

## THIRTY NINTH DAY

House Chamber, Olympia, Thursday, February 18, 2010

The House was called to order at 12:30 p.m. by the Speaker (Representative Moeller presiding). The Clerk called the roll and a quorum was present.

The flags were escorted to the rostrum by a Sergeant at Arms Color Guard, Pages Kathryn Gouker and Jessica Canfield. The Speaker (Representative Moeller presiding) led the Chamber in the Pledge of Allegiance. The prayer was offered by Representative Barbara Bailey, 10th District.

Reading of the Journal of the previous day was dispensed with and it was ordered to stand approved.

There being no objection, the House advanced to the eighth order of business.

There being no objection, the Committee on Judiciary was relieved of SUBSTITUTE SENATE BILL NO. 6338 and the bill was referred to the Committee on Human Services.

There being no objection, the Committee on Rules was relieved of HOUSE BILL NO. 2941, and the bill was placed on the second reading calendar.

There being no objection, the House reverted to the fourth order of business.

### INTRODUCTION & FIRST READING

HB 3190 by Representatives Kelley, Green, Van De Wege, Simpson, Blake, Ericks, Hurst, Finn, Hinkle and Dammeier

AN ACT Relating to membership in the law enforcement officers' and firefighters' retirement system plan 2 for firefighters employed by the department of corrections at the McNeil Island special commitment center; reenacting and amending RCW 41.26.030; and adding a new section to chapter 41.26 RCW.

Referred to Committee on Ways & Means.

There being no objection, the bill listed on the day's introduction sheet under the fourth order of business was referred to the committee so designated.

There being no objection, the House advanced to the sixth order of business.

### SECOND READING

**HOUSE BILL NO. 1775, by Representatives White, Carlyle, Nelson, Uptegrove and Simpson**

**Concerning the regulation of certain limousine carriers.**

The bill was read the second time.

There being no objection, Substitute House Bill No. 1775 was substituted for House Bill No. 1775 and the substitute bill was placed on the second reading calendar.

SUBSTITUTE HOUSE BILL NO. 1775 was read the second time.

Representative White moved the adoption of amendment (1235).

On page 2, beginning on line 34, after "specifying the" strike "type, style, content," and insert "content"

On page 4, line 12, after "criteria" insert "and fees"

On page 6, beginning on line 4, after "each" strike "motor-propelled vehicle while so used in the conduct of a commercial limousine business" and insert "~~((motor-propelled vehicle while so used))~~ limousine while licensed by the department"

On page 7, after line 19, insert the following:

"(8) It is a class 1 civil infraction, with monetary penalties against the individual as specified in RCW 7.80.120, for an individual to accept payment to solicit or assign customers on the behalf of a chauffeur."

On page 8, beginning on line 27, strike all of section 10 and insert the following:

**"Sec. 10.** RCW 46.72A.120 and 1996 c 87 s 15 are each amended to read as follows:

The department may adopt and enforce such rules, including the setting of fees, as may be consistent with and necessary to carry out this chapter. The fees must approximate the cost of administration. Any fee related to limousine vehicle certificates must not exceed seventy-five dollars. Any fee related to a limousine carrier license for a business must not exceed three hundred and fifty dollars in 2011 and four hundred and fifty dollars in the following years."

Renumber the remaining sections consecutively and correct any internal references accordingly.

On page 10, line 6, after "**Sec. 14.**" strike "This act takes" and insert "Sections 1 through 12 of this act take"

Correct the title.

Representative White spoke in favor of the adoption of the amendment.

Amendment (1235) was adopted.

The bill was ordered engrossed.

There being no objection, the rules were suspended, the second reading considered the third and the bill was placed on final passage.

Representatives White, Rolfes and Orwall spoke in favor of the passage of the bill.

Representative Roach spoke against the passage of the bill.

The Speaker (Representative Moeller presiding) stated the question before the House to be the final passage of Engrossed Substitute House Bill No. 1775.

### MOTION

On motion of Representative Van de Wege, Representatives Carlyle, Clibborn, Driscoll and Simpson were excused.

