
BILL REQUEST - CODE REVISER'S OFFICE

BILL REQ. #: S-2785.4/11 4th draft

ATTY/TYPIST: ML:ean

BRIEF DESCRIPTION: Regarding the consolidation of natural resources agencies and programs.

1 NEW SECTION. **Sec. 101.** (1) The department of agriculture, the
2 department of ecology, the department of fish and wildlife, the
3 department of natural resources, the recreation and conservation
4 office, the Puget Sound partnership, and the state parks and recreation
5 commission, in consultation with the office of financial management,
6 must:

7 (a) Consolidate administrative regions into no more than four per
8 agency;

9 (b) Identify regional or field offices appropriate for use as
10 shared facilities by more than one agency, and maximize the collocation
11 of staff and resources; and

12 (c) Identify and implement cross agency efficiencies by maximizing
13 the consolidation of administrative functions among multiple agencies.
14 In implementing this subsection (1)(c), agencies must consider
15 administrative functions including but not limited to human resources,
16 communications, contracting and procurement, public records and
17 disclosure, financial, budgeting, accounting, and information
18 technology.

19 (2) The director of the department of fish and wildlife, the
20 commissioner of public lands, the director of the state parks and
21 recreation commission, the director of the department of agriculture,
22 the director of the department of ecology, the executive director of
23 the Puget Sound partnership, and the director of the recreation and
24 conservation office must each designate a representative to serve on
25 the natural resources consolidation team and assist in the
26 implementation of this section.

27 (a) The consolidation team must provide a brief summary of the
28 progress in implementing this section, including any legislative or
29 budgetary recommendations, to the office of financial management and to
30 the appropriate committees of the legislature by September 1, 2011, and
31 September 1, 2012.

32 (b) The consolidation team may: Invite, at its discretion, other
33 appropriate persons to participate on the transition team; and consult,
34 as necessary, with the department of personnel, the office of financial
35 management, or any other agency with relevant expertise.

36 NEW SECTION. **Sec. 102.** (1) The state conservation commission
37 shall work cooperatively with conservation districts to evaluate and

1 facilitate the consolidation of appropriate conservation districts,
2 with a goal of reducing the total number of conservation districts to
3 thirty-nine.

4 (2) The state conservation commission shall provide a brief report
5 to the appropriate committees of the legislature on the progress in
6 implementing this section, along with any legislative recommendations,
7 by October 1, 2011.

8 NEW SECTION. **Sec. 103.** A new section is added to chapter 77.04
9 RCW to read as follows:

10 The department may not establish or maintain more than four
11 administrative regions.

12 NEW SECTION. **Sec. 104.** A new section is added to chapter 43.30
13 RCW to read as follows:

14 The department may not establish or maintain more than four
15 administrative regions.

16 NEW SECTION. **Sec. 105.** Sections 103 and 104 of this act take
17 effect July 1, 2012.

18 **PART 2**

19 **MERGING THE STATE'S POLLUTION LIABILITY INSURANCE AGENCY AND THE**
20 **COLUMBIA RIVER GORGE COMMISSION INTO THE DEPARTMENT OF ECOLOGY;**
21 **TRANSFERRING THE DEPARTMENT OF HEALTH'S RECLAIMED WATER PROGRAM TO THE**
22 **DEPARTMENT OF ECOLOGY; AND TRANSFERRING THE DEPARTMENT OF ECOLOGY'S**
23 **LOW-LEVEL RADIOACTIVE WASTE PROGRAM INTO THE DEPARTMENT OF HEALTH**

24 **SUBPART A**

25 **MERGING THE POLLUTION LIABILITY INSURANCE PROGRAM INTO**
26 **THE DEPARTMENT OF ECOLOGY**

27 **Sec. 201.** RCW 70.148.005 and 1990 c 64 s 1 are each amended to
28 read as follows:

29 (1) The legislature finds that:

30 (a) Final regulations adopted by the United States environmental
31 protection agency (EPA) require owners and operators of underground

1 petroleum storage tanks to demonstrate financial responsibility for
2 accidental releases of petroleum as a precondition to continued
3 ownership and operation of such tanks;

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

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

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

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

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

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

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

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

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

(5) This section expires June 1, 2013.

Sec. 202. 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

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

8 "Corrective action" does not include:

- 9 (a) Replacement or repair of storage tanks or other receptacles;
10 (b) Replacement or repair of piping, connections, and valves of
11 storage tanks or other receptacles;
12 (c) Excavation or backfilling done in conjunction with (a) or (b)
13 of this subsection; or

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

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

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

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

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

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

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

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

37 (10) "Occurrence" means an accident, including continuous or

1 repeated exposure to conditions, that results in a release from an
2 underground storage tank.

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

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

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

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

17 (15) "Property damage" means:

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

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

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

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

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

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

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

4 (20) "Pollution liability insurance program" or "program" means the
5 reinsurance program created in this chapter.

6 This section expires June 1, 2013.

7 **Sec. 203.** RCW 70.148.020 and 2006 c 276 s 1 are each amended to
8 read as follows:

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

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

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

36 (4) ~~((During the 2005-2007 fiscal biennium, the legislature may~~

1 ~~transfer from the pollution liability insurance program trust account~~
2 ~~to the state general fund such amounts as reflect the excess fund~~
3 ~~balance of the account.~~

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

5 **Sec. 204.** RCW 70.148.025 and 1995 c 20 s 12 are each amended to
6 read as follows:

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

10 (2) This section expires June 1, 2013.

11 **Sec. 205.** RCW 70.148.030 and 1994 sp.s. c 9 s 805 are each amended
12 to read as follows:

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

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

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

13 (3) The ((director)) department may appoint ad hoc technical
14 advisory committees to obtain expertise necessary to fulfill the
15 purposes of this chapter.

16 (4) This section expires June 1, 2013.

17 **Sec. 206.** RCW 70.148.035 and 1990 c 64 s 11 are each amended to
18 read as follows:

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

29 (2) This section expires June 1, 2013.

30 **Sec. 207.** RCW 70.148.040 and 1990 c 64 s 5 are each amended to
31 read as follows:

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

35 (2) This section expires June 1, 2013.

1 **Sec. 208.** RCW 70.148.050 and 2006 c 276 s 2 are each amended to
2 read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 This section expires June 1, 2013.

25 **Sec. 209.** RCW 70.148.060 and 2005 c 274 s 341 are each amended to
26 read as follows:

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

33 (2) Subsection (1) of this section notwithstanding, the
34 ((director)) department may furnish all or part of examination reports
35 prepared by the ((director)) department or by any person, firm,
36 corporation, association, or other entity preparing the reports on
37 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.

(6) This section expires June 1, 2013.

Sec. 210. 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.

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

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

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

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

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

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

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

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

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

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

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

1 (3) The ~~((director))~~ department shall adopt all rules necessary to
2 implement this section. In developing and adopting rules governing
3 rates, deductibles, underwriting standards, and coverage conditions,
4 limitations, and exclusions, the ~~((director))~~ department shall balance
5 the owner and operator's need for coverage with the need to maintain
6 the actuarial integrity of the program, shall take into consideration
7 the economic impact of the discontinued use of a storage tank upon the
8 affected community, and shall consult with the ~~((standing))~~ ad hoc
9 technical advisory committee established under RCW 70.148.030(3). ~~((In~~
10 ~~developing and adopting rules governing coverage exclusions affecting~~
11 ~~corrective action, the director shall consult with the Washington state~~
12 ~~department of ecology.))~~

13 (4) Notwithstanding the definitions contained in RCW 70.148.010,
14 the ~~((director))~~ department may permit an insurer to use different
15 words or phrases describing the coverage provided under the program.
16 In permitting such deviations from the definitions contained in RCW
17 70.148.010, the ~~((director))~~ department shall consider the regulations
18 adopted by the United States environmental protection agency requiring
19 financial responsibility by owners and operators of underground
20 petroleum storage tanks.

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

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

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

33 (6) ~~((When))~~ Within thirty days of a reinsurance contract ~~((has~~
34 ~~been))~~ being entered into by the ~~((agency))~~ department and insurance
35 companies, ~~((the director shall notify the department of ecology of the~~
36 ~~letting of the contract. Within thirty days of that notification,))~~
37 the department ~~((of ecology))~~ shall notify all known owners and
38 operators of petroleum underground storage tanks that appropriate

1 levels of financial responsibility must be established by October 26,
2 1990, in accordance with federal environmental protection agency
3 requirements, and that insurance under the program is available. All
4 owners and operators of petroleum underground storage tanks must also
5 be notified that declaration of method of financial responsibility or
6 intent to seek to be insured under the program must be made to the
7 state by November 1, 1990. If the declaration of method of financial
8 responsibility is not made by November 1, 1990, the department (~~of~~
9 ~~ecology~~) shall, pursuant to chapter 90.76 RCW, prohibit the owner or
10 operator of an underground storage tank from obtaining a tank tag or
11 receiving petroleum products until such time as financial
12 responsibility has been established.

13 (7) This section expires June 1, 2013.

14 **Sec. 211.** RCW 70.148.080 and 1990 c 64 s 9 are each amended to
15 read as follows:

16 (1) If the insurer cancels or refuses to issue or renew a policy,
17 the affected owner or operator may appeal the insurer's decision to the
18 director or the director's designee. The director or the director's
19 designee shall conduct a brief adjudicative proceeding under chapter
20 34.05 RCW.

21 (2) This section expires June 1, 2013.

22 **Sec. 212.** RCW 70.148.090 and 1990 c 64 s 10 are each amended to
23 read as follows:

24 (1) The activities and operations of the program are exempt from
25 the provisions and requirements of Title 48 RCW and to the extent of
26 their participation in the program, the activities and operations of
27 the insurer selected by the (~~director~~) department to provide
28 liability insurance coverage to owners and operators of underground
29 storage tanks are exempt from the requirements of Title 48 RCW except
30 for:

- 31 (a) Chapter 48.03 RCW pertaining to examinations;
- 32 (b) RCW 48.05.250 pertaining to annual reports;
- 33 (c) Chapter 48.12 RCW pertaining to assets and liabilities;
- 34 (d) Chapter 48.13 RCW pertaining to investments;
- 35 (e) Chapter 48.30 RCW pertaining to deceptive, false, or fraudulent
- 36 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.

