
SUBSTITUTE SENATE BILL 5669

State of Washington

62nd Legislature

2011 Regular Session

By Senate Natural Resources & Marine Waters (originally sponsored by Senators Ranker, Swecker, Regala, Rockefeller, Nelson, White, Pflug, and Shin; by request of Governor Gregoire)

READ FIRST TIME 02/21/11.

1 AN ACT Relating to consolidating natural resources agencies and
2 programs; amending RCW 43.17.010, 43.17.020, 42.17A.705, 43.03.028,
3 79.64.020, 79.64.100, 77.04.020, 77.04.055, 77.08.010, 79A.05.010,
4 79A.05.070, 79A.25.005, 79A.25.010, 79A.25.110, 79A.25.150, 77.85.110,
5 70.148.005, 70.148.010, 70.148.020, 70.148.025, 70.148.030, 70.148.035,
6 70.148.040, 70.148.050, 70.148.060, 70.148.070, 70.148.080, 70.148.090,
7 70.148.130, 70.148.140, 70.148.150, 70.148.160, 70.148.170, 70.149.010,
8 70.149.030, 70.149.040, 70.149.050, 70.149.060, 70.149.090, 70.149.120,
9 90.46.005, 90.46.010, 90.46.015, 90.46.030, 90.46.050, 90.46.090,
10 90.46.120, 90.46.150, 90.46.160, 90.46.200, 90.46.210, 90.46.220,
11 90.46.230, 90.46.240, 90.46.250, 90.46.260, 90.46.270, 43.200.015,
12 43.200.080, 43.200.170, 43.200.180, 43.200.190, 43.200.200, 43.200.230,
13 70.98.030, 70.98.085, 70.98.095, 70.98.098, and 70.98.130; adding a new
14 section to chapter 41.06 RCW; adding a new section to chapter 41.80
15 RCW; adding a new section to chapter 77.04 RCW; adding a new section to
16 chapter 43.30 RCW; adding a new section to chapter 79A.05 RCW; adding
17 new sections to chapter 79A.25 RCW; adding a new section to chapter
18 77.85 RCW; adding a new section to chapter 70.148 RCW; adding a new
19 section to chapter 90.46 RCW; adding a new section to chapter 43.97
20 RCW; adding a new section to chapter 70.98 RCW; adding a new section to
21 chapter 43.200 RCW; adding a new chapter to Title 43 RCW; creating new

1 sections; repealing RCW 77.04.013, 77.04.080, 77.15.005, 43.300.010,
2 43.300.040, 43.300.050, 90.46.020, 90.46.072, 90.46.110, and
3 43.200.210; providing effective dates; providing expiration dates; and
4 declaring an emergency.

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

6 **PART 1**
7 **CREATING THE DEPARTMENT OF FISH, WILDLIFE, AND**
8 **RECREATION AND CONSOLIDATING SPECIFIED AGENCIES**
9 **AND PROGRAMS INTO THE NEW DEPARTMENT**

10 NEW SECTION. **Sec. 101.** Through this act, the legislature intends
11 to consolidate state natural resource agencies and programs in order
12 to: Increase the effectiveness and efficiency of state government by
13 reducing overlap across natural resource agencies and programs; capture
14 savings from these efficiencies, which are estimated at up to ten
15 million dollars per year beginning July 1, 2012; and maximize the
16 state's ability to preserve and manage recreation and its natural
17 resources by utilizing savings from the efficiencies achieved through
18 consolidation.

19 NEW SECTION. **Sec. 102.** The definitions in this section apply
20 throughout this chapter unless the context clearly requires otherwise.

21 (1) "Department" means the department of fish, wildlife, and
22 recreation.

23 (2) "Secretary" means the secretary of the department of fish,
24 wildlife, and recreation.

25 NEW SECTION. **Sec. 103.** (1) The department of fish, wildlife, and
26 recreation is created as an executive branch agency. The department is
27 vested with all powers and duties transferred to it under this act and
28 such other powers and duties as may be authorized by law.

29 (2) Any powers, duties, and functions assigned to the department of
30 fish and wildlife, the state parks and recreation commission, and the
31 recreation and conservation office are transferred to the department of
32 fish, wildlife, and recreation.

33 (3) The primary duties of the department are to:

1 (a) Preserve, protect, and perpetuate the fish and wildlife
2 resources for the benefit of the state's citizens;

3 (b) Wisely manage the state's parks and trail systems, promote
4 outdoor recreation education and safety, and protect the state's
5 cultural, historical, and natural sites; and

6 (c) Serve as a good steward of public funds that perpetuate healthy
7 ecosystems and open spaces, restore habitat important to our fish and
8 wildlife, and support outdoor recreation and recreational places and
9 facilities.

10 (4) The department must be structured organizationally to maintain
11 at least two distinct areas of focus: One for fish and wildlife
12 management; and one for parks and recreation management.

13 NEW SECTION. **Sec. 104.** (1) The executive head of the department
14 is the secretary. The secretary must be appointed by, and serve at the
15 pleasure of, the governor. The governor must select the secretary from
16 a list of five candidates accepted by the governor that has been
17 submitted jointly by the fish and wildlife commission and the state
18 parks and recreation commission. The appointment of the secretary is
19 subject to confirmation by the senate.

20 (2) The secretary shall be paid a salary fixed by the governor in
21 accordance with RCW 43.03.040. If a vacancy occurs in the position of
22 secretary while the senate is not in session, the governor shall make
23 a temporary appointment until the next meeting of the senate at which
24 time the governor shall present to that body the governor's nomination
25 for the position.

26 (3) The secretary may employ staff members, who are exempt from the
27 state civil service law, chapter 41.06 RCW, and any additional staff
28 members as are necessary to administer this act, and such other duties
29 as may be authorized by law. The secretary may delegate any power or
30 duty vested in the secretary by this act or other law, including
31 authority to make final decisions and enter final orders in hearings
32 conducted under chapter 34.05 RCW.

33 (4) The secretary may create those administrative structures as the
34 secretary considers appropriate, except as otherwise specified by law.
35 The secretary may employ personnel as necessary for the general
36 administration of the department. This employment must be in

1 accordance with the state civil service law, chapter 41.06 RCW, and the
2 state collective bargaining law, chapter 41.80 RCW, except as otherwise
3 provided.

4 NEW SECTION. **Sec. 105.** The secretary shall:

- 5 (1) Supervise the administrative operations of the department; and
6 (2) Exercise all the powers and perform all the duties provided to
7 the secretary by law.

8 NEW SECTION. **Sec. 106.** It is the intent of the legislature that
9 the fish and wildlife commission and the state parks and recreation
10 commission retain policy and rule-making authority upon their transfer
11 to the department of fish, wildlife, and recreation.

12 NEW SECTION. **Sec. 107.** (1) On the effective date of this section,
13 the director of the department of fish and wildlife, the commissioner
14 of public lands, the director of the state parks and recreation
15 commission, and the director of the recreation and conservation office
16 must each designate a representative to serve on the natural resources
17 consolidation transition team.

18 (2) The transition team must, with the assistance of the natural
19 resources agencies, plan for and facilitate the effective and efficient
20 consolidation of the applicable natural resources agencies and programs
21 into the department of fish, wildlife, and recreation. Specifically,
22 the transition team must develop the following work products:

23 (a) A natural resources consolidation transition team report, to be
24 submitted to the office of financial management and the legislature by
25 August 1, 2011. This report must, at a minimum:

26 (i) Detail all legislative and fiscal changes recommended for the
27 effective and efficient implementation of natural resources agency
28 consolidation. The transition team must consider the scope of the
29 duties appropriately exercised by the secretary of the department of
30 fish, wildlife, and recreation in supervising the administrative
31 operations of the consolidated department, and include any recommended
32 legislative changes in its report. Recommended legislative changes
33 must be submitted in the form of draft legislation; and

34 (ii) Identify expected costs and savings associated with the
35 consolidation;

1 (b) A supplemental budget request, if necessary, for consideration
2 during the 2012 legislative session. This request must encompass any
3 necessary budgetary and legislative changes for all natural resources
4 agencies affected by this act, and be submitted to the office of
5 financial management by September 1, 2011; and

6 (c) A second natural resources consolidation transition team
7 report, to be submitted to the secretary of the department of fish,
8 wildlife, and recreation and the legislature by July 1, 2012. This
9 report must, at a minimum, detail all additional legislative and fiscal
10 changes recommended for the effective and efficient implementation of
11 natural resources agency consolidation and identify expected costs and
12 savings associated with the consolidation.

13 (3)(a) The transition team may: Invite, at its discretion, other
14 appropriate persons to participate on the transition team; and consult,
15 as necessary, with the department of personnel, office of financial
16 management, or other agency with relevant expertise.

17 (b) The transition team must provide opportunities for input from:
18 Representatives of potentially affected bargaining units; and
19 appropriate stakeholders.

20 NEW SECTION. **Sec. 108.** A new section is added to chapter 41.06
21 RCW to read as follows:

22 In addition to the exemptions under RCW 41.06.070, the provisions
23 of this chapter do not apply in the department of fish, wildlife, and
24 recreation to the secretary, the secretary's confidential secretary,
25 assistant secretaries, and any other exempt staff members provided for
26 in section 104 of this act.

27 **Sec. 109.** RCW 43.17.010 and 2009 c 565 s 25 are each amended to
28 read as follows:

29 There shall be departments of the state government which shall be
30 known as (1) the department of social and health services, (2) the
31 department of ecology, (3) the department of labor and industries, (4)
32 the department of agriculture, (5) the department of fish (~~and~~)
33 wildlife, and recreation, (6) the department of transportation, (7) the
34 department of licensing, (8) the department of general administration,
35 (9) the department of commerce, (10) the department of veterans
36 affairs, (11) the department of revenue, (12) the department of

1 retirement systems, (13) the department of corrections, (14) the
2 department of health, (15) the department of financial institutions,
3 (16) the department of archaeology and historic preservation, (17) the
4 department of early learning, and (18) the Puget Sound partnership,
5 which shall be charged with the execution, enforcement, and
6 administration of such laws, and invested with such powers and required
7 to perform such duties, as the legislature may provide.

8 **Sec. 110.** RCW 43.17.020 and 2009 c 565 s 26 are each amended to
9 read as follows:

10 There shall be a chief executive officer of each department to be
11 known as: (1) The secretary of social and health services, (2) the
12 director of ecology, (3) the director of labor and industries, (4) the
13 director of agriculture, (5) the ~~((director))~~ secretary of fish
14 ~~((and)),~~ wildlife, and recreation, (6) the secretary of transportation,
15 (7) the director of licensing, (8) the director of general
16 administration, (9) the director of commerce, (10) the director of
17 veterans affairs, (11) the director of revenue, (12) the director of
18 retirement systems, (13) the secretary of corrections, (14) the
19 secretary of health, (15) the director of financial institutions, (16)
20 the director of the department of archaeology and historic
21 preservation, (17) the director of early learning, and (18) the
22 executive director of the Puget Sound partnership.

