
SECOND SUBSTITUTE SENATE BILL 5296

State of Washington

63rd Legislature

2013 Regular Session

By Senate Ways & Means (originally sponsored by Senators Ericksen, Baumgartner, Rivers, Bailey, Delvin, and Honeyford)

READ FIRST TIME 04/15/13.

1 AN ACT Relating to the model toxics control act; amending RCW
2 70.105D.020, 70.105D.030, and 70.105.280; reenacting and amending RCW
3 70.105D.070; adding a new section to chapter 70.105D RCW; adding a new
4 section to chapter 70.105 RCW; creating new sections; providing an
5 effective date; and declaring an emergency.

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

7 NEW SECTION. **Sec. 1.** The legislature finds that there are a large
8 number of toxic waste sites that have been identified in the department
9 of ecology's priority list as ready for immediate cleanup. The
10 legislature further finds that addressing the cleanup of these toxic
11 waste sites will provide needed jobs to citizens of Washington state.
12 It is the intent of the legislature to prioritize the spending of
13 revenues under chapter 70.105D RCW, the model toxics control act, on
14 cleaning up the most toxic sites, while also providing jobs in
15 communities around the state.

16 **Sec. 2.** RCW 70.105D.020 and 2007 c 104 s 18 are each amended to
17 read as follows:

1 The definitions in this section apply throughout this chapter
2 unless the context clearly requires otherwise.

3 (1) "Agreed order" means an order issued by the department under
4 this chapter with which the potentially liable person receiving the
5 order agrees to comply. An agreed order may be used to require or
6 approve any cleanup or other remedial actions but it is not a
7 settlement under RCW 70.105D.040(4) and shall not contain a covenant
8 not to sue, or provide protection from claims for contribution, or
9 provide eligibility for public funding of remedial actions under RCW
10 70.105D.070(~~((2)(d)(xi))~~) (2)(b)(iii) and (3)(b)(iii).

11 (2) "Department" means the department of ecology.

12 (3) "Director" means the director of ecology or the director's
13 designee.

14 (4) "Environmental covenant" has the same meaning as defined in RCW
15 64.70.020.

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

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

27 (7)(a) "Fiduciary" means a person acting for the benefit of another
28 party as a bona fide trustee; executor; administrator; custodian;
29 guardian of estates or guardian ad litem; receiver; conservator;
30 committee of estates of incapacitated persons; trustee in bankruptcy;
31 trustee, under an indenture agreement, trust agreement, lease, or
32 similar financing agreement, for debt securities, certificates of
33 interest or certificates of participation in debt securities, or other
34 forms of indebtedness as to which the trustee is not, in the capacity
35 of trustee, the lender. Except as provided in subsection (17)(b)(iii)
36 of this section, the liability of a fiduciary under this chapter shall
37 not exceed the assets held in the fiduciary capacity.

38 (b) "Fiduciary" does not mean:

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

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

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

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

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

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

25 (8) "Fiduciary capacity" means the capacity of a person holding
26 title to a facility, or otherwise having control of an interest in the
27 facility pursuant to the exercise of the responsibilities of the person
28 as a fiduciary.

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

38 (10) "Hazardous substance" means:

1 (a) Any dangerous or extremely hazardous waste as defined in RCW
2 70.105.010 (~~((+5) and (+6))~~) (1) and (7), or any dangerous or extremely
3 dangerous waste designated by rule pursuant to chapter 70.105 RCW;

4 (b) Any hazardous substance as defined in RCW 70.105.010(~~((+14))~~)
5 (10) or any hazardous substance as defined by rule pursuant to chapter
6 70.105 RCW;

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

10 (d) Petroleum or petroleum products; and

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

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

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

33 (12) "Independent remedial actions" means remedial actions
34 conducted without department oversight or approval, and not under an
35 order, agreed order, or consent decree.

36 (13) "Indicia of ownership" means evidence of a security interest,
37 evidence of an interest in a security interest, or evidence of an
38 interest in a facility securing a loan or other obligation, including

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

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

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

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

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

26 (16) "Operating a facility primarily to protect a security
27 interest" occurs when all of the following are met: (a) Operating the
28 facility where the borrower has defaulted on the loan or otherwise
29 breached the security agreement; (b) operating the facility to preserve
30 the value of the facility as an ongoing business; (c) the operation is
31 being done in anticipation of a sale, transfer, or assignment of the
32 facility; and (d) the operation is being done primarily to protect a
33 security interest. Operating a facility for longer than one year prior
34 to foreclosure or its equivalents shall be presumed to be operating the
35 facility for other than to protect a security interest.