(3) This section expires June 1, 2013.

Sec. 213. 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

1 thousand dollars, the ~~((director))~~ department may not provide further
2 financial assistance until the owner or operator has developed and
3 implemented a corrective action plan with the department ~~((of~~
4 ~~ecology))~~.

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

- 9 (i) The property is located in an underserved rural area;
10 (ii) The property was previously used by a private owner or
11 operator to provide motor vehicle fuel; and
12 (iii) The property is at least ten miles from the nearest motor
13 vehicle fuel service station.

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

19 (4) The ~~((director shall consult with the))~~ department ~~((of~~
20 ~~ecology))~~, in approving financial assistance for corrective action
21 ~~((to))~~, shall ensure compliance with ~~((regulations))~~ rules governing
22 underground petroleum storage tanks and corrective action.

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

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

36 (7) This section expires June 1, 2013.

1 **Sec. 214.** RCW 70.148.140 and 1991 c 4 s 3 are each amended to read
2 as follows:

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

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

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

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

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

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

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

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

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

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

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

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

7 (6) This section expires June 1, 2013.

8 **Sec. 215.** RCW 70.148.150 and 1991 c 4 s 4 are each amended to read
9 as follows:

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

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

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

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

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

32 (3) This section expires June 1, 2013.

33 **Sec. 216.** RCW 70.148.160 and 1991 c 4 s 5 are each amended to read
34 as follows:

35 To qualify for financial assistance, a rural hospital ((as defined

1 ~~in RCW 18.89.020~~)), owning or operating an underground storage tank
2 must:

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

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

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

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

18 (5) This section expires June 1, 2013.

19 **Sec. 217.** RCW 70.148.170 and 1991 c 4 s 6 are each amended to read
20 as follows:

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

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

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

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

34 (c) Designate the local government official who will be responsible
35 for negotiating the price of petroleum products to be sold on a cost-
36 plus basis to the local government entities in the affected communities

1 and the entities eligible to receive petroleum products at such price;
2 and

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

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

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

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

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

13 (5) This section expires June 1, 2013.

14 **Sec. 218.** RCW 70.149.010 and 1995 c 20 s 1 are each amended to
15 read as follows:

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

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

28 (3) This section expires June 1, 2013.

29 **Sec. 219.** RCW 70.149.030 and 1995 c 20 s 3 are each amended to
30 read as follows:

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

33 (1) "Accidental release" means a sudden or nonsudden release of
34 heating oil, occurring after July 23, 1995, from operating a heating
35 oil tank that results in bodily injury, property damage, or a need for

1 corrective action, neither expected nor intended by the owner or
2 operator.

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

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

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

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

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

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

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

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

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

35 (6) "Heating oil" means any petroleum product used for space
36 heating in oil-fired furnaces, heaters, and boilers, including stove
37 oil, diesel fuel, or kerosene. "Heating oil" does not include
38 petroleum products used as fuels in motor vehicles, marine vessels,

1 trains, buses, aircraft, or any off-highway equipment not used for
2 space heating, or for industrial processing or the generation of
3 electrical energy.

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

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

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

16 (10) "Pollution liability insurance ((agency)) program" or
17 "program" means the Washington state pollution liability insurance
18 ((agency)) program located within the department.

19 (11) "Property damage" means:

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

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

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

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

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

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

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

38 This section expires June 1, 2013.

1 **Sec. 220.** RCW 70.149.040 and 2009 c 560 s 11 are each amended to
2 read as follows:

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

4 (1) Design a program, consistent with RCW 70.149.120, for providing
5 pollution liability insurance for heating oil tanks that provides up to
6 sixty thousand dollars per occurrence coverage and aggregate limits,
7 and protects the state of Washington from unwanted or unanticipated
8 liability for accidental release claims;

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

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

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

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

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

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

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

33 (9) Implement a program to provide advice and technical assistance
34 to owners and operators of active and abandoned heating oil tanks if
35 contamination from an active or abandoned heating oil tank is
36 suspected. Advice and assistance regarding administrative and
37 technical requirements may include observation of testing or site
38 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.

This section expires June 1, 2013.

Sec. 221. 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;

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

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

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

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

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

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

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

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

24 (4) This section expires June 1, 2013.

25 **Sec. 222.** RCW 70.149.060 and 1995 c 20 s 6 are each amended to
26 read as follows:

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

33 (a) Chapter 48.03 RCW pertaining to examinations;

34 (b) RCW 48.05.250 pertaining to annual reports;

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

36 (d) Chapter 48.13 RCW pertaining to investments;

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

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

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

10 (3) This section expires June 1, 2013.

11 **Sec. 223.** RCW 70.149.090 and 2005 c 274 s 342 are each amended to
12 read as follows:

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

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

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

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

30 (a) The Washington state insurance commissioner;

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

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

36 This section expires June 1, 2013.

1 **Sec. 224.** RCW 70.149.120 and 2007 c 240 s 2 are each amended to
2 read as follows:

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

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

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

20 (4) This section expires June 1, 2013.

21 **NEW SECTION.** **Sec. 225.** A new section is added to chapter 70.148
22 RCW to read as follows:

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

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

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

36 (c) If any question arises as to the transfer of any personnel,
37 funds, books, documents, records, papers, files, equipment, or other

1 tangible property used or held in the exercise of the powers and the
2 performance of the duties and functions transferred, the director of
3 financial management shall make a determination as to the proper
4 allocation and certify the same to the state agencies concerned.

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

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

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

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

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

36 (8) This section expires June 1, 2013.

SUBPART B
RECLAIMED WATER PROGRAM

Sec. 226. RCW 90.46.005 and 2007 c 445 s 2 are each amended to read as follows:

The legislature finds that by encouraging the use of reclaimed water while assuring the health and safety of all Washington citizens and the protection of its environment, the state of Washington will continue to use water in the best interests of present and future generations.

To facilitate the immediate use of reclaimed water for uses approved by the department(~~(s)~~) of ecology (~~(and health)~~), the state shall expand both direct financial support and financial incentives for capital investments in water reuse and reclaimed water to effectuate the goals of this chapter. The legislature further directs (~~(the department of health and)~~) the department of ecology to (~~(coordinate efforts towards developing)~~) develop an efficient and streamlined process for creating and implementing processes for the use of reclaimed water.

It is hereby declared that the people of the state of Washington have a primary interest in the development of facilities to provide reclaimed water to replace potable water in nonpotable applications, to supplement existing surface and ground water supplies, and to assist in meeting the future water requirements of the state.

The legislature further finds and declares that the utilization of reclaimed water by local communities for domestic, agricultural, industrial, recreational, and fish and wildlife habitat creation and enhancement purposes, including wetland enhancement, will contribute to the peace, health, safety, and welfare of the people of the state of Washington. To the extent reclaimed water is appropriate for beneficial uses, it should be so used to preserve potable water for drinking purposes, contribute to the restoration and protection of instream flows that are crucial to preservation of the state's salmonid fishery resources, contribute to the restoration of Puget Sound by reducing wastewater discharge, provide a drought resistant source of water supply for nonpotable needs, or be a source of supply integrated into state, regional, and local strategies to respond to population growth and global warming. Use of reclaimed water constitutes the development of new basic water supplies needed for future generations

1 and local and regional water management planning should consider
2 coordination of infrastructure, development, storage, water reclamation
3 and reuse, and source exchange as strategies to meet water demands
4 associated with population growth and impacts of global warming.

5 The legislature further finds and declares that the use of
6 reclaimed water is not inconsistent with the policy of antidegradation
7 of state waters announced in other state statutes, including the water
8 pollution control act, chapter 90.48 RCW and the water resources act,
9 chapter 90.54 RCW.

10 The legislature finds that other states, including California,
11 Florida, and Arizona, have successfully used reclaimed water to
12 supplement existing water supplies without threatening existing
13 resources or public health.

14 It is the intent of the legislature that the department of ecology
15 ~~((and the department of health))~~ undertake the necessary steps to
16 encourage the development of water reclamation facilities so that
17 reclaimed water may be made available to help meet the growing water
18 requirements of the state.

19 The legislature further finds and declares that reclaimed water
20 facilities are water pollution control facilities as defined in chapter
21 70.146 RCW and are eligible for financial assistance as provided in
22 chapter 70.146 RCW. The legislature finds that funding demonstration
23 projects will ensure the future use of reclaimed water. ~~((The
24 demonstration projects in RCW 90.46.110 are varied in nature and will
25 provide the experience necessary to test different facets of the
26 standards and refine a variety of technologies so that water purveyors
27 can begin to use reclaimed water technology in a more cost effective
28 manner.))~~ This is especially critical in smaller cities and
29 communities where the feasibility for such projects is great, but there
30 are scarce resources to develop the necessary facilities.

31 The legislature further finds that the agricultural processing
32 industry can play a critical and beneficial role in promoting the
33 efficient use of water by having the opportunity to develop and reuse
34 agricultural industrial process water from food processing.

35 **Sec. 227.** RCW 90.46.010 and 2009 c 456 s 1 are each amended to
36 read as follows:

1 The definitions in this section apply throughout this chapter
2 unless the context clearly requires otherwise.

3 (1) "Agricultural industrial process water" means water that has
4 been used for the purpose of agricultural processing and has been
5 adequately and reliably treated, so that as a result of that treatment,
6 it is suitable for other agricultural water use.

7 (2) "Agricultural processing" means the processing of crops or milk
8 to produce a product primarily for wholesale or retail sale for human
9 or animal consumption, including but not limited to potato, fruit,
10 vegetable, and grain processing.

11 (3) "Agricultural water use" means the use of water for irrigation
12 and other uses related to the production of agricultural products.
13 These uses include, but are not limited to, construction, operation,
14 and maintenance of agricultural facilities and livestock operations at
15 farms, ranches, dairies, and nurseries. Examples of these uses
16 include, but are not limited to, dust control, temperature control, and
17 fire control.