23 Such officers(~~(, except the director of fish and wildlife,)~~) shall
24 be appointed by the governor, with the consent of the senate, and hold
25 office at the pleasure of the governor. (~~(The director of fish and
26 wildlife shall be appointed by the fish and wildlife commission as
27 prescribed by RCW 77.04.055.)~~)

28 **Sec. 111.** RCW 42.17A.705 and 2010 c 204 s 902 are each amended to
29 read as follows:

30 For the purposes of RCW 42.17A.700, "executive state officer"
31 includes:

32 (1) The chief administrative law judge, the director of
33 agriculture, the director of the department of services for the blind,
34 the director of the state system of community and technical colleges,
35 the director of commerce, the secretary of corrections, the director of
36 early learning, the director of ecology, the commissioner of employment

1 security, the chair of the energy facility site evaluation council, the
2 secretary of the state finance committee, the director of financial
3 management, the ~~((director))~~ secretary of the department of fish
4 ~~((and)),~~ wildlife, and recreation, ~~((the executive secretary of the~~
5 ~~forest practices appeals board,))~~ the director of the gambling
6 commission, the director of general administration, the secretary of
7 health, the administrator of the Washington state health care
8 authority, the executive secretary of the health care facilities
9 authority, the executive secretary of the higher education facilities
10 authority, the executive secretary of the horse racing commission, the
11 executive secretary of the human rights commission, the executive
12 secretary of the indeterminate sentence review board, the director of
13 the department of information services, the executive director of the
14 state investment board, the director of labor and industries, the
15 director of licensing, the director of the lottery commission, the
16 director of the office of minority and women's business enterprises,
17 ~~((the director of parks and recreation,))~~ the director of personnel,
18 the executive director of the public disclosure commission, the
19 executive director of the Puget Sound partnership, ~~((the director of~~
20 ~~the recreation and conservation office,))~~ the director of retirement
21 systems, the director of revenue, the secretary of social and health
22 services, the chief of the Washington state patrol, the executive
23 secretary of the board of tax appeals, the secretary of transportation,
24 the secretary of the utilities and transportation commission, the
25 director of veterans affairs, the president of each of the regional and
26 state universities and the president of The Evergreen State College,
27 and each district and each campus president of each state community
28 college;

29 (2) Each professional staff member of the office of the governor;

30 (3) Each professional staff member of the legislature; and

31 (4) Central Washington University board of trustees, the boards of
32 trustees of each community college and each technical college, each
33 member of the state board for community and technical colleges, state
34 convention and trade center board of directors, Eastern Washington
35 University board of trustees, Washington economic development finance
36 authority, Washington energy northwest executive board, The Evergreen
37 State College board of trustees, executive ethics board, fish and
38 wildlife commission, ~~((forest practices appeals board,))~~ forest

1 practices board, gambling commission, Washington health care facilities
2 authority, higher education coordinating board, higher education
3 facilities authority, horse racing commission, state housing finance
4 commission, human rights commission, indeterminate sentence review
5 board, board of industrial insurance appeals, information services
6 board, state investment board, commission on judicial conduct,
7 legislative ethics board, life sciences discovery fund authority board
8 of trustees, liquor control board, lottery commission, Pacific
9 Northwest electric power and conservation planning council, parks and
10 recreation commission, Washington personnel resources board, board of
11 pilotage commissioners, pollution control hearings board, public
12 disclosure commission, public employees' benefits board, recreation and
13 conservation funding board, salmon recovery funding board, shorelines
14 hearings board, board of tax appeals, transportation commission,
15 University of Washington board of regents, utilities and transportation
16 commission, Washington State University board of regents, and Western
17 Washington University board of trustees.

18 **Sec. 112.** RCW 43.03.028 and 2010 1st sp.s. c 7 s 2 are each
19 amended to read as follows:

20 (1) The department of personnel shall study the duties and salaries
21 of the directors of the several departments and the members of the
22 several boards and commissions of state government, who are subject to
23 appointment by the governor or whose salaries are fixed by the
24 governor, and of the chief executive officers of the following agencies
25 of state government:

26 The arts commission; the human rights commission; the board of
27 accountancy; the board of pharmacy; the eastern Washington historical
28 society; the Washington state historical society; (~~the recreation and~~
29 ~~conservation office;~~) the criminal justice training commission; the
30 department of personnel; the state library; the traffic safety
31 commission; the horse racing commission; the advisory council on
32 vocational education; the public disclosure commission; the state
33 conservation commission; the commission on Hispanic affairs; the
34 commission on Asian Pacific American affairs; the state board for
35 volunteer firefighters and reserve officers; the transportation
36 improvement board; the public employment relations commission; (~~the~~

1 ~~forest practices appeals board~~)) and the energy facilities site
2 evaluation council.

3 (2) The department of personnel shall report to the governor or the
4 chairperson of the appropriate salary fixing authority at least once in
5 each fiscal biennium on such date as the governor may designate, but
6 not later than seventy-five days prior to the convening of each regular
7 session of the legislature during an odd-numbered year, its
8 recommendations for the salaries to be fixed for each position.

9 NEW SECTION. **Sec. 113.** The law enforcement program and employees
10 of the department of natural resources are transferred to the
11 department of fish, wildlife, and recreation. The department of fish,
12 wildlife, and recreation and the department of natural resources shall
13 enter into an interagency agreement before July 1, 2012, to enforce
14 laws and rules on state trust lands. This agreement must include, but
15 is not limited to, the level of law enforcement services provided on
16 state trust lands and the level of funding to cover the cost of
17 increased enforcement. The services provided on state trust lands may
18 not be less than that provided by department of natural resources' law
19 enforcement staff as of the effective date of this section.

20 **Sec. 114.** RCW 79.64.020 and 2008 c 328 s 6004 are each amended to
21 read as follows:

22 A resource management cost account in the state treasury is created
23 to be used solely for the purpose of defraying the costs and expenses
24 necessarily incurred by the department in managing and administering
25 state lands and aquatic lands and the making and administering of
26 leases, sales, contracts, licenses, permits, easements, and rights-of-
27 way as authorized under the provisions of this title. The account may
28 also be used to defray the costs and expenses necessarily incurred by
29 the department of fish, wildlife, and recreation in the enforcement of
30 laws and rules on state trust lands. Appropriations from the resource
31 management cost account to the department shall be expended for no
32 other purposes. Funds in the resource management cost account may be
33 appropriated or transferred by the legislature for the benefit of all
34 of the trusts from which the funds were derived. For the 2007-2009
35 biennium, moneys in the account may be used for the purposes identified
36 in section 3044, chapter 328, Laws of 2008.

1 **Sec. 115.** RCW 79.64.100 and 2003 c 334 s 219 are each amended to
2 read as follows:

3 There is created a forest development account in the state
4 treasury. The state treasurer shall keep an account of all sums
5 deposited therein and expended or withdrawn therefrom. Any sums placed
6 in the forest development account shall be pledged for the purpose of
7 paying interest and principal on the bonds issued by the department
8 under RCW 79.22.080 and 79.22.090 and the provisions of this chapter,
9 and for the purchase of land for growing timber. Any bonds issued
10 shall constitute a first and prior claim and lien against the account
11 for the payment of principal and interest. No sums for the above
12 purposes shall be withdrawn or paid out of the account except upon
13 approval of the department.

14 Appropriations may be made by the legislature from the forest
15 development account to the department for the purpose of carrying on
16 the activities of the department on state forest lands, lands managed
17 on a sustained yield basis as provided for in RCW 79.10.320, and for
18 reimbursement of expenditures that have been made or may be made from
19 the resource management cost account in the management of state forest
20 lands. The account may also be used to defray the costs and expenses
21 necessarily incurred by the department of fish, wildlife, and
22 recreation in the enforcement of laws and rules on state trust lands.

23 NEW SECTION. **Sec. 116.** A new section is added to chapter 41.80
24 RCW to read as follows:

25 (1) By April 1, 2012, the commission shall review the existing
26 collective bargaining units within the department of fish and wildlife,
27 the state parks and recreation commission, the recreation and
28 conservation office, and the portions of the existing collective
29 bargaining units within the department of natural resources that
30 represent the law enforcement program to determine if these units would
31 be appropriate units within the department of fish, wildlife, and
32 recreation. In determining appropriateness of bargaining units, the
33 commission shall utilize and apply the organizational restructure
34 detail created by the natural resources consolidation transition team
35 created in section 107 of this act.

36 (2) If the commission determines that an existing collective
37 bargaining unit is appropriate pursuant to RCW 41.80.070, the exclusive

1 bargaining representative certified to represent the bargaining unit
2 prior to July 1, 2012, shall continue as the exclusive bargaining
3 representative without the necessity of an election and will be so
4 certified by the commission.

5 (3) If the commission determines that existing collective
6 bargaining units are not appropriate, the commission may modify those
7 units and order an election pursuant to RCW 41.80.080. Certified
8 exclusive bargaining representatives will not be required to
9 demonstrate a showing of interest to be included on the ballot.

10 (4) The commission may require an election pursuant to RCW
11 41.80.080 if similarly situated employees are represented by more than
12 one employee organization. Certified exclusive bargaining
13 representatives will not be required to demonstrate a showing of
14 interest to be included on the ballot.

15 (5) Certification under this section will not preclude any
16 subsequent actions allowable under this chapter.

17 NEW SECTION. **Sec. 117.** Sections 102 through 105 of this act
18 constitute a new chapter in Title 43 RCW.

19 NEW SECTION. **Sec. 118.** Section 111 of this act takes effect
20 January 1, 2012.

21 NEW SECTION. **Sec. 119.** (1) The code reviser shall note wherever
22 the director or department of fish and wildlife is used or referred to
23 in statute that the name of the department has changed.

24 (2) The code reviser shall prepare legislation for the 2012 regular
25 legislative session that changes all statutory references to the
26 director or department of fish and wildlife to the secretary or
27 department of fish, wildlife, and recreation.

28 NEW SECTION. **Sec. 120.** (1) The code reviser shall note wherever
29 the director or recreation and conservation office is used or referred
30 to in statute that the name of the department has changed.

31 (2) The code reviser shall prepare legislation for the 2012 regular
32 legislative session that changes all statutory references to the
33 director or recreation and conservation office to the secretary or
34 department of fish, wildlife, and recreation.

1 NEW SECTION. **Sec. 121.** (1) The code reviser shall note wherever
2 the director of the state parks and recreation commission is used or
3 referred to in statute that the name of the director has changed.

4 (2) The code reviser shall prepare legislation for the 2012 regular
5 legislative session that changes all statutory references to the
6 director of the state parks and recreation commission to the secretary
7 of the department of fish, wildlife, and recreation.

8 **Sec. 122.** RCW 77.04.020 and 2000 c 107 s 202 are each amended to
9 read as follows:

10 (~~The department consists of the state fish and wildlife commission~~
11 ~~and the director.~~) The commission may delegate to the (~~director~~)
12 secretary any of the powers and duties vested in the commission.

13 **Sec. 123.** RCW 77.04.055 and 2000 c 107 s 204 are each amended to
14 read as follows:

15 (1) In establishing policies to preserve, protect, and perpetuate
16 wildlife, fish, and wildlife and fish habitat, the commission shall
17 meet annually with the governor to:

18 (a) Review and prescribe basic goals and objectives related to
19 those policies; and

20 (b) Review the performance of the department in implementing fish
21 and wildlife policies.

22 The commission shall maximize fishing, hunting, and outdoor
23 recreational opportunities compatible with healthy and diverse fish and
24 wildlife populations.

25 (2) The commission shall establish hunting, trapping, and fishing
26 seasons and prescribe the time, place, manner, and methods that may be
27 used to harvest or enjoy game fish and wildlife.

28 (3) The commission shall establish provisions regulating food fish
29 and shellfish as provided in RCW 77.12.047.

30 (4) The commission shall have final approval authority for tribal,
31 interstate, international, and any other department agreements relating
32 to fish and wildlife.

33 (5) The commission shall adopt rules to implement the state's fish
34 and wildlife laws.

35 (6) (~~The commission shall have final approval authority for the~~
36 ~~department's budget proposals.~~

1 ~~(7))~~ The commission shall select its own staff (~~and shall appoint~~
2 ~~the director of the department. The director and commission staff~~
3 ~~shall~~) which serves at the pleasure of the commission.

4 **Sec. 124.** RCW 77.08.010 and 2009 c 333 s 12 are each amended to
5 read as follows:

6 The definitions in this section apply throughout this title or
7 rules adopted under this title unless the context clearly requires
8 otherwise.

9 (1) "Angling gear" means a line attached to a rod and reel capable
10 of being held in hand while landing the fish or a hand-held line
11 operated without rod or reel.

12 (2) "Aquatic invasive species" means any invasive, prohibited,
13 regulated, unregulated, or unlisted aquatic animal or plant species as
14 defined under subsections (3), (28), (40), (44), (58), and (59) of this
15 section, aquatic noxious weeds as defined under RCW 17.26.020(5)(c),
16 and aquatic nuisance species as defined under RCW 77.60.130(1).

17 (3) "Aquatic plant species" means an emergent, submersed, partially
18 submersed, free-floating, or floating-leaving plant species that grows
19 in or near a body of water or wetland.

20 (4) "Bag limit" means the maximum number of game animals, game
21 birds, or game fish which may be taken, caught, killed, or possessed by
22 a person, as specified by rule of the commission for a particular
23 period of time, or as to size, sex, or species.

24 (5) "Closed area" means a place where the hunting of some or all
25 species of wild animals or wild birds is prohibited.

26 (6) "Closed season" means all times, manners of taking, and places
27 or waters other than those established by rule of the commission as an
28 open season. "Closed season" also means all hunting, fishing, taking,
29 or possession of game animals, game birds, game fish, food fish, or
30 shellfish that do not conform to the special restrictions or physical
31 descriptions established by rule of the commission as an open season or
32 that have not otherwise been deemed legal to hunt, fish, take, harvest,
33 or possess by rule of the commission as an open season.

34 (7) "Closed waters" means all or part of a lake, river, stream, or
35 other body of water, where fishing or harvesting is prohibited.

36 (8) "Commercial" means related to or connected with buying,
37 selling, or bartering.

