



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.

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

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

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

18 **Sec. 202.** RCW 70.148.010 and 1990 c 64 s 2 are each amended to  
19 read as follows:

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

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

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

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

32 (4) "Corrective action" means those actions reasonably required to  
33 be undertaken by the insured to remove, treat, neutralize, contain, or  
34 clean up an accidental release in order to comply with any statute,  
35 ordinance, rule, regulation, directive, order, or similar legal  
36 requirement of the United States, the state of Washington, or any  
37 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. Any such  
4 contractor or consultant is prohibited from releasing, publishing, or  
5 otherwise using any information made available to it under its  
6 contractual responsibility without specific permission of the  
7 ((program)) director. The director may call upon other agencies of the  
8 state to provide technical support and available information as  
9 necessary to assist the director in meeting the director's  
10 responsibilities under this chapter. Agencies shall supply this  
11 support and information as promptly as circumstances permit.

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

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

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

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

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

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

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

34 (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:

1 (a) The Washington state insurance commissioner;

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

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

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

11 (a) The Washington state insurance commissioner; and

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

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

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

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

21 **Sec. 210.** RCW 70.148.070 and 1990 c 64 s 8 are each amended to  
22 read as follows:

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

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

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

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

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

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

35 (f) The insurer's ability to provide risk management guidance to  
36 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

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

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

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

10 **Sec. 213.** RCW 70.148.130 and 2005 c 428 s 2 are each amended to  
11 read as follows:

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

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

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

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

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

31 (2)(a) Except as otherwise provided in RCW 70.148.120 through  
32 70.148.170, no grant of financial assistance may be used for any  
33 purpose other than for corrective action and repair, replacement,  
34 reconstruction, and improvement of underground storage tanks and tank  
35 sites. If at any time prior to providing financial assistance or in  
36 the course of providing such assistance, it appears to the ((director))  
37 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~~))

1 department finds that contamination is not present or that the  
2 contamination is apparently minor and not a threat to human health or  
3 the environment, the ((~~director~~)) department may provide written  
4 opinions and conclusions on the results of the investigation to owners  
5 and operators of active and abandoned heating oil tanks. The  
6 ((~~agency~~)) department is authorized to collect, from persons requesting  
7 advice and assistance, the costs incurred by the ((~~agency~~)) department  
8 in providing such advice and assistance. The costs may include travel  
9 costs and expenses associated with review of reports and preparation of  
10 written opinions and conclusions. Funds from cost reimbursement must  
11 be deposited in the heating oil pollution liability trust account. The  
12 state of Washington, the department, the pollution liability insurance  
13 ((~~agency~~)) program, and its officers and employees are immune from all  
14 liability, and no cause of action arises from any act or omission in  
15 providing, or failing to provide, such advice, opinion, conclusion, or  
16 assistance;

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

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

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

26 This section expires June 1, 2013.

27 **Sec. 221.** RCW 70.149.050 and 1995 c 20 s 5 are each amended to  
28 read as follows:

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

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

36 (b) The insurer's ability to settle pollution liability claims  
37 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.



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.

31       ~~((5))~~ (4) The authority and duties created in this section are in  
32 addition to any authority and duties already provided in law with  
33 regard to sewage and wastewater collection, treatment, and disposal for  
34 the protection of health and safety of the state's waters. Nothing in  
35 this section limits the powers of the state or any political  
36 subdivision to exercise such authority.

37       ~~((6) Unless the department of ecology adopts rules pursuant to RCW~~  
38 ~~90.46.015 that relate to the industrial and commercial use of reclaimed~~

1 ~~water specifying otherwise, the department of health may implement the~~  
2 ~~requirements of this section through the department of ecology by~~  
3 ~~execution of a formal agreement between the departments. Upon~~  
4 ~~execution of such an agreement, the department of ecology may issue~~  
5 ~~reclaimed water permits for industrial and commercial uses of reclaimed~~  
6 ~~water by issuance of permits under chapter 90.48 RCW, and may establish~~  
7 ~~and collect fees as required for permits issued under chapter 90.48~~  
8 ~~RCW.~~

9 ~~(7) Unless the department of ecology adopts rules pursuant to RCW~~  
10 ~~90.46.015 that relate to the industrial and commercial use of reclaimed~~  
11 ~~water specifying otherwise, and))~~

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

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

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

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

33 (1) Reclaimed water may be beneficially used for discharge into  
34 constructed beneficial use wetlands and constructed treatment wetlands  
35 provided the reclaimed water meets the class A or B reclaimed water  
36 standards as defined in the reclamation criteria, and the discharge is

1 incorporated into a sewer or water comprehensive plan, as applicable,  
2 adopted by the applicable local government and approved by the  
3 department of health or department of ecology as applicable.