18 (4) "Constructed beneficial use wetlands" means those wetlands
19 intentionally constructed on nonwetland sites to produce or create
20 natural wetland functions and values.

21 (5) "Constructed treatment wetlands" means wetland-like
22 impoundments intentionally constructed on nonwetland sites and managed
23 for the primary purpose of further treatment or retention of reclaimed
24 water as distinct from creating natural wetland functions and values.

25 (6) "Direct groundwater recharge" means the controlled subsurface
26 addition of water directly into groundwater for the purpose of
27 replenishing groundwater.

28 (7) "Domestic wastewater" means wastewater from greywater, toilet,
29 or urinal sources.

30 (8) "Greywater or gray water" means domestic type flows from
31 bathtubs, showers, bathroom sinks, washing machines, dishwashers, and
32 kitchen or utility sinks. Gray water does not include flow from a
33 toilet or urinal.

34 (9) "Industrial reuse water" means water that has been used for the
35 purpose of industrial processing and has been adequately and reliably
36 treated so that, as a result of that treatment, it is suitable for
37 other uses.

1 (10) "Land application" means use of reclaimed water as permitted
2 under this chapter for the purpose of irrigation or watering of
3 landscape vegetation.

4 ~~((11) ("Lead agency" means either the department of health or the~~
5 ~~department of ecology that has been designated by rule as the agency~~
6 ~~that will coordinate, review, issue, and enforce a reclaimed water~~
7 ~~permit issued under this chapter.~~

8 ~~((12) "Nonlead agency" means either the department of health or the~~
9 ~~department of ecology, whichever is not the lead agency for purposes of~~
10 ~~this chapter.~~

11 ((13))) "Person" means any state, individual, public or private
12 corporation, political subdivision, governmental subdivision,
13 governmental agency, municipality, copartnership, association, firm,
14 trust estate, or any other legal entity whatever.

15 ((+14)) (12) "Planned groundwater recharge project" means any
16 reclaimed water project designed for the purpose of recharging
17 groundwater.

18 ((+15)) (13) "Reclaimed water" means water derived in any part
19 from wastewater with a domestic wastewater component that has been
20 adequately and reliably treated, so that it can be used for beneficial
21 purposes. Reclaimed water is not considered a wastewater.

22 ((+16)) (14) "State drinking water contaminant criteria" means the
23 contaminant criteria found in the drinking water quality standards
24 adopted by the state board of health pursuant to chapter 43.20 RCW and
25 the department of health pursuant to chapter 70.119A RCW.

26 ((+17)) (15) "Streamflow or surface water augmentation" means the
27 intentional use of reclaimed water for rivers and streams of the state
28 or other surface water bodies, for the purpose of increasing volumes.

29 ((+18)) (16) "Surface percolation" means the controlled
30 application of water to the ground surface or to unsaturated soil for
31 the purpose of replenishing groundwater.

32 ((+19)) (17) "User" means any person who uses reclaimed water.

33 ((+20)) (18) "Wastewater" means water-carried wastes from
34 residences, buildings, industrial and commercial establishments, or
35 other places, together with such groundwater infiltration and inflow as
36 may be present.

37 ((+21)) (19) "Wetland or wetlands" means areas that are inundated
38 or saturated by surface water or groundwater at a frequency and

1 duration sufficient to support, and that under normal circumstances do
2 support, a prevalence of vegetation typically adapted to life in
3 saturated soil conditions. Wetlands generally include swamps, marshes,
4 bogs, and similar areas. Wetlands regulated under this chapter shall
5 be delineated in accordance with the manual adopted by the department
6 of ecology pursuant to RCW 90.58.380.

7 (20) "Department" means the department of ecology.

8 **Sec. 228.** RCW 90.46.015 and 2009 c 456 s 2 are each amended to
9 read as follows:

10 (1) The department ~~((of ecology))~~ shall~~((, in coordination with the~~
11 ~~department of health,))~~ adopt rules for reclaimed water use consistent
12 with this chapter. The rules must address all aspects of reclaimed
13 water use, including commercial and industrial uses, land applications,
14 direct groundwater recharge, wetland discharge, surface percolation,
15 constructed wetlands, and streamflow or surface water augmentation.
16 The department of health shall, in coordination with the department
17 ~~((of ecology))~~, adopt rules for greywater reuse. ~~((The rules must also~~
18 ~~designate whether the department of ecology or the department of health~~
19 ~~will be the lead agency responsible for a particular aspect of~~
20 ~~reclaimed water use.))~~ In developing the rules, the ~~((departments of~~
21 ~~health and ecology))~~ department shall amend or rescind any existing
22 rules on reclaimed water in conflict with the new rules.

23 (2) All rules required to be adopted pursuant to this section must
24 be completed no later than December 31, 2010, although the department
25 ~~((of ecology))~~ is encouraged to adopt the final rules as soon as
26 possible.

27 (3) The department ~~((of ecology))~~ must consult with the advisory
28 committee created under RCW 90.46.050 in all aspects of rule
29 development required under this section.

30 **Sec. 229.** RCW 90.46.030 and 2006 c 279 s 5 are each amended to
31 read as follows:

32 (1)~~((a) The department of health shall, in coordination with the~~
33 ~~department of ecology, adopt a single set of standards, procedures, and~~
34 ~~guidelines on or before August 1, 1993, for the industrial and~~
35 ~~commercial use of reclaimed water.~~

1 ~~(b) Standards adopted under this section are superseded by any~~
2 ~~rules adopted by the department of ecology pursuant to RCW 90.46.015 as~~
3 ~~they relate to the industrial and commercial use of reclaimed water.~~

4 ~~(2) Unless~~) The department ~~((of ecology adopts))~~ shall adopt rules
5 pursuant to RCW 90.46.015 that relate to the industrial and commercial
6 use of reclaimed water ~~((specifying otherwise,))~~. The department ~~((of~~
7 ~~health))~~ may issue a reclaimed water permit for industrial and
8 commercial uses of reclaimed water to the generator of reclaimed water
9 who may then distribute the water, subject to provisions in the permit
10 governing the location, rate, water quality, and purposes of use.
11 Permits issued after the adoption of rules under RCW 90.46.015 must be
12 consistent with the adopted rules.

13 ~~((3))~~ (2) The department ~~((of health))~~ in consultation with the
14 advisory committee established in RCW 90.46.050, shall develop
15 recommendations for a fee structure for permits issued under
16 ~~((subsection (2) of))~~ this ~~((section))~~ chapter. Fees shall be
17 established in amounts to fully recover, and not exceed, expenses
18 incurred by the department ~~((of health))~~ in processing permit
19 applications and modifications, monitoring and evaluating compliance
20 with permits, and conducting inspections and supporting the reasonable
21 overhead expenses that are directly related to these activities.
22 Permit fees may not be used for research or enforcement activities.
23 ~~((The department of health shall not issue permits under this section~~
24 ~~until a fee structure has been established.~~

25 ~~(4))~~ (3) A permit under this section for use of reclaimed water
26 may be issued only to:

- 27 (a) A municipal, quasi-municipal, or other governmental entity;
28 (b) A private utility as defined in RCW 36.94.010; ~~((or))~~
29 (c) The holder of a waste discharge permit issued under chapter
30 90.48 RCW or operating permit under chapter 70.118B RCW; or
31 (d) The owner of an agricultural processing facility that is
32 generating agricultural industrial process water for agricultural use,
33 or the owner of an industrial facility that is generating industrial
34 process water for reuse.

35 ~~((5))~~ (4) The authority and duties created in this section are in
36 addition to any authority and duties already provided in law with
37 regard to sewage and wastewater collection, treatment, and disposal for

1 the protection of health and safety of the state's waters. Nothing in
2 this section limits the powers of the state or any political
3 subdivision to exercise such authority.

4 ~~((6) Unless the department of ecology adopts rules pursuant to RCW~~
5 ~~90.46.015 that relate to the industrial and commercial use of reclaimed~~
6 ~~water specifying otherwise, the department of health may implement the~~
7 ~~requirements of this section through the department of ecology by~~
8 ~~execution of a formal agreement between the departments. Upon~~
9 ~~execution of such an agreement, the department of ecology may issue~~
10 ~~reclaimed water permits for industrial and commercial uses of reclaimed~~
11 ~~water by issuance of permits under chapter 90.48 RCW, and may establish~~
12 ~~and collect fees as required for permits issued under chapter 90.48~~
13 ~~RCW.~~

14 ~~(7) Unless the department of ecology adopts rules pursuant to RCW~~
15 ~~90.46.015 that relate to the industrial and commercial use of reclaimed~~
16 ~~water specifying otherwise, and))~~

17 (5) Before deciding whether to issue a permit under this section to
18 a private utility, the department ((of health)) may require information
19 that is reasonable and necessary to determine whether the private
20 utility has the financial and other resources to ensure the
21 reliability, continuity, and supervision of the reclaimed water
22 facility.

23 **Sec. 230.** RCW 90.46.050 and 2006 c 279 s 2 are each amended to
24 read as follows:

25 The department ~~((of ecology))~~ shall~~((, before July 1, 2006,))~~ form
26 an advisory committee~~((, in coordination with the department of health~~
27 ~~and the department of agriculture,))~~ which will provide technical
28 assistance in the development of standards, procedures, and guidelines
29 required by this chapter. The advisory committee shall be composed of
30 a broad range of interested individuals representing the various
31 stakeholders that utilize or are potentially impacted by the use of
32 reclaimed water and include a representative from the department of
33 health and a representative from the department of agriculture. The
34 advisory committee must also contain individuals with technical
35 expertise and knowledge of new advancements in technology.

1 **Sec. 231.** RCW 90.46.090 and 2006 c 279 s 10 are each amended to
2 read as follows:

3 (1) Reclaimed water may be beneficially used for discharge into
4 constructed beneficial use wetlands and constructed treatment wetlands
5 provided the reclaimed water meets the class A or B reclaimed water
6 standards as defined in the reclamation criteria, and the discharge is
7 incorporated into a sewer or water comprehensive plan, as applicable,
8 adopted by the applicable local government and approved by the
9 department of health or department of ecology as applicable.

