

---

**HOUSE BILL 2475**

---

**State of Washington**

**66th Legislature**

**2020 Regular Session**

**By** Representatives Mead, DeBolt, Peterson, Doglio, and Lekanoff; by request of Pollution Liability Insurance Agency

Read first time 01/15/20. Referred to Committee on Environment & Energy.

1 AN ACT Relating to the underground storage tank reinsurance  
2 program; amending RCW 70.148.005, 70.148.050, 70.148.020, and  
3 70.148.090; and adding a new section to chapter 70.148 RCW.

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

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

7 (1) The legislature finds that:

8 (a) Final regulations adopted by the United States environmental  
9 protection agency (EPA) require owners and operators of underground  
10 petroleum storage tanks to demonstrate financial responsibility for  
11 accidental releases of petroleum as a precondition to continued  
12 ownership and operation of such tanks;

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

19 (c) Many owners and operators of underground petroleum storage  
20 tanks cannot purchase pollution liability insurance either because  
21 private insurance is unavailable at any price or because owners and

1 operators cannot meet the rigid underwriting standards of existing  
2 insurers, nor can many owners and operators meet the strict  
3 regulatory standards imposed for alternatives to the purchase of  
4 insurance; and

5 (d) Without a state financial responsibility program for owners  
6 and operators of underground petroleum storage tanks, many tank  
7 owners and operators will be forced to discontinue the ownership and  
8 operation of these tanks.

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

12 (a) Minimizes state involvement in pollution liability claims  
13 management and insurance administration;

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

16 (c) Creates incentives for private insurers to provide needed  
17 liability insurance; and

18 (d) Parallels generally accepted principles of insurance and risk  
19 management.

20 To that end, this chapter establishes a temporary program to  
21 provide pollution liability reinsurance at a price that will  
22 encourage a private insurance company or risk retention group to sell  
23 pollution liability insurance in accordance with the requirements of  
24 this chapter to owners and operators of underground petroleum storage  
25 tanks, thereby allowing the owners and operators to comply with the  
26 financial responsibility regulations of the EPA. In the event that  
27 private insurance is not available in the state, this chapter  
28 provides an emergency program to address the need of owners and  
29 operators of underground petroleum storage tanks to demonstrate  
30 financial responsibility so that businesses may continue to operate.

31 (3) It is not the intent of this chapter to permit owners and  
32 operators of underground petroleum storage tanks to obtain pollution  
33 liability insurance without regard to the quality or condition of  
34 their storage tanks or without regard to the risk management  
35 practices of tank owners and operators, nor is it the intent of this  
36 chapter to provide coverage or funding for past or existing petroleum  
37 releases. Further, it is the intent of the legislature that the  
38 program follow generally accepted insurance underwriting and  
39 actuarial principles and to deviate from those principles only to the  
40 extent necessary and within the tax revenue limits provided, to make

1 pollution liability insurance reasonably affordable and available to  
2 owners and operators who meet the requirements of this chapter,  
3 particularly to those owners and operators whose underground storage  
4 tanks meet a vital economic need within the affected community.

5 **Sec. 2.** RCW 70.148.050 and 2006 c 276 s 2 are each amended to  
6 read as follows:

7 The director has the following powers and duties:

8 (1) To design and from time to time revise a reinsurance contract  
9 providing coverage to an insurer meeting the requirements of this  
10 chapter. Before initially entering into a reinsurance contract, the  
11 director shall prepare an actuarial report describing the various  
12 reinsurance methods considered by the director and describing each  
13 method's costs. In designing the reinsurance contract the director  
14 shall consider common insurance industry reinsurance contract  
15 provisions and shall design the contract in accordance with the  
16 following guidelines:

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

21 (b) In the event of an insolvency of the insurer, the reinsurance  
22 contract shall provide reinsurance payable directly to the insurer or  
23 to its liquidator, receiver, or successor on the basis of the  
24 liability of the insurer in accordance with the reinsurance contract.  
25 In no event may the program be liable for or provide coverage for  
26 that portion of any covered loss that is the responsibility of the  
27 insurer whether or not the insurer is able to fulfill the  
28 responsibility.

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

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

36 (2) To design and implement a structure of periodic premiums due  
37 the director from the insurer that takes full advantage of revenue  
38 collections and projected revenue collections to ensure affordable  
39 premiums to the insured consistent with sound actuarial principles.

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

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

9 (5) To monitor the activities of the insurer to ensure compliance  
10 with this chapter and protect the program from excessive loss  
11 exposure resulting from claims mismanagement by the insurer.