1 (9) "Commission" means the state fish and wildlife commission
2 within the department of fish, wildlife, and recreation.

3 (10) "Concurrent waters of the Columbia river" means those waters
4 of the Columbia river that coincide with the Washington-Oregon state
5 boundary.

6 (11) "Contraband" means any property that is unlawful to produce or
7 possess.

8 (12) "Deleterious exotic wildlife" means species of the animal
9 kingdom not native to Washington and designated as dangerous to the
10 environment or wildlife of the state.

11 (13) "Department" means the department of fish ~~((and))~~, wildlife,
12 and recreation.

13 (14) "Director" means the ~~((director))~~ secretary of the department
14 of fish ~~((and))~~, wildlife, and recreation.

15 (15) "Endangered species" means wildlife designated by the
16 commission as seriously threatened with extinction.

17 (16) "Ex officio fish and wildlife officer" means a commissioned
18 officer of a municipal, county, state, or federal agency having as its
19 primary function the enforcement of criminal laws in general, while the
20 officer is in the appropriate jurisdiction. The term "ex officio fish
21 and wildlife officer" includes special agents of the national marine
22 fisheries service, state parks commissioned officers, United States
23 fish and wildlife special agents, ~~((department of natural resources~~
24 ~~enforcement officers,))~~ and United States forest service officers,
25 while the agents and officers are within their respective
26 jurisdictions.

27 (17) "Fish" includes all species classified as game fish or food
28 fish by statute or rule, as well as all fin fish not currently
29 classified as food fish or game fish if such species exist in state
30 waters. The term "fish" includes all stages of development and the
31 bodily parts of fish species.

32 (18) "Fish and wildlife officer" means a person appointed and
33 commissioned by the director, with authority to enforce this title and
34 rules adopted pursuant to this title, and other statutes as prescribed
35 by the legislature. Fish and wildlife officer includes a person
36 commissioned before June 11, 1998, as a wildlife agent or a fisheries
37 patrol officer. Fish and wildlife officer includes a person

1 commissioned before July 1, 2012, as a department of natural resources
2 enforcement officer.

3 (19) "Fish broker" means a person whose business it is to bring a
4 seller of fish and shellfish and a purchaser of those fish and
5 shellfish together.

6 (20) "Fishery" means the taking of one or more particular species
7 of fish or shellfish with particular gear in a particular geographical
8 area.

9 (21) "Freshwater" means all waters not defined as saltwater
10 including, but not limited to, rivers upstream of the river mouth,
11 lakes, ponds, and reservoirs.

12 (22) "Fur-bearing animals" means game animals that shall not be
13 trapped except as authorized by the commission.

14 (23) "Game animals" means wild animals that shall not be hunted
15 except as authorized by the commission.

16 (24) "Game birds" means wild birds that shall not be hunted except
17 as authorized by the commission.

18 (25) "Game farm" means property on which wildlife is held or raised
19 for commercial purposes, trade, or gift. The term "game farm" does not
20 include publicly owned facilities.

21 (26) "Game reserve" means a closed area where hunting for all wild
22 animals and wild birds is prohibited.

23 (27) "Illegal items" means those items unlawful to be possessed.

24 (28) "Invasive species" means a plant species or a nonnative animal
25 species that either:

26 (a) Causes or may cause displacement of, or otherwise threatens,
27 native species in their natural communities;

28 (b) Threatens or may threaten natural resources or their use in the
29 state;

30 (c) Causes or may cause economic damage to commercial or
31 recreational activities that are dependent upon state waters; or

32 (d) Threatens or harms human health.

33 (29) "License year" means the period of time for which a
34 recreational license is valid. The license year begins April 1st, and
35 ends March 31st.

36 (30) "Limited-entry license" means a license subject to a license
37 limitation program established in chapter 77.70 RCW.

1 (31) "Money" means all currency, script, personal checks, money
2 orders, or other negotiable instruments.

3 (32) "Nonresident" means a person who has not fulfilled the
4 qualifications of a resident.

5 (33) "Offshore waters" means marine waters of the Pacific Ocean
6 outside the territorial boundaries of the state, including the marine
7 waters of other states and countries.

8 (34) "Open season" means those times, manners of taking, and places
9 or waters established by rule of the commission for the lawful hunting,
10 fishing, taking, or possession of game animals, game birds, game fish,
11 food fish, or shellfish that conform to the special restrictions or
12 physical descriptions established by rule of the commission or that
13 have otherwise been deemed legal to hunt, fish, take, harvest, or
14 possess by rule of the commission. "Open season" includes the first
15 and last days of the established time.

16 (35) "Owner" means the person in whom is vested the ownership
17 dominion, or title of the property.

18 (36) "Person" means and includes an individual; a corporation; a
19 public or private entity or organization; a local, state, or federal
20 agency; all business organizations, including corporations and
21 partnerships; or a group of two or more individuals acting with a
22 common purpose whether acting in an individual, representative, or
23 official capacity.

24 (37) "Personal property" or "property" includes both corporeal and
25 incorporeal personal property and includes, among other property,
26 contraband and money.

27 (38) "Personal use" means for the private use of the individual
28 taking the fish or shellfish and not for sale or barter.

29 (39) "Predatory birds" means wild birds that may be hunted
30 throughout the year as authorized by the commission.

31 (40) "Prohibited aquatic animal species" means an invasive species
32 of the animal kingdom that has been classified as a prohibited aquatic
33 animal species by the commission.

34 (41) "Protected wildlife" means wildlife designated by the
35 commission that shall not be hunted or fished.

36 (42) "Raffle" means an activity in which tickets bearing an
37 individual number are sold for not more than twenty-five dollars each

1 and in which a permit or permits are awarded to hunt or for access to
2 hunt big game animals or wild turkeys on the basis of a drawing from
3 the tickets by the person or persons conducting the raffle.

4 (43) "Recreational and commercial watercraft" includes the boat, as
5 well as equipment used to transport the boat, and any auxiliary
6 equipment such as attached or detached outboard motors.

7 (44) "Regulated aquatic animal species" means a potentially
8 invasive species of the animal kingdom that has been classified as a
9 regulated aquatic animal species by the commission.

10 (45) "Resident" means:

11 (a) A person who has maintained a permanent place of abode within
12 the state for at least ninety days immediately preceding an application
13 for a license, has established by formal evidence an intent to continue
14 residing within the state, and who is not licensed to hunt or fish as
15 a resident in another state; and

16 (b) A person age eighteen or younger who does not qualify as a
17 resident under (a) of this subsection, but who has a parent that
18 qualifies as a resident under (a) of this subsection.

19 (46) "Retail-eligible species" means commercially harvested salmon,
20 crab, and sturgeon.

21 (47) "Saltwater" means those marine waters seaward of river mouths.

22 (48) "Seaweed" means marine aquatic plant species that are
23 dependent upon the marine aquatic or tidal environment, and exist in
24 either an attached or free floating form, and includes but is not
25 limited to marine aquatic plants in the classes Chlorophyta,
26 Phaeophyta, and Rhodophyta.

27 (49) "Senior" means a person seventy years old or older.

28 (50) "Shellfish" means those species of marine and freshwater
29 invertebrates that have been classified and that shall not be taken
30 except as authorized by rule of the commission. The term "shellfish"
31 includes all stages of development and the bodily parts of shellfish
32 species.

33 (51) "State waters" means all marine waters and fresh waters within
34 ordinary high water lines and within the territorial boundaries of the
35 state.

36 (52) "To fish," "to harvest," and "to take," and their derivatives
37 means an effort to kill, injure, harass, or catch a fish or shellfish.

1 (53) "To hunt" and its derivatives means an effort to kill, injure,
2 capture, or harass a wild animal or wild bird.

3 (54) "To process" and its derivatives mean preparing or preserving
4 fish, wildlife, or shellfish.

5 (55) "To trap" and its derivatives means a method of hunting using
6 devices to capture wild animals or wild birds.

7 (56) "Trafficking" means offering, attempting to engage, or
8 engaging in sale, barter, or purchase of fish, shellfish, wildlife, or
9 deleterious exotic wildlife.

10 (57) "Unclaimed" means that no owner of the property has been
11 identified or has requested, in writing, the release of the property to
12 themselves nor has the owner of the property designated an individual
13 to receive the property or paid the required postage to effect delivery
14 of the property.

15 (58) "Unlisted aquatic animal species" means a nonnative animal
16 species that has not been classified as a prohibited aquatic animal
17 species, a regulated aquatic animal species, or an unregulated aquatic
18 animal species by the commission.

19 (59) "Unregulated aquatic animal species" means a nonnative animal
20 species that has been classified as an unregulated aquatic animal
21 species by the commission.

22 (60) "Wholesale fish dealer" means a person who, acting for
23 commercial purposes, takes possession or ownership of fish or shellfish
24 and sells, barter, or exchanges or attempts to sell, barter, or
25 exchange fish or shellfish that have been landed into the state of
26 Washington or entered the state of Washington in interstate or foreign
27 commerce.

28 (61) "Wild animals" means those species of the class Mammalia whose
29 members exist in Washington in a wild state and the species *Rana*
30 *catesbeiana* (bullfrog). The term "wild animal" does not include feral
31 domestic mammals or old world rats and mice of the family Muridae of
32 the order Rodentia.

33 (62) "Wild birds" means those species of the class Aves whose
34 members exist in Washington in a wild state.

35 (63) "Wildlife" means all species of the animal kingdom whose
36 members exist in Washington in a wild state. This includes but is not
37 limited to mammals, birds, reptiles, amphibians, fish, and
38 invertebrates. The term "wildlife" does not include feral domestic

1 mammals, old world rats and mice of the family Muridae of the order
2 Rodentia, or those fish, shellfish, and marine invertebrates classified
3 as food fish or shellfish by the director. The term "wildlife"
4 includes all stages of development and the bodily parts of wildlife
5 members.

6 (64) "Youth" means a person fifteen years old for fishing and under
7 sixteen years old for hunting.

8 NEW SECTION. **Sec. 125.** A new section is added to chapter 77.04
9 RCW to read as follows:

10 (1) The powers, duties, and functions of the department of fish and
11 wildlife are hereby transferred to the department of fish, wildlife,
12 and recreation. All references to the department of fish and wildlife
13 in the Revised Code of Washington shall be construed to mean the
14 department of fish, wildlife, and recreation.

15 (2)(a) All reports, documents, surveys, books, records, files,
16 papers, or written material in the possession of the department of fish
17 and wildlife shall be delivered to the custody of the department of
18 fish, wildlife, and recreation. All cabinets, furniture, office
19 equipment, motor vehicles, and other tangible property employed by the
20 department of fish and wildlife shall be made available to the
21 department of fish, wildlife, and recreation. All funds, credits, or
22 other assets held by the department of fish and wildlife shall be
23 assigned to the department of fish, wildlife, and recreation.

24 (b) Any appropriations made to the department of fish and wildlife
25 shall, on the effective date of this section, be transferred and
26 credited to the department of fish, wildlife, and recreation.

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

33 (3) All rules and all pending business before the department of
34 fish and wildlife shall be continued and acted upon by the department
35 of fish, wildlife, and recreation. All existing contracts and
36 obligations shall remain in full force and shall be performed by the
37 department of fish, wildlife, and recreation.

1 (4) The transfer of the powers, duties, functions, and personnel of
2 the department of fish and wildlife shall not affect the validity of
3 any act performed before the effective date of this section.

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

10 (6) All employees of the department of fish and wildlife engaged in
11 performing the powers, functions, and duties transferred to the
12 department of fish, wildlife, and recreation, are transferred to the
13 department of fish, wildlife, and recreation. All employees classified
14 under chapter 41.06 RCW, the state civil service law, are assigned to
15 the department of fish, wildlife, and recreation to perform their usual
16 duties upon the same terms as formerly, without any loss of rights,
17 subject to any action that may be appropriate thereafter in accordance
18 with the laws and rules governing state civil service law.

19 NEW SECTION. **Sec. 126.** A new section is added to chapter 43.30
20 RCW to read as follows:

21 (1) The powers, duties, and functions of the law enforcement
22 program of the department of natural resources are hereby transferred
23 to the department of fish, wildlife, and recreation.

24 (2) All employees of the department of natural resources engaged in
25 performing the powers, functions, and duties transferred to the
26 department of fish, wildlife, and recreation, are transferred to the
27 department of fish, wildlife, and recreation. All employees classified
28 under chapter 41.06 RCW, the state civil service law, are assigned to
29 the department of fish, wildlife, and recreation to perform their usual
30 duties upon the same terms as formerly, without any loss of rights,
31 subject to any action that may be appropriate thereafter in accordance
32 with the laws and rules governing state civil service law.