10 (2) Reclaimed water that does not meet the class A or B reclaimed
11 water standards may be beneficially used for discharge into constructed
12 treatment wetlands where the department (~~(of ecology, in consultation~~
13 ~~with the department of health,))~~ has specifically authorized such use
14 at such lower standards.

15 (3)(a) The department (~~(of ecology and the department of health))~~
16 must develop appropriate standards for discharging reclaimed water into
17 constructed beneficial use wetlands and constructed treatment wetlands.
18 These standards must be considered as part of the approval process
19 under subsections (1) and (2) of this section.

20 (b) Standards adopted under this section are superseded by any
21 rules adopted by the department (~~(of ecology))~~ pursuant to RCW
22 90.46.015 as they relate to discharge into constructed beneficial use
23 wetlands and constructed treatment wetlands.

24 **Sec. 232.** RCW 90.46.120 and 2009 c 456 s 5 are each amended to
25 read as follows:

26 (1) The owner of a wastewater treatment facility that is reclaiming
27 water with a permit issued under this chapter has the exclusive right
28 to any reclaimed water generated by the wastewater treatment facility.
29 Use, distribution, storage, and the recovery from storage of reclaimed
30 water permitted under this chapter is exempt from the permit
31 requirements of RCW 90.03.250 and 90.44.060, provided that a permit for
32 recovery of reclaimed water from aquifer storage shall be reviewed
33 under the standards established under RCW 90.03.370(2) for aquifer
34 storage and recovery projects. Revenues derived from the reclaimed
35 water facility shall be used only to offset the cost of operation of
36 the wastewater utility fund or other applicable source of systemwide
37 funding.

1 (2) If the proposed use of reclaimed water is to augment or replace
2 potable water supplies or to create the potential for the development
3 of an additional new potable water supply, then regional water supply
4 plans, or any other potable water supply plans prepared by multiple
5 water purveyors, must consider the proposed use of the reclaimed water
6 as they are developed or updated.

7 (a) Regional water supply plans include those adopted under state
8 board of health laws (chapter 43.20 RCW), the public water system
9 coordination act of 1977 (chapter 70.116 RCW), groundwater protection
10 laws (chapter 90.44 RCW), and the watershed planning act (chapter 90.82
11 RCW).

12 (b) The requirement to consider the use of reclaimed water does not
13 change the plan approval process established under these statutes.

14 (c) When regional water supply plans are being developed, the
15 owners of wastewater treatment facilities that produce or propose to
16 produce reclaimed water for use within the planning area must be
17 included in the planning process.

18 (3) When reclaimed water is available or is proposed for use under
19 a water supply or wastewater plan developed under chapter 43.20,
20 70.116, 90.44, 90.48, or 90.82 RCW these plans must be coordinated to
21 ensure that opportunities for reclaimed water are evaluated. The
22 requirements of this subsection (3) do not apply to water system plans
23 developed under chapter 43.20 RCW for utilities serving less than one
24 thousand service connections.

25 (4) The provisions of any plan for reclaimed water, developed under
26 the authorities in subsections (2) and (3) of this section, should be
27 included by a city, town, or county in reviewing provisions for water
28 supplies in a proposed short plat, short subdivision, or subdivision
29 under chapter 58.17 RCW, where reclaimed water supplies may be proposed
30 for nonpotable purposes in the short plat, short subdivision, or
31 subdivision.

32 ~~((5) By November 30, 2009, the department of ecology shall review~~
33 ~~comments from the reclaimed water advisory committee under RCW~~
34 ~~90.46.050 and the reclaimed water and water rights advisory committee~~
35 ~~under the direction of the department of ecology and submit a~~
36 ~~recommendation to the legislature on the impairment requirements and~~
37 ~~standards for reclaimed water. The department of ecology shall also~~

1 ~~provide a report to the legislature that describes the opinions of the~~
2 ~~stakeholders on the impairment requirements and standards for reclaimed~~
3 ~~water.))~~

4 **Sec. 233.** RCW 90.46.150 and 2001 c 69 s 3 are each amended to read
5 as follows:

6 The permit to apply agricultural industrial process water to
7 agricultural water use shall be the permit issued under chapter 90.48
8 RCW to the owner of the agricultural processing plant who may then
9 distribute the water through methods including, but not limited to,
10 irrigation systems, subject to provisions in the permit governing the
11 location, rate, water quality, and purpose. ~~((In cases where the~~
12 ~~department of ecology determines that a significant risk to public~~
13 ~~health exists, in land application of the water, the department must~~
14 ~~refer the application to the department of health for review and~~
15 ~~consultation.))~~

16 The owner of the agricultural processing plant who obtains a permit
17 under this section has the exclusive right to the use of any
18 agricultural industrial process water generated from the plant and to
19 the distribution of such water through facilities including irrigation
20 systems. Use and distribution of the water by the owner is exempt from
21 the permit requirements of RCW 90.03.250, 90.03.380, 90.44.060, and
22 90.44.100.

23 Nothing in chapter 69, Laws of 2001 shall be construed to affect
24 any right to reuse agricultural industrial discharge water in existence
25 on or before July 22, 2001.

26 **Sec. 234.** RCW 90.46.160 and 2002 c 329 s 6 are each amended to
27 read as follows:

28 (1) The permit to use industrial reuse water shall be the permit
29 issued under chapter 90.48 RCW to the owner of the plant that is the
30 source of the industrial process water, who may then distribute the
31 water according to provisions in the permit governing the location,
32 rate, water quality, and purpose. ~~((In cases where the department of~~
33 ~~ecology determines that a proposed use may pose a significant risk to~~
34 ~~public health, the department shall refer the permit application to the~~
35 ~~department of health for review and consultation.))~~

1 (2) The owner of the industrial plant who obtains a permit under
2 this section has the exclusive right to the use of any industrial reuse
3 water generated from the plant and to the distribution of such water.
4 Use and distribution of the water by the owner is exempt from the
5 permit requirements of RCW 90.03.250, 90.03.380, 90.44.060, and
6 90.44.100.

7 (3) Nothing in this section affects any right to reuse industrial
8 process water in existence on or before June 13, 2002.

9 **Sec. 235.** RCW 90.46.200 and 2009 c 456 s 7 are each amended to
10 read as follows:

11 ~~(1) ((The department of ecology and the department of health shall~~
12 ~~have authority to carry out all the provisions of this chapter~~
13 ~~including, but not limited to, permitting and enforcement. Only the~~
14 ~~department of ecology or the department of health may act as a lead~~
15 ~~agency for purposes of this chapter and will be established as such by~~
16 ~~rule. Enforcement of a permit issued under this chapter shall be at~~
17 ~~the sole discretion of the lead agency that issued the permit.~~

18 ~~(2) All permit applications shall be referred to the nonlead agency~~
19 ~~for review and consultation. The nonlead agency may choose to limit~~
20 ~~the scope of its review.~~

21 ~~(3)) The department shall consult with the department of health in~~
22 ~~cases where a proposed use of reclaimed water may pose a significant~~
23 ~~risk to public health.~~

24 (2) The authority and duties created in this chapter are in
25 addition to any authority and duties already provided in law. Nothing
26 in this chapter limits the powers of the state or any political
27 subdivision to exercise such authority.

28 **Sec. 236.** RCW 90.46.210 and 2009 c 456 s 8 are each amended to
29 read as follows:

30 The ~~((lead agency))~~ department, with the assistance of the attorney
31 general, is authorized to bring any appropriate action at law or in
32 equity, including action for injunctive relief, as may be necessary to
33 carry out the provisions of this chapter. The ~~((lead agency))~~
34 department may bring the action in the superior court of the county in
35 which the violation occurred or in the superior court of Thurston

1 county. The court may award reasonable attorneys' fees for the cost of
2 the attorney general's office in representing the ((~~lead agency~~))
3 department.

4 **Sec. 237.** RCW 90.46.220 and 2009 c 456 s 9 are each amended to
5 read as follows:

6 (1) Any person proposing to generate any type of reclaimed water
7 for a use regulated under this chapter shall obtain a permit from the
8 ((~~lead agency~~)) department prior to distribution or use of that water.
9 The permittee may then distribute and use the water, subject to the
10 provisions in the permit. The permit must include provisions that
11 protect human health and the environment. At a minimum, the permit
12 must:

13 (a) Assure adequate and reliable treatment; and

14 (b) Govern the water quality, location, rate, and purpose of use.

15 (2) A permit under this chapter may be issued only to:

16 (a) A municipal, quasi-municipal, or other governmental entity;

17 (b) A private utility as defined in RCW 36.94.010;

18 (c) The holder of a waste disposal permit issued under chapter
19 90.48 RCW or operating permit under chapter 70.118B RCW; or

20 (d) The owner of an agricultural processing facility that is
21 generating agricultural industrial process water for agricultural use,
22 or the owner of an industrial facility that is generating industrial
23 process water for reuse.

24 (3) Before deciding whether to issue a permit under this section to
25 a private utility, the ((~~lead agency~~)) department may require
26 information that is reasonable and necessary to determine whether the
27 private utility has the financial and other resources to ensure the
28 reliability, continuity, and supervision of the reclaimed water
29 facility.

30 (4) Permits shall be issued for a fixed term specified by the rules
31 adopted under RCW 90.46.015. A permittee shall apply for permit
32 renewal prior to the end of the term. The rules adopted under RCW
33 90.46.015 shall specify the process of renewal, modification, change of
34 ownership, suspension, and termination.

35 (5) The ((~~lead agency~~)) department may deny an application for a
36 permit or modify, suspend, or revoke a permit for good cause, including
37 but not limited to, any case in which it finds that the permit was

1 obtained by fraud or misrepresentation, or there is or has been a
2 failure, refusal, or inability to comply with the requirements of this
3 chapter or the rules adopted under this chapter.

4 (6) The ~~((lead agency))~~ department shall provide for adequate
5 public notice and opportunity for review and comment on all initial
6 permit applications and renewal applications. Methods for providing
7 notice may include electronic mail, posting on the ~~((lead agency's))~~
8 department's internet site, publication in a local newspaper, press
9 releases, mailings, or other means of notification the ~~((lead agency))~~
10 department determines appropriate. The ~~((lead agency))~~ department
11 shall also publicize notice of final permitting decisions.

