S-1421.7

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**SENATE BILL 5993**

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**State of Washington 66th Legislature 2019 Regular Session**

**By** Senators Frockt, Billig, Liias, and Hunt

AN ACT Relating to reforming the financial structure of the model toxics control program; amending RCW 82.21.010, 82.21.020, 82.21.040, 82.21.030, 70.105D.030, 70.105D.050, 70.75A.060, 70.76.100, 70.95M.080, 70.95M.120, 70.240.050, 70.270.050, 70.285.090, 70.280.050, 70.300.040, 90.71.370, 70.105D.130, and 70.105D.140; adding new sections to chapter 70.105D RCW; creating new sections; repealing RCW 70.105D.170 and 70.105D.070; providing an effective date; and declaring an emergency.

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

**Part I**

**Sec.**  RCW 82.21.010 and 1989 c 2 s 8 are each amended to read as follows:

(1) It is the intent of this chapter to impose a tax only once for each hazardous substance possessed in this state and to tax the first possession of all hazardous substances, including substances and products that the department of ecology determines to present a threat to human health or the environment. However, it is not intended to impose a tax on the first possession of small amounts of any hazardous substance (other than petroleum and pesticide products) that is first possessed by a retailer for the purpose of sale to ultimate consumers. This chapter is not intended to exempt any person from tax liability under any other law.

(2) It is the specific purpose of the model toxics control reform act (this act) to update the model toxics control program and its primary funding mechanism. These reforms are intended to achieve the financial stability, transparency, and long-term protection of revenues. Specifically, this reform act makes the following changes:

(a) Increases funding for programs and projects related to clean air, clean water, and prevention, with specific focus on stormwater pollution;

(b) Provides distinct and transparent financial separation of capital and operating budget funding under the model toxics control program;

(c) Improves the transparency and visibility of operating and capital project expenditures under the model toxics control program; and

(d) Eliminates the year-to-year volatility of hazardous substance tax revenues by moving to a volumetric rate for petroleum products.

**Sec.**  RCW 82.21.020 and 2002 c 105 s 1 are each amended to read as follows:

((~~Unless the context clearly requires otherwise,~~)) The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Fiscal growth factor" has the same meaning as provided in RCW 43.135.025.

(2) "Hazardous substance" means:

(a) Any substance that, on March 1, 2002, is a hazardous substance under section 101(14) of the federal comprehensive environmental response, compensation, and liability act of 1980, 42 U.S.C. Sec. 9601(14), as amended by Public Law 99-499 on October 17, 1986, except that hazardous substance does not include the following noncompound metals when in solid form in a particle larger than one hundred micrometers (0.004 inches) in diameter: Antimony, arsenic, beryllium, cadmium, chromium, copper, lead, nickel, selenium, silver, thallium, or zinc;

(b) Petroleum products;

(c) Any pesticide product required to be registered under section 136a of the federal insecticide, fungicide and rodenticide act, 7 U.S.C. Sec. 136 et seq., as amended by Public Law 104-170 on August 3, 1996; and

(d) Any other substance, category of substance, and any product or category of product determined by the director of ecology by rule to present a threat to human health or the environment if released into the environment. The director of ecology ((~~shall~~)) may not add or delete substances from this definition more often than twice during each calendar year. For tax purposes, changes in this definition ((~~shall~~)) take effect on the first day of the next month that is at least thirty days after the effective date of the rule. The word "product" or "products" as used in this ((~~paragraph (d)~~)) subsection (2)(d) means an item or items containing both:

(i) One or more substances that are hazardous substances under (a), (b), or (c) of this subsection or that are substances or categories of substances determined under this ((~~paragraph (d)~~)) subsection (2)(d) to present a threat to human health or the environment if released into the environment; and

(ii) One or more substances that are not hazardous substances.

((~~(2)~~)) (3) "Petroleum product" means plant condensate, lubricating oil, gasoline, aviation fuel, kerosene, diesel motor fuel, benzol, fuel oil, residual oil, liquefied or liquefiable gases such as butane, ethane, and propane, and every other product derived from the refining of crude oil, but the term does not include crude oil.

((~~(3)~~)) (4) "Possession" means the control of a hazardous substance located within this state and includes both actual and constructive possession. "Actual possession" occurs when the person with control has physical possession. "Constructive possession" occurs when the person with control does not have physical possession. "Control" means the power to sell or use a hazardous substance or to authorize the sale or use by another.

((~~(4)~~)) (5) "Previously taxed hazardous substance" means a hazardous substance in respect to which a tax has been paid under this chapter and which has not been remanufactured or reprocessed in any manner (other than mere repackaging or recycling for beneficial reuse) since the tax was paid.

((~~(5)~~)) (6) "Wholesale value" means fair market wholesale value, determined as nearly as possible according to the wholesale selling price at the place of use of similar substances of like quality and character, in accordance with rules of the department.

((~~(6)~~)) (7) Except for terms defined in this section, the definitions in chapters 82.04, 82.08, and 82.12 RCW apply to this chapter.

**Sec.**  RCW 82.21.040 and 2015 3rd sp.s. c 6 s 1902 are each amended to read as follows:

The following are exempt from the tax imposed in this chapter:

(1) Any successive possession of a previously taxed hazardous substance. If tax due under this chapter has not been paid with respect to a hazardous substance, the department may collect the tax from any person who has had possession of the hazardous substance. If the tax is paid by any person other than the first person having taxable possession of a hazardous substance, the amount of tax paid ((~~shall~~)) constitutes a debt owed by the first person having taxable possession to the person who paid the tax.

(2) Any possession of a hazardous substance by a natural person under circumstances where the substance is used, or is to be used, for a personal or domestic purpose (and not for any business purpose) by that person or a relative of, or person residing in the same dwelling as, that person.

(3) Any possession of a hazardous substance amount which is determined as minimal by the department of ecology and which is possessed by a retailer for the purpose of making sales to ultimate consumers. This exemption does not apply to pesticide or petroleum products.

(4) Any possession of alumina or natural gas.

(5)(a) Until January 1, 2026, any possession of a hazardous substance as defined in RCW 82.21.020((~~(1)~~)) (2)(c) that is solely for use by a farmer or certified applicator as an agricultural crop protection product and warehoused in this state or transported to or from this state, provided that the person possessing the substance does not otherwise use, manufacture, package for sale, or sell the substance in this state.

(b) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(i) "Agricultural crop protection product" means a chemical regulated under the federal insecticide, fungicide, and rodenticide act, 7 U.S.C. Sec. 136 as amended as of September 1, 2015, when used to prevent, destroy, repel, mitigate, or control predators, diseases, weeds, or other pests.

(ii) "Certified applicator" has the same meaning as provided in RCW 17.21.020.

(iii) "Farmer" has the same meaning as in RCW 82.04.213.

