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ENGROSSED SECOND SUBSTITUTE SENATE BILL 5669

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State of Washington

62nd Legislature

2011 1st Special Session

**By** Senate Ways & Means (originally sponsored by Senators Ranker, Swecker, Regala, Rockefeller, Nelson, White, Pflug, and Shin; by request of Governor Gregoire)

READ FIRST TIME 05/19/11.

1 AN ACT Relating to consolidating natural resources agencies and  
2 programs; amending RCW 70.148.005, 70.148.010, 70.148.020, 70.148.025,  
3 70.148.030, 70.148.035, 70.148.040, 70.148.050, 70.148.060, 70.148.070,  
4 70.148.080, 70.148.090, 70.148.130, 70.148.140, 70.148.150, 70.148.160,  
5 70.148.170, 70.149.010, 70.149.030, 70.149.040, 70.149.050, 70.149.060,  
6 70.149.090, 70.149.120, 90.46.005, 90.46.010, 90.46.015, 90.46.030,  
7 90.46.050, 90.46.090, 90.46.120, 90.46.150, 90.46.160, 90.46.200,  
8 90.46.210, 90.46.220, 90.46.230, 90.46.240, 90.46.250, 90.46.260,  
9 90.46.270, 43.200.015, 43.200.080, 43.200.170, 43.200.180, 43.200.190,  
10 43.200.200, 43.200.230, 70.98.030, 70.98.085, 70.98.095, 70.98.098, and  
11 70.98.130; adding a new section to chapter 70.148 RCW; adding a new  
12 section to chapter 90.46 RCW; adding a new section to chapter 43.97  
13 RCW; adding a new section to chapter 70.98 RCW; adding a new section to  
14 chapter 43.200 RCW; creating new sections; repealing RCW 90.46.020,  
15 90.46.072, 90.46.110, and 43.200.210; providing effective dates;  
16 providing expiration dates; and declaring an emergency.

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

18

**PART 1**

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

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

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

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

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

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

34       NEW SECTION.    **Sec. 102.** (1) The departments of fish and wildlife  
35 and natural resources shall each consolidate their administrative  
36 regions to no more than four per agency if so directed by legislation  
37 enacted prior to July 1, 2012.

1 (2) The departments of fish and wildlife and natural resources  
2 shall each: (a) Develop options for and a plan to consolidate their  
3 administrative regions to no more than four per agency; (b) analyze the  
4 costs and benefits of administrative regional consolidation, including  
5 impacts on budget, efficiency, and agency operations; and (c) provide  
6 the plan and analysis required under this section, along with other  
7 relevant legislative and budget recommendations, to the appropriate  
8 committees of the legislature and the office of financial management by  
9 September 1, 2011.

10 NEW SECTION. **Sec. 103.** (1) The state conservation commission  
11 shall work cooperatively with conservation districts to evaluate and  
12 facilitate the consolidation of appropriate conservation districts,  
13 with a goal of reducing the total number of conservation districts to  
14 thirty-nine.

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

19 **PART 2**

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

25 **SUBPART A**

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

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

30 (1) The legislature finds that:

31 (a) Final regulations adopted by the United States environmental  
32 protection agency (EPA) require owners and operators of underground  
33 petroleum storage tanks to demonstrate financial responsibility for

1 accidental releases of petroleum as a precondition to continued  
2 ownership and operation of such tanks;

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

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

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

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

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

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

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

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

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

37 (3) It is not the intent of this chapter to permit owners and  
38 operators of underground petroleum storage tanks to obtain pollution

1 liability insurance without regard to the quality or condition of their  
2 storage tanks or without regard to the risk management practices of  
3 tank owners and operators, nor is it the intent of this chapter to  
4 provide coverage or funding for past or existing petroleum releases.  
5 Further, it is the intent of the legislature that the program follow  
6 generally accepted insurance underwriting and actuarial principles and  
7 to deviate from those principles only to the extent necessary and  
8 within the tax revenue limits provided, to make pollution liability  
9 insurance reasonably affordable and available to owners and operators  
10 who meet the requirements of this chapter, particularly to those owners  
11 and operators whose underground storage tanks meet a vital economic  
12 need within the affected community.