12 (7) Any person aggrieved by a permitting decision has the right to
13 an adjudicative proceeding. An adjudicative proceeding conducted under
14 this subsection is governed by chapter 34.05 RCW. ~~((For any permit
15 decision for which the department of ecology is the lead agency under
16 this chapter,))~~ Any appeal shall be in accordance with chapter 43.21B
17 RCW. ~~((For any permit decision for which department of health is the
18 lead agency under this chapter, any application for an adjudicative
19 proceeding must be in writing, state the basis for contesting the
20 action, include a copy of the decision, be served on and received by
21 the department of health within twenty-eight days of receipt of notice
22 of the final decision, and be served in a manner that shows proof of
23 receipt.))~~

24 (8) Permit requirements for the distribution and use of greywater
25 will be established in rules adopted by the department of health under
26 RCW 90.46.015.

27 **Sec. 238.** RCW 90.46.230 and 2009 c 456 s 10 are each amended to
28 read as follows:

29 (1)(a) Except as otherwise provided in (b) of this subsection, the
30 ~~((lead agency))~~ department or its designee shall have the right to
31 enter and inspect any property related to the purpose of the permit,
32 public or private, at reasonable times with prior notification in order
33 to determine compliance with laws and rules administered by the ~~((lead
34 agency))~~ department. During such inspections, the ~~((lead agency))~~
35 department shall have free and unimpeded access to all data,
36 facilities, and property involved in the generation, distribution, and
37 use of reclaimed water.

1 (b) The ((~~lead agency~~)) department or its designee need not give
2 prior notification to enter property under (a) of this subsection if
3 the purpose of the entry is to ensure compliance by the permittee with
4 a prior order of the ((~~lead agency~~)) department or if the ((~~lead~~
5 ~~agency~~)) department or its designee has reasonable cause to believe
6 there is a violation of the law that poses a serious threat to public
7 health and safety or the environment.

8 (2) The ((~~lead agency~~)) department or its designee may apply for an
9 administrative search warrant to a court of competent jurisdiction and
10 an administrative search warrant may issue where:

11 (a) The ((~~lead agency~~)) department has attempted an inspection
12 under this chapter and access has been actually or constructively
13 denied; or

14 (b) There is reasonable cause to believe that a violation of this
15 chapter or rules adopted under this chapter is occurring or has
16 occurred.

17 **Sec. 239.** RCW 90.46.240 and 2009 c 456 s 11 are each amended to
18 read as follows:

19 All required feasibility studies, planning documents, engineering
20 reports, and plans and specifications for the construction of new
21 reclaimed water, agricultural industrial process water, and industrial
22 reuse water facilities, including generation, distribution, and use
23 facilities, or for improvements or extensions to existing facilities,
24 and the proposed method of future operation and maintenance of said
25 facility or facilities, shall be submitted to and be approved by the
26 ((~~lead agency~~)) department, before construction thereof may begin. No
27 approval shall be given until the ((~~lead agency~~)) department is
28 satisfied that the plans, reports, and specifications and the methods
29 of operation and maintenance submitted are adequate to protect the
30 quality of the water for the intended use as provided for in this
31 chapter and are adequate to protect public health and safety as
32 necessary.

33 **Sec. 240.** RCW 90.46.250 and 2009 c 456 s 12 are each amended to
34 read as follows:

35 (1) When, in the opinion of the ((~~lead agency~~)) department, a
36 person violates or creates a substantial potential to violate this

chapter, the ((~~lead agency~~)) department shall notify the person of its determination by registered mail. The determination shall not constitute an appealable order or directive. Within thirty days from the receipt of notice of such determination, the person shall file with the ((~~lead agency~~)) department a full report stating what steps have been and are being taken to comply with the determination of the ((~~lead agency~~)) department. After the full report is filed or after the thirty days have elapsed, the ((~~lead agency~~)) department may issue the order or directive as it deems appropriate under the circumstances, shall notify the person by registered mail, and shall inform the person of the process for requesting an adjudicative hearing.

(2) When it appears to the ((~~lead agency~~)) department that water quality conditions or other conditions exist which require immediate action to protect human health and safety or the environment, the ((~~lead agency~~)) department may issue a written order to the person or persons responsible without first issuing a notice of determination pursuant to subsection (1) of this section. An order or directive issued pursuant to this subsection shall be served by registered mail or personally upon any person to whom it is directed, and shall inform the person or persons responsible of the process for requesting an adjudicative hearing.

Sec. 241. RCW 90.46.260 and 2009 c 456 s 13 are each amended to read as follows:

Any person found guilty of willfully violating any of the provisions of this chapter, or any final written orders or directive of the ((~~lead agency~~)) department or a court in pursuance thereof, is guilty of a gross misdemeanor, and upon conviction thereof shall be punished by a fine of up to ten thousand dollars and costs of prosecution, or by imprisonment in the county jail for not more than one year, or both, in the discretion of the court. Each day upon which a willful violation of the provisions of this chapter occurs may be deemed a separate and additional violation.

Sec. 242. RCW 90.46.260 and 2011 c 96 s 60 are each amended to read as follows:

Any person found guilty of willfully violating any of the provisions of this chapter, or any final written orders or directive of

1 the (~~lead agency~~) department or a court in pursuance thereof, is
2 guilty of a gross misdemeanor, and upon conviction thereof shall be
3 punished by a fine of up to ten thousand dollars and costs of
4 prosecution, or by imprisonment in the county jail for up to three
5 hundred sixty-four days, or both, in the discretion of the court. Each
6 day upon which a willful violation of the provisions of this chapter
7 occurs may be deemed a separate and additional violation.

8 **Sec. 243.** RCW 90.46.270 and 2009 c 456 s 14 are each amended to
9 read as follows:

10 (1) Except as provided in RCW 43.05.060 through 43.05.080,
11 43.05.100, 43.05.110, and 43.05.150, any person who:

12 (a) Generates any reclaimed water for a use regulated under this
13 chapter and distributes or uses that water without a permit;

14 (b) Violates the terms or conditions of a permit issued under this
15 chapter; or

16 (c) Violates rules or orders adopted or issued pursuant to this
17 chapter,

18 shall incur, in addition to any other penalty as provided by law, a
19 penalty in an amount of up to ten thousand dollars per day for every
20 violation. Each violation shall be a separate and distinct offense,
21 and in case of a continuing violation, every day's continuance shall be
22 a separate and distinct violation. Every act of commission or omission
23 which procures, aids, or abets in the violation shall be considered a
24 violation under the provisions of this section and subject to the
25 penalty herein provided for. The penalty amount shall be set in
26 consideration of the previous history of the violator and the severity
27 of the violation's impact on public health, the environment, or both,
28 in addition to other relevant factors.

29 (2) A penalty imposed by a final administrative order is due upon
30 service of the final administrative order. A person who fails to pay
31 a penalty assessed by a final administrative order within thirty days
32 of service of the final administrative order shall pay, in addition to
33 the amount of the penalty, interest at the rate of one percent of the
34 unpaid balance of the assessed penalty for each month or part of a
35 month that the penalty remains unpaid, commencing within the month in
36 which the notice of penalty was served, and reasonable attorneys' fees

1 as are incurred if civil enforcement of the final administrative order
2 is required to collect penalty.

3 (3) A person who institutes proceedings for judicial review of a
4 final administrative order assessing a civil penalty under this chapter
5 shall place the full amount of the penalty in an interest bearing
6 account in the registry of the reviewing court. At the conclusion of
7 the proceeding the court shall, as appropriate, enter a judgment on
8 behalf of the ~~((lead agency))~~ department and order that the judgment be
9 satisfied to the extent possible from moneys paid into the registry of
10 the court or shall enter a judgment in favor of the person appealing
11 the penalty assessment and order return of the moneys paid into the
12 registry of the court together with accrued interest to the person
13 appealing. The judgment may award reasonable attorneys' fees for the
14 cost of the attorney general's office in representing the ~~((lead~~
15 ~~agency))~~ department.

16 (4) If no appeal is taken from a final administrative order
17 assessing a civil penalty under this chapter, the ~~((lead agency))~~
18 department may file a certified copy of the final administrative order
19 with the clerk of the superior court in which the person resides, or in
20 Thurston county, and the clerk shall enter judgment in the name of the
21 ~~((lead agency))~~ department and in the amount of the penalty assessed in
22 the final administrative order.

23 ~~((When the penalty herein provided for is imposed by the~~
24 ~~department of ecology, it))~~ The penalty shall be imposed pursuant to
25 the procedures set forth in RCW 43.21B.300. All penalties imposed by
26 the department ~~((of ecology))~~ pursuant to RCW 43.21B.300 shall be
27 deposited into the state treasury and credited to the general fund.

28 ~~((6) When the penalty is imposed by the department of health, it~~
29 ~~shall be imposed pursuant to the procedures set forth in RCW 43.70.095.~~
30 ~~All receipts from penalties shall be deposited into the health~~
31 ~~reclaimed water account. The department of health shall use revenue~~
32 ~~derived from penalties only to provide training and technical~~
33 ~~assistance to reclaimed water system owners and operators.))~~

34 NEW SECTION. Sec. 244. A new section is added to chapter 90.46
35 RCW to read as follows:

36 (1) The reclaimed water program is transferred from the department
37 of health to the department of ecology.

1 (2)(a) All reports, documents, surveys, books, records, files,
2 papers, or written material in the possession of the department of
3 health reclaimed water program shall be delivered to the custody of the
4 department of ecology. All cabinets, furniture, office equipment,
5 motor vehicles, and other tangible property employed by the department
6 of health reclaimed water program shall be transferred to the
7 department of ecology. All funds, credits, or other assets held by the
8 department of health reclaimed water program shall be assigned to the
9 department of ecology.

10 (b) Any appropriations made to the department of health for the
11 reclaimed water program shall be transferred and credited to the
12 department of ecology.