(iv) "Manufacturing" includes mixing or combining agricultural crop protection products with other chemicals or other agricultural crop protection products.

(v) "Package for sale" includes transferring agricultural crop protection products from one container to another, including the transfer of fumigants and other liquid or gaseous chemicals from one tank to another.

(vi) "Use" has the same meaning as in RCW 82.12.010.

(6) Persons or activities which the state is prohibited from taxing under the United States Constitution.

**Part II**

**Sec.**  RCW 82.21.030 and 1989 c 2 s 10 are each amended to read as follows:

(1)(a) A tax is imposed on the privilege of possession of hazardous substances in this state. Except as provided in (b) of this subsection, the rate of the tax ((~~shall be~~)) is seven-tenths of one percent multiplied by the wholesale value of the substance. Moneys collected under this subsection (1)(a) must be deposited in the model toxics control capital account.

(b) The rate of the tax on petroleum products is two dollars and fifty-two cents per barrel. The tax collected under this subsection (1)(b) on petroleum products must be deposited as follows:

(i) Forty-three percent to the model toxics control operating account created under section 202 of this act;

(ii) Forty-three percent to the model toxics control capital account created under section 203 of this act; and

(iii) Fourteen percent to the model toxics control stormwater account created under section 204 of this act.

(c) The department must compile a list of petroleum products that are not easily measured on a per barrel basis. Petroleum products identified on the list are subject to the rate under (a) of this subsection in lieu of the volumetric rate under this subsection (1)(c). The list will be made in a form and manner prescribed by the department and must be made available on the department's internet web site. In compiling the list, the department may accept technical assistance from persons that sell, market, or distribute petroleum products and consider any other resource the department finds useful in compiling the list.

(2) ((~~Moneys collected under this chapter shall be deposited in the toxics control accounts under RCW 70.105D.070.~~

~~(3)~~)) Chapter 82.32 RCW applies to the tax imposed in this chapter. The tax due dates, reporting periods, and return requirements applicable to chapter 82.04 RCW apply equally to the tax imposed in this chapter.

(3) Beginning July 1, 2020, and each July 1st thereafter, the rate specified under subsection (1)(b) of this section must be adjusted by a percentage that equals the fiscal growth factor, as most recently adjusted by the state expenditure limit committee. The rate must be calculated to the nearest one-thousandth of a cent.

NEW SECTION. **Sec.**  A new section is added to chapter 70.105D RCW to read as follows:

(1) The model toxics control operating account is hereby created in the state treasury.

(2) Moneys in the model toxics control operating account must be used only to carry out the administrative and service activities of those programs and activities identified in subsection (3) of this section.

(3) Moneys in the model toxics control operating account must be used only to carry out the purposes of this chapter, including but not limited to the following:

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

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

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

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

(e) Financial assistance for local programs in accordance with chapters 70.76, 70.95, 70.95C, 70.95I, and 70.105 RCW;

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

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

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

(i) Programs authorized under chapter 70.146 RCW;

(j) A public participation program;

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

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

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

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

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

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

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

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

(p) Petroleum-based plastic or expanded polystyrene foam debris clean-up activities in fresh or marine waters.

(4) Except for unanticipated receipts under RCW 43.79.260 through 43.79.282, moneys in model toxics control operating account may be spent only after appropriation by statute.

(5) One percent of the moneys collected under RCW 82.21.030 must be allocated only for public participation grants to persons who may be adversely affected by a release or threatened release of a hazardous substance and to not-for-profit public interest organizations. The primary purpose of these grants is to facilitate the participation by persons and organizations in the investigation and remedying of releases or threatened releases of hazardous substances and to implement the state's solid and hazardous waste management priorities. No grant may exceed sixty thousand dollars. Grants may be renewed annually. Moneys appropriated for public participation that are not expended at the close of any biennium revert to the model toxics control operating account.

(6) The department must adopt rules for grant or loan issuance and performance.

NEW SECTION. **Sec.**  A new section is added to chapter 70.105D RCW to read as follows:

(1) The model toxics control capital account is hereby created in the state treasury.

(2) In addition to the funds deposited into the model toxics control capital account required under RCW 82.21.030, the following moneys must be deposited into the model toxics control capital account:

(a) The costs of remedial actions recovered under this chapter;

(b) Penalties collected or recovered under this chapter; and

(c) Any other money appropriated or transferred to the account by the legislature.

(3) Moneys in the model toxics control capital account must be used for the improvement, rehabilitation, remediation, and cleanup of toxic sites and other capital-related expenditures for programs and activities identified in subsection (4) of this section.

(4)(a) Moneys in the model toxics control capital account may be used by the department only for capital projects and activities that carry out the purposes of this chapter and for financial assistance to local governments or other persons to carry out those projects or activities, including but not limited to the following, generally in descending order of priority:

(i) Extended grant agreements entered into under (f)(i) of this subsection;

(ii) Remedial actions, including planning for adaptive reuse of properties as provided for under (f)(iv) of this subsection. The department must prioritize funding of remedial actions at:

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

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

(iii) Department-conducted remedial actions;

(iv) Grants to persons intending to remediate contaminated real property for development of affordable housing under subsection (6) of this section;

(v) Department-conducted remedial actions;

(vi) Public funding to assist potentially liable persons to pay for the costs of remedial action in compliance with clean-up standards under RCW 70.105D.030(2)(e) if:

(A) The amount and terms of the funding are established under a settlement agreement under RCW 70.105D.040(4); and

(B) The director has found that the funding will achieve both a substantially more expeditious or enhanced cleanup than would otherwise occur, and the prevention or mitigation of unfair economic hardship;

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

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

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

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

(viii) To expedite multiparty clean-up efforts, purchase of remedial action cost-cap insurance; and

(ix) Petroleum-based plastic or expanded polystyrene foam debris clean-up activities in fresh or marine waters.

(b) Grants, or loans, or contracts to local governments for solid waste plans and programs under chapters 70.95, 70.95C, 70.95I, 70.95E, 70.95G, 70.95M, and 70.105 RCW. Funds must be allocated consistent with priorities and matching requirements in the respective chapters;

(c) Toxic air pollutant reduction programs, including grants or loans to local governments for woodstoves and diesel;

(d) Grants, or loans, or contracts to local governments for hazardous waste plans and programs under chapters 70.76 and 70.105 RCW, including chemical action plan implementation. Funds must be allocated consistent with priorities and matching requirements in the chapter;

(e) Funds for plans and programs must be allocated consistent with the priorities and matching requirements established in chapters 70.105, 70.95C, 70.95I, and 70.95 RCW; and

(f) The department may establish and administer a program to provide grants and loans to local governments for remedial actions, including planning for adaptive reuse of contaminated properties. To expedite cleanups throughout the state, the department may use the following strategies when providing grants to local governments under this subsection:

(i) Enter into an extended grant agreement with a local government conducting remedial actions at a facility where those actions extend over multiple biennia and the total eligible cost of those actions exceeds twenty million dollars. The agreement is subject to the following limitations:

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

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

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

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

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

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

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

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

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

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

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

(vii) When pending grant applications under (f)(iv) and (v) of this subsection (5) exceed the amount of funds available, designated redevelopment opportunity zones must receive priority for distribution of available funds.