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

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

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

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

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

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

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

30 (4) "Corrective action" means those actions reasonably required to  
31 be undertaken by the insured to remove, treat, neutralize, contain, or  
32 clean up an accidental release in order to comply with any statute,  
33 ordinance, rule, regulation, directive, order, or similar legal  
34 requirement of the United States, the state of Washington, or any  
35 political subdivision of the United States or the state of Washington  
36 in effect at the time of an accidental release. "Corrective action"  
37 includes, when agreed to in writing, in advance by the insurer, action

1 to remove, treat, neutralize, contain, or clean up an accidental  
2 release to avert, reduce, or eliminate the liability of the insured for  
3 corrective action, bodily injury, or property damage. "Corrective  
4 action" also includes actions reasonably necessary to monitor, assess,  
5 and evaluate an accidental release.

6 "Corrective action" does not include:

7 (a) Replacement or repair of storage tanks or other receptacles;

8 (b) Replacement or repair of piping, connections, and valves of  
9 storage tanks or other receptacles;

10 (c) Excavation or backfilling done in conjunction with (a) or (b)  
11 of this subsection; or

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

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

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

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

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

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

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

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

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

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

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

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

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

15 (15) "Property damage" means:

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

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

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

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

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

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

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

3        This section expires June 1, 2013.

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

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

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

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

33        ~~(4) ((During the 2005-2007 fiscal biennium, the legislature may~~  
34 ~~transfer from the pollution liability insurance program trust account~~  
35 ~~to the state general fund such amounts as reflect the excess fund~~  
36 ~~balance of the account.~~

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



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

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

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

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

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

22       (2) The director shall employ such other staff as are necessary to  
23 fulfill the responsibilities and duties of the ((~~director~~)) department.  
24 The staff is subject to the civil service law, chapter 41.06 RCW. In  
25 addition, the director may contract with third parties for services  
26 necessary to carry out its activities where this will promote economy,  
27 avoid duplication of effort, and make best use of available expertise.  
28 To the extent necessary to protect the state from unintended liability  
29 and ensure quality program and contract design, the director shall  
30 contract with an organization or organizations with demonstrated  
31 experience and ability in managing and designing pollution liability  
32 insurance and with an organization or organizations with demonstrated  
33 experience and ability in managing and designing pollution liability  
34 reinsurance. The director shall enter into such contracts after  
35 competitive bid but need not select the lowest bid. Any such  
36 contractor or consultant is prohibited from releasing, publishing, or  
37 otherwise using any information made available to it under its

1 contractual responsibility without specific permission of the  
2 ((~~program~~)) director. The director may call upon other agencies of the  
3 state to provide technical support and available information as  
4 necessary to assist the director in meeting the director's  
5 responsibilities under this chapter. Agencies shall supply this  
6 support and information as promptly as circumstances permit.

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

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

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

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

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

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

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

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

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

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

33 (1) To design and from time to time revise a reinsurance contract  
34 providing coverage to an insurer meeting the requirements of this  
35 chapter. Before initially entering into a reinsurance contract, the

1 ((~~director~~)) department shall prepare an actuarial report describing  
2 the various reinsurance methods considered by the ((~~director~~))  
3 department and describing each method's costs. In designing the  
4 reinsurance contract the ((~~director~~)) department shall consider common  
5 insurance industry reinsurance contract provisions and shall design the  
6 contract in accordance with the following guidelines:

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

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

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

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

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

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

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

37 (5) To monitor the activities of the insurer to ensure compliance

1 with this chapter and protect the program from excessive loss exposure  
2 resulting from claims mismanagement by the insurer.

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

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

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

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

19 This section expires June 1, 2013.

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

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

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

33 (a) The Washington state insurance commissioner;

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

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

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

7 (a) The Washington state insurance commissioner; and

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

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

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

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

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

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

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

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

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

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

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

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

33 The ((~~director~~)) department shall select the bidder most qualified  
34 to provide insurance consistent with this chapter and need not select  
35 the bidder submitting the least expensive bid. The ((~~director~~))  
36 department may consider bids by groups of insurers and management

1 companies who propose to act in concert in providing coverage and who  
2 otherwise meet the requirements of this chapter.