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

19 (3) All employees of the department of health reclaimed water
20 program are transferred to the jurisdiction of the department of
21 ecology. All employees classified under chapter 41.06 RCW, the state
22 civil service law, are assigned to the department of ecology to perform
23 their usual duties upon the same terms as formerly, without any loss of
24 rights, subject to any action that may be appropriate thereafter in
25 accordance with the laws and rules governing state civil service.

26 (4) All rules and all pending business before the department of
27 health reclaimed water program shall be continued and acted upon by the
28 department of ecology. All existing contracts and obligations shall
29 remain in full force and shall be performed by the department of
30 ecology.

31 (5) The transfer of the powers, duties, functions, and personnel of
32 the department of health reclaimed water program to the department of
33 ecology under this act shall not affect the validity of any activity
34 performed before the effective date of this section or the effective
35 date of the consolidation.

36 (6) If apportionments of budgeted funds are required because of the
37 consolidation directed by this section, the director of financial
38 management shall certify the apportionments to the affected agencies,

1 the state auditor, and the state treasurer. Each of these shall make
2 the appropriate transfer and adjustments in funds and appropriation
3 accounts and equipment records in accordance with the certification.

4 (7) All classified employees of the department of health reclaimed
5 water program assigned to the department of ecology under this act
6 whose positions are within an existing bargaining unit description at
7 the department of health shall become a part of the existing bargaining
8 unit at the department of ecology and shall be considered an
9 appropriate inclusion or modification of the existing bargaining unit
10 under the provisions of chapter 41.80 RCW.

11 NEW SECTION. **Sec. 245.** The following acts or parts of acts are
12 each repealed:

13 (1) RCW 90.46.020 (Interim standards for pilot projects for use of
14 reclaimed water) and 1992 c 204 s 3;

15 (2) RCW 90.46.072 (Conflict resolution--Reclaimed water projects
16 and chapter 372-32 WAC) and 1995 c 342 s 8; and

17 (3) RCW 90.46.110 (Reclaimed water demonstration program--
18 Demonstration projects) and 1997 c 355 s 2.

19 **SUBPART C**

20 **CONSOLIDATING THE COLUMBIA RIVER GORGE COMMISSION UNDER** 21 **THE DEPARTMENT OF ECOLOGY**

22 NEW SECTION. **Sec. 246.** A new section is added to chapter 43.97
23 RCW to read as follows:

24 (1) As authorized by this chapter for the state of Washington, the
25 department of ecology shall provide administrative and functional
26 assistance to the Columbia River Gorge commission. This provision of
27 administrative and functional assistance does not alter the legal
28 status of the commission as a bistate compact entity or confer the
29 status of state agency upon the commission.

30 (2) Pursuant to RCW 43.97.015 Article IV b., the governor
31 designates the director of the department of ecology. The commission
32 shall submit a budget of its estimated expenditures to the director of
33 the department of ecology. The department of ecology shall include a
34 request for funding for the commission as a separate program in its

1 budget submittal to the governor. The department shall separately
2 account for the commission funding.

3 **SUBPART D**
4 **SITE USE PERMIT AUTHORITY**

5 **Sec. 247.** RCW 43.200.015 and 1989 c 322 s 1 are each amended to
6 read as follows:

7 As used in this chapter, the following terms have the meanings
8 indicated unless the context clearly requires otherwise.

9 (1) "High-level radioactive waste" means "high-level radioactive
10 waste" as the term is defined in 42 U.S.C. Sec. 10101 (P.L. 97-425).

11 (2) "Low-level radioactive waste" means waste material that
12 contains radioactive nuclides emitting primarily beta or gamma
13 radiation, or both, in concentrations or quantities that exceed
14 applicable federal or state standards for unrestricted release. Low-
15 level waste does not include waste containing more than one hundred
16 nanocuries of transuranic contaminants per gram of material, nor spent
17 nuclear fuel, nor material classified as either high-level radioactive
18 waste or waste that is unsuited for disposal by near-surface burial
19 under any applicable federal regulations.

20 (3) "Radioactive waste" means both high-level and low-level
21 radioactive waste.

22 (4) "Spent nuclear fuel" means spent nuclear fuel as the term is
23 defined in 42 U.S.C. Sec. 10101.

24 (5) "Department" means the department of ecology.

25 (6) "Commercial low-level radioactive waste disposal facility" has
26 the same meaning as "facility" as defined in RCW 43.145.010.

27 **Sec. 248.** RCW 43.200.080 and 2003 1st sp.s. c 21 s 1 are each
28 amended to read as follows:

29 The director of ecology shall, in addition to the powers and duties
30 otherwise imposed by law, have the following special powers and duties:

31 (1) To fulfill the responsibilities of the state under the lease
32 between the state of Washington and the federal government executed
33 September 10, 1964, as amended, covering approximately one (~~thousand~~)
34 hundred fifteen acres of land lying within the Hanford reservation near
35 Richland, Washington. The department of ecology may sublease to

1 private or public entities all or a portion of the land for specific
2 purposes or activities which are determined, after public hearing, to
3 be in agreement with the terms of the lease and in the best interests
4 of the citizens of the state consistent with any criteria that may be
5 developed as a requirement by the legislature;

6 (2) To assume the responsibilities of the state under the perpetual
7 care agreement between the state of Washington and the federal
8 government executed July 29, 1965, and the sublease between the state
9 of Washington and the site operator of the ((Hanford)) commercial low-
10 level radioactive waste disposal facility. In order to finance
11 perpetual surveillance and maintenance under the agreement and ensure
12 site closure under the sublease, the department of ecology shall impose
13 and collect fees from parties holding radioactive materials for waste
14 management purposes. The fees shall be established by rule adopted
15 under chapter 34.05 RCW and shall be an amount determined by the
16 department of ecology to be necessary to defray the estimated liability
17 of the state. Such fees shall reflect equity between the disposal
18 facilities of this and other states. A site closure account and a
19 perpetual surveillance and maintenance account ((is)) are hereby
20 created in the state treasury. Site use permit fees collected by the
21 department of health under RCW 70.98.085(3) must be deposited in the
22 site closure account and must be used as specified in RCW 70.98.085(3).
23 Funds in the site closure account other than site use permit fee funds
24 shall be exclusively available to reimburse, to the extent that moneys
25 are available in the account, the site operator for its costs plus a
26 reasonable profit as agreed by the operator and the state, or to
27 reimburse the state licensing agency and any agencies under contract to
28 the state licensing agency for their costs in final closure and
29 decommissioning of the ((Hanford)) commercial low-level radioactive
30 waste disposal facility. If a balance remains in the account after
31 satisfactory performance of closure and decommissioning, this balance
32 shall be transferred to the perpetual surveillance and maintenance
33 account. The perpetual surveillance and maintenance account shall be
34 used exclusively by the state to meet post-closure surveillance and
35 maintenance costs, or for otherwise satisfying surveillance and
36 maintenance obligations. Appropriations are required to permit
37 expenditures and payment of obligations from the site closure account
38 and the perpetual surveillance and maintenance account. ((All moneys,

1 including earnings from the investment of balances in the site closure
2 and the perpetual surveillance and maintenance account, less the
3 allocation to the state treasurer's service fund, pursuant to RCW
4 43.08.190 accruing under the authority of this section shall be
5 directed to the site closure account until December 31, 1992.
6 Thereafter receipts including earnings from the investment of balances
7 in the site closure and the perpetual surveillance and maintenance
8 account, less the allocation to the state treasurer's service fund,
9 pursuant to RCW 43.08.190)) Receipts shall be directed to the site
10 closure account and the perpetual surveillance and maintenance account
11 as specified by the department. Additional moneys specifically
12 appropriated by the legislature or received from any public or private
13 source may be placed in the site closure account and the perpetual
14 surveillance and maintenance account. During the 2003-2005 fiscal
15 biennium, the legislature may transfer up to thirteen million eight
16 hundred thousand dollars from the site closure account to the general
17 fund;

18 (3)(a) Subject to the conditions in (b) of this subsection, on July
19 1, 2008, and each July 1st thereafter, the treasurer shall transfer
20 from the perpetual surveillance and maintenance account to the site
21 closure account the sum of nine hundred sixty-six thousand dollars.
22 The nine hundred sixty-six thousand dollars transferred on July 1,
23 2009, and thereafter shall be adjusted to a level equal to the
24 percentage increase in the United States implicit price deflator for
25 personal consumption. The last transfer under this section shall occur
26 on July 1, 2033.

27 (b) The transfer in (a) of this subsection shall occur only if
28 written agreement is reached between the state department of ecology
29 and the United States department of energy pursuant to section 6 of the
30 perpetual care agreement dated July 29, 1965, between the United States
31 atomic energy commission and the state of Washington. If agreement
32 cannot be reached between the state department of ecology and the
33 United States department of energy by June 1, 2008, the treasurer shall
34 transfer the funds from the general fund to the site closure account
35 according to the schedule in (a) of this subsection.

36 (c) If for any reason the ((Hanford)) commercial low-level
37 radioactive waste disposal facility is closed to further disposal
38 operations during or after the 2003-2005 biennium and before 2033, then

1 the amount remaining to be repaid from the 2003-2005 transfer of
2 thirteen million eight hundred thousand dollars from the site closure
3 account shall be transferred by the treasurer from the general fund to
4 the site closure account to fund the closure and decommissioning of the
5 facility. The treasurer shall transfer to the site closure account in
6 full the amount remaining to be repaid upon written notice from the
7 secretary of health that the department of health has authorized
8 closure or that disposal operations have ceased. The treasurer shall
9 complete the transfer within sixty days of written notice from the
10 secretary of health.