(6) Except for unanticipated receipts under RCW 43.79.260 through 43.79.282, moneys in model toxics control capital account may be spent only after appropriation by statute.

NEW SECTION. **Sec.**  A new section is added to chapter 70.105D RCW to read as follows:

(1) The model toxics control stormwater account is hereby created in the state treasury.

(2) Moneys in the model toxics control stormwater account must be used for operating and capital programs, activities, and projects identified in subsection (3) of this section directly relating to stormwater pollution control.

(3) Moneys in the model toxics control stormwater account must be used only to carry out the operating and capital directly relating to stormwater activities under sections 202 and 203 of this act, including but not limited to the following:

(a) Stormwater pollution control projects and activities that protect or preserve existing remedial actions or prevent hazardous clean-up sites;

(b) Stormwater financial assistance to local governments that assist in compliance to the purposes of this chapter.

(4) Except for unanticipated receipts under RCW 43.79.260 through 43.79.282, moneys in the model toxics control stormwater account may be spent only after appropriation by statute.

**Part III**

NEW SECTION. **Sec.**  A new section is added to chapter 70.105D RCW to read as follows:

(1) Budget proposals by the governor and enacted budgets by the legislature must include a summary document that provides the capital and operating budget expenditures funded in whole or in part by revenues deposited into the accounts specified in RCW 82.21.030, detailed by agency and, if practicable, by program. The document must provide the percentage allocation of these revenues within the operating and capital budgets by agency for the current budget proposal. Transfers of model toxics control revenues into other accounts must be noted accordingly.

(2) In addition to the summary document required under subsection (1) of this section, capital budget proposals by the governor and enacted budgets by the legislature must include detailed capital project lists funded in whole, or in part, or program specific funding for yet to be identified projects, by revenues deposited into the model toxics control capital account created in section 203 of this act, that identify the following: The project recipient, project name, county, legislative district, the amount of the budget request for the project for the biennium, and the projected ten-year need for the project delineated between the state funding and local government match. For any capital budget proposal that is submitted by the governor or adopted by any fiscal committee or chamber of the legislature, a model toxics control capital project list must be electronically distributed to all legislators, and any other interested parties, with the information required under this subsection (2).

**Part IV**

**Sec.**  RCW 70.105D.030 and 2013 2nd sp.s. c 1 s 6 are each amended to read as follows:

(1) The department may exercise the following powers in addition to any other powers granted by law:

(a) Investigate, provide for investigating, or require potentially liable persons to investigate any releases or threatened releases of hazardous substances, including but not limited to inspecting, sampling, or testing to determine the nature or extent of any release or threatened release. If there is a reasonable basis to believe that a release or threatened release of a hazardous substance may exist, the department's authorized employees, agents, or contractors may enter upon any property and conduct investigations. The department shall give reasonable notice before entering property unless an emergency prevents such notice. The department may by subpoena require the attendance or testimony of witnesses and the production of documents or other information that the department deems necessary;

(b) Conduct, provide for conducting, or require potentially liable persons to conduct remedial actions (including investigations under (a) of this subsection) to remedy releases or threatened releases of hazardous substances. In carrying out such powers, the department's authorized employees, agents, or contractors may enter upon property. The department ((~~shall~~)) must give reasonable notice before entering property unless an emergency prevents such notice. In conducting, providing for, or requiring remedial action, the department ((~~shall~~)) must give preference to permanent solutions to the maximum extent practicable and ((~~shall~~)) must provide for or require adequate monitoring to ensure the effectiveness of the remedial action;

(c) Indemnify contractors retained by the department for carrying out investigations and remedial actions, but not for any contractor's reckless or willful misconduct;

(d) Carry out all state programs authorized under the federal cleanup law and the federal resource, conservation, and recovery act, 42 U.S.C. Sec. 6901 et seq., as amended;

(e) Classify substances as hazardous substances for purposes of RCW 70.105D.020 and classify substances and products as hazardous substances for purposes of RCW 82.21.020(1);

(f) Issue orders or enter into consent decrees or agreed orders that include, or issue written opinions under (i) of this subsection that may be conditioned upon, environmental covenants where necessary to protect human health and the environment from a release or threatened release of a hazardous substance from a facility. Prior to establishing an environmental covenant under this subsection, the department ((~~shall~~)) must consult with and seek comment from a city or county department with land use planning authority for real property subject to the environmental covenant;

(g) Enforce the application of permanent and effective institutional controls that are necessary for a remedial action to be protective of human health and the environment and the notification requirements established in RCW 70.105D.110, and impose penalties for violations of that section consistent with RCW 70.105D.050;

(h) Require holders to conduct remedial actions necessary to abate an imminent or substantial endangerment pursuant to RCW 70.105D.020(22)(b)(ii)(C);

(i) Provide informal advice and assistance to persons regarding the administrative and technical requirements of this chapter. This may include site-specific advice to persons who are conducting or otherwise interested in independent remedial actions. Any such advice or assistance ((~~shall be~~)) is advisory only, and ((~~shall~~)) is not ((~~be~~)) binding on the department. As a part of providing this advice and assistance for independent remedial actions, the department may prepare written opinions regarding whether the independent remedial actions or proposals for those actions meet the substantive requirements of this chapter or whether the department believes further remedial action is necessary at the facility. Nothing in this chapter may be construed to preclude the department from issuing a written opinion on whether further remedial action is necessary at any portion of the real property located within a facility, even if further remedial action is still necessary elsewhere at the same facility. Such a written opinion on a portion of a facility must also provide an opinion on the status of the facility as a whole. The department may collect, from persons requesting advice and assistance, the costs incurred by the department in providing such advice and assistance; however, the department ((~~shall~~)) must, where appropriate, waive collection of costs in order to provide an appropriate level of technical assistance in support of public participation. The state, the department, and officers and employees of the state are immune from all liability, and no cause of action of any nature may arise from any act or omission in providing, or failing to provide, informal advice and assistance. The department must track the number of requests for reviews of planned or completed independent remedial actions and establish performance measures to track how quickly the department is able to respond to those requests. By November 1, 2015, the department must submit to the governor and the appropriate legislative fiscal and policy committees a report on achieving the performance measures and provide recommendations for improving performance, including staffing needs;

(j) In fulfilling the objectives of this chapter, the department ((~~shall~~)) must allocate staffing and financial assistance in a manner that considers both the reduction of human and environmental risks and the land reuse potential and planning for the facilities to be cleaned up. This does not preclude the department from allocating resources to a facility based solely on human or environmental risks;