33 **Sec. 127.** RCW 79A.05.010 and 1999 c 249 s 101 are each amended to
34 read as follows:

35 The definitions in this section apply throughout this title unless
36 the context clearly requires otherwise.

1 (1) "Commission" means the state parks and recreation commission
2 within the department of fish, wildlife, and recreation.

3 (2) "Chair" means the member of the commission elected pursuant to
4 RCW 79A.05.025.

5 (3) "Director" and "director of the state parks and recreation
6 commission" means the (~~director~~) secretary of (~~parcs and recreation~~
7 ~~or the director's~~) the department of fish, wildlife, and recreation or
8 the secretary's designee.

9 (4) "Recreation" means those activities of a voluntary and leisure
10 time nature that aid in promoting entertainment, pleasure, play,
11 relaxation, or instruction.

12 (5) "Natural forest" means a forest that faithfully represents, or
13 is meant to become representative of, its unaltered state.

14 **Sec. 128.** RCW 79A.05.070 and 2006 c 141 s 1 are each amended to
15 read as follows:

16 The commission may:

17 (1) Make rules and regulations for the proper administration of its
18 duties;

19 (2) Accept any grants of funds made with or without a matching
20 requirement by the United States, or any agency thereof, for purposes
21 in keeping with the purposes of this chapter; accept gifts, bequests,
22 devises and endowments for purposes in keeping with such purposes;
23 enter into cooperative agreements with and provide for private
24 nonprofit groups to use state park property and facilities to raise
25 money to contribute gifts, grants, and support to the commission for
26 the purposes of this chapter. The commission may assist the nonprofit
27 group in a cooperative effort by providing necessary agency personnel
28 and services, if available. However, none of the moneys raised may
29 inure to the benefit of the nonprofit group, except in furtherance of
30 its purposes to benefit the commission as provided in this chapter.
31 The agency and the private nonprofit group shall agree on the nature of
32 any project to be supported by such gift or grant prior to the use of
33 any agency property or facilities for raising money. Any such gifts
34 may be in the form of recreational facilities developed or built in
35 part or in whole for public use on agency property, provided that the
36 facility is consistent with the purposes of the agency;

1 (3) Require certification by the commission of all parks and
2 recreation workers employed in state aided or state controlled
3 programs;

4 (4) Act jointly, when advisable, with the United States, any other
5 state agencies, institutions, departments, boards, or commissions in
6 order to carry out the objectives and responsibilities of this chapter;

7 (5) Grant franchises and easements for any legitimate purpose on
8 parks or parkways, for such terms and subject to such conditions and
9 considerations as the commission shall specify;

10 (6) Charge such fees for services, utilities, and use of facilities
11 as the commission shall deem proper. The commission may not charge
12 fees for general park access or parking;

13 (7) Enter into agreements whereby individuals or companies may rent
14 undeveloped parks or parkway land for grazing, agricultural, or mineral
15 development purposes upon such terms and conditions as the commission
16 shall deem proper, for a term not to exceed forty years; and

17 ~~(8) ((Determine the qualifications of and employ a director of
18 parks and recreation who shall receive a salary as fixed by the
19 governor in accordance with the provisions of RCW 43.03.040 and
20 determine the qualifications and salary of and employ such other
21 persons as may be needed to carry out the provisions hereof; and~~

22 ~~(9))~~) Without being limited to the powers hereinbefore enumerated,
23 the commission shall have such other powers as in the judgment of a
24 majority of its members are deemed necessary to effectuate the purposes
25 of this chapter: PROVIDED, That the commission shall not have power to
26 supervise directly any local park or recreation district, and no funds
27 shall be made available for such purpose.

28 NEW SECTION. Sec. 129. A new section is added to chapter 79A.05
29 RCW to read as follows:

30 (1) The powers, duties, and functions of the state parks and
31 recreation commission are hereby transferred to the department of fish,
32 wildlife, and recreation. All references to the state parks and
33 recreation commission in the Revised Code of Washington shall be
34 construed to mean the state parks and recreation commission within the
35 department of fish, wildlife, and recreation.

36 (2)(a) All reports, documents, surveys, books, records, files,
37 papers, or written material in the possession of the state parks and

1 recreation commission shall be delivered to the custody of the
2 department of fish, wildlife, and recreation. All cabinets, furniture,
3 office equipment, motor vehicles, and other tangible property employed
4 by the state parks and recreation commission shall be made available to
5 the department of fish, wildlife, and recreation. All funds, credits,
6 or other assets held by the state parks and recreation commission shall
7 be assigned to the department of fish, wildlife, and recreation.

8 (b) Any appropriations made to the state parks and recreation
9 commission shall, on the effective date of this section, be transferred
10 and credited to the department of fish, wildlife, and recreation.

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

17 (3) All rules and all pending business before the state parks and
18 recreation commission shall be continued and acted upon by the
19 department of fish, wildlife, and recreation. All existing contracts
20 and obligations shall remain in full force and shall be performed by
21 the department of fish, wildlife, and recreation.

22 (4) The transfer of the powers, duties, functions, and personnel of
23 the state parks and recreation commission shall not affect the validity
24 of any act performed before the effective date of this section.

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

31 (6) All employees of the state parks and recreation commission
32 engaged in performing the powers, functions, and duties transferred to
33 the department of fish, wildlife, and recreation are transferred to the
34 department of fish, wildlife, and recreation. All employees classified
35 under chapter 41.06 RCW, the state civil service law, are assigned to
36 the department of fish, wildlife, and recreation to perform their usual
37 duties upon the same terms as formerly, without any loss of rights,

1 subject to any action that may be appropriate thereafter in accordance
2 with the laws and rules governing state civil service law.

3 **Sec. 130.** RCW 79A.25.005 and 2007 c 241 s 39 are each amended to
4 read as follows:

5 (1) As Washington begins its second century of statehood, the
6 legislature recognizes that renewed efforts are needed to preserve,
7 conserve, and enhance the state's recreational resources. Rapid
8 population growth and increased urbanization have caused a decline in
9 suitable land for recreation and resulted in overcrowding and
10 deterioration of existing facilities. Lack of adequate recreational
11 resources directly affects the health and well-being of all citizens of
12 the state, reduces the state's economic viability, and prevents
13 Washington from maintaining and achieving the quality of life that it
14 deserves.

15 It is therefore the policy of the state and its agencies to
16 preserve, conserve, and enhance recreational resources and open space.
17 In carrying out this policy, the mission of the recreation and
18 conservation funding board and (~~its office~~) the department of fish,
19 wildlife, and recreation is to (a) create and work actively for the
20 implementation of a unified statewide strategy for meeting the
21 recreational needs of Washington's citizens, (b) represent and promote
22 the interests of the state on recreational issues in concert with other
23 state and local agencies and the governor, (c) encourage and provide
24 interagency and regional coordination, and interaction between public
25 and private organizations, (d) administer recreational grant-in-aid
26 programs and provide technical assistance, and (e) serve as a
27 repository for information, studies, research, and other data relating
28 to recreation.

29 (2) Washington is uniquely endowed with fresh and salt waters rich
30 in scenic and recreational value. This outdoor heritage enriches the
31 lives of citizens, attracts new residents and businesses to the state,
32 and is a major support of its expanding tourist industry. Rising
33 population, increased income and leisure time, and the rapid growth of
34 boating and other water sports have greatly increased the demand for
35 water related recreation, while waterfront land is rapidly rising in
36 value and disappearing from public use. There is consequently an
37 urgent need for the acquisition or improvement of waterfront land on

1 fresh and salt water suitable for marine recreational use by Washington
2 residents and visitors. To meet this need, it is necessary and proper
3 that the portion of motor vehicle fuel taxes paid by boat owners and
4 operators on fuel consumed in their watercraft and not reclaimed as
5 presently provided by law should be expended for the acquisition or
6 improvement of marine recreation land on the Pacific Ocean, Puget
7 Sound, bays, lakes, rivers, reservoirs and other fresh and salt waters
8 of the state.

9 **Sec. 131.** RCW 79A.25.010 and 2007 c 241 s 40 are each amended to
10 read as follows:

11 The definitions in this section apply throughout this chapter
12 unless the context clearly requires otherwise.

13 (1) "Marine recreation land" means any land with or without
14 improvements which (a) provides access to, or in whole or in part
15 borders on, fresh or salt water suitable for recreational use by
16 watercraft, or (b) may be used to create, add to, or make more usable,
17 bodies of water, waterways, or land, for recreational use by
18 watercraft.

19 (2) "Public body" means any county, city, town, port district, park
20 and recreation district, metropolitan park district, or other municipal
21 corporation which is authorized to acquire or improve public outdoor
22 recreation land, and shall also mean Indian tribes now or hereafter
23 recognized as such by the federal government for participation in the
24 land and water conservation program.

25 (3) "Tax on marine fuel" means motor vehicle fuel tax which is (a)
26 tax on fuel used in, or sold or distributed for use in, any watercraft,
27 (b) refundable pursuant to chapter 82.36 RCW, and (c) paid to the
28 director of licensing with respect to taxable sales, distributions, or
29 uses occurring on or after December 3, 1964.

30 (4) "Watercraft" means any boat, vessel, or other craft used for
31 navigation on or through water.

32 (5) "Board" means the recreation and conservation funding board.

33 (6) "Director" means the (~~director~~) secretary of the (~~recreation~~
34 ~~and conservation office~~) department of fish, wildlife, and recreation.

35 (7) "Office," "recreation and conservation office," or "the office
36 of recreation and conservation" means the department of fish, wildlife,
37 and recreation, the state agency responsible for administration of

1 programs and activities of the recreation and conservation funding
2 board, the salmon recovery funding board, the invasive species council,
3 and such other duties or boards, councils, or advisory groups as are or
4 may be established or directed for administrative placement in the
5 ((agency)) department.

6 (8) "Council" means the Washington invasive species council created
7 in RCW 79A.25.310.

8 **Sec. 132.** RCW 79A.25.110 and 2007 c 241 s 47 are each amended to
9 read as follows:

10 There is created the recreation and conservation funding board,
11 within the department of fish, wildlife, and recreation, consisting of
12 the commissioner of public lands, ((the director of parks and
13 recreation, and the director of fish and wildlife, or their
14 designees,)) and, by appointment of the governor with the advice and
15 consent of the senate, five members from the public at large who have
16 a demonstrated interest in and a general knowledge of outdoor
17 recreation and conservation in the state. The terms of members
18 appointed from the public at large shall commence on January 1st of the
19 year of appointment and shall be for three years or until a successor
20 is appointed, except in the case of appointments to fill vacancies
21 which shall be for the remainder of the unexpired term. The governor
22 shall appoint one of the members from the public at large to serve as
23 chair of the board for the duration of the member's term. Members
24 employed by the state shall serve without additional pay and
25 participation in the work of the board shall be deemed performance of
26 their employment. Members from the public at large shall be
27 compensated in accordance with RCW 43.03.240 and shall be entitled to
28 reimbursement individually for travel expenses incurred in performance
29 of their duties as members of the board in accordance with RCW
30 43.03.050 and 43.03.060.

31 NEW SECTION. **Sec. 133.** A new section is added to chapter 79A.25
32 RCW to read as follows:

33 (1) It is the intent of the legislature that a proper barrier be
34 maintained between the board and the department in matters affecting
35 the department as either a grant applicant or grant recipient, or both.

1 (2) For those grant award and management issues where the
2 department is either a grant applicant or grant recipient, or both,
3 including but not limited to issues of project scope changes, deed
4 restrictions, conversions, and time extensions, the board shall have
5 independent and final decision-making authority. The board shall adopt
6 written policies and procedures by July 1, 2012, to implement this
7 section.

8 **Sec. 134.** RCW 79A.25.150 and 2010 c 128 s 7 are each amended to
9 read as follows:

10 When requested by the board, members employed by the state shall
11 furnish assistance to the board from their departments for the analysis
12 and review of proposed plans and projects, and such assistance shall be
13 a proper charge against the appropriations to the several agencies
14 represented on the board. Assistance may be in the form of money,
15 personnel, or equipment and supplies, whichever is most suitable to the
16 needs of the board.