36 (17) "Owner or operator" means:

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

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

4 The term does not include:

5 (i) An agency of the state or unit of local government which
6 acquired ownership or control through a drug forfeiture action under
7 RCW 69.50.505, or involuntarily through bankruptcy, tax delinquency,
8 abandonment, or other circumstances in which the government
9 involuntarily acquires title. This exclusion does not apply to an
10 agency of the state or unit of local government which has caused or
11 contributed to the release or threatened release of a hazardous
12 substance from the facility;

13 (ii) A person who, without participating in the management of a
14 facility, holds indicia of ownership primarily to protect the person's
15 security interest in the facility. Holders after foreclosure and its
16 equivalent and holders who engage in any of the activities identified
17 in subsection (18)(e) through (g) of this section shall not lose this
18 exemption provided the holder complies with all of the following:

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

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

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

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

29 (E) Any remedial actions conducted by the holder are in compliance
30 with any preexisting requirements identified by the department, or, if
31 the department has not identified such requirements for the facility,
32 the remedial actions are conducted consistent with the rules adopted
33 under this chapter; and

34 (F) The holder does not exacerbate an existing release. The
35 exemption in this subsection (17)(b)(ii) does not apply to holders who
36 cause or contribute to a new release or threatened release or who are
37 otherwise liable under RCW 70.105D.040(1) (b), (c), (d), and (e);
38 provided, however, that a holder shall not lose this exemption if it

1 establishes that any such new release has been remediated according to
2 the requirements of this chapter and that any hazardous substances
3 remaining at the facility after remediation of the new release are
4 divisible from such new release;

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

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

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

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

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

27 (E) Any remedial actions conducted by the fiduciary are in
28 compliance with any preexisting requirements identified by the
29 department, or, if the department has not identified such requirements
30 for the facility, the remedial actions are conducted consistent with
31 the rules adopted under this chapter; and

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

33 The exemption in this subsection (17)(b)(iii) does not apply to
34 fiduciaries who cause or contribute to a new release or threatened
35 release or who are otherwise liable under RCW 70.105D.040(1) (b), (c),
36 (d), and (e); provided however, that a fiduciary shall not lose this
37 exemption if it establishes that any such new release has been
38 remediated according to the requirements of this chapter and that any

1 hazardous substances remaining at the facility after remediation of the
2 new release are divisible from such new release. The exemption in this
3 subsection (17)(b)(iii) also does not apply where the fiduciary's
4 powers to comply with this subsection (17)(b)(iii) are limited by a
5 governing instrument created with the objective purpose of avoiding
6 liability under this chapter or of avoiding compliance with this
7 chapter; or

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

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

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

19 (C) The person does not engage in activities that damage or
20 interfere with the operation of remedial actions installed on the
21 person's property or engage in activities that result in exposure of
22 humans or the environment to the contaminated groundwater that has
23 migrated onto the property;

24 (D) If requested, the person allows the department, potentially
25 liable persons who are subject to an order, agreed order, or consent
26 decree, and the authorized employees, agents, or contractors of each,
27 access to the property to conduct remedial actions required by the
28 department. The person may attempt to negotiate an access agreement
29 before allowing access; and

30 (E) Legal withdrawal of groundwater does not disqualify a person
31 from the exemption in this subsection (17)(b)(iv).

32 (18) "Participation in management" means exercising decision-making
33 control over the borrower's operation of the facility, environmental
34 compliance, or assuming or manifesting responsibility for the overall
35 management of the enterprise encompassing the day-to-day decision
36 making of the enterprise.

37 The term does not include any of the following: (a) A holder with
38 the mere capacity or ability to influence, or the unexercised right to

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

23 (19) "Person" means an individual, firm, corporation, association,
24 partnership, consortium, joint venture, commercial entity, state
25 government agency, unit of local government, federal government agency,
26 or Indian tribe.