(k) Establish model remedies for common categories of facilities, types of hazardous substances, types of media, or geographic areas to streamline and accelerate the selection of remedies for routine types of cleanups at facilities;

(i) When establishing a model remedy, the department ((~~shall~~)) must:

(A) Identify the requirements for characterizing a facility to select a model remedy, the applicability of the model remedy for use at a facility, and monitoring requirements;

(B) Describe how the model remedy meets clean-up standards and the requirements for selecting a remedy established by the department under this chapter; and

(C) Provide public notice and an opportunity to comment on the proposed model remedy and the conditions under which it may be used at a facility;

(ii) When developing model remedies, the department ((~~shall~~)) must solicit and consider proposals from qualified persons. The proposals must, in addition to describing the model remedy, provide the information required under (k)(i)(A) and (B) of this subsection;

(iii) If a facility meets the requirements for use of a model remedy, an analysis of the feasibility of alternative remedies is not required under this chapter. For department-conducted and department-supervised remedial actions, the department must provide public notice and consider public comments on the proposed use of a model remedy at a facility. The department may waive collection of its costs for providing a written opinion under (i) of this subsection on a cleanup that qualifies for and appropriately uses a model remedy; and

(l) Take any other actions necessary to carry out the provisions of this chapter, including the power to adopt rules under chapter 34.05 RCW.

(2) The department ((~~shall~~)) must immediately implement all provisions of this chapter to the maximum extent practicable, including investigative and remedial actions where appropriate. The department ((~~shall~~)) must adopt, and thereafter enforce, rules under chapter 34.05 RCW to:

(a) Provide for public participation, including at least (i) public notice of the development of investigative plans or remedial plans for releases or threatened releases and (ii) concurrent public notice of all compliance orders, agreed orders, enforcement orders, or notices of violation;

(b) Establish a hazard ranking system for hazardous waste sites;

(c) Provide for requiring the reporting by an owner or operator of releases of hazardous substances to the environment that may be a threat to human health or the environment within ninety days of discovery, including such exemptions from reporting as the department deems appropriate, however this requirement ((~~shall~~)) may not modify any existing requirements provided for under other laws;

(d) Establish reasonable deadlines not to exceed ninety days for initiating an investigation of a hazardous waste site after the department receives notice or otherwise receives information that the site may pose a threat to human health or the environment and other reasonable deadlines for remedying releases or threatened releases at the site;

(e) Publish and periodically update minimum clean-up standards for remedial actions at least as stringent as the clean-up standards under section 121 of the federal cleanup law, 42 U.S.C. Sec. 9621, and at least as stringent as all applicable state and federal laws, including health-based standards under state and federal law; and

(f) Apply industrial clean-up standards at industrial properties. Rules adopted under this subsection ((~~shall~~)) must ensure that industrial properties cleaned up to industrial standards cannot be converted to nonindustrial uses without approval from the department. The department may require that a property cleaned up to industrial standards is cleaned up to a more stringent applicable standard as a condition of conversion to a nonindustrial use. Industrial clean-up standards may not be applied to industrial properties where hazardous substances remaining at the property after remedial action pose a threat to human health or the environment in adjacent nonindustrial areas.

(3) To achieve and protect the state's long-term ecological health, the department ((~~shall~~)) must plan to clean up hazardous waste sites and prevent the creation of future hazards due to improper disposal of toxic wastes at a pace that matches the estimated cash resources in the ((~~state and local toxics control accounts and the environmental legacy stewardship account created in RCW 70.105D.170~~)) model toxics control capital account. Estimated cash resources must consider the annual cash flow requirements of major projects that receive appropriations expected to cross multiple biennia. ((~~To effectively monitor toxic accounts expenditures, the department shall develop a comprehensive ten-year financing report that identifies long-term remedial action project costs, tracks expenses, and projects future needs.~~

~~(4) By November 1, 2016, the department must submit to the governor and the appropriate legislative committees a report on the status of developing model remedies and their use under this chapter. The report must include: The number and types of model remedies identified by the department under subsection (1)(k) of this section; the number and types of model remedy proposals prepared by qualified private sector engineers, consultants, or contractors that were accepted or rejected under subsection (1)(k) of this section and the reasons for rejection; and the success of model remedies in accelerating the cleanup as measured by the number of jobs created by the cleanup, where this information is available to the department, acres of land restored, and the number and types of hazardous waste sites successfully remediated using model remedies.~~

~~(5)~~)) (4) Before September 20th of each even-numbered year, the department ((~~shall~~)) must:

(a) Develop a comprehensive ten-year financing report in coordination with all local governments with clean‑up responsibilities that identifies the projected biennial hazardous waste site remedial action needs that are eligible for funding from the ((~~state and local toxics control account and the environmental legacy stewardship account~~)) model toxics control capital account;

(b) Work with local governments to develop working capital reserves to be incorporated in the ten-year financing report;

(c) Identify the projected remedial action needs for orphaned, abandoned, and other clean‑up sites that are eligible for funding from the ((~~state toxics control account~~)) model toxics control capital account;

(d) Project the remedial action need, cost, revenue, and any recommended working capital reserve estimate to the next biennium's long‑term remedial action needs from ((~~both the local and state toxics control account and the environmental legacy stewardship account~~)) model toxics control capital account, and submit this information to the appropriate standing fiscal and environmental committees of the senate and house of representatives. This submittal must also include a ranked list of such remedial action projects for ((~~both~~)) the model toxics control capital account((~~s~~)). The submittal must also identify separate budget estimates for large, multibiennia clean-up projects that exceed ten million dollars. The department ((~~shall~~)) must prepare its ten-year capital budget plan that is submitted to the office of financial management to reflect the separate budget estimates for these large clean-up projects and include information on the anticipated private and public funding obligations for completion of the relevant projects.

((~~(6)~~)) (5) By December 1st of each odd-numbered year, the department must provide the legislature and the public a report of the department's activities supported by appropriations from the ((~~state and local toxics control accounts and the environmental legacy stewardship~~)) model toxics control operating, capital, and stormwater accounts. The report must be prepared and displayed in a manner that allows the legislature and the public to easily determine the statewide and local progress made in cleaning up hazardous waste sites under this chapter. The report must include, at a minimum:

(a) The name, location, hazardous waste ranking, and a short description of each site on the hazardous sites list, and the date the site was placed on the hazardous waste sites list; and

(b) For sites where there are state contracts, grants, loans, or direct investments by the state:

(i) The amount of money from the ((~~state and local toxics control accounts and the environmental legacy stewardship account~~)) model toxics control capital account used to conduct remedial actions at the site and the amount of that money recovered from potentially liable persons;

(ii) The actual or estimated start and end dates and the actual or estimated expenditures of funds authorized under this chapter for the following project phases:

(A) Emergency or interim actions, if needed;

(B) Remedial investigation;

(C) Feasibility study and selection of a remedy;

(D) Engineering design and construction of the selected remedy;

(E) Operation and maintenance or monitoring of the constructed remedy; and

(F) The final completion date.