17 ~~((The director of the recreation and conservation office shall be
18 appointed by, and serve at the pleasure of, the governor. The governor
19 shall select the director from a list of three candidates submitted by
20 the board. However, the governor may request and the board shall
21 provide an additional list or lists from which the governor may select
22 the director. The director shall have background and experience in the
23 areas of recreation and conservation management and policy. The
24 director shall be paid a salary to be fixed by the governor in
25 accordance with the provisions of RCW 43.03.040. The director shall
26 appoint such personnel as may be necessary to carry out the duties of
27 the office. Not more than three employees appointed by the director
28 shall be exempt from the provisions of chapter 41.06 RCW.))~~

29 **Sec. 135.** RCW 77.85.110 and 2007 c 241 s 20 are each amended to
30 read as follows:

31 (1) The salmon recovery funding board is created consisting of ten
32 members.

33 (2) Five members of the board shall be voting members who are
34 appointed by the governor, subject to confirmation by the senate. One
35 of these voting members shall be a cabinet-level appointment as the
36 governor's representative to the board. Board members who represent

1 the general public shall not have a financial or regulatory interest in
2 salmon recovery. The governor shall appoint one of the general public
3 members of the board as the chair. The voting members of the board
4 shall be appointed for terms of four years, except that two members
5 initially shall be appointed for terms of two years and three members
6 shall initially be appointed for terms of three years. In making the
7 appointments, the governor shall seek a board membership that
8 collectively provide the expertise necessary to provide strong fiscal
9 oversight of salmon recovery expenditures, and that provide extensive
10 knowledge of local government processes and functions and an
11 understanding of issues relevant to salmon recovery in Washington
12 state. The governor shall appoint at least three of the voting members
13 of the board no later than ninety days after July 1, 1999. Vacant
14 positions on the board shall be filled in the same manner as the
15 original appointments. The governor may remove members of the board
16 for good cause.

17 In addition to the five voting members of the board, the following
18 five state officials shall serve as ex officio nonvoting members of the
19 board: The ~~((director))~~ secretary of the department of fish ~~((and))~~,
20 wildlife, and recreation, the executive director of the conservation
21 commission, the secretary of transportation, the director of the
22 department of ecology, and the commissioner of public lands. The state
23 officials serving in an ex officio capacity may designate a
24 representative of their respective agencies to serve on the board in
25 their behalf. Such designations shall be made in writing and in such
26 manner as is specified by the board.

27 (3) Staff support to the board shall be provided by the
28 ~~((recreation and conservation office))~~ department of fish, wildlife,
29 and recreation. For administrative purposes, the board shall be
30 located with the ~~((recreation and conservation office))~~ department of
31 fish, wildlife, and recreation.

32 (4) Members of the board who do not represent state agencies shall
33 be compensated as provided by RCW 43.03.250. Members of the board
34 shall be reimbursed for travel expenses as provided by RCW 43.03.050
35 and 43.03.060.

36 NEW SECTION. Sec. 136. A new section is added to chapter 77.85
37 RCW to read as follows:

1 (1) It is the intent of the legislature that a proper barrier be
2 maintained between the salmon recovery funding board and the department
3 in matters affecting the department as either a grant applicant or
4 grant recipient, or both.

5 (2) For those grant award and management issues where the
6 department is either a grant applicant or grant recipient, or both,
7 including but not limited to issues of project scope changes, deed
8 restrictions, conversions, and time extensions, the salmon recovery
9 funding board shall have independent and final decision-making
10 authority. The salmon recovery funding board shall adopt written
11 policies and procedures by July 1, 2012, to implement this section.

12 NEW SECTION. **Sec. 137.** A new section is added to chapter 79A.25
13 RCW to read as follows:

14 (1) The powers, duties, and functions of the recreation and
15 conservation office are hereby transferred to the department of fish,
16 wildlife, and recreation. All references to the recreation and
17 conservation office in the Revised Code of Washington shall be
18 construed to mean the department of fish, wildlife, and recreation.

19 (2)(a) All reports, documents, surveys, books, records, files,
20 papers, or written material in the possession of the recreation and
21 conservation office shall be delivered to the custody of the department
22 of fish, wildlife, and recreation. All cabinets, furniture, office
23 equipment, motor vehicles, and other tangible property employed by the
24 recreation and conservation office shall be made available to the
25 department of fish, wildlife, and recreation. All funds, credits, or
26 other assets held by the recreation and conservation office shall be
27 assigned to the department of fish, wildlife, and recreation.

28 (b) Any appropriations made to the recreation and conservation
29 office shall, on the effective date of this section, be transferred and
30 credited to the department of fish, wildlife, and recreation.

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

1 (3) All rules and all pending business before the recreation and
2 conservation office shall be continued and acted upon by the department
3 of fish, wildlife, and recreation. All existing contracts and
4 obligations shall remain in full force and shall be performed by the
5 department of fish, wildlife, and recreation.

6 (4) The transfer of the powers, duties, functions, and personnel of
7 the recreation and conservation office shall not affect the validity of
8 any act performed before the effective date of this section.

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

15 (6) All employees of the recreation and conservation office engaged
16 in performing the powers, functions, and duties transferred to the
17 department of fish, wildlife, and recreation, are transferred to the
18 department of fish, wildlife, and recreation. All employees classified
19 under chapter 41.06 RCW, the state civil service law, are assigned to
20 the department of fish, wildlife, and recreation to perform their usual
21 duties upon the same terms as formerly, without any loss of rights,
22 subject to any action that may be appropriate thereafter in accordance
23 with the laws and rules governing state civil service law.

24 NEW SECTION. **Sec. 138.** The following acts or parts of acts are
25 each repealed:

26 (1) RCW 77.04.013 (Findings and intent) and 1995 1st sp.s. c 2 s 1;

27 (2) RCW 77.04.080 (Director--Qualifications--Duties--Salary) and
28 2000 c 107 s 205, 1995 1st sp.s. c 2 s 5, 1993 sp.s. c 2 s 64, 1987 c
29 506 s 9, 1980 c 78 s 8, & 1955 c 36 s 77.04.080;

30 (3) RCW 77.15.005 (Finding--Intent) and 1998 c 190 s 1;

31 (4) RCW 43.300.010 (Department created--Transfer of powers, duties,
32 and functions) and 1993 sp.s. c 2 s 2;

33 (5) RCW 43.300.040 (Director's duties) and 1996 c 267 s 33 & 1993
34 sp.s. c 2 s 5; and

35 (6) RCW 43.300.050 (Exempt positions) and 1993 sp.s. c 2 s 6.

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

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

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

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

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

12 To that end, this chapter establishes a temporary program to
13 provide pollution liability reinsurance at a price that will encourage
14 a private insurance company or risk retention group to sell pollution
15 liability insurance in accordance with the requirements of this chapter
16 to owners and operators of underground petroleum storage tanks, thereby
17 allowing the owners and operators to comply with the financial
18 responsibility regulations of the EPA.

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

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

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

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

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

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

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

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

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

26 "Corrective action" does not include:

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

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

- 37 (a) The United States, the state of Washington, or any political

1 subdivision of the United States or state of Washington to require
2 corrective action or to recover costs of corrective action; or

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

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

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

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

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

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

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

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

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

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

35 (15) "Property damage" means:

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

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

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

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

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

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

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

23 This section expires June 1, 2013.

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

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

1 (2) Each calendar quarter, the ~~((director))~~ department shall report
2 to the insurance commissioner the loss and surplus reserves required
3 for the calendar quarter. The ~~((director))~~ department shall notify the
4 department of revenue of this amount by the fifteenth day of each
5 calendar quarter.

6 (3) Each calendar quarter the ~~((director))~~ department shall
7 determine the amount of reserves necessary to fund commitments made to
8 provide financial assistance under RCW 70.148.130 to the extent that
9 the financial assistance reserves do not jeopardize the operations and
10 liabilities of the pollution liability insurance program. The
11 ~~((director))~~ department shall notify the department of revenue of this
12 amount by the fifteenth day of each calendar quarter. The ~~((director))~~
13 department may immediately establish an initial financial assistance
14 reserve of five million dollars from available revenues. The director
15 may not expend more than fifteen million dollars for the financial
16 assistance program.

17 ~~((During the 2005-2007 fiscal biennium, the legislature may
18 transfer from the pollution liability insurance program trust account
19 to the state general fund such amounts as reflect the excess fund
20 balance of the account.~~

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

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

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

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

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

30 (1) The ~~((Washington))~~ pollution liability insurance program is
31 ~~((created as an independent agency of the state. The administrative
32 head and appointing authority of the program shall be the director who
33 shall be appointed by the governor, with the consent of the senate, and
34 shall serve at the pleasure of the governor. The salary for this
35 office shall be set by the governor pursuant to RCW 43.03.040. The
36 director shall appoint a deputy director. The director, deputy~~

1 ~~director, and up to three other employees are exempt from the civil~~
2 ~~service law, chapter 41.06 RCW)) merged into the department. The~~
3 ~~administrative head must be appointed by the director. The~~
4 ~~administrative head of the program and up to three other employees are~~
5 ~~exempt from the civil service law, chapter 41.06 RCW, and serve at the~~
6 ~~pleasure of the director.~~

7 (2) The director shall employ such other staff as are necessary to
8 fulfill the responsibilities and duties of the ((~~director~~)) department.
9 The staff is subject to the civil service law, chapter 41.06 RCW. In
10 addition, the director may contract with third parties for services
11 necessary to carry out its activities where this will promote economy,
12 avoid duplication of effort, and make best use of available expertise.
13 To the extent necessary to protect the state from unintended liability
14 and ensure quality program and contract design, the director shall
15 contract with an organization or organizations with demonstrated
16 experience and ability in managing and designing pollution liability
17 insurance and with an organization or organizations with demonstrated
18 experience and ability in managing and designing pollution liability
19 reinsurance. The director shall enter into such contracts after
20 competitive bid but need not select the lowest bid. The contracting
21 activity is not subject to the competitive contracting provisions of
22 RCW 41.06.142. Any such contractor or consultant is prohibited from
23 releasing, publishing, or otherwise using any information made
24 available to it under its contractual responsibility without specific
25 permission of the ((~~program~~)) director. The director may call upon
26 other agencies of the state to provide technical support and available
27 information as necessary to assist the director in meeting the
28 director's responsibilities under this chapter. Agencies shall supply
29 this support and information as promptly as circumstances permit.

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

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

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

36 (1) The ((~~director~~)) department may design the program to cover the
37 costs incurred in determining whether a proposed applicant for

1 pollution insurance under the program meets the underwriting standards
2 of the insurer. In covering such costs the ((~~director~~)) department
3 shall consider the financial resources of the applicant, shall take
4 into consideration the economic impact of the discontinued use of the
5 applicant's storage tank upon the affected community, shall provide
6 coverage within the revenue limits provided under this chapter, and
7 shall limit coverage of such costs to the extent that coverage would be
8 detrimental to providing affordable insurance under the program.

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

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

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

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

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

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

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

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

32 (b) In the event of an insolvency of the insurer, the reinsurance
33 contract shall provide reinsurance payable directly to the insurer or
34 to its liquidator, receiver, or successor on the basis of the liability
35 of the insurer in accordance with the reinsurance contract. In no

1 event may the program be liable for or provide coverage for that
2 portion of any covered loss that is the responsibility of the insurer
3 whether or not the insurer is able to fulfill the responsibility.

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

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

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

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

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

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

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

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

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

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

4 This section expires June 1, 2013.

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

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

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

18 (a) The Washington state insurance commissioner;

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

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

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

28 (a) The Washington state insurance commissioner; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 (3) The ((director)) department shall adopt all rules necessary to
18 implement this section. In developing and adopting rules governing
19 rates, deductibles, underwriting standards, and coverage conditions,
20 limitations, and exclusions, the ((director)) department shall balance
21 the owner and operator's need for coverage with the need to maintain
22 the actuarial integrity of the program, shall take into consideration
23 the economic impact of the discontinued use of a storage tank upon the
24 affected community, and shall consult with the ((standing)) ad hoc
25 technical advisory committee established under RCW 70.148.030(3). ((In
26 developing and adopting rules governing coverage exclusions affecting
27 corrective action, the director shall consult with the Washington state
28 department of ecology.))

29 (4) Notwithstanding the definitions contained in RCW 70.148.010,
30 the ((director)) department may permit an insurer to use different
31 words or phrases describing the coverage provided under the program.
32 In permitting such deviations from the definitions contained in RCW
33 70.148.010, the ((director)) department shall consider the regulations
34 adopted by the United States environmental protection agency requiring
35 financial responsibility by owners and operators of underground
36 petroleum storage tanks.