27 (20) "Policing activities" means actions the holder takes to ensure
28 that the borrower complies with the terms of the loan or security
29 interest or actions the holder takes or requires the borrower to take
30 to maintain the value of the security. Policing activities include:
31 Requiring the borrower to conduct remedial actions at the facility
32 during the term of the security interest; requiring the borrower to
33 comply or come into compliance with applicable federal, state, and
34 local environmental and other laws, regulations, and permits during the
35 term of the security interest; securing or exercising authority to
36 monitor or inspect the facility including on-site inspections, or to
37 monitor or inspect the borrower's business or financial condition
38 during the term of the security interest; or taking other actions

1 necessary to adequately police the loan or security interest such as
2 requiring a borrower to comply with any warranties, covenants,
3 conditions, representations, or promises from the borrower.

4 (21) "Potentially liable person" means any person whom the
5 department finds, based on credible evidence, to be liable under RCW
6 70.105D.040. The department shall give notice to any such person and
7 allow an opportunity for comment before making the finding, unless an
8 emergency requires otherwise.

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

23 (23) "Primarily to protect a security interest" means the indicia
24 of ownership is held primarily for the purpose of securing payment or
25 performance of an obligation. The term does not include indicia of
26 ownership held primarily for investment purposes nor indicia of
27 ownership held primarily for purposes other than as protection for a
28 security interest. A holder may have other, secondary reasons, for
29 maintaining indicia of ownership, but the primary reason must be for
30 protection of a security interest. Holding indicia of ownership after
31 foreclosure or its equivalents for longer than five years shall be
32 considered to be holding the indicia of ownership for purposes other
33 than primarily to protect a security interest. For facilities that
34 have been acquired through foreclosure or its equivalents prior to July
35 23, 1995, this five-year period shall begin as of July 23, 1995.

36 (24) "Public notice" means, at a minimum, adequate notice mailed to
37 all persons who have made timely request of the department and to
38 persons residing in the potentially affected vicinity of the proposed

1 action; mailed to appropriate news media; published in the newspaper of
2 largest circulation in the city or county of the proposed action; and
3 opportunity for interested persons to comment.

4 (25) "Release" means any intentional or unintentional entry of any
5 hazardous substance into the environment, including but not limited to
6 the abandonment or disposal of containers of hazardous substances.

7 (26) "Remedy" or "remedial action" means any action or expenditure
8 consistent with the purposes of this chapter to identify, eliminate, or
9 minimize any threat or potential threat posed by hazardous substances
10 to human health or the environment including any investigative and
11 monitoring activities with respect to any release or threatened release
12 of a hazardous substance and any health assessments or health effects
13 studies conducted in order to determine the risk or potential risk to
14 human health.

15 (27) "Security interest" means an interest in a facility created or
16 established for the purpose of securing a loan or other obligation.
17 Security interests include deeds of trusts, sellers interest in a real
18 estate contract, liens, legal, or equitable title to a facility
19 acquired incident to foreclosure and its equivalents, and title
20 pursuant to lease financing transactions. Security interests may also
21 arise from transactions such as sale and leasebacks, conditional sales,
22 installment sales, trust receipt transactions, certain assignments,
23 factoring agreements, accounts receivable financing arrangements,
24 easements, and consignments, if the transaction creates or establishes
25 an interest in a facility for the purpose of securing a loan or other
26 obligation.

27 (28) "Workout activities" means those actions by which a holder, at
28 any time prior to foreclosure and its equivalents, seeks to prevent,
29 cure, or mitigate a default by the borrower or obligor; or to preserve,
30 or prevent the diminution of, the value of the security. Workout
31 activities include: Restructuring or renegotiating the terms of the
32 security interest; requiring payment of additional rent or interest;
33 exercising forbearance; requiring or exercising rights pursuant to an
34 assignment of accounts or other amounts owed to an obligor; requiring
35 or exercising rights pursuant to an escrow agreement pertaining to
36 amounts owed to an obligor; providing specific or general financial or
37 other advice, suggestions, counseling, or guidance; and exercising any

1 right or remedy the holder is entitled to by law or under any
2 warranties, covenants, conditions, representations, or promises from
3 the borrower.