((~~(7)~~)) (6) The department ((~~shall~~)) must establish a program to identify potential hazardous waste sites and to encourage persons to provide information about hazardous waste sites.

((~~(8)~~)) (7) For all facilities where an environmental covenant has been required under subsection (1)(f) of this section, including all facilities where the department has required an environmental covenant under an order, agreed order, or consent decree, or as a condition of a written opinion issued under the authority of subsection (1)(i) of this section, the department ((~~shall~~)) must periodically review the environmental covenant for effectiveness. ((~~Except as otherwise provided in (c) of this subsection,~~)) The department ((~~shall~~)) must conduct a review at least once every five years after an environmental covenant is recorded.

(a) The review ((~~shall~~)) must consist of, at a minimum:

(i) A review of the title of the real property subject to the environmental covenant to determine whether the environmental covenant was properly recorded and, if applicable, amended or terminated;

(ii) A physical inspection of the real property subject to the environmental covenant to determine compliance with the environmental covenant, including whether any development or redevelopment of the real property has violated the terms of the environmental covenant; and

(iii) A review of the effectiveness of the environmental covenant in limiting or prohibiting activities that may interfere with the integrity of the remedial action or that may result in exposure to or migration of hazardous substances. This ((~~shall~~)) must include a review of available monitoring data.

(b) If an environmental covenant has been amended or terminated without proper authority, or if the terms of an environmental covenant have been violated, or if the environmental covenant is no longer effective in limiting or prohibiting activities that may interfere with the integrity of the remedial action or that may result in exposure to or migration of hazardous substances, then the department ((~~shall~~)) must take any and all appropriate actions necessary to ensure compliance with the environmental covenant and the policies and requirements of this chapter.

((~~(c) For facilities where an environmental covenant required by the department under subsection (1)(f) of this section was required before July 1, 2007, the department shall:~~

~~(i) Enter all required information about the environmental covenant into the registry established under RCW 64.70.120 by June 30, 2008;~~

~~(ii) For those facilities where more than five years has elapsed since the environmental covenant was required and the department has yet to conduct a review, conduct an initial review according to the following schedule:~~

~~(A) By December 30, 2008, fifty facilities;~~

~~(B) By June 30, 2009, fifty additional facilities; and~~

~~(C) By June 30, 2010, the remainder of the facilities;~~

~~(iii) Once this initial review has been completed, conduct subsequent reviews at least once every five years.~~))

**Sec.**  RCW 70.105D.050 and 2013 2nd sp.s. c 1 s 8 are each amended to read as follows:

(1) With respect to any release, or threatened release, for which the department does not conduct or contract for conducting remedial action and for which the department believes remedial action is in the public interest, the director ((~~shall~~)) must issue orders or agreed orders requiring potentially liable persons to provide the remedial action. Any liable person, or prospective purchaser who has entered into an agreed order under RCW 70.105D.040(6), who refuses, without sufficient cause, to comply with an order or agreed order of the director is liable in an action brought by the attorney general for:

(a) Up to three times the amount of any costs incurred by the state as a result of the party's refusal to comply; and

(b) A civil penalty of up to twenty-five thousand dollars for each day the party refuses to comply.

The treble damages and civil penalty under this subsection apply to all recovery actions filed on or after March 1, 1989.

(2) Any person who incurs costs complying with an order issued under subsection (1) of this section may petition the department for reimbursement of those costs. If the department refuses to grant reimbursement, the person may within thirty days thereafter file suit and recover costs by proving that he or she was not a liable person under RCW 70.105D.040 and that the costs incurred were reasonable.

(3) The attorney general ((~~shall~~)) must seek, by filing an action if necessary, to recover the amounts spent by the department for investigative and remedial actions and orders, and agreed orders, including amounts spent prior to March 1, 1989.

(4) The attorney general may bring an action to secure such relief as is necessary to protect human health and the environment under this chapter.

(5)(a) Any person may commence a civil action to compel the department to perform any nondiscretionary duty under this chapter. At least thirty days before commencing the action, the person must give notice of intent to sue, unless a substantial endangerment exists. The court may award attorneys' fees and other costs to the prevailing party in the action.

(b) Civil actions under this section and RCW 70.105D.060 may be brought in the superior court of Thurston county or of the county in which the release or threatened release exists.

(6) Any person who fails to provide notification of releases consistent with RCW 70.105D.110 or who submits false information is liable in an action brought by the attorney general for a civil penalty of up to five thousand dollars per day for each day the party refuses to comply.

(7) Any person who owns real property or lender holding a mortgage on real property that is subject to a lien filed under RCW 70.105D.055 may petition the department to have the lien removed or the amount of the lien reduced. If, after consideration of the petition and the information supporting the petition, the department decides to deny the request, the person may, within ninety days after receipt of the department's denial, file suit for removal or reduction of the lien. The person is entitled to removal of a lien filed under RCW 70.105D.055(2)(a) if they can prove by a preponderance of the evidence that the person is not a liable party under RCW 70.105D.040. The person is entitled to a reduction of the amount of the lien if they can prove by a preponderance of the evidence:

(a) For liens filed under RCW 70.105D.055(2)(a), the amount of the lien exceeds the remedial action costs the department incurred related to cleanup of the real property; and

(b) For liens filed under RCW 70.105D.055(2)(c), the amount of the lien exceeds the remedial action costs the department incurred related to cleanup of the real property or exceeds the increase of the fair market value of the real property solely attributable to the remedial action conducted by the department.

(8) The expenditure of moneys under the ((~~state and local toxics control~~)) model toxics control operating, capital, and stormwater accounts created in ((~~RCW 70.105D.170 [70.105D.070] and the environmental legacy stewardship account created in RCW 70.105D.170~~)) sections 202 through 204 of this act does not alter the liability of any person under this chapter, or the authority of the department under this chapter, including the authority to recover those moneys.

**Sec.**  RCW 70.75A.060 and 2018 c 286 s 7 are each amended to read as follows:

A manufacturer of class B firefighting foam in violation of RCW 70.75A.020 or 70.75A.040 or a person in violation of RCW 70.75A.010 or 70.75A.030 is subject to a civil penalty not to exceed five thousand dollars for each violation in the case of a first offense. Manufacturers, local governments, or persons that are repeat violators are subject to a civil penalty not to exceed ten thousand dollars for each repeat offense. Penalties collected under this section must be deposited in the ((~~state~~)) model toxics control operating account created in ((~~RCW 70.105D.070~~)) section 202 of this act.