### ROLL CALL

The Clerk called the roll on the final passage of Engrossed Substitute House Bill No. 1775, and the bill passed the House by the following vote: Yeas, 62; Nays, 32; Absent, 0; Excused, 4.

Voting yea: Representatives Appleton, Armstrong, Blake, Chase, Cody, Conway, Dammeier, Darneille, Dickerson, Dunshee, Eddy, Ericks, Finn, Flannigan, Goodman, Green, Haigh, Hasegawa, Hudgins, Hunt, Hunter, Hurst, Jacks, Kagi, Kelley, Kenney, Kessler, Kirby, Lias, Linville, Maxwell, McCoy, Miloscia, Moeller, Morrell, Morris, Nelson, O'Brien, Orcutt, Ormsby, Orwall, Pedersen, Pettigrew, Priest, Probst, Quall, Roberts, Rolfes, Santos, Seaquist, Sells, Springer, Sullivan, Takko, Upthegrove, Van De Wege, Wallace, Walsh, White, Williams, Wood and Mr. Speaker.

Voting nay: Representatives Alexander, Anderson, Angel, Bailey, Campbell, Chandler, Condotta, Crouse, DeBolt, Ericksen, Fagan, Haler, Herrera, Hinkle, Hope, Johnson, Klippert, Kretz, Kristiansen, McCune, Nealey, Parker, Pearson, Roach, Rodne, Ross, Schmick, Shea, Short, Smith, Taylor and Warnick.

Excused: Representatives Carlyle, Clibborn, Driscoll and Simpson.

ENGROSSED SUBSTITUTE HOUSE BILL NO. 1775, having received the necessary constitutional majority, was declared passed.

### HOUSE BILL NO. 2591, by Representatives Morris and Chase

#### Recovering the actual cost of processing applications for water right permits.

The bill was read the second time.

There being no objection, Second Substitute House Bill No. 2591 was substituted for House Bill No. 2591 and the second substitute bill was placed on the second reading calendar.

SECOND SUBSTITUTE HOUSE BILL NO. 2591 was read the second time.

There being no objection, the rules were suspended, the second reading considered the third and the bill was placed on final passage.

Representatives Morris, Linville and Morris (again) spoke in favor of the passage of the bill.

Representatives Chandler, Hinkle, Haler, Taylor and Hinkle (again) spoke against the passage of the bill.

There being no objection, the House deferred action on SECOND SUBSTITUTE HOUSE BILL NO. 2591, and the bill held its place on the third reading calendar.

There being no objection, the House reverted to the sixth order of business.

### SECOND READING

### HOUSE BILL NO. 3175, by Representative Darneille

#### Transferring the office of minority and women's business enterprises into the department of commerce.

The bill was read the second time.

There being no objection, Substitute House Bill No. 3175 was substituted for House Bill No. 3175 and the substitute bill was placed on the second reading calendar.

SUBSTITUTE HOUSE BILL NO. 3175 was read the second time.

Representative Darneille moved the adoption of amendment (1245).

On page 10, beginning on line 26, strike all of subsection (7) and insert the following:

"(7) The existing bargaining units of employees of the office of minority and women's business enterprises transferred to the department of commerce under this section shall be transferred in their entirety without the merging of other bargaining units or the inclusion of employees from other bargaining units. Nothing contained in this section may be construed to alter any of the existing collective bargaining units unless and until the bargaining unit has been modified by action of the public employment relations commission as provided by law. Therefore, the certification of the existing bargaining units shall remain. However, the public employment relations commission may, upon request, amend the certification to reflect the name of the new agency. Nothing in this section may be construed to alter the provisions of any existing collective bargaining agreement until the agreement has expired. The existing bargaining units of employees transferred under this section shall continue to be subject to the provisions of chapter 41.80 RCW."

Representative Darneille spoke in favor of the adoption of the amendment.

Amendment (1245) was adopted.

The bill was ordered engrossed.

There being no objection, the rules were suspended, the second reading considered the third and the bill was placed on final passage.

Representatives Darneille and McCune spoke in favor of the passage of the bill.

The Speaker (Representative Moeller presiding) stated the question before the House to be the final passage of Substitute House Bill No. 3175.