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

13 (30) "Model remedy" or "model remedial action" means a set of
14 technologies, procedures, and monitoring protocols identified by the
15 department for use in routine types of clean-up projects at facilities
16 that have common features and lower risks to human health and the
17 environment.

18 **Sec. 3.** RCW 70.105D.030 and 2009 c 560 s 10 are each amended to
19 read as follows:

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

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

34 (b) Conduct, provide for conducting, or require potentially liable
35 persons to conduct remedial actions (including investigations under (a)
36 of this subsection) to remedy releases or threatened releases of
37 hazardous substances. In carrying out such powers, the department's

1 authorized employees, agents, or contractors may enter upon property.
2 The department shall give reasonable notice before entering property
3 unless an emergency prevents such notice. In conducting, providing
4 for, or requiring remedial action, the department shall give preference
5 to permanent solutions to the maximum extent practicable and shall
6 provide for or require adequate monitoring to ensure the effectiveness
7 of the remedial action;

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

11 (d) Carry out all state programs authorized under the federal
12 cleanup law and the federal resource, conservation, and recovery act,
13 42 U.S.C. Sec. 6901 et seq., as amended;

14 (e) Classify substances as hazardous substances for purposes of RCW
15 70.105D.020 and classify substances and products as hazardous
16 substances for purposes of RCW 82.21.020(1);

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

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

31 (h) Require holders to conduct remedial actions necessary to abate
32 an imminent or substantial endangerment pursuant to RCW
33 70.105D.020(17)(b)(ii)(C);

34 (i) Provide informal advice and assistance to persons regarding the
35 administrative and technical requirements of this chapter. This may
36 include site-specific advice to persons who are conducting or otherwise
37 interested in independent remedial actions. Any such advice or
38 assistance shall be advisory only, and shall not be binding on the

1 department. As a part of providing this advice and assistance for
2 independent remedial actions, the department may prepare written
3 opinions regarding whether the independent remedial actions or
4 proposals for those actions meet the substantive requirements of this
5 chapter or whether the department believes further remedial action is
6 necessary at the facility. Nothing in this chapter may be construed to
7 preclude the department from issuing a written opinion on whether
8 further remedial action is necessary at any portion of the real
9 property located within a facility, even if further remedial action is
10 still necessary elsewhere at the same facility. Such a written opinion
11 on a portion of a facility must also provide an opinion on the status
12 of the facility as a whole. The department may collect, from persons
13 requesting advice and assistance, the costs incurred by the department
14 in providing such advice and assistance; however, the department shall,
15 where appropriate, waive collection of costs in order to provide an
16 appropriate level of technical assistance in support of public
17 participation. The state, the department, and officers and employees
18 of the state are immune from all liability, and no cause of action of
19 any nature may arise from any act or omission in providing, or failing
20 to provide, informal advice and assistance; ((and))

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

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

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

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

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

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

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

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

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

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

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

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

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

35 (e) Publish and periodically update minimum clean-up standards for
36 remedial actions at least as stringent as the clean-up standards under
37 section 121 of the federal cleanup law, 42 U.S.C. Sec. 9621, and at

1 least as stringent as all applicable state and federal laws, including
2 health-based standards under state and federal law; and

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

14 (3) To achieve and protect the state's long-term ecological health,
15 the department shall (~~(prioritize sufficient funding)~~) plan to clean up
16 hazardous waste sites and prevent the creation of future hazards due to
17 improper disposal of toxic wastes(~~(, and create financing tools to~~
18 ~~clean up large scale hazardous waste sites requiring multiyear~~
19 ~~commitments)~~) at a pace that matches the estimated cash resources in
20 the state and local toxics control accounts and the environmental
21 legacy stewardship account created in section 5 of this act. Estimated
22 cash resources must consider the annual cash flow requirements of major
23 projects that receive appropriations expected to cross multiple
24 biennia. To effectively monitor toxic accounts expenditures, the
25 department shall develop a comprehensive ten-year financing report that
26 identifies long-term remedial action project costs, tracks expenses,
27 and projects future needs.

