
HOUSE BILL 1033

State of Washington

64th Legislature

2015 Regular Session

By Representatives Blake, Hurst, and Kretz

Prefiled 12/08/14.

1 AN ACT Relating to providing tools for the department of fish and
2 wildlife to use in order to promote access to private lands for
3 hunting; reenacting and amending RCW 70.105D.070, 70.105D.020, and
4 77.12.170; and adding a new section to chapter 77.12 RCW.

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

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 77.12
7 RCW to read as follows:

8 (1) The department must use any moneys made available to it under
9 RCW 70.105D.070(7) to fund a program designed to assist private
10 landowners in mitigating the damages and expenses incurred due to
11 allowing public access to their lands for hunting. Specifically, the
12 department may enter into agreements with private landowners who
13 agree to allow free access to their land, or to portions of their
14 land, to licensed hunters in exchange for assistance in removing and
15 disposing of litter, garbage, hazardous materials, and other items
16 that can potentially result from allowing public access.

17 (2) The department may use the moneys made available to it under
18 RCW 70.105D.070(7) in the manner deemed by the department as the most
19 efficient in implementing the intent of this section. This may
20 include utilizing department staff, contracting with a third party,

1 providing cash payments to the participating landowner, or utilizing
2 the Washington conservation corps created in chapter 43.220 RCW.

3 (3) Nothing in this section limits the ability of the department
4 to enter into other agreements with private landowners to secure
5 public recreational access with funds other than those provided in
6 RCW 70.105D.070(7).

7 **Sec. 2.** RCW 70.105D.070 and 2013 2nd sp.s. c 19 s 7033 and 2013
8 2nd sp.s. c 4 s 992 are each reenacted and amended to read as
9 follows:

10 (1) The state toxics control account and the local toxics control
11 account are hereby created in the state treasury.

12 (2)(a) Moneys collected under RCW 82.21.030 must be deposited as
13 follows: Fifty-six percent to the state toxics control account under
14 subsection (3) of this section and forty-four percent to the local
15 toxics control account under subsection (4) of this section. When the
16 cumulative amount of deposits made to the state and local toxics
17 control accounts under this section reaches the limit during a fiscal
18 year as established in (b) of this subsection, the remainder of the
19 moneys collected under RCW 82.21.030 during that fiscal year must be
20 deposited into the environmental legacy stewardship account created
21 in RCW 70.105D.170.

22 (b) The limit on distributions of moneys collected under RCW
23 82.21.030 to the state and local toxics control accounts for the
24 fiscal year beginning July 1, 2013, is one hundred forty million
25 dollars.

26 (c) In addition to the funds required under (a) of this
27 subsection, the following moneys must be deposited into the state
28 toxics control account: (i) The costs of remedial actions recovered
29 under this chapter or chapter 70.105A RCW; (ii) penalties collected
30 or recovered under this chapter; and (iii) any other money
31 appropriated or transferred to the account by the legislature.

32 (3) Moneys in the state toxics control account must be used only
33 to carry out the purposes of this chapter, including but not limited
34 to the following activities:

35 (a) The state's responsibility for hazardous waste planning,
36 management, regulation, enforcement, technical assistance, and public
37 education required under chapter 70.105 RCW;

1 (b) The state's responsibility for solid waste planning,
2 management, regulation, enforcement, technical assistance, and public
3 education required under chapter 70.95 RCW;

4 (c) The hazardous waste clean-up program required under this
5 chapter;

6 (d) State matching funds required under federal cleanup law;

7 (e) Financial assistance for local programs in accordance with
8 chapters 70.95, 70.95C, 70.95I, and 70.105 RCW;

9 (f) State government programs for the safe reduction, recycling,
10 or disposal of paint and hazardous wastes from households, small
11 businesses, and agriculture;

12 (g) Oil and hazardous materials spill prevention, preparedness,
13 training, and response activities;

14 (h) Water and environmental health protection and monitoring
15 programs;

16 (i) Programs authorized under chapter 70.146 RCW;

17 (j) A public participation program;

18 (k) Public funding to assist potentially liable persons to pay
19 for the costs of remedial action in compliance with clean-up
20 standards under RCW 70.105D.030(2)(e) but only when the amount and
21 terms of such funding are established under a settlement agreement
22 under RCW 70.105D.040(4) and when the director has found that the
23 funding will achieve both: (i) A substantially more expeditious or
24 enhanced cleanup than would otherwise occur; and (ii) the prevention
25 or mitigation of unfair economic hardship;

26 (l) Development and demonstration of alternative management
27 technologies designed to carry out the hazardous waste management
28 priorities of RCW 70.105.150;

29 (m) State agriculture and health programs for the safe use,
30 reduction, recycling, or disposal of pesticides;

31 (n) Storm water pollution control projects and activities that
32 protect or preserve existing remedial actions or prevent hazardous
33 clean-up sites;

34 (o) Funding requirements to maintain receipt of federal funds
35 under the federal solid waste disposal act (42 U.S.C. Sec. 6901 et
36 seq.);