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

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

14 (b) Standards adopted under this section are superseded by any  
15 rules adopted by the department (~~(of ecology)~~) pursuant to RCW  
16 90.46.015 as they relate to discharge into constructed beneficial use  
17 wetlands and constructed treatment wetlands.

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

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

32 (2) If the proposed use of reclaimed water is to augment or replace  
33 potable water supplies or to create the potential for the development  
34 of an additional new potable water supply, then regional water supply  
35 plans, or any other potable water supply plans prepared by multiple  
36 water purveyors, must consider the proposed use of the reclaimed water  
37 as they are developed or updated.

1 (a) Regional water supply plans include those adopted under state  
2 board of health laws (chapter 43.20 RCW), the public water system  
3 coordination act of 1977 (chapter 70.116 RCW), groundwater protection  
4 laws (chapter 90.44 RCW), and the watershed planning act (chapter 90.82  
5 RCW).

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

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

12 (3) When reclaimed water is available or is proposed for use under  
13 a water supply or wastewater plan developed under chapter 43.20,  
14 70.116, 90.44, 90.48, or 90.82 RCW these plans must be coordinated to  
15 ensure that opportunities for reclaimed water are evaluated. The  
16 requirements of this subsection (3) do not apply to water system plans  
17 developed under chapter 43.20 RCW for utilities serving less than one  
18 thousand service connections.

19 (4) The provisions of any plan for reclaimed water, developed under  
20 the authorities in subsections (2) and (3) of this section, should be  
21 included by a city, town, or county in reviewing provisions for water  
22 supplies in a proposed short plat, short subdivision, or subdivision  
23 under chapter 58.17 RCW, where reclaimed water supplies may be proposed  
24 for nonpotable purposes in the short plat, short subdivision, or  
25 subdivision.

26 ~~((5) By November 30, 2009, the department of ecology shall review  
27 comments from the reclaimed water advisory committee under RCW  
28 90.46.050 and the reclaimed water and water rights advisory committee  
29 under the direction of the department of ecology and submit a  
30 recommendation to the legislature on the impairment requirements and  
31 standards for reclaimed water. The department of ecology shall also  
32 provide a report to the legislature that describes the opinions of the  
33 stakeholders on the impairment requirements and standards for reclaimed  
34 water.))~~

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

37 The permit to apply agricultural industrial process water to

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

10 The owner of the agricultural processing plant who obtains a permit  
11 under this section has the exclusive right to the use of any  
12 agricultural industrial process water generated from the plant and to  
13 the distribution of such water through facilities including irrigation  
14 systems. Use and distribution of the water by the owner is exempt from  
15 the permit requirements of RCW 90.03.250, 90.03.380, 90.44.060, and  
16 90.44.100.

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

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

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

30 (2) The owner of the industrial plant who obtains a permit under  
31 this section has the exclusive right to the use of any industrial reuse  
32 water generated from the plant and to the distribution of such water.  
33 Use and distribution of the water by the owner is exempt from the  
34 permit requirements of RCW 90.03.250, 90.03.380, 90.44.060, and  
35 90.44.100.

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

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

3           ~~(1) ((The department of ecology and the department of health shall~~  
4 ~~have authority to carry out all the provisions of this chapter~~  
5 ~~including, but not limited to, permitting and enforcement. Only the~~  
6 ~~department of ecology or the department of health may act as a lead~~  
7 ~~agency for purposes of this chapter and will be established as such by~~  
8 ~~rule. Enforcement of a permit issued under this chapter shall be at~~  
9 ~~the sole discretion of the lead agency that issued the permit.~~

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

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

16           (2) The authority and duties created in this chapter are in  
17 addition to any authority and duties already provided in law. Nothing  
18 in this chapter limits the powers of the state or any political  
19 subdivision to exercise such authority.