### MOTION

On motion of Representative Santos, Representatives Morris and Orwall were excused.

### ROLL CALL

The Clerk called the roll on the final passage of Substitute House Bill No. 3175, and the bill passed the House by the following vote: Yeas, 92; Nays, 0; Absent, 0; Excused, 6.

Voting yea: Representatives Alexander, Anderson, Angel, Appleton, Armstrong, Bailey, Blake, Campbell, Chandler, Chase, Cody, Condotta, Conway, Crouse, Dammeier, Darneille, DeBolt, Dickerson, Dunshee, Eddy, Ericks, Ericksen, Fagan, Finn, Flannigan, Goodman, Green, Haigh, Haler, Hasegawa, Herrera, Hinkle, Hope, Hudgins, Hunt, Hunter, Hurst, Jacks, Johnson, Kagi, Kelley, Kenney, Kessler, Kirby, Klippert, Kretz, Kristiansen, Liias, Linville, Maxwell, McCoy, McCune, Miloscia, Moeller, Morrell, Nealey, Nelson, O'Brien, Orcutt, Ormsby, Parker, Pearson, Pedersen, Pettigrew, Priest, Probst, Quall, Roach, Roberts, Rodne, Rolfes, Ross, Santos, Schmick, Seaquist, Sells, Shea, Short, Smith, Springer, Sullivan, Takko, Taylor, Upthegrove, Van De Wege, Wallace, Walsh, Warnick, White, Williams, Wood and Mr. Speaker.

Excused: Representatives Carlyle, Clibborn, Driscoll, Morris, Orwall and Simpson.

SUBSTITUTE HOUSE BILL NO. 3175, having received the necessary constitutional majority, was declared passed.

**HOUSE BILL NO. 2697, by Representatives Conway and Condotta**

**Concerning real estate broker licensure fees.**

The bill was read the second time.

There being no objection, the rules were suspended, the second reading considered the third and the bill was placed on final passage.

Representatives Conway, Condotta and Ericks spoke in favor of the passage of the bill.

The Speaker (Representative Moeller presiding) stated the question before the House to be the final passage of House Bill No. 2697.

**MOTION**

On motion of Representative Santos, Representative Wallace was excused.

**ROLL CALL**

The Clerk called the roll on the final passage of House Bill No. 2697, and the bill passed the House by the following vote: Yeas, 89; Nays, 2; Absent, 0; Excused, 7.

Voting yea: Representatives Alexander, Anderson, Angel, Appleton, Armstrong, Bailey, Blake, Campbell, Chandler, Chase, Cody, Condotta, Conway, Crouse, Dammeier, Darneille, Dickerson, Dunshee, Eddy, Ericks, Ericksen, Fagan, Finn, Flannigan, Goodman, Green, Haigh, Haler, Hasegawa, Herrera, Hinkle, Hope, Hudgins, Hunt, Hunter, Hurst, Jacks, Johnson, Kagi, Kelley, Kenney, Kessler, Kirby, Klippert, Kretz, Kristiansen, Liias, Linville, Maxwell, McCoy, McCune, Miloscia, Moeller, Morrell, Nealey, Nelson, O'Brien, Orcutt, Ormsby, Parker, Pearson, Pedersen, Pettigrew, Priest, Probst, Quall, Roach, Roberts, Rodne, Rolfes, Santos, Schmick, Seaquist, Sells, Shea, Short, Smith, Springer, Sullivan, Takko, Taylor, Upthegrove, Van De Wege, Walsh, Warnick, White, Williams, Wood and Mr. Speaker.

Voting nay: Representatives DeBolt and Ross.

Excused: Representatives Carlyle, Clibborn, Driscoll, Morris, Orwall, Simpson and Wallace.

HOUSE BILL NO. 2697, having received the necessary constitutional majority, was declared passed.

**HOUSE BILL NO. 3023, by Representatives Jacks, Chandler, Kretz, Hunt, Blake and Wallace**

**Consolidating the pollution liability insurance agency within the department of ecology.**

The bill was read the second time.

With the consent of the House, amendment (1159) was withdrawn.

Representative Jacks moved the adoption of amendment (1247).