37 (5) Owners and operators of underground storage tanks or sites
38 containing underground storage tanks where a preexisting release has

1 been identified or where the owner or operator knows of a preexisting
2 release are eligible for coverage under the program subject to the
3 following conditions:

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

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

11 (6) ~~((When))~~ Within thirty days of a reinsurance contract ~~((has~~
12 ~~been))~~ being entered into by the ~~((agency))~~ department and insurance
13 companies, ~~((the director shall notify the department of ecology of the~~
14 ~~letting of the contract. Within thirty days of that notification,))~~
15 the department ~~((of ecology))~~ shall notify all known owners and
16 operators of petroleum underground storage tanks that appropriate
17 levels of financial responsibility must be established by October 26,
18 1990, in accordance with federal environmental protection agency
19 requirements, and that insurance under the program is available. All
20 owners and operators of petroleum underground storage tanks must also
21 be notified that declaration of method of financial responsibility or
22 intent to seek to be insured under the program must be made to the
23 state by November 1, 1990. If the declaration of method of financial
24 responsibility is not made by November 1, 1990, the department ~~((of~~
25 ~~ecology))~~ shall, pursuant to chapter 90.76 RCW, prohibit the owner or
26 operator of an underground storage tank from obtaining a tank tag or
27 receiving petroleum products until such time as financial
28 responsibility has been established.

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

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

32 (1) If the insurer cancels or refuses to issue or renew a policy,
33 the affected owner or operator may appeal the insurer's decision to the
34 director or the director's designee. The director or the director's
35 designee shall conduct a brief adjudicative proceeding under chapter
36 34.05 RCW.

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

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

3 (1) The activities and operations of the program are exempt from
4 the provisions and requirements of Title 48 RCW and to the extent of
5 their participation in the program, the activities and operations of
6 the insurer selected by the ((~~director~~)) department to provide
7 liability insurance coverage to owners and operators of underground
8 storage tanks are exempt from the requirements of Title 48 RCW except
9 for:

- 10 (a) Chapter 48.03 RCW pertaining to examinations;
11 (b) RCW 48.05.250 pertaining to annual reports;
12 (c) Chapter 48.12 RCW pertaining to assets and liabilities;
13 (d) Chapter 48.13 RCW pertaining to investments;
14 (e) Chapter 48.30 RCW pertaining to deceptive, false, or fraudulent
15 acts or practices; and
16 (f) Chapter 48.92 RCW pertaining to liability risk retention.

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

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

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

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

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

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

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

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

10 (2)(a) Except as otherwise provided in RCW 70.148.120 through
11 70.148.170, no grant of financial assistance may be used for any
12 purpose other than for corrective action and repair, replacement,
13 reconstruction, and improvement of underground storage tanks and tank
14 sites. If at any time prior to providing financial assistance or in
15 the course of providing such assistance, it appears to the ~~((director))~~
16 department that corrective action costs may exceed seventy-five
17 thousand dollars, the ~~((director))~~ department may not provide further
18 financial assistance until the owner or operator has developed and
19 implemented a corrective action plan with the department ~~((of~~
20 ~~ecology))~~.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

36 (1) The ((~~director~~)) department shall develop and distribute to

1 appropriate cities, towns, and counties a form for use by the local
2 government in making the certification required for all private owner
3 and operator financial assistance along with instructions on the use of
4 such form.

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

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

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

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

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

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

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

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

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

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

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

31 (1) It is the intent of the legislature to establish a temporary
32 regulatory program to assist owners and operators of heating oil tanks.
33 The legislature finds that it is in the best interests of all citizens
34 for heating oil tanks to be operated safely and for tank leaks or
35 spills to be dealt with expeditiously. The legislature further finds
36 that it is necessary to protect tank owners from the financial hardship
37 related to damaged heating oil tanks. The problem is especially acute

1 because owners and operators of heating oil tanks used for space
2 heating have been unable to obtain pollution liability insurance or
3 insurance has been unaffordable.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

34 (11) "Property damage" means:

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

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

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

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

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

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

15 (16) "Department" means the Washington state department of ecology.
16 This section expires June 1, 2013.

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

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

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

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

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

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

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

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

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

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

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

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

37 (11) Monitor ~~((agency))~~ program expenditures and seek to minimize

1 costs and maximize benefits to ensure responsible financial
2 stewardship;

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

6 This section expires June 1, 2013.

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

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

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

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

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

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

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

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

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

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

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

36 (b) If the owner or operator files a claim with the insurer, the
37 owner or operator has the burden of proving that the claim is not

1 related to a preexisting release until the owner or operator
2 demonstrates to the satisfaction of the ((director)) department that
3 corrective action has been completed.

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

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

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

13 (a) Chapter 48.03 RCW pertaining to examinations;

14 (b) RCW 48.05.250 pertaining to annual reports;

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

16 (d) Chapter 48.13 RCW pertaining to investments;

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

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

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

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

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

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

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

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

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

10 (a) The Washington state insurance commissioner;

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

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

16 This section expires June 1, 2013.

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

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

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

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

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

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

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

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

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

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

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

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

35 (5) The transfer of the powers, duties, functions, and personnel of
36 the pollution liability insurance agency to the department of ecology
37 under this act shall not affect the validity of any activity performed

1 before the effective date of this section or the effective date of the
2 consolidation.

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

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

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

17 **SUBPART B**
18 **RECLAIMED WATER PROGRAM**

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

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

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

35 It is hereby declared that the people of the state of Washington
36 have a primary interest in the development of facilities to provide

1 reclaimed water to replace potable water in nonpotable applications, to
2 supplement existing surface and ground water supplies, and to assist in
3 meeting the future water requirements of the state.

4 The legislature further finds and declares that the utilization of
5 reclaimed water by local communities for domestic, agricultural,
6 industrial, recreational, and fish and wildlife habitat creation and
7 enhancement purposes, including wetland enhancement, will contribute to
8 the peace, health, safety, and welfare of the people of the state of
9 Washington. To the extent reclaimed water is appropriate for
10 beneficial uses, it should be so used to preserve potable water for
11 drinking purposes, contribute to the restoration and protection of
12 instream flows that are crucial to preservation of the state's salmonid
13 fishery resources, contribute to the restoration of Puget Sound by
14 reducing wastewater discharge, provide a drought resistant source of
15 water supply for nonpotable needs, or be a source of supply integrated
16 into state, regional, and local strategies to respond to population
17 growth and global warming. Use of reclaimed water constitutes the
18 development of new basic water supplies needed for future generations
19 and local and regional water management planning should consider
20 coordination of infrastructure, development, storage, water reclamation
21 and reuse, and source exchange as strategies to meet water demands
22 associated with population growth and impacts of global warming.

23 The legislature further finds and declares that the use of
24 reclaimed water is not inconsistent with the policy of antidegradation
25 of state waters announced in other state statutes, including the water
26 pollution control act, chapter 90.48 RCW and the water resources act,
27 chapter 90.54 RCW.

28 The legislature finds that other states, including California,
29 Florida, and Arizona, have successfully used reclaimed water to
30 supplement existing water supplies without threatening existing
31 resources or public health.

32 It is the intent of the legislature that the department of ecology
33 (~~and the department of health~~) undertake the necessary steps to
34 encourage the development of water reclamation facilities so that
35 reclaimed water may be made available to help meet the growing water
36 requirements of the state.

37 The legislature further finds and declares that reclaimed water
38 facilities are water pollution control facilities as defined in chapter

1 70.146 RCW and are eligible for financial assistance as provided in
2 chapter 70.146 RCW. The legislature finds that funding demonstration
3 projects will ensure the future use of reclaimed water. (~~The
4 demonstration projects in RCW 90.46.110 are varied in nature and will
5 provide the experience necessary to test different facets of the
6 standards and refine a variety of technologies so that water purveyors
7 can begin to use reclaimed water technology in a more cost-effective
8 manner.~~) This is especially critical in smaller cities and
9 communities where the feasibility for such projects is great, but there
10 are scarce resources to develop the necessary facilities.

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

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

17 The definitions in this section apply throughout this chapter
18 unless the context clearly requires otherwise.

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

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

27 (3) "Agricultural water use" means the use of water for irrigation
28 and other uses related to the production of agricultural products.
29 These uses include, but are not limited to, construction, operation,
30 and maintenance of agricultural facilities and livestock operations at
31 farms, ranches, dairies, and nurseries. Examples of these uses
32 include, but are not limited to, dust control, temperature control, and
33 fire control.

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

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

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

8 (7) "Domestic wastewater" means wastewater from greywater, toilet,
9 or urinal sources.

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

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

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

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

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

28 ~~((13))~~ "Person" means any state, individual, public or private
29 corporation, political subdivision, governmental subdivision,
30 governmental agency, municipality, copartnership, association, firm,
31 trust estate, or any other legal entity whatever.

32 ~~((14))~~ (12) "Planned groundwater recharge project" means any
33 reclaimed water project designed for the purpose of recharging
34 groundwater.

35 ~~((15))~~ (13) "Reclaimed water" means water derived in any part
36 from wastewater with a domestic wastewater component that has been
37 adequately and reliably treated, so that it can be used for beneficial
38 purposes. Reclaimed water is not considered a wastewater.

1 ~~((+16+))~~ (14) "State drinking water contaminant criteria" means the
2 contaminant criteria found in the drinking water quality standards
3 adopted by the state board of health pursuant to chapter 43.20 RCW and
4 the department of health pursuant to chapter 70.119A RCW.

5 ~~((+17+))~~ (15) "Streamflow or surface water augmentation" means the
6 intentional use of reclaimed water for rivers and streams of the state
7 or other surface water bodies, for the purpose of increasing volumes.

8 ~~((+18+))~~ (16) "Surface percolation" means the controlled
9 application of water to the ground surface or to unsaturated soil for
10 the purpose of replenishing groundwater.

11 ~~((+19+))~~ (17) "User" means any person who uses reclaimed water.

12 ~~((+20+))~~ (18) "Wastewater" means water-carried wastes from
13 residences, buildings, industrial and commercial establishments, or
14 other places, together with such groundwater infiltration and inflow as
15 may be present.

16 ~~((+21+))~~ (19) "Wetland or wetlands" means areas that are inundated
17 or saturated by surface water or groundwater at a frequency and
18 duration sufficient to support, and that under normal circumstances do
19 support, a prevalence of vegetation typically adapted to life in
20 saturated soil conditions. Wetlands generally include swamps, marshes,
21 bogs, and similar areas. Wetlands regulated under this chapter shall
22 be delineated in accordance with the manual adopted by the department
23 of ecology pursuant to RCW 90.58.380.

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

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

27 (1) The department ~~((of ecology))~~ shall ~~((, in coordination with the~~
28 ~~department of health,))~~ adopt rules for reclaimed water use consistent
29 with this chapter. The rules must address all aspects of reclaimed
30 water use, including commercial and industrial uses, land applications,
31 direct groundwater recharge, wetland discharge, surface percolation,
32 constructed wetlands, and streamflow or surface water augmentation.
33 The department of health shall, in coordination with the department
34 ~~((of ecology)),~~ adopt rules for greywater reuse. ~~((The rules must also~~
35 ~~designate whether the department of ecology or the department of health~~
36 ~~will be the lead agency responsible for a particular aspect of~~

1 ~~reclaimed water use.~~) In developing the rules, the ~~((departments of~~
2 ~~health and ecology))~~ department shall amend or rescind any existing
3 rules on reclaimed water in conflict with the new rules.

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

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

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

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

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

20 ~~(2) Unless))~~ The department ~~((of ecology adopts))~~ shall adopt rules
21 pursuant to RCW 90.46.015 that relate to the industrial and commercial
22 use of reclaimed water ~~((specifying otherwise,))~~. The department ~~((of~~
23 ~~health))~~ may issue a reclaimed water permit for industrial and
24 commercial uses of reclaimed water to the generator of reclaimed water
25 who may then distribute the water, subject to provisions in the permit
26 governing the location, rate, water quality, and purposes of use.
27 Permits issued after the adoption of rules under RCW 90.46.015 must be
28 consistent with the adopted rules.

29 ~~((3))~~ (2) The department ~~((of health))~~ in consultation with the
30 advisory committee established in RCW 90.46.050, shall develop
31 recommendations for a fee structure for permits issued under
32 ~~((subsection (2) of))~~ this ~~((section))~~ chapter. Fees shall be
33 established in amounts to fully recover, and not exceed, expenses
34 incurred by the department ~~((of health))~~ in processing permit
35 applications and modifications, monitoring and evaluating compliance
36 with permits, and conducting inspections and supporting the reasonable
37 overhead expenses that are directly related to these activities.