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

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

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

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

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

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

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

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

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

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

34 (3) The ((~~director~~)) department shall adopt all rules necessary to  
35 implement this section. In developing and adopting rules governing  
36 rates, deductibles, underwriting standards, and coverage conditions,  
37 limitations, and exclusions, the ((~~director~~)) department shall balance  
38 the owner and operator's need for coverage with the need to maintain

1 the actuarial integrity of the program, shall take into consideration  
2 the economic impact of the discontinued use of a storage tank upon the  
3 affected community, and shall consult with the ~~((standing))~~ ad hoc  
4 technical advisory committee established under RCW 70.148.030(3). ~~((In~~  
5 ~~developing and adopting rules governing coverage exclusions affecting~~  
6 ~~corrective action, the director shall consult with the Washington state~~  
7 ~~department of ecology.))~~

8 (4) Notwithstanding the definitions contained in RCW 70.148.010,  
9 the ~~((director))~~ department may permit an insurer to use different  
10 words or phrases describing the coverage provided under the program.  
11 In permitting such deviations from the definitions contained in RCW  
12 70.148.010, the ~~((director))~~ department shall consider the regulations  
13 adopted by the United States environmental protection agency requiring  
14 financial responsibility by owners and operators of underground  
15 petroleum storage tanks.

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

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

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

28 (6) ~~((When))~~ Within thirty days of a reinsurance contract ~~((has~~  
29 ~~been))~~ being entered into by the ~~((agency))~~ department and insurance  
30 companies, ~~((the director shall notify the department of ecology of the~~  
31 ~~letting of the contract. Within thirty days of that notification,))~~  
32 the department ~~((of ecology))~~ shall notify all known owners and  
33 operators of petroleum underground storage tanks that appropriate  
34 levels of financial responsibility must be established by October 26,  
35 1990, in accordance with federal environmental protection agency  
36 requirements, and that insurance under the program is available. All  
37 owners and operators of petroleum underground storage tanks must also  
38 be notified that declaration of method of financial responsibility or

1 intent to seek to be insured under the program must be made to the  
2 state by November 1, 1990. If the declaration of method of financial  
3 responsibility is not made by November 1, 1990, the department (~~of~~  
4 ~~ecology~~) shall, pursuant to chapter 90.76 RCW, prohibit the owner or  
5 operator of an underground storage tank from obtaining a tank tag or  
6 receiving petroleum products until such time as financial  
7 responsibility has been established.

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

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

11 (1) If the insurer cancels or refuses to issue or renew a policy,  
12 the affected owner or operator may appeal the insurer's decision to the  
13 director or the director's designee. The director or the director's  
14 designee shall conduct a brief adjudicative proceeding under chapter  
15 34.05 RCW.

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

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

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

- 26 (a) Chapter 48.03 RCW pertaining to examinations;  
27 (b) RCW 48.05.250 pertaining to annual reports;  
28 (c) Chapter 48.12 RCW pertaining to assets and liabilities;  
29 (d) Chapter 48.13 RCW pertaining to investments;  
30 (e) Chapter 48.30 RCW pertaining to deceptive, false, or fraudulent  
31 acts or practices; and  
32 (f) Chapter 48.92 RCW pertaining to liability risk retention.

33 (2) To the extent of their participation in the program, the  
34 insurer selected by the (~~director~~) department to provide liability  
35 insurance coverage to owners and operators of underground storage tanks  
36 shall not participate in the Washington insurance guaranty association



1 nor shall the association be liable for coverage provided to owners and  
2 operators of underground storage tanks issued in connection with the  
3 program.

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

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

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

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

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

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

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

26 (2)(a) Except as otherwise provided in RCW 70.148.120 through  
27 70.148.170, no grant of financial assistance may be used for any  
28 purpose other than for corrective action and repair, replacement,  
29 reconstruction, and improvement of underground storage tanks and tank  
30 sites. If at any time prior to providing financial assistance or in  
31 the course of providing such assistance, it appears to the ((~~director~~))  
32 department that corrective action costs may exceed seventy-five  
33 thousand dollars, the ((~~director~~)) department may not provide further  
34 financial assistance until the owner or operator has developed and  
35 implemented a corrective action plan with the department ((~~of~~  
36 ~~ecology~~)).

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

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

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

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

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

15 (4) The ~~((director—shall—consult—with—the))~~ department ~~((of~~  
16 ~~ecology))~~, in approving financial assistance for corrective action  
17 ~~((to))~~, shall ensure compliance with ~~((regulations))~~ rules governing  
18 underground petroleum storage tanks and corrective action.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35 (1) First apply for insurance from the pollution liability

1 insurance program and request financial assistance in a form and manner  
2 required by the (~~director~~) department;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35 (2) "Bodily injury" means bodily injury, sickness, or disease

1 sustained by a person, including death at any time, resulting from the  
2 injury, sickness, or disease.

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

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

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

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

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

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

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

29 (5) "Director" means the director of the (~~Washington—state~~  
30 ~~pollution—liability—insurance—agency~~) department or the director's  
31 appointed representative.