37 (p) Air quality programs and actions for reducing public exposure
38 to toxic air pollution;

1 (q) Public funding to assist prospective purchasers to pay for
2 the costs of remedial action in compliance with clean-up standards
3 under RCW 70.105D.030(2)(e) if:

4 (i) The facility is located within a redevelopment opportunity
5 zone designated under RCW 70.105D.150;

6 (ii) The amount and terms of the funding are established under a
7 settlement agreement under RCW 70.105D.040(5); and

8 (iii) The director has found the funding meets any additional
9 criteria established in rule by the department, will achieve a
10 substantially more expeditious or enhanced cleanup than would
11 otherwise occur, and will provide a public benefit in addition to
12 cleanup commensurate with the scope of the public funding;

13 (r) Petroleum-based plastic or expanded polystyrene foam debris
14 cleanup activities in fresh or marine waters;

15 (s) Appropriations to the local toxics control account or the
16 environmental legacy stewardship account created in RCW 70.105D.170,
17 if the legislature determines that priorities for spending exceed
18 available funds in those accounts;

19 (t) During the 2013-2015 fiscal biennium, the department of
20 ecology's water quality, shorelands, environmental assessment,
21 administration, and air quality programs;

22 (u) During the 2013-2015 fiscal biennium, actions at the state
23 conservation commission to improve water quality for shellfish;
24 ((and))

25 (v) During the 2013-2015 fiscal biennium, actions at the
26 University of Washington for reducing ocean acidification;

27 (w) For the 2013-2015 fiscal biennium, moneys in the state toxics
28 control account may be spent on projects in section 3159, chapter 19,
29 Laws of 2013 2nd sp. sess. and for transfer to the local toxics
30 control account; ((and))

31 (x) For the 2013-2015 fiscal biennium, moneys in the state toxics
32 control account may be transferred to the radioactive mixed waste
33 account; and

34 (y) Activities by the department of fish and wildlife under
35 section 1 of this act.

36 (4)(a) The department shall use moneys deposited in the local
37 toxics control account for grants or loans to local governments for
38 the following purposes in descending order of priority:

39 (i) Extended grant agreements entered into under ((+e){+e}) (e)
40 (i) of this subsection;

1 (ii) Remedial actions, including planning for adaptive reuse of
2 properties as provided for under ~~((e)-(e))~~ (e)(iv) of this
3 subsection. The department must prioritize funding of remedial
4 actions at:

5 (A) Facilities on the department's hazardous sites list with a
6 high hazard ranking for which there is an approved remedial action
7 work plan or an equivalent document under federal cleanup law;

8 (B) Brownfield properties within a redevelopment opportunity zone
9 if the local government is a prospective purchaser of the property
10 and there is a department-approved remedial action work plan or
11 equivalent document under the federal cleanup law;

12 (iii) Storm water pollution source projects that: (A) Work in
13 conjunction with a remedial action; (B) protect completed remedial
14 actions against recontamination; or (C) prevent hazardous clean-up
15 sites;

16 (iv) Hazardous waste plans and programs under chapter 70.105 RCW;

17 (v) Solid waste plans and programs under chapters 70.95, 70.95C,
18 70.95I, and 70.105 RCW;

19 (vi) Petroleum-based plastic or expanded polystyrene foam debris
20 cleanup activities in fresh or marine waters; and

21 (vii) Appropriations to the state toxics control account or the
22 environmental legacy stewardship account created in RCW 70.105D.170,
23 if the legislature determines that priorities for spending exceed
24 available funds in those accounts.

25 (b) Funds for plans and programs must be allocated consistent
26 with the priorities and matching requirements established in chapters
27 70.105, 70.95C, 70.95I, and 70.95 RCW.

28 (c) During the 2013-2015 fiscal biennium, the local toxics
29 control account may also be used for local government storm water
30 planning and implementation activities.

31 (d) During the 2013-2015 fiscal biennium, the legislature may
32 transfer from the local toxics control account to the state general
33 fund, such amounts as reflect the excess fund balance in the account.

34 (e) To expedite cleanups throughout the state, the department may
35 use the following strategies when providing grants to local
36 governments under this subsection:

37 (i) Enter into an extended grant agreement with a local
38 government conducting remedial actions at a facility where those
39 actions extend over multiple biennia and the total eligible cost of

1 those actions exceeds twenty million dollars. The agreement is
2 subject to the following limitations:

3 (A) The initial duration of such an agreement may not exceed ten
4 years. The department may extend the duration of such an agreement
5 upon finding substantial progress has been made on remedial actions
6 at the facility;

7 (B) Extended grant agreements may not exceed fifty percent of the
8 total eligible remedial action costs at the facility; and

9 (C) The department may not allocate future funding to an extended
10 grant agreement unless the local government has demonstrated to the
11 department that funds awarded under the agreement during the previous
12 biennium have been substantially expended or contracts have been
13 entered into to substantially expend the funds;