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

22           The ~~((lead agency))~~ department, with the assistance of the attorney  
23 general, is authorized to bring any appropriate action at law or in  
24 equity, including action for injunctive relief, as may be necessary to  
25 carry out the provisions of this chapter. The ~~((lead agency))~~  
26 department may bring the action in the superior court of the county in  
27 which the violation occurred or in the superior court of Thurston  
28 county. The court may award reasonable attorneys' fees for the cost of  
29 the attorney general's office in representing the ~~((lead agency))~~  
30 department.

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

33           (1) Except as provided in RCW 90.46.150 and 90.46.160, any person  
34 proposing to generate any type of reclaimed water for a use regulated  
35 under this chapter shall obtain a permit from the ((lead agency))  
36 department prior to distribution or use of that water. The permittee

1 may then distribute and use the water, subject to the provisions in the  
2 permit. The permit must include provisions that protect human health  
3 and the environment. At a minimum, the permit must:

- 4 (a) Assure adequate and reliable treatment; and
- 5 (b) Govern the water quality, location, rate, and purpose of use.

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

- 7 (a) A municipal, quasi-municipal, or other governmental entity;
- 8 (b) A private utility as defined in RCW 36.94.010; or

9 (c) The holder of a waste disposal permit issued under chapter  
10 90.48 RCW or operating permit under chapter 70.118B RCW( ~~or~~

11 ~~(d) The owner of an agricultural processing facility that is~~  
12 ~~generating agricultural industrial process water for agricultural use,~~  
13 ~~or the owner of an industrial facility that is generating industrial~~  
14 ~~process water for reuse)).~~

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

21 (4) Permits shall be issued for a fixed term specified by the rules  
22 adopted under RCW 90.46.015. A permittee shall apply for permit  
23 renewal prior to the end of the term. The rules adopted under RCW  
24 90.46.015 shall specify the process of renewal, modification, change of  
25 ownership, suspension, and termination.

26 (5) The ((~~lead agency~~)) department may deny an application for a  
27 permit or modify, suspend, or revoke a permit for good cause, including  
28 but not limited to, any case in which it finds that the permit was  
29 obtained by fraud or misrepresentation, or there is or has been a  
30 failure, refusal, or inability to comply with the requirements of this  
31 chapter or the rules adopted under this chapter.

32 (6) The ((~~lead agency~~)) department shall provide for adequate  
33 public notice and opportunity for review and comment on all initial  
34 permit applications and renewal applications. Methods for providing  
35 notice may include electronic mail, posting on the ((~~lead agency's~~))  
36 department's internet site, publication in a local newspaper, press  
37 releases, mailings, or other means of notification the ((~~lead agency~~))

1 department determines appropriate. The (~~lead agency~~) department  
2 shall also publicize notice of final permitting decisions.

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

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

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

20 (1)(a) Except as otherwise provided in (b) of this subsection, the  
21 (~~lead agency~~) department or its designee shall have the right to  
22 enter and inspect any property related to the purpose of the permit,  
23 public or private, at reasonable times with prior notification in order  
24 to determine compliance with laws and rules administered by the (~~lead~~  
25 ~~agency~~) department. During such inspections, the (~~lead agency~~)  
26 department shall have free and unimpeded access to all data,  
27 facilities, and property involved in the generation, distribution, and  
28 use of reclaimed water.

29 (b) The (~~lead agency~~) department or its designee need not give  
30 prior notification to enter property under (a) of this subsection if  
31 the purpose of the entry is to ensure compliance by the permittee with  
32 a prior order of the (~~lead agency~~) department or if the (~~lead~~  
33 ~~agency~~) department or its designee has reasonable cause to believe  
34 there is a violation of the law that poses a serious threat to public  
35 health and safety or the environment.

36 (2) The (~~lead agency~~) department or its designee may apply for an

1 administrative search warrant to a court of competent jurisdiction and  
2 an administrative search warrant may issue where:

3 (a) The ((~~lead-agency~~)) department has attempted an inspection  
4 under this chapter and access has been actually or constructively  
5 denied; or

6 (b) There is reasonable cause to believe that a violation of this  
7 chapter or rules adopted under this chapter is occurring or has  
8 occurred.