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

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

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

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

13 (10) "Pollution liability insurance ((agency)) program" or  
14 "program" means the Washington state pollution liability insurance  
15 ((agency)) program located within the department.

16 (11) "Property damage" means:

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

31 (9) Implement a program to provide advice and technical assistance  
32 to owners and operators of active and abandoned heating oil tanks if  
33 contamination from an active or abandoned heating oil tank is  
34 suspected. Advice and assistance regarding administrative and  
35 technical requirements may include observation of testing or site  
36 assessment and review of the results of reports. If the ((~~director~~))  
37 department finds that contamination is not present or that the  
38 contamination is apparently minor and not a threat to human health or

1 the environment, the ((~~director~~)) department may provide written  
2 opinions and conclusions on the results of the investigation to owners  
3 and operators of active and abandoned heating oil tanks. The  
4 ((~~agency~~)) department is authorized to collect, from persons requesting  
5 advice and assistance, the costs incurred by the ((~~agency~~)) department  
6 in providing such advice and assistance. The costs may include travel  
7 costs and expenses associated with review of reports and preparation of  
8 written opinions and conclusions. Funds from cost reimbursement must  
9 be deposited in the heating oil pollution liability trust account. The  
10 state of Washington, the department, the pollution liability insurance  
11 ((~~agency~~)) program, and its officers and employees are immune from all  
12 liability, and no cause of action arises from any act or omission in  
13 providing, or failing to provide, such advice, opinion, conclusion, or  
14 assistance;

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

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

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

24 This section expires June 1, 2013.

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

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

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

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

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

1 (d) The insurer's estimate of premium rates for providing coverage;  
2 (e) The insurer's ability to manage and invest premiums; and  
3 (f) The insurer's ability to provide risk management guidance to  
4 insureds.

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

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

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

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

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

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

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

31 (a) Chapter 48.03 RCW pertaining to examinations;

32 (b) RCW 48.05.250 pertaining to annual reports;

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

34 (d) Chapter 48.13 RCW pertaining to investments;

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

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

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

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

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

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

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

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

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

27 (a) The Washington state insurance commissioner;

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

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

33 This section expires June 1, 2013.

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

36 (1) The ((~~pollution liability insurance agency~~)) department shall

1 identify design criteria for heating oil tanks that provide superior  
2 protection against future leaks as compared to standard steel tank  
3 designs. Any tank designs identified under this section must either be  
4 constructed with fiberglass or offer at least an equivalent level of  
5 protection against leaks as a standard fiberglass design.

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

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

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

18 NEW SECTION. Sec. 225. A new section is added to chapter 70.148  
19 RCW to read as follows:

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

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

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

33 (c) If any question arises as to the transfer of any personnel,  
34 funds, books, documents, records, papers, files, equipment, or other  
35 tangible property used or held in the exercise of the powers and the  
36 performance of the duties and functions transferred, the director of

1 financial management shall make a determination as to the proper  
2 allocation and certify the same to the state agencies concerned.

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

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

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

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

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

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

35 **SUBPART B**  
36 **RECLAIMED WATER PROGRAM**

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

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

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

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

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

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

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

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

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

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

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

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

36 The definitions in this section apply throughout this chapter  
37 unless the context clearly requires otherwise.



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

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

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

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

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

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

26 (7) "Domestic wastewater" means wastewater from greywater, toilet,  
27 or urinal sources.

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

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

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

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

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

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

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

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

19           ~~((16))~~ (14) "State drinking water contaminant criteria" means the  
20 contaminant criteria found in the drinking water quality standards  
21 adopted by the state board of health pursuant to chapter 43.20 RCW and  
22 the department of health pursuant to chapter 70.119A RCW.

23           ~~((17))~~ (15) "Streamflow or surface water augmentation" means the  
24 intentional use of reclaimed water for rivers and streams of the state  
25 or other surface water bodies, for the purpose of increasing volumes.

26           ~~((18))~~ (16) "Surface percolation" means the controlled  
27 application of water to the ground surface or to unsaturated soil for  
28 the purpose of replenishing groundwater.

29           ~~((19))~~ (17) "User" means any person who uses reclaimed water.

30           ~~((20))~~ (18) "Wastewater" means water-carried wastes from  
31 residences, buildings, industrial and commercial establishments, or  
32 other places, together with such groundwater infiltration and inflow as  
33 may be present.