28 (4) By November 1, 2016, the department must submit to the governor
29 and the appropriate legislative committees a report on the status of
30 developing model remedies and their use under this chapter. The report
31 must include: The number and types of model remedies identified by the
32 department under subsection (1)(j) of this section; the number and
33 types of model remedy proposals prepared by qualified private sector
34 engineers, consultants, or contractors that were accepted or rejected
35 under subsection (1)(j) of this section and the reasons for rejection;
36 and the success of model remedies in accelerating the cleanup as
37 measured by the number of jobs created by the cleanup, where the

1 information is available to the department, and the number and types of
2 hazardous waste sites successfully remediated using model remedies.

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

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

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

13 (c) Identify the projected remedial action needs for orphaned,
14 abandoned, and other clean-up sites that are eligible for funding from
15 the state toxics control account;

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

31 (6) By December 1st of each odd-numbered year, the department must
32 provide the legislature and the public ((each year with an accounting))
33 a report of the department's activities supported by appropriations
34 from the state and local toxics control accounts ~~((, including a list of~~
35 ~~known hazardous waste sites and their hazard rankings, actions taken~~
36 ~~and planned at each site, how the department is meeting its waste~~
37 ~~management priorities under RCW 70.105.150, and all funds expended~~
38 ~~under this chapter)) and the environmental legacy stewardship account.~~

1 The report must be prepared and displayed in a manner that allows the
2 legislature and the public to easily determine the statewide and local
3 progress made in cleaning up hazardous waste sites under this chapter.

4 The report must include, at a minimum:

5 (a) The date the site was placed on the hazardous waste sites list;

6 (b) The site's current hazard ranking;

7 (c) A short description, including location, of the site; and

8 (d) For sites where there are state contracts, grants, loans, or
9 direct investments by the state, the actual or estimated start and end
10 dates and the actual or estimated expenditures of funds authorized
11 under this chapter for the following project phases:

12 (i) Emergency or interim actions, if needed;

13 (ii) Remedial investigation;

14 (iii) Feasibility study and selection of a remedy;

15 (iv) Engineering design and construction of the selected remedy;

16 (v) Operation and maintenance or monitoring of the constructed
17 remedy; and

18 (vi) Final completion date.

19 ~~((+5))~~ (7) The department shall establish a program to identify
20 potential hazardous waste sites and to encourage persons to provide
21 information about hazardous waste sites.

22 ~~((+6))~~ (8) For all facilities where an environmental covenant has
23 been required under subsection (1)(f) of this section, including all
24 facilities where the department has required an environmental covenant
25 under an order, agreed order, or consent decree, or as a condition of
26 a written opinion issued under the authority of subsection (1)(i) of
27 this section, the department shall periodically review the
28 environmental covenant for effectiveness. Except as otherwise provided
29 in (c) of this subsection, the department shall conduct a review at
30 least once every five years after an environmental covenant is
31 recorded.

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

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

36 (ii) A physical inspection of the real property subject to the
37 environmental covenant to determine compliance with the environmental

1 covenant, including whether any development or redevelopment of the
2 real property has violated the terms of the environmental covenant; and

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

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

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

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

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

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

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

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

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

31 **Sec. 4.** RCW 70.105D.070 and 2012 2nd sp.s. c 7 s 920 and 2012 2nd
32 sp.s. c 2 s 6005 are each reenacted and amended to read as follows:

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

35 ~~((2) The following moneys shall be deposited into the state toxics~~
36 ~~control account: (a) Those revenues which are raised by the tax~~
37 ~~imposed under RCW 82.21.030 and which are attributable to that portion~~

1 of the rate equal to thirty three one hundredths of one percent; (b)
2 the costs of remedial actions recovered under this chapter or chapter
3 70.105A RCW; (c) penalties collected or recovered under this chapter;
4 and (d) any other money appropriated or transferred to the account by
5 the legislature. Moneys in the account may be used only to carry out
6 the purposes of this chapter, including but not limited to the
7 following activities:

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

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

14 (iii) The hazardous waste cleanup program required under this
15 chapter;

16 (iv) State matching funds required under the federal cleanup law;

17 (v) Financial assistance for local programs in accordance with
18 chapters 70.95, 70.95C, 70.95I, and 70.105 RCW;

19 (vi) State government programs for the safe reduction, recycling,
20 or disposal of hazardous wastes from households, small businesses, and
21 agriculture;

22 (vii) Hazardous materials emergency response training;

23 (viii) Water and environmental health protection and monitoring
24 programs;