1 Permit fees may not be used for research or enforcement activities.
2 (~~The department of health shall not issue permits under this section~~
3 ~~until a fee structure has been established.~~

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

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

7 (b) A private utility as defined in RCW 36.94.010; ~~((or))~~

8 (c) The holder of a waste discharge permit issued under chapter
9 90.48 RCW or operating permit under chapter 70.118B RCW; or

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

14 ~~((5))~~ (4) The authority and duties created in this section are in
15 addition to any authority and duties already provided in law with
16 regard to sewage and wastewater collection, treatment, and disposal for
17 the protection of health and safety of the state's waters. Nothing in
18 this section limits the powers of the state or any political
19 subdivision to exercise such authority.

20 ~~((6) Unless the department of ecology adopts rules pursuant to RCW~~
21 ~~90.46.015 that relate to the industrial and commercial use of reclaimed~~
22 ~~water specifying otherwise, the department of health may implement the~~
23 ~~requirements of this section through the department of ecology by~~
24 ~~execution of a formal agreement between the departments. Upon~~
25 ~~execution of such an agreement, the department of ecology may issue~~
26 ~~reclaimed water permits for industrial and commercial uses of reclaimed~~
27 ~~water by issuance of permits under chapter 90.48 RCW, and may establish~~
28 ~~and collect fees as required for permits issued under chapter 90.48~~
29 ~~RCW.~~

30 ~~(7) Unless the department of ecology adopts rules pursuant to RCW~~
31 ~~90.46.015 that relate to the industrial and commercial use of reclaimed~~
32 ~~water specifying otherwise, and))~~

33 (5) Before deciding whether to issue a permit under this section to
34 a private utility, the department ~~((of health))~~ may require information
35 that is reasonable and necessary to determine whether the private
36 utility has the financial and other resources to ensure the
37 reliability, continuity, and supervision of the reclaimed water
38 facility.

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

3 The department (~~(of ecology)~~) shall(~~(, before July 1, 2006,)~~) form
4 an advisory committee(~~(, in coordination with the department of health~~
5 ~~and the department of agriculture,)~~) which will provide technical
6 assistance in the development of standards, procedures, and guidelines
7 required by this chapter. The advisory committee shall be composed of
8 a broad range of interested individuals representing the various
9 stakeholders that utilize or are potentially impacted by the use of
10 reclaimed water and include a representative from the department of
11 health and a representative from the department of agriculture. The
12 advisory committee must also contain individuals with technical
13 expertise and knowledge of new advancements in technology.

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

16 (1) Reclaimed water may be beneficially used for discharge into
17 constructed beneficial use wetlands and constructed treatment wetlands
18 provided the reclaimed water meets the class A or B reclaimed water
19 standards as defined in the reclamation criteria, and the discharge is
20 incorporated into a sewer or water comprehensive plan, as applicable,
21 adopted by the applicable local government and approved by the
22 department of health or department of ecology as applicable.

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

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

33 (b) Standards adopted under this section are superseded by any
34 rules adopted by the department (~~(of ecology)~~) pursuant to RCW
35 90.46.015 as they relate to discharge into constructed beneficial use
36 wetlands and constructed treatment wetlands.

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

3 (1) The owner of a wastewater treatment facility that is reclaiming
4 water with a permit issued under this chapter has the exclusive right
5 to any reclaimed water generated by the wastewater treatment facility.
6 Use, distribution, storage, and the recovery from storage of reclaimed
7 water permitted under this chapter is exempt from the permit
8 requirements of RCW 90.03.250 and 90.44.060, provided that a permit for
9 recovery of reclaimed water from aquifer storage shall be reviewed
10 under the standards established under RCW 90.03.370(2) for aquifer
11 storage and recovery projects. Revenues derived from the reclaimed
12 water facility shall be used only to offset the cost of operation of
13 the wastewater utility fund or other applicable source of systemwide
14 funding.

15 (2) If the proposed use of reclaimed water is to augment or replace
16 potable water supplies or to create the potential for the development
17 of an additional new potable water supply, then regional water supply
18 plans, or any other potable water supply plans prepared by multiple
19 water purveyors, must consider the proposed use of the reclaimed water
20 as they are developed or updated.

21 (a) Regional water supply plans include those adopted under state
22 board of health laws (chapter 43.20 RCW), the public water system
23 coordination act of 1977 (chapter 70.116 RCW), groundwater protection
24 laws (chapter 90.44 RCW), and the watershed planning act (chapter 90.82
25 RCW).

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

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

32 (3) When reclaimed water is available or is proposed for use under
33 a water supply or wastewater plan developed under chapter 43.20,
34 70.116, 90.44, 90.48, or 90.82 RCW these plans must be coordinated to
35 ensure that opportunities for reclaimed water are evaluated. The
36 requirements of this subsection (3) do not apply to water system plans
37 developed under chapter 43.20 RCW for utilities serving less than one
38 thousand service connections.

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

8 ~~((5) By November 30, 2009, the department of ecology shall review
9 comments from the reclaimed water advisory committee under RCW
10 90.46.050 and the reclaimed water and water rights advisory committee
11 under the direction of the department of ecology and submit a
12 recommendation to the legislature on the impairment requirements and
13 standards for reclaimed water. The department of ecology shall also
14 provide a report to the legislature that describes the opinions of the
15 stakeholders on the impairment requirements and standards for reclaimed
16 water.))~~

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

19 The permit to apply agricultural industrial process water to
20 agricultural water use shall be the permit issued under chapter 90.48
21 RCW to the owner of the agricultural processing plant who may then
22 distribute the water through methods including, but not limited to,
23 irrigation systems, subject to provisions in the permit governing the
24 location, rate, water quality, and purpose. ~~((In cases where the
25 department of ecology determines that a significant risk to public
26 health exists, in land application of the water, the department must
27 refer the application to the department of health for review and
28 consultation.))~~

29 The owner of the agricultural processing plant who obtains a permit
30 under this section has the exclusive right to the use of any
31 agricultural industrial process water generated from the plant and to
32 the distribution of such water through facilities including irrigation
33 systems. Use and distribution of the water by the owner is exempt from
34 the permit requirements of RCW 90.03.250, 90.03.380, 90.44.060, and
35 90.44.100.

36 Nothing in chapter 69, Laws of 2001 shall be construed to affect

1 any right to reuse agricultural industrial discharge water in existence
2 on or before July 22, 2001.

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

5 (1) The permit to use industrial reuse water shall be the permit
6 issued under chapter 90.48 RCW to the owner of the plant that is the
7 source of the industrial process water, who may then distribute the
8 water according to provisions in the permit governing the location,
9 rate, water quality, and purpose. ~~((In cases where the department of
10 ecology determines that a proposed use may pose a significant risk to
11 public health, the department shall refer the permit application to the
12 department of health for review and consultation.))~~

13 (2) The owner of the industrial plant who obtains a permit under
14 this section has the exclusive right to the use of any industrial reuse
15 water generated from the plant and to the distribution of such water.
16 Use and distribution of the water by the owner is exempt from the
17 permit requirements of RCW 90.03.250, 90.03.380, 90.44.060, and
18 90.44.100.

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

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

23 ~~(1) ((The department of ecology and the department of health shall
24 have authority to carry out all the provisions of this chapter
25 including, but not limited to, permitting and enforcement. Only the
26 department of ecology or the department of health may act as a lead
27 agency for purposes of this chapter and will be established as such by
28 rule. Enforcement of a permit issued under this chapter shall be at
29 the sole discretion of the lead agency that issued the permit.~~

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

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

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

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

7 The ((~~lead agency~~)) department, with the assistance of the attorney
8 general, is authorized to bring any appropriate action at law or in
9 equity, including action for injunctive relief, as may be necessary to
10 carry out the provisions of this chapter. The ((~~lead agency~~))
11 department may bring the action in the superior court of the county in
12 which the violation occurred or in the superior court of Thurston
13 county. The court may award reasonable attorneys' fees for the cost of
14 the attorney general's office in representing the ((~~lead agency~~))
15 department.

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

18 (1) Any person proposing to generate any type of reclaimed water
19 for a use regulated under this chapter shall obtain a permit from the
20 ((~~lead agency~~)) department prior to distribution or use of that water.
21 The permittee may then distribute and use the water, subject to the
22 provisions in the permit. The permit must include provisions that
23 protect human health and the environment. At a minimum, the permit
24 must:

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

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

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

30 (c) The holder of a waste disposal permit issued under chapter
31 90.48 RCW or operating permit under chapter 70.118B RCW; or

32 (d) The owner of an agricultural processing facility that is
33 generating agricultural industrial process water for agricultural use,
34 or the owner of an industrial facility that is generating industrial
35 process water for reuse.

1 (3) Before deciding whether to issue a permit under this section to
2 a private utility, the ~~((lead agency))~~ department may require
3 information that is reasonable and necessary to determine whether the
4 private utility has the financial and other resources to ensure the
5 reliability, continuity, and supervision of the reclaimed water
6 facility.

7 (4) Permits shall be issued for a fixed term specified by the rules
8 adopted under RCW 90.46.015. A permittee shall apply for permit
9 renewal prior to the end of the term. The rules adopted under RCW
10 90.46.015 shall specify the process of renewal, modification, change of
11 ownership, suspension, and termination.

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

18 (6) The ~~((lead agency))~~ department shall provide for adequate
19 public notice and opportunity for review and comment on all initial
20 permit applications and renewal applications. Methods for providing
21 notice may include electronic mail, posting on the ~~((lead agency's))~~
22 department's internet site, publication in a local newspaper, press
23 releases, mailings, or other means of notification the ~~((lead agency))~~
24 department determines appropriate. The ~~((lead agency))~~ department
25 shall also publicize notice of final permitting decisions.

26 (7) Any person aggrieved by a permitting decision has the right to
27 an adjudicative proceeding. An adjudicative proceeding conducted under
28 this subsection is governed by chapter 34.05 RCW. ~~((For any permit
29 decision for which the department of ecology is the lead agency under
30 this chapter,))~~ Any appeal shall be in accordance with chapter 43.21B
31 RCW. ~~((For any permit decision for which department of health is the
32 lead agency under this chapter, any application for an adjudicative
33 proceeding must be in writing, state the basis for contesting the
34 action, include a copy of the decision, be served on and received by
35 the department of health within twenty-eight days of receipt of notice
36 of the final decision, and be served in a manner that shows proof of
37 receipt.))~~

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

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

6 (1)(a) Except as otherwise provided in (b) of this subsection, the
7 (~~lead agency~~) department or its designee shall have the right to
8 enter and inspect any property related to the purpose of the permit,
9 public or private, at reasonable times with prior notification in order
10 to determine compliance with laws and rules administered by the (~~lead
11 agency~~) department. During such inspections, the (~~lead agency~~)
12 department shall have free and unimpeded access to all data,
13 facilities, and property involved in the generation, distribution, and
14 use of reclaimed water.

15 (b) The (~~lead agency~~) department or its designee need not give
16 prior notification to enter property under (a) of this subsection if
17 the purpose of the entry is to ensure compliance by the permittee with
18 a prior order of the (~~lead agency~~) department or if the (~~lead
19 agency~~) department or its designee has reasonable cause to believe
20 there is a violation of the law that poses a serious threat to public
21 health and safety or the environment.

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

25 (a) The (~~lead agency~~) department has attempted an inspection
26 under this chapter and access has been actually or constructively
27 denied; or

28 (b) There is reasonable cause to believe that a violation of this
29 chapter or rules adopted under this chapter is occurring or has
30 occurred.

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

33 All required feasibility studies, planning documents, engineering
34 reports, and plans and specifications for the construction of new
35 reclaimed water, agricultural industrial process water, and industrial
36 reuse water facilities, including generation, distribution, and use

1 facilities, or for improvements or extensions to existing facilities,
2 and the proposed method of future operation and maintenance of said
3 facility or facilities, shall be submitted to and be approved by the
4 ((~~lead agency~~)) department, before construction thereof may begin. No
5 approval shall be given until the ((~~lead agency~~)) department is
6 satisfied that the plans, reports, and specifications and the methods
7 of operation and maintenance submitted are adequate to protect the
8 quality of the water for the intended use as provided for in this
9 chapter and are adequate to protect public health and safety as
10 necessary.

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

13 (1) When, in the opinion of the ((~~lead agency~~)) department, a
14 person violates or creates a substantial potential to violate this
15 chapter, the ((~~lead agency~~)) department shall notify the person of its
16 determination by registered mail. The determination shall not
17 constitute an appealable order or directive. Within thirty days from
18 the receipt of notice of such determination, the person shall file with
19 the ((~~lead agency~~)) department a full report stating what steps have
20 been and are being taken to comply with the determination of the ((~~lead~~
21 ~~agency~~)) department. After the full report is filed or after the
22 thirty days have elapsed, the ((~~lead agency~~)) department may issue the
23 order or directive as it deems appropriate under the circumstances,
24 shall notify the person by registered mail, and shall inform the person
25 of the process for requesting an adjudicative hearing.