34           ~~((21))~~ (19) "Wetland or wetlands" means areas that are inundated  
35 or saturated by surface water or groundwater at a frequency and  
36 duration sufficient to support, and that under normal circumstances do  
37 support, a prevalence of vegetation typically adapted to life in  
38 saturated soil conditions. Wetlands generally include swamps, marshes,

1 bogs, and similar areas. Wetlands regulated under this chapter shall  
2 be delineated in accordance with the manual adopted by the department  
3 of ecology pursuant to RCW 90.58.380.

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

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

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

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

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

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

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

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

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

10       ~~((3))~~ (2) The department ~~((of health))~~ in consultation with the  
11 advisory committee established in RCW 90.46.050, shall develop  
12 recommendations for a fee structure for permits issued under  
13 ~~((subsection (2) of))~~ this ~~((section))~~ chapter. Fees shall be  
14 established in amounts to fully recover, and not exceed, expenses  
15 incurred by the department ~~((of health))~~ in processing permit  
16 applications and modifications, monitoring and evaluating compliance  
17 with permits, and conducting inspections and supporting the reasonable  
18 overhead expenses that are directly related to these activities.  
19 Permit fees may not be used for research or enforcement activities.  
20 ~~((The department of health shall not issue permits under this section~~  
21 ~~until a fee structure has been established.~~

22       ~~(4))~~ (3) A permit under this section for use of reclaimed water  
23 may be issued only to:

- 24       (a) A municipal, quasi-municipal, or other governmental entity;  
25       (b) A private utility as defined in RCW 36.94.010; or  
26       (c) The holder of a waste discharge permit issued under chapter  
27 90.48 RCW or operating permit under chapter 70.118B RCW.

28       ~~((5))~~ (4) The authority and duties created in this section are in  
29 addition to any authority and duties already provided in law with  
30 regard to sewage and wastewater collection, treatment, and disposal for  
31 the protection of health and safety of the state's waters. Nothing in  
32 this section limits the powers of the state or any political  
33 subdivision to exercise such authority.

34       ~~((6) Unless the department of ecology adopts rules pursuant to RCW~~  
35 ~~90.46.015 that relate to the industrial and commercial use of reclaimed~~  
36 ~~water specifying otherwise, the department of health may implement the~~  
37 ~~requirements of this section through the department of ecology by~~  
38 ~~execution of a formal agreement between the departments. Upon~~

1 ~~execution of such an agreement, the department of ecology may issue~~  
2 ~~reclaimed water permits for industrial and commercial uses of reclaimed~~  
3 ~~water by issuance of permits under chapter 90.48 RCW, and may establish~~  
4 ~~and collect fees as required for permits issued under chapter 90.48~~  
5 ~~RCW.~~

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

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

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

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

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

30 (1) Reclaimed water may be beneficially used for discharge into  
31 constructed beneficial use wetlands and constructed treatment wetlands  
32 provided the reclaimed water meets the class A or B reclaimed water  
33 standards as defined in the reclamation criteria, and the discharge is  
34 incorporated into a sewer or water comprehensive plan, as applicable,  
35 adopted by the applicable local government and approved by the  
36 department of health or department of ecology as applicable.

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

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

11 (b) Standards adopted under this section are superseded by any  
12 rules adopted by the department (~~(of ecology)~~) pursuant to RCW  
13 90.46.015 as they relate to discharge into constructed beneficial use  
14 wetlands and constructed treatment wetlands.

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

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

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

35 (a) Regional water supply plans include those adopted under state  
36 board of health laws (chapter 43.20 RCW), the public water system

1 coordination act of 1977 (chapter 70.116 RCW), groundwater protection  
2 laws (chapter 90.44 RCW), and the watershed planning act (chapter 90.82  
3 RCW).

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

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

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

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

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

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

35 The permit to apply agricultural industrial process water to  
36 agricultural water use shall be the permit issued under chapter 90.48  
37 RCW to the owner of the agricultural processing plant who may then

1 distribute the water through methods including, but not limited to,  
2 irrigation systems, subject to provisions in the permit governing the  
3 location, rate, water quality, and purpose. (~~In cases where the  
4 department of ecology determines that a significant risk to public  
5 health exists, in land application of the water, the department must  
6 refer the application to the department of health for review and  
7 consultation.~~)

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

30 **SUBPART D**  
31 **SITE USE PERMIT AUTHORITY**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 **SUBPART E**

18 **ADMINISTRATIVE PROVISIONS**

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

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

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

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

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

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

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

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

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

--- END ---