toll facility bond retirement account, the transportation 2003 account (nickel account), the transportation equipment fund, the transportation fund, the transportation future funding program account, the transportation improvement account, the transportation improvement board bond retirement account, the transportation infrastructure account, the transportation partnership account, the traumatic brain injury account, the tuition recovery trust fund, the University of Washington bond retirement fund, the University of Washington building account, the volunteer firefighters' and reserve officers' relief and pension principal fund, the volunteer firefighters' and reserve officers' administrative fund, the Washington judicial retirement system account, the Washington law enforcement officers' and firefighters' system plan 1 retirement account, the Washington law enforcement officers' and firefighters' system plan 2 retirement account, the Washington public safety employees' plan 2 retirement account, the Washington school employees' retirement system combined plan 2 and 3 account, the Washington state health insurance pool account, the Washington state patrol retirement account, the Washington State University building account, the Washington State University bond retirement fund, the water pollution control revolving administration account, the water pollution control revolving fund, the Western Washington University capital projects account, the Yakima integrated plan implementation account, the Yakima integrated plan implementation revenue recovery account, and the Yakima integrated plan implementation taxable bond account. Earnings derived from investing balances of the agricultural permanent fund, the normal school permanent fund, the permanent common school fund, the scientific permanent fund, the state university permanent fund, and the state reclamation revolving account shall be allocated to their respective beneficiary accounts.

(b) Any state agency that has independent authority over accounts or funds not statutorily required to be held in the state treasury that deposits funds into a fund or account in the state treasury pursuant to an agreement with the office of the state treasurer shall receive its proportionate share of earnings based upon each account's or fund's average daily balance for the period.

(5) In conformance with Article II, section 37 of the state Constitution, no treasury accounts or funds shall be allocated earnings without the specific affirmative directive of this section.

NEW SECTION. **Sec.**  (1) On July 1, 2016, if the cash balance amount in the pollution liability insurance program trust account after excluding the reserves under RCW 70.148.020(2), exceeds seven million five hundred thousand dollars, 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.

(2) On July 1, 2017, and every two years thereafter at the start of each successive biennium, if the cash balance amount in the pollution liability insurance program trust account after excluding the reserves under RCW 70.148.020(2), exceeds seven million five hundred thousand dollars, the state treasurer shall transfer the amount exceeding seven million five hundred thousand dollars, 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, on July 1st of the subsequent fiscal year, if the cash balance amount in the pollution liability insurance program trust account after excluding the reserves under RCW 70.148.020(2), exceeds seven million five hundred thousand dollars, 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 a 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.**  Sections 1 through 13, 21, and 23 of this act constitute a new chapter in Title 70 RCW.

NEW SECTION. **Sec.**  Sections 1 through 13 of this act take effect July 1, 2016.

NEW SECTION. **Sec.**  The following acts or parts of acts are each repealed:

(1)RCW 70.148.120 (Financial assistance for corrective actions in small communities—Intent) and 2005 c 428 s 1 & 1991 c 4 s 1;

(2)RCW 70.148.130 (Financial assistance—Criteria) and 2005 c 428 s 2 & 1991 c 4 s 2;

(3)RCW 70.148.140 (Financial assistance—Private owner or operator) and 1991 c 4 s 3;

(4)RCW 70.148.150 (Financial assistance—Public owner or operator) and 1991 c 4 s 4;

(5)RCW 70.148.160 (Financial assistance—Rural hospitals) and 1991 c 4 s 5; and

(6)RCW 70.148.170 (Certification) and 1991 c 4 s 6.

**--- END ---**