11 (d) To the extent that money in the site closure account together
12 with the amount of money identified for repayment to the site closure
13 account, pursuant to (a) through (c) of this subsection, equals or
14 exceeds the cost estimate approved by the department of health for
15 closure and decommissioning of the facility, the money in the site
16 closure account together with the amount of money identified for
17 repayment to the site closure account shall constitute adequate
18 financial assurance for purposes of the department of health financial
19 assurance requirements;

20 (4) To assure maintenance of such insurance coverage by state
21 licensees, lessees, or sublessees as will adequately, in the opinion of
22 the director, protect the citizens of the state against nuclear
23 accidents or incidents that may occur on privately or state-controlled
24 nuclear facilities;

25 ~~((To institute a user permit system and issue site use permits,~~
26 ~~consistent with regulatory practices, for generators, packagers, or~~
27 ~~brokers using the Hanford low-level radioactive waste disposal~~
28 ~~facility. The costs of administering the user permit system shall be~~
29 ~~borne by the applicants for site use permits. The site use permit fee~~
30 ~~shall be set at a level that is sufficient to fund completely the~~
31 ~~executive and legislative participation in activities related to the~~
32 ~~Northwest Interstate Compact on Low-Level Radioactive Waste Management;~~

33 ~~(6+))~~ To make application for or otherwise pursue any federal funds
34 to which the state may be eligible, through the federal resource
35 conservation and recovery act or any other federal programs, for the
36 management, treatment or disposal, and any remedial actions, of wastes
37 that are both radioactive and hazardous at all ~~((Hanford))~~ commercial
38 low-level radioactive waste disposal facilities; and

1 ((+7)) (6) To develop contingency plans for duties and options for
2 the department and other state agencies related to the ((Hanford))
3 commercial low-level radioactive waste disposal facility based on
4 various projections of annual levels of waste disposal. These plans
5 shall include an analysis of expected revenue to the state in various
6 taxes and funds related to low-level radioactive waste disposal and the
7 resulting implications that any increase or decrease in revenue may
8 have on state agency duties or responsibilities. The plans shall be
9 updated annually.

10 **Sec. 249.** RCW 43.200.170 and 1990 c 21 s 3 are each amended to
11 read as follows:

12 The governor may assess surcharges and penalty surcharges on the
13 disposal of waste at the ((Hanford)) commercial low-level radioactive
14 waste disposal facility. The surcharges may be imposed up to the
15 maximum extent permitted by federal law. Ten dollars per cubic foot of
16 the moneys received under this section shall be transmitted monthly to
17 the site closure account established under RCW 43.200.080. The rest of
18 the moneys received under this section shall be deposited in the
19 general fund.

20 **Sec. 250.** RCW 43.200.180 and 1998 c 245 s 81 are each amended to
21 read as follows:

22 Except as provided in chapter 70.98 RCW, the department of ecology
23 shall be the state agency responsible for implementation of the federal
24 low-level radioactive waste policy amendments act of 1985, including:

25 (1) Collecting and administering the surcharge assessed by the
26 governor under RCW 43.200.170;

27 (2) Collecting low-level radioactive waste data from disposal
28 facility operators, generators, intermediate handlers, and the federal
29 department of energy;

30 (3) Developing and operating a computerized information system to
31 manage low-level radioactive waste data;

32 (4) Denying and reinstating access to the ((Hanford)) commercial
33 low-level radioactive waste disposal facility pursuant to the authority
34 granted under federal law;

35 (5) Administering and/or monitoring (a) the maximum waste volume
36 levels for the ((Hanford)) commercial low-level radioactive waste

1 disposal facility, (b) reactor waste allocations, (c) priority
2 allocations under the Northwest Interstate Compact on Low-Level
3 Radioactive Waste Management, and (d) adherence by other states and
4 compact regions to federal statutory deadlines; and

5 (6) Coordinating the state's low-level radioactive waste disposal
6 program with similar programs in other states.

7 **Sec. 251.** RCW 43.200.190 and 1998 c 245 s 82 are each amended to
8 read as follows:

9 The department of ecology shall perform studies, by contract or
10 otherwise, to define site closure and perpetual care and maintenance
11 requirements for the ((Hanford)) commercial low-level radioactive waste
12 disposal facility and to assess the adequacy of insurance coverage for
13 general liability, radiological liability, and transportation liability
14 for the facility.

15 **Sec. 252.** RCW 43.200.200 and 1998 c 245 s 83 are each amended to
16 read as follows:

17 (1) The director of the department of ecology ((shall)) may
18 periodically review the potential for bodily injury and property damage
19 arising from the transportation and disposal of commercial low-level
20 radioactive waste under permits issued by the state.

21 (2) ~~((The director may require permit holders to demonstrate~~
22 ~~financial assurance in an amount that is adequate to protect the state~~
23 ~~and its citizens from all claims, suits, losses, damages, or expenses~~
24 ~~on account of injuries to persons and property damage arising or~~
25 ~~growing out of the transportation or disposal of commercial low-level~~
26 ~~radioactive waste. The financial assurance may be in the form of~~
27 ~~insurance, cash deposits, surety bonds, corporate guarantees, and other~~
28 ~~acceptable instruments or guarantees determined by the director to be~~
29 ~~acceptable evidence of financial assurance.~~

30 (3)) In making the determination of the appropriate level of
31 financial assurance, the director shall consider:

32 (a) The nature and purpose of the activity and its potential for
33 injury and damages to or claims against the state and its citizens;

34 (b) The current and cumulative manifested volume and radioactivity
35 of waste being packaged, transported, buried, or otherwise handled;

1 (c) The location where the waste is being packaged, transported,
2 buried, or otherwise handled, including the proximity to the general
3 public and geographic features such as geology and hydrology, if
4 relevant; and

5 (d) The legal defense cost, if any, that will be paid from the
6 required financial assurance amount.

7 ~~((4) The director may establish different levels of required
8 financial assurance for various classes of permit holders.~~

9 ~~(5) The director shall establish by rule the instruments or
10 mechanisms by which a permit applicant or holder may demonstrate
11 financial assurance as required by RCW 43.200.210.))~~

12 **Sec. 253.** RCW 43.200.230 and 1991 c 272 s 16 are each amended to
13 read as follows:

14 The director of the department of ecology shall require that
15 generators of waste pay a fee for each cubic foot of waste disposed at
16 any facility in the state equal to six dollars and fifty cents. The
17 fee shall be imposed specifically on the generator of the waste and
18 shall not be considered to apply in any way to the low-level site
19 operator's disposal activities. The fee shall be allocated in
20 accordance with RCW 43.200.233 and 43.200.235. ~~((This subsection shall
21 be invalidated and the authorization to collect a surcharge removed if
22 the legislature or any administrative agency of the state of Washington
23 prior to January 1, 1993, (1) imposes fees, assessments, or charges
24 other than perpetual care and maintenance, site surveillance, and site
25 closing fees currently applicable to the Hanford commercial low-level
26 waste site operator's activities, (2) imposes any additional fees,
27 assessments, or charges on generators using the Hanford commercial low-
28 level waste site, or (3) increases any existing fees, assessments, or
29 charges.))~~ Failure to comply with this section may result in denial or
30 suspension of the generator's site use permit pursuant to RCW
31 70.98.085.

32 **Sec. 254.** RCW 70.98.030 and 1991 c 3 s 355 are each amended to
33 read as follows:

34 (1) "By-product material" means any radioactive material (except
35 special nuclear material) yielded in or made radioactive by exposure to

1 the radiation incident to the process of producing or utilizing special
2 nuclear material.

3 (2) "Ionizing radiation" means gamma rays and x-rays, alpha and
4 beta particles, high-speed electrons, neutrons, protons, and other
5 atomic or subatomic particles; but not sound or radio waves, or
6 visible, infrared, or ultraviolet light.

7 (3)(a) "General license" means a license effective pursuant to
8 rules promulgated by the state radiation control agency, without the
9 filing of an application, to transfer, acquire, own, possess, or use
10 quantities of, or devices or equipment utilizing, by-product, source,
11 special nuclear materials, or other radioactive material occurring
12 naturally or produced artificially.

13 (b) "Specific license" means a license, issued after application to
14 use, manufacture, produce, transfer, receive, acquire, own, or possess
15 quantities of, or devices or equipment utilizing by-product, source,
16 special nuclear materials, or other radioactive materials occurring
17 naturally or produced artificially.

18 (4) "Person" means any individual, corporation, partnership, firm,
19 association, trust, estate, public or private institution, group,
20 agency, political subdivision of this state, any other state or
21 political subdivision or agency thereof, and any legal successor,
22 representative, agent, or agency of the foregoing, other than the
23 United States Atomic Energy Commission, or any successor thereto, and
24 other than federal government agencies licensed by the United States
25 Atomic Energy Commission, or any successor thereto.

26 (5) "Source material" means (a) uranium, thorium, or any other
27 material which is determined by the United States Nuclear Regulatory
28 Commission or its successor pursuant to the provisions of section 61 of
29 the United States Atomic Energy Act of 1954, as amended (42 U.S.C. Sec.
30 209) to be source material; or (b) ores containing one or more of the
31 foregoing materials, in such concentration as the commission may by
32 regulation determine from time to time.

33 (6) "Special nuclear material" means (a) plutonium, uranium
34 enriched in the isotope 233 or in the isotope 235, and any other
35 material which the United States Nuclear Regulatory Commission or its
36 successor, pursuant to the provisions of section 51 of the United
37 States Atomic Energy Act of 1954, as amended (42 U.S.C. Sec. 2071),

determines to be special nuclear material, but does not include source material; or (b) any material artificially enriched by any of the foregoing, but does not include source material.

(7) "Registration" means registration with the state department of health by any person possessing a source of ionizing radiation in accordance with rules adopted by the department of health.

(8) "Radiation source" means any type of device or substance which is capable of producing or emitting ionizing radiation.

(9) "Site use permit" means a permit, issued after application, to use the commercial low-level radioactive waste disposal facility.

Sec. 255. RCW 70.98.085 and 1990 c 21 s 7 are each amended to read as follows:

(1) The agency is empowered to administer a user permit system and issue site use permits for generators, packagers, or brokers to use the commercial low-level radioactive waste disposal facility. The agency may issue a site use permit consistent with the requirements of this chapter and the rules adopted under it and the requirements of the Northwest Interstate Compact on Low-Level Radioactive Waste Management under chapter 43.145 RCW. The agency may deny an application for a site use permit or modify, suspend ((and reinstate)), or revoke a site use permit((s consistent with current regulatory practices and in coordination with the department of ecology, for generators, packagers, or brokers using the Hanford low-level radioactive waste disposal facility)) in any case in which it finds that the permit was obtained by fraud or there is or has been a failure, refusal, or inability to comply with the requirements of this chapter or rules adopted under this chapter or the requirements of the Northwest Interstate Compact on Low-Level Radioactive Waste Management under chapter 43.145 RCW. The agency may also deny or suspend a site use permit for failure to comply with RCW 43.200.230.