14 (ii) Enter into a grant agreement with a local government
15 conducting a remedial action that provides for periodic reimbursement
16 of remedial action costs as they are incurred as established in the
17 agreement;

18 (iii) Enter into a grant agreement with a local government prior
19 to it acquiring a property or obtaining necessary access to conduct
20 remedial actions, provided the agreement is conditioned upon the
21 local government acquiring the property or obtaining the access in
22 accordance with a schedule specified in the agreement;

23 (iv) Provide integrated planning grants to local governments to
24 fund studies necessary to facilitate remedial actions at brownfield
25 properties and adaptive reuse of properties following remediation.
26 Eligible activities include, but are not limited to: Environmental
27 site assessments; remedial investigations; health assessments;
28 feasibility studies; site planning; community involvement; land use
29 and regulatory analyses; building and infrastructure assessments;
30 economic and fiscal analyses; and any environmental analyses under
31 chapter 43.21C RCW;

32 (v) Provide grants to local governments for remedial actions
33 related to area-wide groundwater contamination. To receive the
34 funding, the local government does not need to be a potentially
35 liable person or be required to seek reimbursement of grant funds
36 from a potentially liable person;

37 (vi) The director may alter grant matching requirements to create
38 incentives for local governments to expedite cleanups when one of the
39 following conditions exists:

1 (A) Funding would prevent or mitigate unfair economic hardship
2 imposed by the clean-up liability;

3 (B) Funding would create new substantial economic development,
4 public recreational opportunities, or habitat restoration
5 opportunities that would not otherwise occur; or

6 (C) Funding would create an opportunity for acquisition and
7 redevelopment of brownfield property under RCW 70.105D.040(5) that
8 would not otherwise occur;

9 (vii) When pending grant applications under ~~((e)-(e))~~ (e)(iv)
10 and (v) of this subsection (4) exceed the amount of funds available,
11 designated redevelopment opportunity zones must receive priority for
12 distribution of available funds.

13 ~~((d)-(f))~~ (f) To expedite multiparty clean-up efforts, the
14 department may purchase remedial action cost-cap insurance. For the
15 2013-2015 fiscal biennium, moneys in the local toxics control account
16 may be spent on projects in sections 3024, 3035, 3036, and 3059,
17 chapter 19, Laws of 2013 2nd sp. sess.

18 (5) Except for unanticipated receipts under RCW 43.79.260 through
19 43.79.282, moneys in the state and local toxics control accounts may
20 be spent only after appropriation by statute.

21 (6) No moneys deposited into either the state or local toxics
22 control account may be used for: Natural disasters where there is no
23 hazardous substance contamination; high performance buildings; solid
24 waste incinerator facility feasibility studies, construction,
25 maintenance, or operation; or after January 1, 2010, for projects
26 designed to address the restoration of Puget Sound, funded in a
27 competitive grant process, that are in conflict with the action
28 agenda developed by the Puget Sound partnership under RCW 90.71.310.
29 However, this subsection does not prevent an appropriation from the
30 state toxics control account to the department of revenue to enforce
31 compliance with the hazardous substance tax imposed in chapter 82.21
32 RCW.

33 (7) ~~(Except)~~ (a) During ~~(the 2011-2013)~~ each fiscal biennium,
34 one percent of the moneys collected under RCW 82.21.030 shall be
35 allocated as follows:

36 (i) All amounts up to and including the established level may be
37 used only for public participation grants, consistent with this
38 subsection, to persons who may be adversely affected by a release or
39 threatened release of a hazardous substance and to not-for-profit
40 public interest organizations.

1 (ii) All amounts above the established level, if any, must be
2 transferred to the state wildlife account created in RCW 77.12.170
3 and used consistent with section 1 of this act.

4 (b) The primary purpose of ((these)) grants issued under (a)(i)
5 of this subsection is to facilitate the participation by persons and
6 organizations in the investigation and remedying of releases or
7 threatened releases of hazardous substances and to implement the
8 state's solid and hazardous waste management priorities. No grant may
9 exceed sixty thousand dollars. Grants may be renewed annually. Moneys
10 appropriated for public participation that are not expended at the
11 close of any biennium revert to the state toxics control account.

12 (8) The department shall adopt rules for grant or loan issuance
13 and performance. To accelerate both remedial action and economic
14 recovery, the department may expedite the adoption of rules necessary
15 to implement chapter 1, Laws of 2013 2nd sp. sess. using the
16 expedited procedures in RCW 34.05.353. The department shall initiate
17 the award of financial assistance by August 1, 2013. To ensure the
18 adoption of rules will not delay financial assistance, the department
19 may administer the award of financial assistance through interpretive
20 guidance pending the adoption of rules through July 1, 2014.

21 (9) Except as provided under subsection (3)(k) and (q) of this
22 section, nothing in chapter 1, Laws of 2013 2nd sp. sess. (~~effects~~
23 ~~{affects}~~) affects the ability of a potentially liable person to
24 receive public funding.