12 (6) To monitor the success of the program and periodically make  
13 such reports and recommendations to the legislature as the director  
14 deems appropriate, and to annually publish a financial report on the  
15 pollution liability insurance program trust account showing, among  
16 other things, administrative and other expenses paid from the fund.

17 (7) To annually report the financial and loss experience of the  
18 insurer as to policies issued under the program and the financial and  
19 loss experience of the program to the legislature.

20 (8) To enter into contracts with public and private agencies to  
21 assist the director in his or her duties to design, revise, monitor,  
22 and evaluate the program and to provide technical or professional  
23 assistance to the director.

24 (9) To examine the affairs, transactions, accounts, records,  
25 documents, and assets of insurers as the director deems advisable.

26 (10) To design, in consultation with the office of financial  
27 management, an emergency program to assist owners and operators of  
28 underground storage tanks in meeting the federal financial  
29 responsibility requirements.

30 (11) To implement the emergency program in the event that a  
31 private insurer withdraws from the Washington pollution liability  
32 insurance program.

33 (12) To determine, assess, and collect moneys sufficient to cover  
34 the direct and indirect costs of implementing the emergency program,  
35 including initial program development costs. The moneys may be  
36 collected from underground storage tank owners and operators who are  
37 using the emergency program. All moneys collected under this section  
38 must be deposited in the pollution liability insurance program trust  
39 account created in RCW 70.148.020.

1        NEW SECTION.    **Sec. 3.**    A new section is added to chapter 70.148  
2    RCW to read as follows:

3        (1) The director, in consultation with the office of financial  
4    management, may design and approve an emergency program under which  
5    the state shall assist owners and operators of underground storage  
6    tanks in meeting the federal financial responsibility requirements.

7        (2) The emergency program is designed to be time limited. If the  
8    director implements the approved emergency program, then at the  
9    legislative session following implementation, the director is  
10   required to provide the legislature with a report on the options  
11   available to assist owners and operators in using one or a  
12   combination of mechanisms to demonstrate financial responsibility for  
13   underground storage tanks. This includes, but is not limited to,  
14   discussion of a state run insurance program, alternative options to a  
15   state run insurance program, and an evaluation and recommendation of  
16   the finances required to develop and implement a new financial  
17   responsibility model that complies with the federal financial  
18   responsibility requirements in 40 C.F.R. Part 280 subpart H.

19        **Sec. 4.**    RCW 70.148.020 and 2019 c 413 s 7034 are each amended to  
20    read as follows:

21        (1) The pollution liability insurance program trust account is  
22    established in the custody of the state treasurer. All funds  
23    appropriated for this chapter and all premiums collected for  
24    reinsurance shall be deposited in the account. Except as provided in  
25    chapter 70.340 RCW, expenditures from the account shall be used  
26    exclusively for the purposes of this chapter including payment of  
27    costs of administering the pollution liability insurance program and  
28    (~~(underground storage tank community assistance)~~) emergency  
29    program(~~s~~). Expenditures for payment of administrative and  
30    operating costs of the agency are subject to the allotment procedures  
31    under chapter 43.88 RCW and may be made only after appropriation by  
32    statute. No appropriation is required for other expenditures from the  
33    account.

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

1 (3) During the 2019-2021 fiscal biennium, the legislature may  
2 make appropriations from the pollution liability insurance program  
3 trust account for the leaking tank model remedies activity.

4 (~~(4) This section expires July 1, 2030.~~)

5 **Sec. 5.** RCW 70.148.090 and 1990 c 64 s 10 are each amended to  
6 read as follows:

7 (1) The activities and operations of the program are exempt from  
8 the provisions and requirements of Title 48 RCW (~~and to~~).

9 (2) To the extent of their participation in the program, the  
10 activities and operations of the insurer selected by the director to  
11 provide liability insurance coverage to owners and operators of  
12 underground storage tanks are exempt from the requirements of Title  
13 48 RCW except for:

14 (a) Chapter 48.03 RCW pertaining to examinations;

15 (b) RCW 48.05.250 pertaining to annual reports;

16 (c) Chapter 48.12 RCW pertaining to assets and liabilities;

17 (d) Chapter 48.13 RCW pertaining to investments;

18 (e) Chapter 48.30 RCW pertaining to deceptive, false, or  
19 fraudulent acts or practices; and

20 (f) Chapter 48.92 RCW pertaining to liability risk retention.

21 (~~(2)~~) (3) To the extent of their participation in the program,  
22 the insurer selected by the director to provide liability insurance  
23 coverage to owners and operators of underground storage tanks shall  
24 not participate in the Washington insurance guaranty association nor  
25 shall the association be liable for coverage provided to owners and  
26 operators of underground storage tanks issued in connection with the  
27 program.

--- END ---