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**SUBSTITUTE HOUSE BILL 2424**

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**State of Washington**

**66th Legislature**

**2020 Regular Session**

**By** House Environment & Energy (originally sponsored by Representatives Fitzgibbon, DeBolt, Peterson, Young, and Doglio; by request of Pollution Liability Insurance Agency)

1 AN ACT Relating to the heating oil insurance program; amending  
2 RCW 70.149.010, 70.149.040, 70.340.010, 70.340.020, 70.340.030,  
3 70.340.050, 70.340.060, 70.340.090, and 70.340.130; adding a new  
4 section to chapter 70.149 RCW; and repealing RCW 70.149.050.

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

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

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

1 ~~insurance or insurance has been unaffordable.)~~ Therefore, the  
2 legislature intends to transition the pollution liability insurance  
3 program for heating oil tanks to a revolving loan and grant program,  
4 while maintaining the pollution liability insurance program for  
5 existing registrants.

6 **Sec. 2.** RCW 70.149.040 and 2018 c 194 s 3 are each amended to  
7 read as follows:

8 The director shall:

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

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

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

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

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

36 ~~((Design and from time to time revise a reinsurance contract~~  
37 ~~providing coverage to an insurer or insurers meeting the requirements~~  
38 ~~of this chapter. The director is authorized))~~ Have the authority to

1 provide reinsurance through the pollution liability insurance program  
2 trust account;

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

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

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

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

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

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

1        ~~((10))~~ (8) Establish a public information program to provide  
2 information regarding liability, technical, and environmental  
3 requirements associated with active and abandoned heating oil tanks;  
4        ~~((11))~~ (9) Monitor agency expenditures and seek to minimize  
5 costs and maximize benefits to ensure responsible financial  
6 stewardship;  
7        ~~((12))~~ (10) Study if appropriate user fees to supplement  
8 program funding are necessary and develop recommendations for  
9 legislation to authorize such fees;  
10        ~~((13))~~ (11) Establish requirements, including deadlines not to  
11 exceed ninety days, for reporting to the pollution liability  
12 insurance agency a suspected or confirmed release from a heating oil  
13 tank, including a decommissioned or abandoned heating oil tank, that  
14 may pose a threat to human health or the environment by the owner or  
15 operator of the heating oil tank or the owner of the property where  
16 the release occurred;  
17        ~~((14))~~ (12) Within ninety days of receiving information and  
18 having a reasonable basis to believe that there may be a release from  
19 a heating oil tank, including decommissioned or abandoned heating oil  
20 tanks, that may pose a threat to human health or the environment,  
21 perform an initial investigation to determine at a minimum whether  
22 such a release has occurred and whether further remedial action is  
23 necessary under chapter 70.105D RCW. The initial investigation may  
24 include, but is not limited to, inspecting, sampling, or testing. The  
25 director may retain contractors to perform an initial investigation  
26 on the agency's behalf;  
27        ~~((15))~~ (13) For any written opinion issued under subsection  
28 ~~((9))~~ (7) of this section requiring an environmental covenant as  
29 part of the remedial action, consult with, and seek comment from, a  
30 city or county department with land use planning authority for real  
31 property subject to the environmental covenant prior to the property  
32 owner recording the environmental covenant; and  
33        ~~((16))~~ (14) For any property where an environmental covenant  
34 has been established as part of the remedial action approved under  
35 subsection ~~((9))~~ (7) of this section, periodically review the  
36 environmental covenant for effectiveness. The director shall perform  
37 a review at least once every five years after an environmental  
38 covenant is recorded.

1        NEW SECTION.    **Sec. 3.**    A new section is added to chapter 70.149  
2    RCW to read as follows:

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

8        **Sec. 4.**    RCW 70.340.010 and 2016 c 161 s 1 are each amended to  
9    read as follows:

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

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

23       **Sec. 5.**    RCW 70.340.020 and 2016 c 161 s 2 are each amended to  
24    read as follows:

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

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

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

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

36        ~~((3))~~ (4) "Operator" means any person in control of, or having  
37    responsibility for, the daily operation of a petroleum underground  
38    storage tank system, including a heating oil tank system.

1       ~~((4))~~ (5) "Owner" means any person who owns a petroleum  
2 underground storage tank system, including a heating oil tank system.

3       ~~((5))~~ (6) "Petroleum underground storage tank system" means an  
4 underground storage tank system regulated under chapter 90.76 RCW or  
5 subtitle I of the solid waste disposal act (42 U.S.C. chapter 82,  
6 subchapter IX) that is used for storing petroleum.