25 (ix) Programs authorized under chapter 70.146 RCW;

26 (x) A public participation program, including regional citizen
27 advisory committees;

28 (xi) Public funding to assist potentially liable persons to pay for
29 the costs of remedial action in compliance with cleanup standards under
30 RCW 70.105D.030(2)(e) but only when the amount and terms of such
31 funding are established under a settlement agreement under RCW
32 70.105D.040(4) and when the director has found that the funding will
33 achieve both (A) a substantially more expeditious or enhanced cleanup
34 than would otherwise occur, and (B) the prevention or mitigation of
35 unfair economic hardship;

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

1 ~~(xiii) During the 2009-2011 and 2011-2013 fiscal biennia, shoreline~~
2 ~~update technical assistance;~~

3 ~~(xiv) During the 2009-2011 fiscal biennium, multijurisdictional~~
4 ~~permitting teams;~~

5 ~~(xv) During the 2011-2013 fiscal biennium, actions for reducing~~
6 ~~public exposure to toxic air pollution, and actions taken through the~~
7 ~~family forest fish passage program to correct barriers to fish passage~~
8 ~~on privately owned small forest lands; and~~

9 ~~(xvi) During the 2011-2013 fiscal biennium, the department of~~
10 ~~ecology's water quality, shorelands and environmental assessment,~~
11 ~~hazardous waste, waste to resources, nuclear waste, and air quality~~
12 ~~programs.~~

13 ~~(3) The following moneys shall be deposited into the local toxics~~
14 ~~control account: Those revenues which are raised by the tax imposed~~
15 ~~under RCW 82.21.030 and which are attributable to that portion of the~~
16 ~~rate equal to thirty-seven one-hundredths of one percent.~~

17 ~~(a) Moneys deposited in the local toxics control account shall be~~
18 ~~used by the department for grants or loans to local governments for the~~
19 ~~following purposes in descending order of priority:~~

20 ~~(i) Remedial actions;~~

21 ~~(ii) Hazardous waste plans and programs under chapter 70.105 RCW;~~

22 ~~(iii) Solid waste plans and programs under chapters 70.95, 70.95C,~~
23 ~~70.95I, and 70.105 RCW;~~

24 ~~(iv) Funds for a program to assist in the assessment and cleanup of~~
25 ~~sites of methamphetamine production, but not to be used for the initial~~
26 ~~containment of such sites, consistent with the responsibilities and~~
27 ~~intent of RCW 69.50.511; and~~

28 ~~(v) Cleanup and disposal of hazardous substances from abandoned or~~
29 ~~derelict vessels, defined for the purposes of this section as vessels~~
30 ~~that have little or no value and either have no identified owner or~~
31 ~~have an identified owner lacking financial resources to clean up and~~
32 ~~dispose of the vessel, that pose a threat to human health or the~~
33 ~~environment.~~

34 ~~(b) Funds for plans and programs shall be allocated consistent with~~
35 ~~the priorities and matching requirements established in chapters~~
36 ~~70.105, 70.95C, 70.95I, and 70.95 RCW, except that any applicant that~~
37 ~~is a Puget Sound partner, as defined in RCW 90.71.010, along with any~~
38 ~~project that is referenced in the action agenda developed by the Puget~~

1 ~~Sound partnership under RCW 90.71.310, shall, except as conditioned by~~
2 ~~RCW 70.105D.120, receive priority for any available funding for any~~
3 ~~grant or funding programs or sources that use a competitive bidding~~
4 ~~process. During the 2007-2009 fiscal biennium, moneys in the account~~
5 ~~may also be used for grants to local governments to retrofit public~~
6 ~~sector diesel equipment and for storm water planning and implementation~~
7 ~~activities.~~

8 ~~(c) To expedite cleanups throughout the state, the department shall~~
9 ~~partner with local communities and liable parties for cleanups. The~~
10 ~~department is authorized to use the following additional strategies in~~
11 ~~order to ensure a healthful environment for future generations:~~

12 ~~(i) The director may alter grant-matching requirements to create~~
13 ~~incentives for local governments to expedite cleanups when one of the~~
14 ~~following conditions exists:~~

15 ~~(A) Funding would prevent or mitigate unfair economic hardship~~
16 ~~imposed by the clean-up liability;~~