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

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

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

27 (1) When, in the opinion of the ((~~lead-agency~~)) department, a  
28 person violates or creates a substantial potential to violate this  
29 chapter, the ((~~lead-agency~~)) department shall notify the person of its  
30 determination by registered mail. The determination shall not  
31 constitute an appealable order or directive. Within thirty days from  
32 the receipt of notice of such determination, the person shall file with  
33 the ((~~lead-agency~~)) department a full report stating what steps have  
34 been and are being taken to comply with the determination of the ((~~lead~~  
35 ~~agency~~)) department. After the full report is filed or after the  
36 thirty days have elapsed, the ((~~lead-agency~~)) department may issue the

1 order or directive as it deems appropriate under the circumstances,  
2 shall notify the person by registered mail, and shall inform the person  
3 of the process for requesting an adjudicative hearing.

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

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

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

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

27 Any person found guilty of willfully violating any of the  
28 provisions of this chapter, or any final written orders or directive of  
29 the (~~lead agency~~) department or a court in pursuance thereof, is  
30 guilty of a gross misdemeanor, and upon conviction thereof shall be  
31 punished by a fine of up to ten thousand dollars and costs of  
32 prosecution, or by imprisonment in the county jail for up to three  
33 hundred sixty-four days, or both, in the discretion of the court. Each  
34 day upon which a willful violation of the provisions of this chapter  
35 occurs may be deemed a separate and additional violation.

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

3           (1) Except as provided in RCW 43.05.060 through 43.05.080,  
4 43.05.100, 43.05.110, and 43.05.150, any person who:

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

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

9           (c) Violates rules or orders adopted or issued pursuant to this  
10 chapter,

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

22           (2) A penalty imposed by a final administrative order is due upon  
23 service of the final administrative order. A person who fails to pay  
24 a penalty assessed by a final administrative order within thirty days  
25 of service of the final administrative order shall pay, in addition to  
26 the amount of the penalty, interest at the rate of one percent of the  
27 unpaid balance of the assessed penalty for each month or part of a  
28 month that the penalty remains unpaid, commencing within the month in  
29 which the notice of penalty was served, and reasonable attorneys' fees  
30 as are incurred if civil enforcement of the final administrative order  
31 is required to collect penalty.

32           (3) A person who institutes proceedings for judicial review of a  
33 final administrative order assessing a civil penalty under this chapter  
34 shall place the full amount of the penalty in an interest bearing  
35 account in the registry of the reviewing court. At the conclusion of  
36 the proceeding the court shall, as appropriate, enter a judgment on  
37 behalf of the (~~lead agency~~) department and order that the judgment be  
38 satisfied to the extent possible from moneys paid into the registry of

1 the court or shall enter a judgment in favor of the person appealing  
2 the penalty assessment and order return of the moneys paid into the  
3 registry of the court together with accrued interest to the person  
4 appealing. The judgment may award reasonable attorneys' fees for the  
5 cost of the attorney general's office in representing the ((lead  
6 agency)) department.

7 (4) If no appeal is taken from a final administrative order  
8 assessing a civil penalty under this chapter, the ((lead-agency))  
9 department may file a certified copy of the final administrative order  
10 with the clerk of the superior court in which the person resides, or in  
11 Thurston county, and the clerk shall enter judgment in the name of the  
12 ((lead-agency)) department and in the amount of the penalty assessed in  
13 the final administrative order.

14 (5) (~~When the penalty herein provided for is imposed by the~~  
15 ~~department of ecology, it)~~ The penalty shall be imposed pursuant to  
16 the procedures set forth in RCW 43.21B.300. All penalties imposed by  
17 the department ((of ecology)) pursuant to RCW 43.21B.300 shall be  
18 deposited into the state treasury and credited to the general fund.

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

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

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

29 (2)(a) All reports, documents, surveys, books, records, files,  
30 papers, or written material in the possession of the department of  
31 health reclaimed water program shall be delivered to the custody of the  
32 department of ecology. All cabinets, furniture, office equipment,  
33 motor vehicles, and other tangible property employed by the department  
34 of health reclaimed water program shall be transferred to the  
35 department of ecology. All funds, credits, or other assets held by the  
36 department of health reclaimed water program shall be assigned to the  
37 department of ecology.

1 (b) Any appropriations made to the department of health for the  
2 reclaimed water program shall be transferred and credited to the  
3 department of ecology.