25 (10) During the 2013-2015 fiscal biennium the local toxics
26 control account may also be used for the centennial clean water
27 program and for storm water grants.

28 **Sec. 3.** RCW 70.105D.020 and 2013 2nd sp.s. c 1 s 2 are each
29 reenacted and amended to read as follows:

30 The definitions in this section apply throughout this chapter
31 unless the context clearly requires otherwise.

32 (1) "Agreed order" means an order issued by the department under
33 this chapter with which the potentially liable person or prospective
34 purchaser receiving the order agrees to comply. An agreed order may
35 be used to require or approve any cleanup or other remedial actions
36 but it is not a settlement under RCW 70.105D.040(4) and shall not
37 contain a covenant not to sue, or provide protection from claims for
38 contribution, or provide eligibility for public funding of remedial
39 actions under RCW 70.105D.070(3) (k) and (q).

1 (2) "Area-wide groundwater contamination" means groundwater
2 contamination on multiple adjacent properties with different
3 ownerships consisting of hazardous substances from multiple sources
4 that have resulted in commingled plumes of contaminated groundwater
5 that are not practicable to address separately.

6 (3) "Brownfield property" means previously developed and
7 currently abandoned or underutilized real property and adjacent
8 surface waters and sediment where environmental, economic, or
9 community reuse objectives are hindered by the release or threatened
10 release of hazardous substances that the department has determined
11 requires remedial action under this chapter or that the United States
12 environmental protection agency has determined requires remedial
13 action under the federal cleanup law.

14 (4) "City" means a city or town.

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

16 (6) "Director" means the director of ecology or the director's
17 designee.

18 (7) "Environmental covenant" has the same meaning as defined in
19 RCW 64.70.020.

20 (8) "Facility" means (a) any building, structure, installation,
21 equipment, pipe or pipeline (including any pipe into a sewer or
22 publicly owned treatment works), well, pit, pond, lagoon,
23 impoundment, ditch, landfill, storage container, motor vehicle,
24 rolling stock, vessel, or aircraft, or (b) any site or area where a
25 hazardous substance, other than a consumer product in consumer use,
26 has been deposited, stored, disposed of, or placed, or otherwise come
27 to be located.

28 (9) "Federal cleanup law" means the federal comprehensive
29 environmental response, compensation, and liability act of 1980, 42
30 U.S.C. Sec. 9601 et seq., as amended by Public Law 99-499.

31 (10)(a) "Fiduciary" means a person acting for the benefit of
32 another party as a bona fide trustee; executor; administrator;
33 custodian; guardian of estates or guardian ad litem; receiver;
34 conservator; committee of estates of incapacitated persons; trustee
35 in bankruptcy; trustee, under an indenture agreement, trust
36 agreement, lease, or similar financing agreement, for debt
37 securities, certificates of interest or certificates of participation
38 in debt securities, or other forms of indebtedness as to which the
39 trustee is not, in the capacity of trustee, the lender. Except as
40 provided in subsection (22)(b)(iii) of this section, the liability of

1 a fiduciary under this chapter shall not exceed the assets held in
2 the fiduciary capacity.

3 (b) "Fiduciary" does not mean:

4 (i) A person acting as a fiduciary with respect to a trust or
5 other fiduciary estate that was organized for the primary purpose of,
6 or is engaged in, actively carrying on a trade or business for
7 profit, unless the trust or other fiduciary estate was created as
8 part of, or to facilitate, one or more estate plans or because of the
9 incapacity of a natural person;

10 (ii) A person who acquires ownership or control of a facility
11 with the objective purpose of avoiding liability of the person or any
12 other person. It is prima facie evidence that the fiduciary acquired
13 ownership or control of the facility to avoid liability if the
14 facility is the only substantial asset in the fiduciary estate at the
15 time the facility became subject to the fiduciary estate;

16 (iii) A person who acts in a capacity other than that of a
17 fiduciary or in a beneficiary capacity and in that capacity directly
18 or indirectly benefits from a trust or fiduciary relationship;

19 (iv) A person who is a beneficiary and fiduciary with respect to
20 the same fiduciary estate, and who while acting as a fiduciary
21 receives benefits that exceed customary or reasonable compensation,
22 and incidental benefits permitted under applicable law;

23 (v) A person who is a fiduciary and receives benefits that
24 substantially exceed customary or reasonable compensation, and
25 incidental benefits permitted under applicable law; or

26 (vi) A person who acts in the capacity of trustee of state or
27 federal lands or resources.

28 (11) "Fiduciary capacity" means the capacity of a person holding
29 title to a facility, or otherwise having control of an interest in
30 the facility pursuant to the exercise of the responsibilities of the
31 person as a fiduciary.

32 (12) "Foreclosure and its equivalents" means purchase at a
33 foreclosure sale, acquisition, or assignment of title in lieu of
34 foreclosure, termination of a lease, or other repossession,
35 acquisition of a right to title or possession, an agreement in
36 satisfaction of the obligation, or any other comparable formal or
37 informal manner, whether pursuant to law or under warranties,
38 covenants, conditions, representations, or promises from the
39 borrower, by which the holder acquires title to or possession of a
40 facility securing a loan or other obligation.