Strike everything after the enacting clause and insert the following:

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

(1) The legislature finds that:

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

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

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

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

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

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

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

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

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

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

To that end, this chapter establishes a temporary program to provide pollution liability reinsurance at a price that will encourage a private insurance company or risk retention group to sell pollution liability insurance in accordance with the requirements of this chapter to owners and operators of underground petroleum

storage tanks, thereby allowing the owners and operators to comply with the financial responsibility regulations of the EPA.

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

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

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

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

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

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

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

(4) "Corrective action" means those actions reasonably required to be undertaken by the insured to remove, treat, neutralize, contain, or clean up an accidental release in order to comply with any statute, ordinance, rule, regulation, directive, order, or similar legal requirement of the United States, the state of Washington, or any political subdivision of the United States or the state of Washington in effect at the time of an accidental release. "Corrective action" includes, when agreed to in writing, in advance by the insurer, action to remove, treat, neutralize, contain, or clean up an accidental release to avert, reduce, or eliminate the liability of the insured for corrective action, bodily injury, or property damage. "Corrective action" also includes actions reasonably necessary to monitor, assess, and evaluate an accidental release.

"Corrective action" does not include:

- (a) Replacement or repair of storage tanks or other receptacles;
- (b) Replacement or repair of piping, connections, and valves of storage tanks or other receptacles;
- (c) Excavation or backfilling done in conjunction with (a) or (b) of this subsection; or
- (d) Testing for a suspected accidental release if the results of the testing indicate that there has been no accidental release.

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

- (a) The United States, the state of Washington, or any political subdivision of the United States or state of Washington to require corrective action or to recover costs of corrective action; or
- (b) A third party for bodily injury or property damage caused by an accidental release.

(6) ~~((("Washington pollution liability insurance program" or "program" means the reinsurance program created by this~~

~~chapter.))~~ "Department" means the Washington state department of ecology.

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

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

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

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

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

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

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

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

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

~~((16))~~ (16) "Property damage" means:

- (a) Physical injury to, destruction of, or contamination of tangible property, including the loss of use of the property resulting from the injury, destruction, or contamination; or
- (b) Loss of use of tangible property that has not been physically injured, destroyed, or contaminated but has been evacuated, withdrawn from use, or rendered inaccessible because of an accidental release.

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

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

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

~~((20))~~ (20) "Underground storage tank" means any one or a combination of tanks including underground pipes connected to the tank, that is used to contain an accumulation of petroleum and the volume of which (including the volume of the underground pipes connected to the tank) is ten percent or more beneath the surface of the ground.

**Sec. 3.** RCW 70.148.020 and 2006 c 276 s 1 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. 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))~~ program 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))~~ department shall report to the insurance commissioner the loss and surplus reserves required for the calendar quarter. The ~~((director))~~ department shall notify the department of revenue of this amount by the fifteenth day of each calendar quarter.

(3) Each calendar quarter the ~~((director))~~ department 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))~~ department shall notify the department of revenue of this amount by the fifteenth day of each calendar quarter. The ~~((director))~~ department may immediately establish an initial financial assistance reserve of five million dollars from available revenues. The ~~((director))~~ department may not expend more than fifteen million dollars for the financial assistance program.

~~(4) ((During the 2005-2007 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 June 1, 2013.

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

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

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

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

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

(3) The director shall employ such other staff as are necessary to fulfill the responsibilities and duties of the ~~((director))~~ department. The staff is subject to the civil service law, chapter 41.06 RCW. In addition, the director may ~~contract~~ with third parties for services necessary to carry out its activities where this will promote economy, avoid duplication of effort, and make best use of available expertise. To the extent necessary to protect the state from unintended liability and ensure quality program and contract design, the director shall contract with an organization or organizations with demonstrated experience and ability in managing and designing pollution liability insurance and with an organization

or organizations with demonstrated experience and ability in managing and designing pollution liability reinsurance. The director shall enter into such contracts after competitive bid but need not select the lowest bid. The contracting activity is not subject to the competitive contracting provisions of RCW 41.06.142. Any such contractor or consultant is prohibited from releasing, publishing, or otherwise using any information made available to it under its contractual responsibility without specific permission of the ~~((program))~~ director. The director may call upon other agencies of the state to provide technical support and available information as necessary to assist the director in meeting the director's responsibilities under this chapter. Agencies shall supply this support and information as promptly as circumstances permit.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) The Washington state insurance commissioner;