**Sec.**  RCW 70.76.100 and 2007 c 65 s 11 are each amended to read as follows:

(1) Enforcement of this chapter must rely on notification and information exchange between the department and manufacturers. The department ((~~shall~~)) must achieve compliance with this chapter using the following enforcement sequence:

(a) Before the effective date of the product prohibition in RCW 70.76.020 or 70.76.030, the department ((~~shall~~)) must prepare and distribute information to in‑state manufacturers and out‑of‑state manufacturers, to the maximum extent practicable, to assist them in identifying products prohibited for manufacture, sale, or distribution under this chapter.

(b) The department may request a certificate of compliance from a manufacturer. A certificate of compliance attests that a manufacturer's product or products meets the requirements of this chapter.

(c) The department may issue a warning letter to a manufacturer that produces, sells, or distributes prohibited products in violation of this chapter. The department ((~~shall~~)) must offer information or other appropriate assistance to the manufacturer in complying with this chapter. If, after one year, compliance is not achieved, penalties may be assessed under subsection (3) of this section.

(2) A manufacturer that knowingly produces, sells, or distributes a product prohibited from manufacture, sale, or distribution in this state under this chapter ((~~shall~~)) must recall the product and reimburse the retailer or any other purchaser for the product and any applicable shipping and handling for returning the products.

(3) A manufacturer of products containing PBDEs in violation of this chapter is subject to a civil penalty not to exceed one thousand dollars for each violation in the case of a first offense. Manufacturers who are repeat violators are subject to a civil penalty not to exceed five thousand dollars for each repeat offense. Penalties collected under this section must be deposited in the ((~~state~~)) model toxics control operating account created in ((~~RCW 70.105D.070~~)) section 202 of this act.

**Sec.**  RCW 70.95M.080 and 2003 c 260 s 9 are each amended to read as follows:

A violation of this chapter is punishable by a civil penalty not to exceed one thousand dollars for each violation in the case of a first violation. Repeat violators are liable for a civil penalty not to exceed five thousand dollars for each repeat violation. Penalties collected under this section must be deposited in the ((~~state~~)) model toxics control operating account created in ((~~RCW 70.105D.070~~)) section 202 of this act.

**Sec.**  RCW 70.95M.120 and 2003 c 260 s 11 are each amended to read as follows:

Any fiscal impact on the department or the department of health that results from the implementation of this chapter must be paid for out of funds that are appropriated by the legislature from the ((~~state~~)) model toxics control operating account for the implementation of the department's persistent bioaccumulative toxic chemical strategy.

**Sec.**  RCW 70.240.050 and 2016 c 176 s 4 are each amended to read as follows:

(1) A manufacturer of products that are restricted under this chapter must notify persons that sell the manufacturer's products in this state about the provisions of this chapter no less than ninety days prior to the effective date of the restrictions.

(2) A manufacturer that produces, sells, or distributes a product prohibited from manufacture, sale, or distribution in this state under this chapter ((~~shall~~)) must recall the product and reimburse the retailer or any other purchaser for the product.

(3) A manufacturer of products in violation of this chapter is subject to a civil penalty not to exceed five thousand dollars for each violation in the case of a first offense. Manufacturers who are repeat violators are subject to a civil penalty not to exceed ten thousand dollars for each repeat offense. Penalties collected under this section must be deposited in the ((~~state~~)) model toxics control operating account created in ((~~RCW 70.105D.070~~)) section 202 of this act.

(4) Retailers who unknowingly sell products that are restricted from sale under this chapter are not liable under this chapter.

(5) The sale or purchase of any previously owned products containing a chemical restricted under this chapter made in casual or isolated sales as defined in RCW 82.04.040, or by a nonprofit organization, is exempt from this chapter.

**Sec.**  RCW 70.270.050 and 2009 c 243 s 5 are each amended to read as follows:

(1) An initial violation of RCW 70.270.030(1) is punishable by a civil penalty not to exceed five hundred dollars. Subsequent violations of RCW 70.270.030(1) are punishable by civil penalties not to exceed one thousand dollars for each violation.

(2) Penalties collected under this section must be deposited in the ((~~state~~)) model toxics control operating account created in ((~~RCW 70.105D.070~~)) section 202 of this act.

**Sec.**  RCW 70.285.090 and 2010 c 147 s 9 are each amended to read as follows:

(1) The department ((~~shall~~)) must enforce this chapter. The department may periodically purchase and test brake friction material sold or offered for sale in Washington state to verify that the material complies with this chapter.

(2) Enforcement of this chapter by the department must rely on notification and information exchange between the department and manufacturers, distributors, and retailers. The department ((~~shall~~)) must issue one warning letter by certified mail to a manufacturer, distributor, or retailer that sells or offers to sell brake friction material in violation of this chapter, and offer information or other appropriate assistance regarding compliance with this chapter. Once a warning letter has been issued to a distributor or retailer for violations under subsections (3) and (5) of this section, the department need not provide warning letters for subsequent violations by that distributor or retailer. For the purposes of subsection (6) of this section, a warning letter serves as notice of the violation. If compliance is not achieved, the department may assess penalties under this section.

(3) A brake friction material distributor or retailer that violates this chapter is subject to a civil penalty not to exceed ten thousand dollars for each violation. Brake friction material distributors or retailers that sell brake friction material that is packaged consistent with RCW 70.285.080(2)(b) are not in violation of this chapter. However, if the department conclusively proves that the brake friction material distributor or retailer was aware that the brake friction material being sold violates RCW 70.285.030 or 70.285.050, the brake friction material distributor or retailer is subject to civil penalties according to this section.

(4) A brake friction material manufacturer that knowingly violates this chapter ((~~shall~~)) must recall the brake friction material and reimburse the brake friction distributor, retailer, or any other purchaser for the material and any applicable shipping and handling charges for returning the material. A brake friction material manufacturer that violates this chapter is subject to a civil penalty not to exceed ten thousand dollars for each violation.

(5) A motor vehicle distributor or retailer that violates this chapter is subject to a civil penalty not to exceed ten thousand dollars for each violation. A motor vehicle distributor or retailer is not in violation of this chapter for selling a vehicle that was previously sold at retail and that contains brake friction material failing to meet the requirements of this chapter. However, if the department conclusively proves that the motor vehicle distributor or retailer installed brake friction material that violates RCW 70.285.030, 70.285.050, or 70.285.080(2)(b) on the vehicle being sold and was aware that the brake friction material violates RCW 70.285.030, 70.285.050, or 70.285.080(2)(b), the motor vehicle distributor or retailer is subject to civil penalties under this section.