1 (13) "Hazardous substance" means:

2 (a) Any dangerous or extremely hazardous waste as defined in RCW
3 70.105.010 (1) and (7), or any dangerous or extremely dangerous waste
4 designated by rule pursuant to chapter 70.105 RCW;

5 (b) Any hazardous substance as defined in RCW 70.105.010(10) or
6 any hazardous substance as defined by rule pursuant to chapter 70.105
7 RCW;

8 (c) Any substance that, on March 1, 1989, is a hazardous
9 substance under section 101(14) of the federal cleanup law, 42 U.S.C.
10 Sec. 9601(14);

11 (d) Petroleum or petroleum products; and

12 (e) Any substance or category of substances, including solid
13 waste decomposition products, determined by the director by rule to
14 present a threat to human health or the environment if released into
15 the environment.

16 The term hazardous substance does not include any of the
17 following when contained in an underground storage tank from which
18 there is not a release: Crude oil or any fraction thereof or
19 petroleum, if the tank is in compliance with all applicable federal,
20 state, and local law.

21 (14) "Holder" means a person who holds indicia of ownership
22 primarily to protect a security interest. A holder includes the
23 initial holder such as the loan originator, any subsequent holder
24 such as a successor-in-interest or subsequent purchaser of the
25 security interest on the secondary market, a guarantor of an
26 obligation, surety, or any other person who holds indicia of
27 ownership primarily to protect a security interest, or a receiver,
28 court-appointed trustee, or other person who acts on behalf or for
29 the benefit of a holder. A holder can be a public or privately owned
30 financial institution, receiver, conservator, loan guarantor, or
31 other similar persons that loan money or guarantee repayment of a
32 loan. Holders typically are banks or savings and loan institutions
33 but may also include others such as insurance companies, pension
34 funds, or private individuals that engage in loaning of money or
35 credit.

36 (15) "Independent remedial actions" means remedial actions
37 conducted without department oversight or approval, and not under an
38 order, agreed order, or consent decree.

39 (16) "Indicia of ownership" means evidence of a security
40 interest, evidence of an interest in a security interest, or evidence

1 of an interest in a facility securing a loan or other obligation,
2 including any legal or equitable title to a facility acquired
3 incident to foreclosure and its equivalents. Evidence of such
4 interests includes, mortgages, deeds of trust, sellers interest in a
5 real estate contract, liens, surety bonds, and guarantees of
6 obligations, title held pursuant to a lease financing transaction in
7 which the lessor does not select initially the leased facility, or
8 legal or equitable title obtained pursuant to foreclosure and their
9 equivalents. Evidence of such interests also includes assignments,
10 pledges, or other rights to or other forms of encumbrance against the
11 facility that are held primarily to protect a security interest.

12 (17) "Industrial properties" means properties that are or have
13 been characterized by, or are to be committed to, traditional
14 industrial uses such as processing or manufacturing of materials,
15 marine terminal and transportation areas and facilities, fabrication,
16 assembly, treatment, or distribution of manufactured products, or
17 storage of bulk materials, that are either:

18 (a) Zoned for industrial use by a city or county conducting land
19 use planning under chapter 36.70A RCW; or

20 (b) For counties not planning under chapter 36.70A RCW and the
21 cities within them, zoned for industrial use and adjacent to
22 properties currently used or designated for industrial purposes.

23 (18) "Institutional controls" means measures undertaken to limit
24 or prohibit activities that may interfere with the integrity of a
25 remedial action or result in exposure to or migration of hazardous
26 substances at a site. "Institutional controls" include environmental
27 covenants.

28 (19) "Local government" means any political subdivision of the
29 state, including a town, city, county, special purpose district, or
30 other municipal corporation, including brownfield renewal authority
31 created under RCW 70.105D.160.

32 (20) "Model remedy" or "model remedial action" means a set of
33 technologies, procedures, and monitoring protocols identified by the
34 department for use in routine types of clean-up projects at
35 facilities that have common features and lower risk to human health
36 and the environment.

37 (21) "Operating a facility primarily to protect a security
38 interest" occurs when all of the following are met: (a) Operating the
39 facility where the borrower has defaulted on the loan or otherwise
40 breached the security agreement; (b) operating the facility to

1 preserve the value of the facility as an ongoing business; (c) the
2 operation is being done in anticipation of a sale, transfer, or
3 assignment of the facility; and (d) the operation is being done
4 primarily to protect a security interest. Operating a facility for
5 longer than one year prior to foreclosure or its equivalents shall be
6 presumed to be operating the facility for other than to protect a
7 security interest.