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

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

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

(a) The Washington state insurance commissioner; and

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

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

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

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

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

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

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

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

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

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

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

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

(2) The successful bidder shall agree to provide liability insurance coverage to owners and operators of underground storage tanks for third party bodily injury and property damage and corrective action consistent with the following minimum standards:

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

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

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

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

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

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

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

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

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

(3) The ~~((director))~~ department shall adopt all rules necessary to implement this section. In developing and adopting rules

governing rates, deductibles, underwriting standards, and coverage conditions, limitations, and exclusions, the ~~((director))~~ department shall balance the owner and operator's need for coverage with the need to maintain the actuarial integrity of the program, shall take into consideration the economic impact of the discontinued use of a storage tank upon the affected community, and shall consult with the ~~((standing))~~ ad hoc technical advisory committees established under RCW 70.148.030~~((3))~~ (4). ~~((In developing and adopting rules governing coverage exclusions affecting corrective action, the director shall consult with the Washington state department of ecology.))~~

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

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

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

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

(6) ~~((When))~~ Within thirty days of a reinsurance contract ~~((has been))~~ being entered into by the ~~((agency))~~ department and insurance companies, ~~((the director shall notify the department of ecology of the letting of the contract. Within thirty days of that notification.))~~ the department ~~((of ecology))~~ shall notify all known owners and operators of petroleum underground storage tanks that appropriate levels of financial responsibility must be established by October 26, 1990, in accordance with federal environmental protection agency requirements, and that insurance under the program is available. All owners and operators of petroleum underground storage tanks must also be notified that declaration of method of financial responsibility or intent to seek to be insured under the program must be made to the state by November 1, 1990. If the declaration of method of financial responsibility is not made by November 1, 1990, the department ~~((of ecology))~~ shall, pursuant to chapter 90.76 RCW, prohibit the owner or operator of an underground storage tank from obtaining a tank tag or receiving petroleum products until such time as financial responsibility has been established.

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

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

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

(1) The activities and operations of the program are exempt from the provisions and requirements of Title 48 RCW and to the extent of their participation in the program, the activities and operations of the insurer selected by the ~~((director))~~ department to provide liability insurance coverage to owners and operators of

underground storage tanks are exempt from the requirements of Title 48 RCW except for:

(a) Chapter 48.03 RCW pertaining to examinations;

(b) RCW 48.05.250 pertaining to annual reports;

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

(d) Chapter 48.13 RCW pertaining to investments;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) ~~((The (director shall consult with the department of ecology in approving financial assistance for corrective action to ensure compliance with regulations governing underground petroleum~~

~~storage tanks and corrective action~~) department, in approving financial assistance for corrective action, shall ensure compliance with rules governing underground petroleum storage tanks and corrective action.

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

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

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

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

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

(b) If the ~~((director))~~ department makes a preliminary determination of possible eligibility for financial assistance, apply to the appropriate governing body of the city or town in which the tanks are located or in the case where the tanks are located outside of the jurisdiction of a city or town, then to the appropriate governing body of the county in which the tanks are located, for a determination by the governing body of the city, town, or county that the continued operation of the tanks meets a vital local government, or public health or safety need; and

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

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

(a) To sell petroleum products to the public;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

(3)(a) "Corrective action" means those actions reasonably required to be undertaken by the insured to remove, treat, neutralize, contain, or clean up an accidental release in order to comply with a statute, ordinance, rule, regulation, directive, order, or similar legal requirement, in effect at the time of an accidental release, of the United States, the state of Washington, or a political subdivision of the United States or the state of Washington. "Corrective action" includes, where agreed to in writing, in advance by the insurer, action to remove, treat, neutralize, contain, or clean up an accidental release to avert, reduce, or eliminate the liability of the insured for corrective action, bodily injury, or property damage. "Corrective action" also includes actions reasonably necessary to monitor, assess, and evaluate an accidental release.