(6) A motor vehicle manufacturer that violates this chapter must notify the registered owner of the vehicle within six months of knowledge of the violation and must replace at no cost to the owner the noncompliant brake friction material with brake friction material that complies with this chapter. A motor vehicle manufacturer that fails to provide the required notification to registered owners of the affected vehicles within six months of knowledge of the violation is subject to a civil penalty not to exceed one hundred thousand dollars. A motor vehicle manufacturer that fails to provide the required notification to registered owners of the affected vehicles after twelve months of knowledge of the violation is subject to a civil penalty not to exceed ten thousand dollars per vehicle. For purposes of this section, "motor vehicle manufacturer" does not include a vehicle dealer defined under RCW 46.70.011 and required to be licensed as a vehicle dealer under chapter 46.70 RCW.

(7) Before the effective date of the prohibitions in RCW 70.285.030 or 70.285.050, the department ((~~shall~~)) must prepare and distribute information about the prohibitions to manufacturers, distributors, and retailers to the maximum extent practicable.

(8) All penalties collected under this chapter must be deposited in the ((~~state~~)) model toxics control operating account created in ((~~RCW 70.105D.070~~)) section 202 of this act.

**Sec.**  RCW 70.280.050 and 2010 c 140 s 5 are each amended to read as follows:

Expenses to cover the cost of administering this chapter ((~~shall~~)) must be paid from the ((~~[state]~~)) model toxics control operating account under ((~~RCW 70.105D.070~~)) section 202 of this act.

**Sec.**  RCW 70.300.040 and 2011 c 248 s 5 are each amended to read as follows:

(1) The department ((~~shall~~)) must enforce the requirements of this chapter.

(2)(a) A person or entity that violates this chapter is subject to a civil penalty. The department may assess and collect a civil penalty of up to ten thousand dollars per day per violation.

(b) All penalties collected by the department under this chapter must be deposited in the ((~~state~~)) model toxics control operating account created in ((~~RCW 70.105D.070~~)) section 202 of this act.

**Sec.**  RCW 90.71.370 and 2011 1st sp.s. c 50 s 977 are each amended to read as follows:

(1) By December 1, 2008, and by September 1st of each even-numbered year beginning in 2010, the council ((~~shall~~)) must provide to the governor and the appropriate fiscal committees of the senate and house of representatives its recommendations for the funding necessary to implement the action agenda in the succeeding biennium. The recommendations ((~~shall~~)) must:

(a) Identify the funding needed by action agenda element;

(b) Address funding responsibilities among local, state, and federal governments, as well as nongovernmental funding; and

(c) Address funding needed to support the work of the partnership, the panel, the ecosystem work group, and entities assisting in coordinating local efforts to implement the plan.

(2) In the 2008 report required under subsection (1) of this section, the council ((~~shall~~)) must include recommendations for projected funding needed through 2020 to implement the action agenda; funding needs for science panel staff; identify methods to secure stable and sufficient funding to meet these needs; and include proposals for new sources of funding to be dedicated to Puget Sound protection and recovery. In preparing the science panel staffing proposal, the council ((~~shall~~)) must consult with the panel.

(3) By November 1st of each odd-numbered year beginning in 2009, the council ((~~shall~~)) must produce a state of the Sound report that includes, at a minimum:

(a) An assessment of progress by state and nonstate entities in implementing the action agenda, including accomplishments in the use of state funds for action agenda implementation;

(b) A description of actions by implementing entities that are inconsistent with the action agenda and steps taken to remedy the inconsistency;

(c) The comments by the panel on progress in implementing the plan, as well as findings arising from the assessment and monitoring program;

(d) A review of citizen concerns provided to the partnership and the disposition of those concerns;

(e) A review of the expenditures of funds to state agencies for the implementation of programs affecting the protection and recovery of Puget Sound, and an assessment of whether the use of the funds is consistent with the action agenda; and

(f) An identification of all funds provided to the partnership, and recommendations as to how future state expenditures for all entities, including the partnership, could better match the priorities of the action agenda.

(4)(a) The council ((~~shall~~)) must review state programs that fund facilities and activities that may contribute to action agenda implementation. By November 1, 2009, the council ((~~shall~~)) must provide initial recommendations regarding program changes to the governor and appropriate fiscal and policy committees of the senate and house of representatives. By November 1, 2010, the council ((~~shall~~)) must provide final recommendations regarding program changes, including proposed legislation to implement the recommendation, to the governor and appropriate fiscal and policy committees of the senate and house of representatives.

(b) The review in this subsection ((~~shall~~)) must be conducted with the active assistance and collaboration of the agencies administering these programs, and in consultation with local governments and other entities receiving funding from these programs:

(i) Water pollution control facilities financing, chapter 70.146 RCW;

(ii) The water pollution control revolving fund, chapter 90.50A RCW;

(iii) The public works assistance account, chapter 43.155 RCW;

(iv) The aquatic lands enhancement account, RCW 79.105.150;

(v) The ((~~state toxics control account and local toxics control account~~)) model toxics control operating, capital, and stormwater accounts and clean-up program, chapter 70.105D RCW;

(vi) The acquisition of habitat conservation and outdoor recreation land, chapter 79A.15 RCW;

(vii) The salmon recovery funding board, RCW 77.85.110 through 77.85.150;

(viii) The community economic revitalization board, chapter 43.160 RCW;

(ix) Other state financial assistance to water quality-related projects and activities; and

(x) Water quality financial assistance from federal programs administered through state programs or provided directly to local governments in the Puget Sound basin.

(c) The council's review ((~~shall~~)) must include but not be limited to:

(i) Determining the level of funding and types of projects and activities funded through the programs that contribute to implementation of the action agenda;

(ii) Evaluating the procedures and criteria in each program for determining which projects and activities to fund, and their relationship to the goals and priorities of the action agenda;

(iii) Assessing methods for ensuring that the goals and priorities of the action agenda are given priority when program funding decisions are made regarding water quality-related projects and activities in the Puget Sound basin and habitat-related projects and activities in the Puget Sound basin;

(iv) Modifying funding criteria so that projects, programs, and activities that are inconsistent with the action agenda are ineligible for funding;

(v) Assessing ways to incorporate a strategic funding approach for the action agenda within the outcome-focused performance measures required by RCW 43.41.270 in administering natural resource-related and environmentally based grant and loan programs.

(5) During the 2009-2011 fiscal biennium, the council's review must result in a ranking of projects affecting the protection and recovery of the Puget Sound basin that are proposed in the governor's capital budget submitted under RCW 43.88.060. The ranking ((~~shall~~)) must include recommendations for reallocation of total requested funds for Puget Sound basin projects to achieve the greatest positive outcomes for protection and recovery of Puget Sound and ((~~shall~~)) must be submitted to the appropriate fiscal committees of the legislature no later than February 1, 2011.

(6) During the 2011-2013 fiscal biennium, the council ((~~shall~~)) must by November 1, 2012, produce the state of the Sound report as defined in subsection (3) of this section.