8 (22) "Owner or operator" means:

9 (a) Any person with any ownership interest in the facility or who
10 exercises any control over the facility; or

11 (b) In the case of an abandoned facility, any person who had
12 owned, or operated, or exercised control over the facility any time
13 before its abandonment;

14 The term does not include:

15 (i) An agency of the state or unit of local government which
16 acquired ownership or control through a drug forfeiture action under
17 RCW 69.50.505, or involuntarily through bankruptcy, tax delinquency,
18 abandonment, or other circumstances in which the government
19 involuntarily acquires title. This exclusion does not apply to an
20 agency of the state or unit of local government which has caused or
21 contributed to the release or threatened release of a hazardous
22 substance from the facility;

23 (ii) A person who, without participating in the management of a
24 facility, holds indicia of ownership primarily to protect the
25 person's security interest in the facility. Holders after foreclosure
26 and its equivalent and holders who engage in any of the activities
27 identified in subsection (23)(e) through (g) of this section shall
28 not lose this exemption provided the holder complies with all of the
29 following:

30 (A) The holder properly maintains the environmental compliance
31 measures already in place at the facility;

32 (B) The holder complies with the reporting requirements in the
33 rules adopted under this chapter;

34 (C) The holder complies with any order issued to the holder by
35 the department to abate an imminent or substantial endangerment;

36 (D) The holder allows the department or potentially liable
37 persons under an order, agreed order, or settlement agreement under
38 this chapter access to the facility to conduct remedial actions and
39 does not impede the conduct of such remedial actions;

1 (E) Any remedial actions conducted by the holder are in
2 compliance with any preexisting requirements identified by the
3 department, or, if the department has not identified such
4 requirements for the facility, the remedial actions are conducted
5 consistent with the rules adopted under this chapter; and

6 (F) The holder does not exacerbate an existing release. The
7 exemption in this subsection (22)(b)(ii) does not apply to holders
8 who cause or contribute to a new release or threatened release or who
9 are otherwise liable under RCW 70.105D.040(1) (b), (c), (d), and (e);
10 provided, however, that a holder shall not lose this exemption if it
11 establishes that any such new release has been remediated according
12 to the requirements of this chapter and that any hazardous substances
13 remaining at the facility after remediation of the new release are
14 divisible from such new release;

15 (iii) A fiduciary in his, her, or its personal or individual
16 capacity. This exemption does not preclude a claim against the assets
17 of the estate or trust administered by the fiduciary or against a
18 nonemployee agent or independent contractor retained by a fiduciary.
19 This exemption also does not apply to the extent that a person is
20 liable under this chapter independently of the person's ownership as
21 a fiduciary or for actions taken in a fiduciary capacity which cause
22 or contribute to a new release or exacerbate an existing release of
23 hazardous substances. This exemption applies provided that, to the
24 extent of the fiduciary's powers granted by law or by the applicable
25 governing instrument granting fiduciary powers, the fiduciary
26 complies with all of the following:

27 (A) The fiduciary properly maintains the environmental compliance
28 measures already in place at the facility;

29 (B) The fiduciary complies with the reporting requirements in the
30 rules adopted under this chapter;

31 (C) The fiduciary complies with any order issued to the fiduciary
32 by the department to abate an imminent or substantial endangerment;

33 (D) The fiduciary allows the department or potentially liable
34 persons under an order, agreed order, or settlement agreement under
35 this chapter access to the facility to conduct remedial actions and
36 does not impede the conduct of such remedial actions;

37 (E) Any remedial actions conducted by the fiduciary are in
38 compliance with any preexisting requirements identified by the
39 department, or, if the department has not identified such

1 requirements for the facility, the remedial actions are conducted
2 consistent with the rules adopted under this chapter; and

3 (F) The fiduciary does not exacerbate an existing release.

4 The exemption in this subsection (22)(b)(iii) does not apply to
5 fiduciaries who cause or contribute to a new release or threatened
6 release or who are otherwise liable under RCW 70.105D.040(1) (b),
7 (c), (d), and (e); provided however, that a fiduciary shall not lose
8 this exemption if it establishes that any such new release has been
9 remediated according to the requirements of this chapter and that any
10 hazardous substances remaining at the facility after remediation of
11 the new release are divisible from such new release. The exemption in
12 this subsection (22)(b)(iii) also does not apply where the
13 fiduciary's powers to comply with this subsection (22)(b)(iii) are
14 limited by a governing instrument created with the objective purpose
15 of avoiding liability under this chapter or of avoiding compliance
16 with this chapter; or

17 (iv) Any person who has any ownership interest in, operates, or
18 exercises control over real property where a hazardous substance has
19 come to be located solely as a result of migration of the hazardous
20 substance to the real property through the groundwater from a source
21 off the property, if:

22 (A) The person can demonstrate that the hazardous substance has
23 not been used, placed, managed, or otherwise handled on the property
24 in a manner likely to cause or contribute to a release of the
25 hazardous substance that has migrated onto the property;

26 (B) The person has not caused or contributed to the release of
27 the hazardous substance;

28 (C) The person does not engage in activities that damage or
29 interfere with the operation of remedial actions installed on the
30 person's property or engage in activities that result in exposure of
31 humans or the environment to the contaminated groundwater that has
32 migrated onto the property;

33 (D) If requested, the person allows the department, potentially
34 liable persons who are subject to an order, agreed order, or consent
35 decree, and the authorized employees, agents, or contractors of each,
36 access to the property to conduct remedial actions required by the
37 department. The person may attempt to negotiate an access agreement
38 before allowing access; and

39 (E) Legal withdrawal of groundwater does not disqualify a person
40 from the exemption in this subsection (22)(b)(iv).