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

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

17 (4) All rules and all pending business before the department of  
18 health reclaimed water program shall be continued and acted upon by the  
19 department of ecology. All existing contracts and obligations shall  
20 remain in full force and shall be performed by the department of  
21 ecology.

22 (5) The transfer of the powers, duties, functions, and personnel of  
23 the department of health reclaimed water program to the department of  
24 ecology under this act shall not affect the validity of any activity  
25 performed before the effective date of this section or the effective  
26 date of the consolidation.

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

33 (7) All classified employees of the department of health reclaimed  
34 water program assigned to the department of ecology under this act  
35 whose positions are within an existing bargaining unit description at  
36 the department of health shall become a part of the existing bargaining  
37 unit at the department of ecology and shall be considered an

1 appropriate inclusion or modification of the existing bargaining unit  
2 under the provisions of chapter 41.80 RCW.

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

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

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

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

11 **SUBPART C**

12 **CONSOLIDATING THE COLUMBIA RIVER GORGE COMMISSION UNDER**  
13 **THE DEPARTMENT OF ECOLOGY**

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

16 (1) As authorized by this chapter for the state of Washington, the  
17 department of ecology shall provide administrative and functional  
18 assistance to the Columbia River Gorge commission. This provision of  
19 administrative and functional assistance does not alter the legal  
20 status of the commission as a bistate compact entity or confer the  
21 status of state agency upon the commission.

22 (2) Pursuant to RCW 43.97.015 Article IV b., the governor  
23 designates the director of the department of ecology to receive the  
24 commission's budget of its estimated expenditures. The commission  
25 shall submit a budget of its estimated expenditures to the director of  
26 the department of ecology. The department of ecology shall include a  
27 request for funding for the commission as a separate program in its  
28 budget submittal to the governor. The department shall separately  
29 account for the commission funding.

30 **SUBPART D**

31 **SITE USE PERMIT AUTHORITY**

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

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

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

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

14 (3) "Radioactive waste" means both high-level and low-level  
15 radioactive waste.

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

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

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

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

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

25 (1) To fulfill the responsibilities of the state under the lease  
26 between the state of Washington and the federal government executed  
27 September 10, 1964, as amended, covering approximately one (~~thousand~~)  
28 hundred fifteen acres of land lying within the Hanford reservation near  
29 Richland, Washington. The department of ecology may sublease to  
30 private or public entities all or a portion of the land for specific  
31 purposes or activities which are determined, after public hearing, to  
32 be in agreement with the terms of the lease and in the best interests  
33 of the citizens of the state consistent with any criteria that may be  
34 developed as a requirement by the legislature;

35 (2) To assume the responsibilities of the state under the perpetual  
36 care agreement between the state of Washington and the federal  
37 government executed July 29, 1965, and the sublease between the state

1 of Washington and the site operator of the ((Hanford)) commercial low-  
2 level radioactive waste disposal facility. In order to finance  
3 perpetual surveillance and maintenance under the agreement and ensure  
4 site closure under the sublease, the department of ecology shall impose  
5 and collect fees from parties holding radioactive materials for waste  
6 management purposes. The fees shall be established by rule adopted  
7 under chapter 34.05 RCW and shall be an amount determined by the  
8 department of ecology to be necessary to defray the estimated liability  
9 of the state. Such fees shall reflect equity between the disposal  
10 facilities of this and other states. A site closure account and a  
11 perpetual surveillance and maintenance account ((is)) are hereby  
12 created in the state treasury. Site use permit fees collected by the  
13 department of health under RCW 70.98.085(3) must be deposited in the  
14 site closure account and must be used as specified in RCW 70.98.085(3).  
15 Funds in the site closure account other than site use permit fee funds  
16 shall be exclusively available to reimburse, to the extent that moneys  
17 are available in the account, the site operator for its costs plus a  
18 reasonable profit as agreed by the operator and the state, or to  
19 reimburse the state licensing agency and any agencies under contract to  
20 the state licensing agency for their costs in final closure and  
21 decommissioning of the ((Hanford)) commercial low-level radioactive  
22 waste disposal facility. If a balance remains in the account after  
23 satisfactory performance of closure and decommissioning, this balance  
24 shall be transferred to the perpetual surveillance and maintenance  
25 account. The perpetual surveillance and maintenance account shall be  
26 used exclusively by the state to meet post-closure surveillance and  
27 maintenance costs, or for otherwise satisfying surveillance and  
28 maintenance obligations. Appropriations are required to permit  
29 expenditures and payment of obligations from the site closure account  
30 and the perpetual surveillance and maintenance account. ((All moneys,  
31 including earnings from the investment of balances in the site closure  
32 and the perpetual surveillance and maintenance account, less the  
33 allocation to the state treasurer's service fund, pursuant to RCW  
34 43.08.190 accruing under the authority of this section shall be  
35 directed to the site closure account until December 31, 1992.  
36 Thereafter receipts including earnings from the investment of balances  
37 in the site closure and the perpetual surveillance and maintenance  
38 account, less the allocation to the state treasurer's service fund,