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

20 ~~(C) Funding would create an opportunity for acquisition and~~
21 ~~redevelopment of vacant, orphaned, or abandoned property under RCW~~
22 ~~70.105D.040(5) that would not otherwise occur;~~

23 ~~(ii) The use of outside contracts to conduct necessary studies;~~

24 ~~(iii) The purchase of remedial action cost cap insurance, when~~
25 ~~necessary to expedite multiparty clean-up efforts.~~

26 ~~(d) To facilitate and expedite cleanups using funds from the local~~
27 ~~toxics control account, during the 2009-2011 fiscal biennium the~~
28 ~~director may establish grant-funded accounts to hold and disperse local~~
29 ~~toxics control account funds and funds from local governments to be~~
30 ~~used for remedial actions.~~

31 ~~(4) Except for unanticipated receipts under RCW 43.79.260 through~~
32 ~~43.79.282, moneys in the state and local toxics control accounts may be~~
33 ~~spent only after appropriation by statute.~~

34 ~~(5) Except during the 2011-2013 fiscal biennium, one percent of the~~
35 ~~moneys deposited into the state and local toxics control accounts shall~~
36 ~~be allocated only for public participation grants to persons who may be~~
37 ~~adversely affected by a release or threatened release of a hazardous~~
38 ~~substance and to not-for-profit public interest organizations. The~~

1 primary purpose of these grants is to facilitate the participation by
2 persons and organizations in the investigation and remedying of
3 releases or threatened releases of hazardous substances and to
4 implement the state's solid and hazardous waste management priorities.
5 No grant may exceed sixty thousand dollars. Grants may be renewed
6 annually. Moneys appropriated for public participation from either
7 account which are not expended at the close of any biennium shall
8 revert to the state toxics control account.

9 (6) No moneys deposited into either the state or local toxics
10 control account may be used for solid waste incinerator feasibility
11 studies, construction, maintenance, or operation, or, after January 1,
12 2010, for projects designed to address the restoration of Puget Sound,
13 funded in a competitive grant process, that are in conflict with the
14 action agenda developed by the Puget Sound partnership under RCW
15 90.71.310.

16 (7) The department shall adopt rules for grant or loan issuance and
17 performance.

18 (8) During the 2011-2013 fiscal biennium, the legislature may
19 transfer from the local toxics control account to the state toxics
20 control account such amounts as reflect excess fund balance in the
21 account.

22 (9) During the 2011-2013 fiscal biennium, the local toxics control
23 account may also be used for local government shoreline update grants
24 and actions for reducing public exposure to toxic air pollution;
25 funding to local governments for flood levee improvements; and grants
26 to local governments for brownfield redevelopment.)) (a) Moneys
27 collected under RCW 82.21.030 must be deposited as follows: Sixty
28 percent to the state toxics control account under subsection (2) of
29 this section and forty percent to the local toxics control account
30 under subsection (3) of this section. When the cumulative amount of
31 deposits made to the state and local toxics control accounts under this
32 section reaches the limit during a fiscal year as established in (b) of
33 this subsection, the remainder of the moneys collected under RCW
34 82.21.030 during that fiscal year must be deposited into the
35 environmental legacy stewardship account created in section 5 of this
36 act.

37 (b) The limit on distributions of moneys collected under RCW
38 82.21.030 to the state and local toxics control accounts for the fiscal

1 year beginning July 1, 2013, is one hundred eight million dollars.
2 This limit for each succeeding fiscal year must be increased by a
3 percentage rate that equals the fiscal growth factor as defined in RCW
4 43.135.025.

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

11 (2) Moneys in the state toxics control account must be used only to
12 carry out the purposes of this chapter and must be expended for the
13 following:

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

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

20 (iii) The hazardous waste clean-up program required under this
21 chapter;

22 (iv) State matching funds required under federal cleanup law;

23 (v) Financial assistance for local programs in accordance with
24 chapters 70.95, 70.95C, 70.95I, and 70.105 RCW;

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

28 (vii) Oil and hazardous materials spill prevention, preparedness,
29 training, and response activities;

30 (viii) Water and environmental health protection and monitoring
31 programs;

32 (ix) Programs authorized under chapter 70.146 RCW;

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

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

1 (xii) Storm water pollution control projects and activities that
2 protect or preserve existing remedial actions or prevent hazardous
3 clean-up sites;

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

7 (xiv) Air quality programs and actions for reducing public exposure
8 to toxic air pollution.