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

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

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

12 **Sec. 242.** RCW 90.46.270 and 2009 c 456 s 14 are each amended to
13 read as follows:

14 (1) Except as provided in RCW 43.05.060 through 43.05.080,
15 43.05.100, 43.05.110, and 43.05.150, any person who:

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

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

20 (c) Violates rules or orders adopted or issued pursuant to this
21 chapter,

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

33 (2) A penalty imposed by a final administrative order is due upon
34 service of the final administrative order. A person who fails to pay
35 a penalty assessed by a final administrative order within thirty days
36 of service of the final administrative order shall pay, in addition to
37 the amount of the penalty, interest at the rate of one percent of the

1 unpaid balance of the assessed penalty for each month or part of a
2 month that the penalty remains unpaid, commencing within the month in
3 which the notice of penalty was served, and reasonable attorneys' fees
4 as are incurred if civil enforcement of the final administrative order
5 is required to collect penalty.

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

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

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

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

1 NEW SECTION. **Sec. 243.** A new section is added to chapter 90.46
2 RCW to read as follows:

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

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

14 (b) Any appropriations made to the department of health for the
15 reclaimed water program shall be transferred and credited to the
16 department of ecology.

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

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

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

35 (5) The transfer of the powers, duties, functions, and personnel of
36 the department of health reclaimed water program to the department of
37 ecology under this act shall not affect the validity of any activity

1 performed before the effective date of this section or the effective
2 date of the consolidation.

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

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

16 NEW SECTION. **Sec. 244.** The following acts or parts of acts are
17 each repealed:

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

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

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

24 **SUBPART C**
25 **CONSOLIDATING THE COLUMBIA RIVER GORGE COMMISSION UNDER**
26 **THE DEPARTMENT OF ECOLOGY**

27 NEW SECTION. **Sec. 245.** A new section is added to chapter 43.97
28 RCW to read as follows:

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

1 (2) Pursuant to RCW 43.97.015 Article IV b., the governor
2 designates the director of the department of ecology. The commission
3 shall submit a budget of its estimated expenditures to the director of
4 the department of ecology. The department of ecology shall include a
5 request for funding for the commission as a separate program in its
6 budget submittal to the governor. The department shall separately
7 account for the commission funding.

8 **SUBPART D**

9 **SITE USE PERMIT AUTHORITY**

10 **Sec. 246.** RCW 43.200.015 and 1989 c 322 s 1 are each amended to
11 read as follows:

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

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

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

25 (3) "Radioactive waste" means both high-level and low-level
26 radioactive waste.

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

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

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

32 **Sec. 247.** RCW 43.200.080 and 2003 1st sp.s. c 21 s 1 are each
33 amended to read as follows:

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

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

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

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

23 (3)(a) Subject to the conditions in (b) of this subsection, on July
24 1, 2008, and each July 1st thereafter, the treasurer shall transfer
25 from the perpetual surveillance and maintenance account to the site
26 closure account the sum of nine hundred sixty-six thousand dollars.
27 The nine hundred sixty-six thousand dollars transferred on July 1,
28 2009, and thereafter shall be adjusted to a level equal to the
29 percentage increase in the United States implicit price deflator for
30 personal consumption. The last transfer under this section shall occur
31 on July 1, 2033.

32 (b) The transfer in (a) of this subsection shall occur only if
33 written agreement is reached between the state department of ecology
34 and the United States department of energy pursuant to section 6 of the
35 perpetual care agreement dated July 29, 1965, between the United States
36 atomic energy commission and the state of Washington. If agreement
37 cannot be reached between the state department of ecology and the

1 United States department of energy by June 1, 2008, the treasurer shall
2 transfer the funds from the general fund to the site closure account
3 according to the schedule in (a) of this subsection.

4 (c) If for any reason the ((Hanford)) commercial low-level
5 radioactive waste disposal facility is closed to further disposal
6 operations during or after the 2003-2005 biennium and before 2033, then
7 the amount remaining to be repaid from the 2003-2005 transfer of
8 thirteen million eight hundred thousand dollars from the site closure
9 account shall be transferred by the treasurer from the general fund to
10 the site closure account to fund the closure and decommissioning of the
11 facility. The treasurer shall transfer to the site closure account in
12 full the amount remaining to be repaid upon written notice from the
13 secretary of health that the department of health has authorized
14 closure or that disposal operations have ceased. The treasurer shall
15 complete the transfer within sixty days of written notice from the
16 secretary of health.

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

26 (4) To assure maintenance of such insurance coverage by state
27 licensees, lessees, or sublessees as will adequately, in the opinion of
28 the director, protect the citizens of the state against nuclear
29 accidents or incidents that may occur on privately or state-controlled
30 nuclear facilities;

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

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

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

16 **Sec. 248.** RCW 43.200.170 and 1990 c 21 s 3 are each amended to
17 read as follows:

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

26 **Sec. 249.** RCW 43.200.180 and 1998 c 245 s 81 are each amended to
27 read as follows:

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

31 (1) Collecting and administering the surcharge assessed by the
32 governor under RCW 43.200.170;

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

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

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

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

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

14 **Sec. 250.** RCW 43.200.190 and 1998 c 245 s 82 are each amended to
15 read as follows:

16 The department of ecology shall perform studies, by contract or
17 otherwise, to define site closure and perpetual care and maintenance
18 requirements for the ((Hanford)) commercial low-level radioactive waste
19 disposal facility and to assess the adequacy of insurance coverage for
20 general liability, radiological liability, and transportation liability
21 for the facility.

22 **Sec. 251.** RCW 43.200.200 and 1998 c 245 s 83 are each amended to
23 read as follows:

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

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

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

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

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

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

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

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

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

18 **Sec. 252.** RCW 43.200.230 and 1991 c 272 s 16 are each amended to
19 read as follows:

20 The director of the department of ecology shall require that
21 generators of waste pay a fee for each cubic foot of waste disposed at
22 any facility in the state equal to six dollars and fifty cents. The
23 fee shall be imposed specifically on the generator of the waste and
24 shall not be considered to apply in any way to the low-level site
25 operator's disposal activities. The fee shall be allocated in
26 accordance with RCW 43.200.233 and 43.200.235. ~~((This subsection shall
27 be invalidated and the authorization to collect a surcharge removed if
28 the legislature or any administrative agency of the state of Washington
29 prior to January 1, 1993, (1) imposes fees, assessments, or charges
30 other than perpetual care and maintenance, site surveillance, and site
31 closing fees currently applicable to the Hanford commercial low-level
32 waste site operator's activities, (2) imposes any additional fees,
33 assessments, or charges on generators using the Hanford commercial low-
34 level waste site, or (3) increases any existing fees, assessments, or
35 charges.))~~ Failure to comply with this section may result in denial or
36 suspension of the generator's site use permit pursuant to RCW
37 70.98.085.

1 **Sec. 253.** RCW 70.98.030 and 1991 c 3 s 355 are each amended to
2 read as follows:

3 (1) "By-product material" means any radioactive material (except
4 special nuclear material) yielded in or made radioactive by exposure to
5 the radiation incident to the process of producing or utilizing special
6 nuclear material.

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

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

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

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

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

37 (6) "Special nuclear material" means (a) plutonium, uranium
38 enriched in the isotope 233 or in the isotope 235, and any other

1 material which the United States Nuclear Regulatory Commission or its
2 successor, pursuant to the provisions of section 51 of the United
3 States Atomic Energy Act of 1954, as amended (42 U.S.C. Sec. 2071),
4 determines to be special nuclear material, but does not include source
5 material; or (b) any material artificially enriched by any of the
6 foregoing, but does not include source material.

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

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

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

14 **Sec. 254.** RCW 70.98.085 and 1990 c 21 s 7 are each amended to read
15 as follows:

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

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

1 (3) The agency shall collect a fee from the applicants for site use
2 permits that is sufficient to fund the costs to the agency to
3 administer the user permit system. The site use permit fee must be set
4 at a level that is also sufficient to fund state participation in
5 activities related to the Northwest Interstate Compact on Low-Level
6 Radioactive Waste Management under chapter 43.145 RCW. The site use
7 permit fees must be deposited in the site closure account established
8 in RCW 43.200.080(2). Appropriations to the department of health or
9 the department of ecology are required to permit expenditures using
10 site use permit fee funds from the site closure account.

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

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

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

1 **Sec. 255.** RCW 70.98.095 and 1992 c 61 s 3 are each amended to read
2 as follows:

3 (1) The radiation control agency may require any person who
4 applies for, or holds, a license under this chapter to demonstrate that
5 the person has financial assurance sufficient to assure that liability
6 incurred as a result of licensed operations and activities can be fully
7 satisfied. Financial assurance may be in the form of insurance, cash
8 deposits, surety bonds, corporate guarantees, letters of credit, or
9 other financial instruments or guarantees determined by the agency to
10 be acceptable financial assurance. The agency may require financial
11 assurance in an amount determined by the secretary pursuant to RCW
12 70.98.098.

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

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

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

1 **Sec. 256.** RCW 70.98.098 and 2003 1st sp.s. c 21 s 2 are each
2 amended to read as follows:

3 (1) In making the determination of the appropriate level of
4 financial assurance, the secretary shall consider: (a) (~~The~~) Any
5 report prepared by the department of ecology pursuant to RCW
6 43.200.200; (b) the potential cost of decontamination, treatment,
7 disposal, decommissioning, and cleanup of facilities or equipment; (c)
8 federal cleanup and decommissioning requirements; and (d) the legal
9 defense cost, if any, that might be paid from the required financial
10 assurance.

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

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

16 (4) To the extent that money in the site closure account together
17 with the amount of money identified for repayment to the site closure
18 account pursuant to RCW 43.200.080 equals or exceeds the cost estimate
19 approved by the department of health for closure and decommissioning of
20 the (~~Hanford~~) commercial low-level radioactive waste disposal
21 facility, the money in the site closure account together with the
22 amount of money identified for repayment to the site closure account
23 shall constitute adequate financial assurance for purposes of the
24 department of health financial assurance requirements under RCW
25 70.98.095.

26 **Sec. 257.** RCW 70.98.130 and 1989 c 175 s 133 are each amended to
27 read as follows:

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

32 (2) Notwithstanding any other provision of this chapter, whenever
33 the agency finds that an emergency exists requiring immediate action to
34 protect the public health, safety, or general welfare, the agency may,
35 in accordance with RCW 34.05.350 without notice or hearing, adopt a
36 rule reciting the existence of such emergency and require that such

1 action be taken as is necessary to meet the emergency. As specified in
2 RCW 34.05.350, such rules are effective immediately.

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

8 NEW SECTION. Sec. 258. A new section is added to chapter 70.98
9 RCW to read as follows:

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

12 NEW SECTION. Sec. 259. A new section is added to chapter 43.200
13 RCW to read as follows:

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

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

25 (b) Any appropriations made to the department of ecology for the
26 site use permit program shall be transferred and credited to the
27 department of health.

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

34 (3) All employees of the department of ecology site use permit
35 program are transferred to the jurisdiction of the department of
36 health. All employees classified under chapter 41.06 RCW, the state

1 civil service law, are assigned to the department of health to perform
2 their usual duties upon the same terms as formerly, without any loss of
3 rights, subject to any action that may be appropriate thereafter in
4 accordance with the laws and rules governing state civil service.

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

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

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

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

28 NEW SECTION. **Sec. 260.** RCW 43.200.210 (Immunity of state--
29 Demonstration of financial assurance--Suspension of permit) and 1992 c
30 61 s 2, 1990 c 82 s 2, & 1986 c 191 s 2 are each repealed.

31 **SUBPART E**

32 **ADMINISTRATIVE PROVISIONS**

33 NEW SECTION. **Sec. 261.** (1) On the effective date of this section,
34 the secretary of health and the directors of the department of ecology,
35 the pollution liability insurance agency, and the Columbia river gorge

1 commission must each designate one executive-level representative to
2 serve on a consolidation transition team. This team must, with the
3 assistance of their agencies, develop the following work products:

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

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

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

20 (2) This section applies to the consolidation directed pursuant to
21 sections 201 through 260 of this act.

22 NEW SECTION. **Sec. 262.** The consolidation directed pursuant to
23 sections 201 through 261 of this act takes effect July 1, 2012.

24 NEW SECTION. **Sec. 263.** Except for section 111 of this act, this
25 act is necessary for the immediate preservation of the public peace,
26 health, or safety, or support of the state government and its existing
27 public institutions, and takes effect July 1, 2011.

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