1 ~~pursuant to RCW 43.08.190~~) Receipts shall be directed to the site  
2 closure account and the perpetual surveillance and maintenance account  
3 as specified by the department. Additional moneys specifically  
4 appropriated by the legislature or received from any public or private  
5 source may be placed in the site closure account and the perpetual  
6 surveillance and maintenance account. During the 2003-2005 fiscal  
7 biennium, the legislature may transfer up to thirteen million eight  
8 hundred thousand dollars from the site closure account to the general  
9 fund;

10 (3)(a) Subject to the conditions in (b) of this subsection, on July  
11 1, 2008, and each July 1st thereafter, the treasurer shall transfer  
12 from the perpetual surveillance and maintenance account to the site  
13 closure account the sum of nine hundred sixty-six thousand dollars.  
14 The nine hundred sixty-six thousand dollars transferred on July 1,  
15 2009, and thereafter shall be adjusted to a level equal to the  
16 percentage increase in the United States implicit price deflator for  
17 personal consumption. The last transfer under this section shall occur  
18 on July 1, 2033.

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

28 (c) If for any reason the (~~Hanford~~) commercial low-level  
29 radioactive waste disposal facility is closed to further disposal  
30 operations during or after the 2003-2005 biennium and before 2033, then  
31 the amount remaining to be repaid from the 2003-2005 transfer of  
32 thirteen million eight hundred thousand dollars from the site closure  
33 account shall be transferred by the treasurer from the general fund to  
34 the site closure account to fund the closure and decommissioning of the  
35 facility. The treasurer shall transfer to the site closure account in  
36 full the amount remaining to be repaid upon written notice from the  
37 secretary of health that the department of health has authorized

1 closure or that disposal operations have ceased. The treasurer shall  
2 complete the transfer within sixty days of written notice from the  
3 secretary of health.

4 (d) To the extent that money in the site closure account together  
5 with the amount of money identified for repayment to the site closure  
6 account, pursuant to (a) through (c) of this subsection, equals or  
7 exceeds the cost estimate approved by the department of health for  
8 closure and decommissioning of the facility, the money in the site  
9 closure account together with the amount of money identified for  
10 repayment to the site closure account shall constitute adequate  
11 financial assurance for purposes of the department of health financial  
12 assurance requirements;

13 (4) To assure maintenance of such insurance coverage by state  
14 licensees, lessees, or sublessees as will adequately, in the opinion of  
15 the director, protect the citizens of the state against nuclear  
16 accidents or incidents that may occur on privately or state-controlled  
17 nuclear facilities;

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

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

32 ((+7)) (6) To develop contingency plans for duties and options for  
33 the department and other state agencies related to the ((Hanford))  
34 commercial low-level radioactive waste disposal facility based on  
35 various projections of annual levels of waste disposal. These plans  
36 shall include an analysis of expected revenue to the state in various  
37 taxes and funds related to low-level radioactive waste disposal and the

1 resulting implications that any increase or decrease in revenue may  
2 have on state agency duties or responsibilities. The plans shall be  
3 updated annually.