(b) "Corrective action" does not include:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(9) Implement a program to provide advice and technical assistance to owners and operators of active and abandoned heating oil tanks if contamination from an active or abandoned heating oil tank is suspected. Advice and assistance regarding administrative and technical requirements may include observation of testing or site assessment and review of the results of reports. If the (~~(director)~~) department finds that contamination is not present or that the contamination is apparently minor and not a threat to human health or the environment, the (~~(director)~~) department may provide written opinions and conclusions on the results of the investigation to owners and operators of active and abandoned heating oil tanks. The (~~(agency)~~) department is authorized to collect, from persons requesting advice and assistance, the costs incurred by the (~~(agency)~~) department in providing such advice and assistance. The costs may include travel costs and expenses associated with review of reports and preparation of written opinions and conclusions. Funds from cost reimbursement must be deposited in the heating oil pollution liability trust account. The state of Washington, the department, the pollution liability insurance (~~(agency)~~) program, and its officers and employees are immune from all liability, and no cause of action arises from any act or omission in providing, or failing to provide, such advice, opinion, conclusion, or assistance;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Chapter 48.03 RCW pertaining to examinations;

(b) RCW 48.05.250 pertaining to annual reports;

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

(d) Chapter 48.13 RCW pertaining to investments;

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

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

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

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

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

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

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

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

(a) The Washington state insurance commissioner;

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

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

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

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

(2) The ~~((pollution liability insurance agency))~~ department shall reimburse any owner or operator, who is participating in the program created in this chapter and who has experienced an occurrence or remedial action, for the difference in price between a standard steel heating tank and a new heating oil tank that satisfies the design standards identified under subsection (1) of this section, if the owner or operator chooses or is required to replace his or her tank at the time of the occurrence or remedial action.

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

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

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

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

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

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

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

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

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

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

(d) Except as provided in RCW 90.03.210(2), the issuance, modification, or termination of any permit, certificate, or license

by the department or any air authority in the exercise of its jurisdiction, including the issuance or termination of a waste disposal permit, the denial of an application for a waste disposal permit, the modification of the conditions or the terms of a waste disposal permit, or a decision to approve or deny an application for a solid waste permit exemption under RCW 70.95.300.

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

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

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

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

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

(j) Regarding the heating oil pollution liability insurance program described in chapter 70.149 RCW, any decision by the department regarding: Denial of eligibility for coverage; amount of payment allowed for corrective action; amount of payment allowed for property damage; and amount of payment allowed for a third-party claim. The pollution control hearings board may hear such an appeal as a short board appeal pursuant to RCW 43.21B.305.

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

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

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

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

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

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

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

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

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

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

(3) The appeals process;

(4) Information management;

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

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

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

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

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

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

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

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

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

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

(4) All rules and all pending business before the pollution liability insurance agency shall be continued and acted upon by the pollution liability insurance program as part of the department of ecology. All existing contracts and obligations shall remain in full force and shall be performed by the pollution liability insurance program as part of the department of ecology.

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

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

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

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

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

(2) Section 27 of this act expires January 1, 2012." Correct the title.

Representative Jacks spoke in favor of the adoption of the amendment.

Amendment (1247) was adopted.

The bill was ordered engrossed.

There being no objection, the rules were suspended, the second reading considered the third and the bill was placed on final passage.

Representative Jacks spoke in favor of the passage of the bill.

Representative McCune spoke against the passage of the bill.

The Speaker (Representative Moeller presiding) stated the question before the House to be the final passage of Engrossed House Bill No. 3023.

### ROLL CALL

The Clerk called the roll on the final passage of Engrossed House Bill No. 3023, and the bill passed the House by the following vote: Yeas, 59; Nays, 32; Absent, 0; Excused, 7.