**Sec.**  RCW 70.105D.130 and 2010 1st sp.s. c 37 s 947 are each amended to read as follows:

(1) The cleanup settlement account is created in the state treasury. The account is not intended to replace the ((~~state~~)) model toxics control capital account established under ((~~RCW 70.105D.070~~)) section 203 of this act. All receipts from the sources identified in subsection (2) of this section must be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only as identified in subsection (4) of this section.

(2) The following receipts must be deposited into the cleanup settlement account:

(a) Receipts from settlements or court orders that direct payment to the account and resolve a person's liability or potential liability under this chapter for either or both of the following:

(i) Conducting future remedial action at a specific facility, if it is not feasible to require the person to conduct the remedial action based on the person's financial insolvency, limited ability to pay, or insignificant contribution under RCW 70.105D.040(4)(a);

(ii) Assessing or addressing the injury to natural resources caused by the release of a hazardous substance from a specific facility; and

(b) Receipts from investment of the moneys in the account.

(3) If a settlement or court order does not direct payment of receipts described in subsection (2)(a) of this section into the cleanup settlement account, then the receipts from any payment to the state must be deposited into the ((~~state~~)) model toxics control capital account.

(4) Expenditures from the cleanup settlement account may only be used to conduct remedial actions at the specific facility or to assess or address the injury to natural resources caused by the release of hazardous substances from that facility for which the moneys were deposited in the account. Conducting remedial actions or assessing or addressing injury to natural resources includes direct expenditures and indirect expenditures such as department oversight costs. During the 2009-2011 fiscal biennium, the legislature may transfer excess fund balances in the account into the state efficiency and restructuring account. Transfers of excess fund balances made under this section ((~~shall~~)) may be made only to the extent amounts transferred with required repayments do not impair the ten‑year spending plan administered by the department of ecology for environmental remedial actions dedicated for any designated clean‑up site associated with the Everett smelter and Tacoma smelter, including plumes, or former Asarco mine sites. The cleanup settlement account must be repaid with interest under provisions of the state efficiency and restructuring account.

(5) The department ((~~shall~~)) must track moneys received, interest earned, and moneys expended separately for each facility.

(6) After the department determines that all remedial actions at a specific facility, and all actions assessing or addressing injury to natural resources caused by the release of hazardous substances from that facility, are completed, including payment of all related costs, any moneys remaining for the specific facility must be transferred to the ((~~state~~)) model toxics control capital account established under ((~~RCW 70.105D.070~~)) section 203 of this act.

(7) The department ((~~shall~~)) must provide the office of financial management and the fiscal committees of the legislature with a report by October 31st of each year regarding the activity within the cleanup settlement account during the previous fiscal year.

**Sec.**  RCW 70.105D.140 and 2013 2nd sp.s. c 1 s 3 are each amended to read as follows:

(1) The brownfield redevelopment trust fund account is created in the state treasury. All receipts from the sources identified in subsection (2) of this section must be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only as identified in subsection (4) of this section.

(2) The following receipts must be deposited into the brownfield redevelopment trust fund account:

(a) Moneys appropriated by the legislature to the account for a specific redevelopment opportunity zone established under RCW 70.105D.150 or a specific brownfield renewal authority established under RCW 70.105D.160;

(b) Moneys voluntarily deposited in the account for a specific redevelopment opportunity zone or a specific brownfield renewal authority; and

(c) Receipts from settlements or court orders that direct payment to the account for a specific redevelopment opportunity zone to resolve a person's liability or potential liability under this chapter.

(3) If a settlement or court order does not direct payment of receipts described in subsection (2)(c) of this section into the brownfield redevelopment trust fund account, then the receipts from any payment to the state must be deposited into the ((~~state~~)) model toxics control capital account established under ((~~RCW 70.105D.070~~)) section 203 of this act.

(4) Expenditures from the brownfield redevelopment trust fund account may only be used for the purposes of remediation and cleanup at the specific redevelopment opportunity zone or specific brownfield renewal authority for which the moneys were deposited in the account.

(5) The department ((~~shall~~)) must track moneys received, interest earned, and moneys expended separately for each facility.

(6) The account must retain its interest earnings in accordance with RCW 43.84.092.

(7) The local government designating the redevelopment opportunity zone under RCW 70.105D.150 or the associated brownfield renewal authority created under RCW 70.105D.160 must be the beneficiary of the deposited moneys.

(8) All expenditures must be used to conduct remediation and cleanup consistent with a plan for the remediation and cleanup of the properties or facilities approved by the department under this chapter. All expenditures must meet the eligibility requirements for the use by local governments under the rules for remedial action grants adopted by the department under this chapter, including requirements for the expenditure of nonstate match funding.

(9) Beginning October 31, 2015, the department must provide a biennial report to the office of financial management and the legislature regarding the activity for each specific redevelopment opportunity zone or specific brownfield renewal authority for which specific legislative appropriation was provided in the previous two fiscal years.

(10) After the department determines that all remedial actions within the redevelopment opportunity zone identified in the plan approved under subsection (8) of this section are completed, including payment of all cost reasonably attributable to the remedial actions and cleanup, any remaining moneys must be transferred to the ((~~state~~)) model toxics control capital account established under ((~~RCW 70.105D.070~~)) section 203 of this act.

(11) If the department determines that substantial progress has not been made on the plan approved under subsection (8) of this section for a redevelopment opportunity zone or specific brownfield renewal authority for which moneys were deposited in the account within six years, or that the brownfield renewal authority is no longer a viable entity, then all remaining moneys must be transferred to the ((~~state~~)) model toxics control operating account established under ((~~RCW 70.105D.070~~)) sections 202 of this act.

(12) The department is authorized to adopt rules to implement this section.

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

(1)RCW 70.105D.170 (Environmental legacy stewardship account) and 2013 2nd sp.s. c 28 s 1, 2013 2nd sp.s. c 19 s 7042, 2013 2nd sp.s. c 4 s 991, & 2013 2nd sp.s. c 1 s 10; and

(2)RCW 70.105D.070 (Toxics control accounts) and 2018 c 299 s 911, 2017 3rd sp.s. c 1 s 980, & 2016 sp.s. c 36 s 943.

NEW SECTION. **Sec.**  Any residual balance of funds remaining in the state toxics control account repealed by section 415 of this act on the effective date of this section must be transferred to the model toxics control operating account created in section 202 of this act.

NEW SECTION. **Sec.**  Any residual balance of funds remaining in the local toxics control account repealed by section 415 of this act on the effective date of this section must be transferred to the model toxics control capital account created in section 203 of this act.

NEW SECTION. **Sec.**  Any residual balance of funds remaining in the environmental legacy stewardship account repealed by section 415 of this act on the effective date of this section must be transferred to the model toxics control stormwater account created in section 204 of this act.

NEW SECTION. **Sec.**  This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2019.

**--- END ---**