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

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

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

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

19 (1) Collecting and administering the surcharge assessed by the  
20 governor under RCW 43.200.170;

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

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

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

29 (5) Administering and/or monitoring (a) the maximum waste volume  
30 levels for the ((Hanford)) commercial low-level radioactive waste  
31 disposal facility, (b) reactor waste allocations, (c) priority  
32 allocations under the Northwest Interstate Compact on Low-Level  
33 Radioactive Waste Management, and (d) adherence by other states and  
34 compact regions to federal statutory deadlines; and

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

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

3       The department of ecology shall perform studies, by contract or  
4 otherwise, to define site closure and perpetual care and maintenance  
5 requirements for the ((Hanford)) commercial low-level radioactive waste  
6 disposal facility and to assess the adequacy of insurance coverage for  
7 general liability, radiological liability, and transportation liability  
8 for the facility.

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

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

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

24       ~~(3))~~ In making the determination of the appropriate level of  
25 financial assurance, the director shall consider:

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

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

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

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

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

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

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

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

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

26       (1) "By-product material" means any radioactive material (except  
27 special nuclear material) yielded in or made radioactive by exposure to  
28 the radiation incident to the process of producing or utilizing special  
29 nuclear material.

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

34       (3)(a) "General license" means a license effective pursuant to  
35 rules promulgated by the state radiation control agency, without the  
36 filing of an application, to transfer, acquire, own, possess, or use

1 quantities of, or devices or equipment utilizing, by-product, source,  
2 special nuclear materials, or other radioactive material occurring  
3 naturally or produced artificially.

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

9 (4) "Person" means any individual, corporation, partnership, firm,  
10 association, trust, estate, public or private institution, group,  
11 agency, political subdivision of this state, any other state or  
12 political subdivision or agency thereof, and any legal successor,  
13 representative, agent, or agency of the foregoing, other than the  
14 United States Atomic Energy Commission, or any successor thereto, and  
15 other than federal government agencies licensed by the United States  
16 Atomic Energy Commission, or any successor thereto.

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

24 (6) "Special nuclear material" means (a) plutonium, uranium  
25 enriched in the isotope 233 or in the isotope 235, and any other  
26 material which the United States Nuclear Regulatory Commission or its  
27 successor, pursuant to the provisions of section 51 of the United  
28 States Atomic Energy Act of 1954, as amended (42 U.S.C. Sec. 2071),  
29 determines to be special nuclear material, but does not include source  
30 material; or (b) any material artificially enriched by any of the  
31 foregoing, but does not include source material.

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

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

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

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

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

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

24           (3) The agency shall collect a fee from the applicants for site use  
25 permits that is sufficient to fund the costs to the agency to  
26 administer the user permit system. The site use permit fee must be set  
27 at a level that is also sufficient to fund state participation in  
28 activities related to the Northwest Interstate Compact on Low-Level  
29 Radioactive Waste Management under chapter 43.145 RCW. The site use  
30 permit fees must be deposited in the site closure account established  
31 in RCW 43.200.080(2). Appropriations to the department of health or  
32 the department of ecology are required to permit expenditures using  
33 site use permit fee funds from the site closure account.

34           (4) The agency shall collect a surveillance fee as an added charge  
35 on each cubic foot of low-level radioactive waste disposed of at the  
36 commercial low-level radioactive waste disposal site in this state  
37 which shall be set at a level that is sufficient to fund completely the  
38 radiation control activities of the agency directly related to the

1 disposal site, including but not limited to the management, licensing,  
2 monitoring, and regulation of the site. (~~The surveillance fee shall  
3 not exceed five percent in 1990, six percent in 1991, and seven percent  
4 in 1992 of the basic minimum fee charged by an operator of a low-level  
5 radioactive waste disposal site in this state. The basic minimum fee  
6 consists of the disposal fee for the site operator, the fee for the  
7 perpetual care and maintenance fund administered by the state, the fee  
8 for the state closure fund, and the tax collected pursuant to chapter  
9 82.04 RCW. Site use permit fees and surcharges collected under chapter  
10 43.200 RCW are not part of the basic minimum fee.~~) The fee shall also  
11 provide funds to the Washington state patrol for costs incurred from  
12 inspection of low-level radioactive waste shipments entering this  
13 state. Disbursements for this purpose shall be by authorization of the  
14 secretary of the department of health or the secretary's designee.

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

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

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

25 (1) The radiation control agency may require any person who  
26 applies for, or holds, a license under this chapter to demonstrate that  
27 the person has financial assurance sufficient to assure that liability  
28 incurred as a result of licensed operations and activities can be fully  
29 satisfied. Financial assurance may be in the form of insurance, cash  
30 deposits, surety bonds, corporate guarantees, letters of credit, or  
31 other financial instruments or guarantees determined by the agency to  
32 be acceptable financial assurance. The agency may require financial  
33 assurance in an amount determined by the secretary pursuant to RCW  
34 70.98.098.