7       ~~((6))~~ (7) "Release" has the same meaning as defined in RCW  
8 70.105D.020.

9       ~~((7))~~ (8) "Remedial action" has the same meaning as defined in  
10 RCW 70.105D.020.

11       ~~((8))~~ (9) "Underground storage tank facility" means the  
12 location where one or more underground storage tank systems are  
13 installed. A facility encompasses all contiguous real property under  
14 common ownership associated with the operation of the underground  
15 storage tank system or systems.

16       ~~((9))~~ (10) "Underground storage tank system" means an  
17 underground storage tank, connected underground piping, underground  
18 ancillary equipment, and containment system, if any, and includes any  
19 aboveground ancillary equipment connected to the underground storage  
20 tank or piping, such as dispensers.

21       **Sec. 6.** RCW 70.340.030 and 2016 c 161 s 3 are each amended to  
22 read as follows:

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

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

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

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

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

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

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

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

14 **Sec. 7.** RCW 70.340.050 and 2016 c 161 s 5 are each amended to  
15 read as follows:

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

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

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

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

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

32 **Sec. 8.** RCW 70.340.060 and 2016 c 161 s 6 are each amended to  
33 read as follows:

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

19 **Sec. 10.** RCW 70.340.130 and 2017 3rd sp.s. c 4 s 6015 are each  
20 amended to read as follows:

21 (1) On July 1, 2016, if the cash balance amount in the pollution  
22 liability insurance program trust account exceeds seven million five  
23 hundred thousand dollars after excluding the reserves under RCW  
24 70.148.020(2), the state treasurer shall transfer the amount  
25 exceeding seven million five hundred thousand dollars, up to a  
26 transfer of ten million dollars, from the pollution liability  
27 insurance program trust account into the pollution liability  
28 insurance agency underground storage tank revolving account. If ten  
29 million dollars is not available to be transferred on July 1, 2016,  
30 then by the end of fiscal year 2017, if the cash balance amount in  
31 the pollution liability insurance program trust account exceeds seven  
32 million five hundred thousand dollars after excluding the reserves  
33 under RCW 70.148.020(2), the state treasurer shall transfer the  
34 amount exceeding seven million five hundred thousand dollars from the  
35 pollution liability insurance program trust account into the  
36 pollution liability insurance agency underground storage tank  
37 revolving account. The total amount transferred in fiscal year 2017  
38 from the pollution liability insurance program trust account into the

1 pollution liability insurance agency underground storage tank  
2 revolving account may not exceed ten million dollars.

3 (2) (~~0A~~) Beginning July 1, 2017, (and every two years  
4 ~~thereafter at the start of each successive)~~ during the fiscal  
5 biennium and each successive fiscal biennium, if the cash balance  
6 amount in the pollution liability insurance program trust account  
7 exceeds seven million five hundred thousand dollars, the state  
8 treasurer (~~shall~~) is authorized, upon request of the agency, to  
9 transfer the amount exceeding seven million five hundred thousand  
10 dollars after excluding the reserves under RCW 70.148.020(2), up to a  
11 transfer of twenty million dollars, from the pollution liability  
12 insurance program trust account into the pollution liability  
13 insurance agency underground storage tank revolving account. (~~If~~  
14 ~~twenty million dollars is not available to be transferred at the~~  
15 ~~beginning of the first fiscal year of the biennium, by the end of the~~  
16 ~~subsequent fiscal year, if the cash balance amount in the pollution~~  
17 ~~liability insurance program trust account exceeds seven million five~~  
18 ~~hundred thousand dollars after excluding the reserves under RCW~~  
19 ~~70.148.020(2), the state treasurer shall transfer the amount~~  
20 ~~exceeding seven million five hundred thousand dollars from the~~  
21 ~~pollution liability insurance program trust account into the~~  
22 ~~pollution liability insurance agency underground storage tank~~  
23 ~~revolving account.)) The agency may request transfers only as needed  
24 to maximize the amount transferred in a fiscal biennium from the  
25 pollution liability insurance program trust account into the  
26 pollution liability insurance agency underground storage tank  
27 revolving account. The total amount transferred in a fiscal biennium  
28 from the pollution liability insurance program trust account into the  
29 pollution liability insurance agency underground storage tank  
30 revolving account may not exceed twenty million dollars.~~

31 NEW SECTION. **Sec. 11.** RCW 70.149.050 (Selection of insurer to  
32 provide pollution liability insurance—Eligibility for coverage) and  
33 1995 c 20 s 5 are each repealed.

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