Voting yea: Representatives Anderson, Appleton, Blake, Chase, Cody, Conway, Darneille, Dickerson, Dunshee, Eddy, Ericks, Finn, Flannigan, Goodman, Green, Haigh, Hasegawa, Hudgins, Hunt, Hunter, Hurst, Jacks, Kagi, Kelley, Kenney, Kessler, Kirby, Lias, Linville, Maxwell, McCoy, Miloscia, Moeller, Morrell, Nelson, O'Brien, Ormsby, Pedersen, Pettigrew, Priest, Probst, Quall, Roberts, Rodne, Rolfes, Santos, Seaquist, Sells, Smith, Springer, Sullivan, Takko, Upthegrove, Van De Wege, Walsh, White, Williams, Wood and Mr. Speaker.

Voting nay: Representatives Alexander, Angel, Armstrong, Bailey, Campbell, Chandler, Condotta, Crouse, Dammeier, DeBolt, Ericksen, Fagan, Haler, Herrera, Hinkle, Hope, Johnson, Klippert, Kretz, Kristiansen, McCune, Nealey, Orcutt, Parker, Pearson, Roach, Ross, Schmick, Shea, Short, Taylor and Warnick.

Excused: Representatives Carlyle, Clibborn, Driscoll, Morris, Orwall, Simpson and Wallace.

ENGROSSED HOUSE BILL NO. 3023, having received the necessary constitutional majority, was declared passed.

### RECONSIDERATION

There being no objection, the House reconsidered the vote by which HOUSE BILL NO. 2697 passed the House.

The Speaker (Representative Moeller presiding) stated the question before the House to be the final passage of House Bill No. 2697 on reconsideration.

### ROLL CALL

The Clerk called the roll on the final passage of House Bill No. 2697 on reconsideration, and the bill passed the House by the following vote: Yeas, 91; Nays, 0; Absent, 0; Excused, 7.

Voting yea: Representatives Alexander, Anderson, Angel, Appleton, Armstrong, Bailey, Blake, Campbell, Chandler, Chase, Cody, Condotta, Conway, Crouse, Dammeier, Darneille, DeBolt, Dickerson, Dunshee, Eddy, Ericks, Ericksen, Fagan, Finn,

Flannigan, Goodman, Green, Haigh, Haler, Hasegawa, Herrera, Hinkle, Hope, Hudgins, Hunt, Hunter, Hurst, Jacks, Johnson, Kagi, Kelley, Kenney, Kessler, Kirby, Klippert, Kretz, Kristiansen, Lias, Linville, Maxwell, McCoy, McCune, Miloscia, Moeller, Morrell, Nealey, Nelson, O'Brien, Orcutt, Ormsby, Parker, Pearson, Pedersen, Pettigrew, Priest, Probst, Quall, Roach, Roberts, Rodne, Rolfes, Ross, Santos, Schmick, Seaquist, Sells, Shea, Short, Smith, Springer, Sullivan, Takko, Taylor, Upthegrove, Van De Wege, Walsh, Warnick, White, Williams, Wood and Mr. Speaker.

Excused: Representatives Carlyle, Clibborn, Driscoll, Morris, Orwall, Simpson and Wallace.

HOUSE BILL NO. 2697 on reconsideration, having received the necessary constitutional majority, was declared passed.

There being no objection, the House advanced to the eighth order of business.

There being no objection, the Committee on Rules was relieved of HOUSE BILL NO. 2569, and the bill was placed on the second reading calendar.

There being no objection, the House advanced to the eleventh order of business.

There being no objection, the House adjourned until 10:00 a.m., February 19, 2010, the 40th Day of the Regular Session.

FRANK CHOPP, Speaker

BARBARA BAKER, Chief Clerk

1775		
	Second Reading.....	1
1775-S		
	Second Reading.....	1
	Amendment Offered.....	1
	Third Reading Final Passage.....	2
2569		
	Other Action.....	10
2591		
	Second Reading.....	2
2591-S2		
	Second Reading.....	2
	Other Action.....	2
2697		
	Second Reading.....	3
	Third Reading Final Passage.....	3
	Final Passage.....	10
2941		
	Other Action.....	1
3023		
	Second Reading.....	3
	Amendment Offered.....	3
	Third Reading Final Passage.....	10
3175		
	Second Reading.....	2
3175-S		
	Second Reading.....	2
	Amendment Offered.....	2
	Third Reading Final Passage.....	3
3190		
	Introduction & 1st Reading.....	1
6338-S		
	Other Action.....	1