1 (23) "Participation in management" means exercising decision-
2 making control over the borrower's operation of the facility,
3 environmental compliance, or assuming or manifesting responsibility
4 for the overall management of the enterprise encompassing the day-to-
5 day decision making of the enterprise.

6 The term does not include any of the following: (a) A holder with
7 the mere capacity or ability to influence, or the unexercised right
8 to control facility operations; (b) a holder who conducts or requires
9 a borrower to conduct an environmental audit or an environmental site
10 assessment at the facility for which indicia of ownership is held;
11 (c) a holder who requires a borrower to come into compliance with any
12 applicable laws or regulations at the facility for which indicia of
13 ownership is held; (d) a holder who requires a borrower to conduct
14 remedial actions including setting minimum requirements, but does not
15 otherwise control or manage the borrower's remedial actions or the
16 scope of the borrower's remedial actions except to prepare a facility
17 for sale, transfer, or assignment; (e) a holder who engages in
18 workout or policing activities primarily to protect the holder's
19 security interest in the facility; (f) a holder who prepares a
20 facility for sale, transfer, or assignment or requires a borrower to
21 prepare a facility for sale, transfer, or assignment; (g) a holder
22 who operates a facility primarily to protect a security interest, or
23 requires a borrower to continue to operate, a facility primarily to
24 protect a security interest; and (h) a prospective holder who, as a
25 condition of becoming a holder, requires an owner or operator to
26 conduct an environmental audit, conduct an environmental site
27 assessment, come into compliance with any applicable laws or
28 regulations, or conduct remedial actions prior to holding a security
29 interest is not participating in the management of the facility.

30 (24) "Person" means an individual, firm, corporation,
31 association, partnership, consortium, joint venture, commercial
32 entity, state government agency, unit of local government, federal
33 government agency, or Indian tribe.

34 (25) "Policing activities" means actions the holder takes to
35 ensure that the borrower complies with the terms of the loan or
36 security interest or actions the holder takes or requires the
37 borrower to take to maintain the value of the security. Policing
38 activities include: Requiring the borrower to conduct remedial
39 actions at the facility during the term of the security interest;
40 requiring the borrower to comply or come into compliance with

1 applicable federal, state, and local environmental and other laws,
2 regulations, and permits during the term of the security interest;
3 securing or exercising authority to monitor or inspect the facility
4 including on-site inspections, or to monitor or inspect the
5 borrower's business or financial condition during the term of the
6 security interest; or taking other actions necessary to adequately
7 police the loan or security interest such as requiring a borrower to
8 comply with any warranties, covenants, conditions, representations,
9 or promises from the borrower.

10 (26) "Potentially liable person" means any person whom the
11 department finds, based on credible evidence, to be liable under RCW
12 70.105D.040. The department shall give notice to any such person and
13 allow an opportunity for comment before making the finding, unless an
14 emergency requires otherwise.

15 (27) "Prepare a facility for sale, transfer, or assignment" means
16 to secure access to the facility; perform routine maintenance on the
17 facility; remove inventory, equipment, or structures; properly
18 maintain environmental compliance measures already in place at the
19 facility; conduct remedial actions to cleanup releases at the
20 facility; or to perform other similar activities intended to preserve
21 the value of the facility where the borrower has defaulted on the
22 loan or otherwise breached the security agreement or after
23 foreclosure and its equivalents and in anticipation of a pending
24 sale, transfer, or assignment, primarily to protect the holder's
25 security interest in the facility. A holder can prepare a facility
26 for sale, transfer, or assignment for up to one year prior to
27 foreclosure and its equivalents and still stay within the security
28 interest exemption in subsection (22)(b)(ii) of this section.

29 (28) "Primarily to protect a security interest" means the indicia
30 of ownership is held primarily for the purpose of securing payment or
31 performance of an obligation. The term does not include indicia of
32 ownership held primarily for investment purposes nor indicia of
33 ownership held primarily for purposes other than as protection for a
34 security interest. A holder may have other, secondary reasons, for
35 maintaining indicia of ownership, but the primary reason must be for
36 protection of a security interest. Holding indicia of ownership after
37 foreclosure or its equivalents for longer than five years shall be
38 considered to be holding the indicia of ownership for purposes other
39 than primarily to protect a security interest. For facilities that

1 have been acquired through foreclosure or its equivalents prior to
2 July 23, 1995, this five-year period shall begin as of July 23, 1995.