(2) Any permit issued by the department of ecology for a site use permit pursuant to chapter 43.200 RCW is valid until the first expiration date that occurs after July 1, 2012.

(3) The agency shall collect a fee from the applicants for site use permits that is sufficient to fund the costs to the agency to administer the user permit system. The site use permit fee must be set at a level that is also sufficient to fund state participation in

1 activities related to the Northwest Interstate Compact on Low-Level
2 Radioactive Waste Management under chapter 43.145 RCW. The site use
3 permit fees must be deposited in the site closure account established
4 in RCW 43.200.080(2). Appropriations to the department of health or
5 the department of ecology are required to permit expenditures using
6 site use permit fee funds from the site closure account.

7 (4) The agency shall collect a surveillance fee as an added charge
8 on each cubic foot of low-level radioactive waste disposed of at the
9 commercial low-level radioactive waste disposal site in this state
10 which shall be set at a level that is sufficient to fund completely the
11 radiation control activities of the agency directly related to the
12 disposal site, including but not limited to the management, licensing,
13 monitoring, and regulation of the site. ~~((The surveillance fee shall~~
14 ~~not exceed five percent in 1990, six percent in 1991, and seven percent~~
15 ~~in 1992 of the basic minimum fee charged by an operator of a low-level~~
16 ~~radioactive waste disposal site in this state. The basic minimum fee~~
17 ~~consists of the disposal fee for the site operator, the fee for the~~
18 ~~perpetual care and maintenance fund administered by the state, the fee~~
19 ~~for the state closure fund, and the tax collected pursuant to chapter~~
20 ~~82.04 RCW. Site use permit fees and surcharges collected under chapter~~
21 ~~43.200 RCW are not part of the basic minimum fee.))~~ The fee shall also
22 provide funds to the Washington state patrol for costs incurred from
23 inspection of low-level radioactive waste shipments entering this
24 state. Disbursements for this purpose shall be by authorization of the
25 secretary of the department of health or the secretary's designee.

26 (5) The agency shall require that any person who holds or applies
27 for a permit under this chapter indemnify and hold harmless the state
28 from claims, suits, damages, or expenses on account of injuries to or
29 death of persons and property damage, arising or growing out of any
30 operations and activities for which the person holds the permit, and
31 any necessary or incidental operations.

32 (6) The agency may adopt such rules as are necessary to carry out
33 its responsibilities under this section.

34 **Sec. 256.** RCW 70.98.095 and 1992 c 61 s 3 are each amended to read
35 as follows:

36 (1) The radiation control agency may require any person who
37 applies for, or holds, a license under this chapter to demonstrate that

1 the person has financial assurance sufficient to assure that liability
2 incurred as a result of licensed operations and activities can be fully
3 satisfied. Financial assurance may be in the form of insurance, cash
4 deposits, surety bonds, corporate guarantees, letters of credit, or
5 other financial instruments or guarantees determined by the agency to
6 be acceptable financial assurance. The agency may require financial
7 assurance in an amount determined by the secretary pursuant to RCW
8 70.98.098.

9 (2) The radiation control agency may require site use permit
10 holders to demonstrate financial assurance in an amount that is
11 adequate to protect the state and its citizens from all claims, suits,
12 losses, damages, or expenses on account of injuries to persons and
13 property damage arising or growing out of the transportation or
14 disposal of commercial low-level radioactive waste. The financial
15 assurance may be in the form of insurance, cash deposits, surety bonds,
16 corporate guarantees, and other acceptable instruments or guarantees
17 determined by the secretary to be acceptable evidence of financial
18 assurance. The agency may require financial assurance in an amount
19 determined by the secretary pursuant to RCW 70.98.098.

20 (3) The radiation control agency shall refuse to issue a license or
21 permit or suspend the license or permit of any person required by this
22 section to demonstrate financial assurance who fails to demonstrate
23 compliance with this section. The license or permit shall not be
24 issued or reinstated until the person demonstrates compliance with this
25 section.

26 ((+3+)) (4) The radiation control agency shall require (a) that any
27 person required to demonstrate financial assurance, maintain with the
28 agency current copies of any insurance policies, certificates of
29 insurance, letters of credit, surety bonds, or any other documents used
30 to comply with this section, (b) that the agency be notified of any
31 changes in the financial assurance or financial condition of the
32 person, and (c) that the state be named as an insured party on any
33 insurance policy used to comply with this section.

34 **Sec. 257.** RCW 70.98.098 and 2003 1st sp.s. c 21 s 2 are each
35 amended to read as follows:

36 (1) In making the determination of the appropriate level of
37 financial assurance, the secretary shall consider: (a) ((The)) Any

1 report prepared by the department of ecology pursuant to RCW
2 43.200.200; (b) the potential cost of decontamination, treatment,
3 disposal, decommissioning, and cleanup of facilities or equipment; (c)
4 federal cleanup and decommissioning requirements; and (d) the legal
5 defense cost, if any, that might be paid from the required financial
6 assurance.

7 (2) The secretary may establish different levels of required
8 financial assurance for various classes of permit or license holders.

9 (3) The secretary shall establish by rule the instruments or
10 mechanisms by which a person may demonstrate financial assurance as
11 required by RCW 70.98.095.

12 (4) To the extent that money in the site closure account together
13 with the amount of money identified for repayment to the site closure
14 account pursuant to RCW 43.200.080 equals or exceeds the cost estimate
15 approved by the department of health for closure and decommissioning of
16 the ((Hanford)) commercial low-level radioactive waste disposal
17 facility, the money in the site closure account together with the
18 amount of money identified for repayment to the site closure account
19 shall constitute adequate financial assurance for purposes of the
20 department of health financial assurance requirements under RCW
21 70.98.095.

22 **Sec. 258.** RCW 70.98.130 and 1989 c 175 s 133 are each amended to
23 read as follows:

24 (1) In any proceeding under this chapter for the issuance or
25 modification or repeal of rules relating to control of sources of
26 ionizing radiation, the agency shall comply with the requirements of
27 chapter 34.05 RCW, the administrative procedure act.

28 (2) Notwithstanding any other provision of this chapter, whenever
29 the agency finds that an emergency exists requiring immediate action to
30 protect the public health, safety, or general welfare, the agency may,
31 in accordance with RCW 34.05.350 without notice or hearing, adopt a
32 rule reciting the existence of such emergency and require that such
33 action be taken as is necessary to meet the emergency. As specified in
34 RCW 34.05.350, such rules are effective immediately.

35 (3) In any case in which the department denies, modifies, suspends,
36 or revokes a license or permit, RCW 43.70.115 governs notice of the

1 action and provides the right to an adjudicative proceeding to the
2 applicant or licensee or permittee. Such an adjudicative proceeding is
3 governed by chapter 34.05 RCW.

4 NEW SECTION. Sec. 259. A new section is added to chapter 70.98
5 RCW to read as follows:

6 The agency shall adopt rules for administering a site use permit
7 program under RCW 70.98.085.

8 NEW SECTION. Sec. 260. A new section is added to chapter 43.200
9 RCW to read as follows:

10 (1) The site use permit program is transferred from the department
11 of ecology to the department of health.

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

21 (b) Any appropriations made to the department of ecology for the
22 site use permit program shall be transferred and credited to the
23 department of health.

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

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

1 (4) All rules and all pending business before the department of
2 ecology site use permit program shall be continued and acted upon by
3 the department of health. All existing contracts and obligations shall
4 remain in full force and shall be performed by the department of
5 health.

6 (5) The transfer of the powers, duties, functions, and personnel of
7 the department of ecology site use permit program to the department of
8 health under this act shall not affect the validity of any activity
9 performed before the effective date of this section or the effective
10 date of the consolidation.

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

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

24 NEW SECTION. **Sec. 261.** RCW 43.200.210 (Immunity of state--
25 Demonstration of financial assurance--Suspension of permit) and 1992 c
26 61 s 2, 1990 c 82 s 2, & 1986 c 191 s 2 are each repealed.

27 **SUBPART E**

28 **ADMINISTRATIVE PROVISIONS**

29 NEW SECTION. **Sec. 262.** (1) On the effective date of this section,
30 the secretary of health and the directors of the department of ecology,
31 the pollution liability insurance agency, and the Columbia river gorge
32 commission must each designate one executive-level representative to
33 serve on a consolidation transition team. This team must, with the
34 assistance of their agencies, develop the following work products:

1 (a) A consolidation transition team report, to be submitted to the
2 office of financial management and the legislature by August 1, 2011.
3 This report must, at a minimum, detail all legislative and fiscal
4 changes necessary for the successful implementation of this
5 consolidation and identify expected costs and savings associated with
6 the consolidation.

7 (b) A supplemental budget request, if necessary, for consideration
8 during the 2012 legislative session. This request must encompass any
9 necessary budgetary and legislative changes for the agencies affected
10 by this consolidation, and be submitted to the office of financial
11 management by September 1, 2011.

12 (c) A second consolidation transition team report, to be submitted
13 to the director of ecology by July 1, 2012. This report must, at a
14 minimum, detail all additional legislative and fiscal changes necessary
15 for the successful implementation of this agency consolidation and
16 identify expected costs and savings associated with the consolidation.

17 (2) This section applies to the consolidation directed pursuant to
18 sections 201 through 261 of this act.

19 NEW SECTION. **Sec. 263.** The consolidation directed pursuant to
20 sections 201 through 262 of this act takes effect July 1, 2012.

21 NEW SECTION. **Sec. 264.** Section 241 of this act expires July 22,
22 2011.

23 NEW SECTION. **Sec. 265.** Section 242 of this act takes effect July
24 22, 2011.

25 NEW SECTION. **Sec. 266.** Except for sections 103, 104, and 242 of
26 this act, this act is necessary for the immediate preservation of the
27 public peace, health, or safety, or support of the state government and
28 its existing public institutions, and takes effect July 1, 2011.

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