35 (2) The radiation control agency may require site use permit  
36 holders to demonstrate financial assurance in an amount that is  
37 adequate to protect the state and its citizens from all claims, suits,

1 losses, damages, or expenses on account of injuries to persons and  
2 property damage arising or growing out of the transportation or  
3 disposal of commercial low-level radioactive waste. The financial  
4 assurance may be in the form of insurance, cash deposits, surety bonds,  
5 corporate guarantees, and other acceptable instruments or guarantees  
6 determined by the secretary to be acceptable evidence of financial  
7 assurance. The agency may require financial assurance in an amount  
8 determined by the secretary pursuant to RCW 70.98.098.

9 (3) The radiation control agency shall refuse to issue a license or  
10 permit or suspend the license or permit of any person required by this  
11 section to demonstrate financial assurance who fails to demonstrate  
12 compliance with this section. The license or permit shall not be  
13 issued or reinstated until the person demonstrates compliance with this  
14 section.

15 ((+3)) (4) The radiation control agency shall require (a) that any  
16 person required to demonstrate financial assurance, maintain with the  
17 agency current copies of any insurance policies, certificates of  
18 insurance, letters of credit, surety bonds, or any other documents used  
19 to comply with this section, (b) that the agency be notified of any  
20 changes in the financial assurance or financial condition of the  
21 person, and (c) that the state be named as an insured party on any  
22 insurance policy used to comply with this section.

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

25 (1) In making the determination of the appropriate level of  
26 financial assurance, the secretary shall consider: (a) ((The)) Any  
27 report prepared by the department of ecology pursuant to RCW  
28 43.200.200; (b) the potential cost of decontamination, treatment,  
29 disposal, decommissioning, and cleanup of facilities or equipment; (c)  
30 federal cleanup and decommissioning requirements; and (d) the legal  
31 defense cost, if any, that might be paid from the required financial  
32 assurance.

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

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

1 (4) To the extent that money in the site closure account together  
2 with the amount of money identified for repayment to the site closure  
3 account pursuant to RCW 43.200.080 equals or exceeds the cost estimate  
4 approved by the department of health for closure and decommissioning of  
5 the ((Hanford)) commercial low-level radioactive waste disposal  
6 facility, the money in the site closure account together with the  
7 amount of money identified for repayment to the site closure account  
8 shall constitute adequate financial assurance for purposes of the  
9 department of health financial assurance requirements under RCW  
10 70.98.095.

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

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

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

24 (3) In any case in which the department denies, modifies, suspends,  
25 or revokes a license or permit, RCW 43.70.115 governs notice of the  
26 action and provides the right to an adjudicative proceeding to the  
27 applicant or licensee or permittee. Such an adjudicative proceeding is  
28 governed by chapter 34.05 RCW.

29 NEW SECTION. **Sec. 259.** A new section is added to chapter 70.98  
30 RCW to read as follows:

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

33 NEW SECTION. **Sec. 260.** A new section is added to chapter 43.200  
34 RCW to read as follows:

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

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

12 (b) Any appropriations made to the department of ecology for the  
13 site use permit program shall be transferred and credited to the  
14 department of health.

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

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

28 (4) All rules and all pending business before the department of  
29 ecology site use permit program shall be continued and acted upon by  
30 the department of health. All existing contracts and obligations shall  
31 remain in full force and shall be performed by the department of  
32 health.

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

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

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

14 NEW SECTION. **Sec. 261.** RCW 43.200.210 (Immunity of state--  
15 Demonstration of financial assurance--Suspension of permit) and 1992 c  
16 61 s 2, 1990 c 82 s 2, & 1986 c 191 s 2 are each repealed.

17 **SUBPART E**

18 **ADMINISTRATIVE PROVISIONS**

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

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

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

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

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

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

10 NEW SECTION. **Sec. 264.** Section 241 of this act expires July 22,  
11 2011.

12 NEW SECTION. **Sec. 265.** Section 242 of this act takes effect July  
13 22, 2011.

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

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