3 (29) "Prospective purchaser" means a person who is not currently
4 liable for remedial action at a facility and who proposes to
5 purchase, redevelop, or reuse the facility.

6 (30) "Public notice" means, at a minimum, adequate notice mailed
7 to all persons who have made timely request of the department and to
8 persons residing in the potentially affected vicinity of the proposed
9 action; mailed to appropriate news media; published in the newspaper
10 of largest circulation in the city or county of the proposed action;
11 and opportunity for interested persons to comment.

12 (31) "Redevelopment opportunity zone" means a geographic area
13 designated under RCW 70.105D.150.

14 (32) "Release" means any intentional or unintentional entry of
15 any hazardous substance into the environment, including but not
16 limited to the abandonment or disposal of containers of hazardous
17 substances.

18 (33) "Remedy" or "remedial action" means any action or
19 expenditure consistent with the purposes of this chapter to identify,
20 eliminate, or minimize any threat or potential threat posed by
21 hazardous substances to human health or the environment including any
22 investigative and monitoring activities with respect to any release
23 or threatened release of a hazardous substance and any health
24 assessments or health effects studies conducted in order to determine
25 the risk or potential risk to human health.

26 (34) "Security interest" means an interest in a facility created
27 or established for the purpose of securing a loan or other
28 obligation. Security interests include deeds of trusts, sellers
29 interest in a real estate contract, liens, legal, or equitable title
30 to a facility acquired incident to foreclosure and its equivalents,
31 and title pursuant to lease financing transactions. Security
32 interests may also arise from transactions such as sale and
33 leasebacks, conditional sales, installment sales, trust receipt
34 transactions, certain assignments, factoring agreements, accounts
35 receivable financing arrangements, easements, and consignments, if
36 the transaction creates or establishes an interest in a facility for
37 the purpose of securing a loan or other obligation.

38 (35) "Workout activities" means those actions by which a holder,
39 at any time prior to foreclosure and its equivalents, seeks to
40 prevent, cure, or mitigate a default by the borrower or obligor; or

1 to preserve, or prevent the diminution of, the value of the security.
2 Workout activities include: Restructuring or renegotiating the terms
3 of the security interest; requiring payment of additional rent or
4 interest; exercising forbearance; requiring or exercising rights
5 pursuant to an assignment of accounts or other amounts owed to an
6 obligor; requiring or exercising rights pursuant to an escrow
7 agreement pertaining to amounts owed to an obligor; providing
8 specific or general financial or other advice, suggestions,
9 counseling, or guidance; and exercising any right or remedy the
10 holder is entitled to by law or under any warranties, covenants,
11 conditions, representations, or promises from the borrower.

12 (36) "Established level" means the dollar amount that represents
13 one percent of the moneys collected under RCW 82.21.030 during the
14 2011-2013 fiscal biennium.

15 **Sec. 4.** RCW 77.12.170 and 2011 c 339 s 3, 2011 c 320 s 23, and
16 2011 c 171 s 112 are each reenacted and amended to read as follows:

17 (1) There is established in the state treasury the state wildlife
18 account which consists of moneys received from:

19 (a) Rentals or concessions of the department;

20 (b) The sale of real or personal property held for department
21 purposes, unless the property is seized or recovered through a fish,
22 shellfish, or wildlife enforcement action;

23 (c) The assessment of administrative penalties;

24 (d) The sale of licenses, permits, tags, and stamps required by
25 chapter 77.32 RCW, RCW 77.65.490, and application fees;

26 (e) Fees for informational materials published by the department;

27 (f) Fees for personalized vehicle, Wild on Washington, and
28 Endangered Wildlife license plates and Washington's Wildlife license
29 plate collection as provided in chapter 46.17 RCW;

30 (g) Articles or wildlife sold by the director under this title;

31 (h) Compensation for damage to department property or wildlife
32 losses or contributions, gifts, or grants received under RCW
33 77.12.320. However, this excludes fish and shellfish overages, and
34 court-ordered restitution or donations associated with any fish,
35 shellfish, or wildlife enforcement action, as such moneys must be
36 deposited pursuant to RCW 77.15.425;

37 (i) Excise tax on anadromous game fish collected under chapter
38 82.27 RCW;

1 (j) The department's share of revenues from auctions and raffles
2 authorized by the commission;

3 (k) The sale of watchable wildlife decals under RCW 77.32.560;
4 (~~and~~)

5 (l) Moneys received from the recreation access pass account
6 created in RCW 79A.80.090 must be dedicated to stewardship,
7 operations, and maintenance of department lands used for public
8 recreation purposes; (~~and~~)

9 (m) Donations received by the director under RCW 77.12.039; and

10 (n) Transfers directed to the state wildlife account under RCW
11 70.105D.070 for the purposes of implementing section 1 of this act.

12 (2) State and county officers receiving any moneys listed in
13 subsection (1) of this section shall deposit them in the state
14 treasury to be credited to the state wildlife account.

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