9 (b) Priority for use of the funds is given to:

10 (i) Cleanup of high priority sites on the department's hazardous
11 sites list that have a draft or preliminary remedial investigation or
12 feasibility study on file with the department, a completed remedial
13 investigation or feasibility study, or a finalized clean-up action
14 plan, and are prepared to begin the clean-up action;

15 (ii) Cleanup of brownfield properties to make land available for
16 economic and job development opportunities that would not otherwise
17 occur; and

18 (iii) Public funding to assist potentially liable persons to pay
19 for the costs of remedial action in compliance with clean-up standards
20 under RCW 70.105D.030(2)(e) when the potentially liable persons have a
21 draft or preliminary remedial investigation or feasibility study on
22 file with the department, a completed remedial investigation or
23 feasibility study, or a finalized clean-up action plan, and are
24 prepared to begin the clean-up action, in compliance with clean-up
25 standards under RCW 70.105D.030(2)(e) but only when the amount and
26 terms of such funding are established under a settlement agreement
27 under RCW 70.105D.040(4) and when the director has found that the
28 funding will achieve both: (A) A substantially more expeditious or
29 enhanced cleanup than would otherwise occur; and (B) the prevention or
30 mitigation of unfair economic hardship.

31 (3)(a) The department shall use moneys deposited in the local
32 toxics control account for grants to local governments for the
33 following purposes:

34 (i) Remedial actions;

35 (ii) Storm water pollution source projects that: (A) Work in
36 conjunction with a remedial action; (B) protect completed remedial
37 actions against recontamination; or (C) prevent hazardous clean-up
38 sites;

1 (iii) Hazardous waste plans and programs under chapter 70.105 RCW;
2 and

3 (iv) Solid waste plans and programs under chapters 70.95, 70.95C,
4 70.95I, and 70.105 RCW.

5 (b) To expedite clean-up projects throughout the state, funding is
6 prioritized for:

7 (i) High priority sites identified on the department's hazardous
8 site list, that have a draft or preliminary remedial investigation or
9 feasibility study on file with the department, a completed remedial
10 investigation or feasibility study, or a finalized clean-up action
11 plan, and are prepared to begin the clean-up action;

12 (ii) Brownfield properties that are available for economic and job
13 development opportunities that would not otherwise occur; and

14 (iii) Public funding to assist potentially liable persons to pay
15 for the costs of remedial action in compliance with clean-up standards
16 under RCW 70.105D.030(2)(e) when the potentially liable persons have a
17 draft or preliminary remedial investigation or feasibility study on
18 file with the department, a completed remedial investigation or
19 feasibility study, or a finalized clean-up action plan, and are
20 prepared to begin the clean-up action in compliance with clean-up
21 standards under RCW 70.105D.030(2)(e) but only when:

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

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

28 (c) To expedite cleanups throughout the state, the department shall
29 partner with local communities and liable parties for cleanups. The
30 department is authorized to use the following additional strategies in
31 order to ensure a healthful environment for future generations:

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

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

37 (B) Funding would create new substantial economic development,

1 public recreational opportunities, or habitat restoration opportunities
2 that would not otherwise occur; or

3 (C) Funding would create an opportunity for acquisition and
4 redevelopment of vacant, orphaned, or abandoned property under RCW
5 70.105D.040(5) that would not otherwise occur;

6 (ii) The use of outside contracts to conduct necessary studies;

7 (iii) The purchase of remedial action cost-cap insurance, when
8 necessary to expedite multiparty clean-up efforts.

9 (4) Funds for plans and programs must be allocated consistent with
10 matching requirements established in chapters 70.95, 70.95C, 70.95I,
11 and 70.105 RCW.

12 (5) Except for unanticipated receipts under RCW 43.79.260 through
13 43.79.282, moneys in the state and local toxics control accounts may be
14 spent only after appropriation by statute.

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

27 (7) Except during the 2011-2013 fiscal biennium, one percent of the
28 moneys deposited into the state and local toxics control accounts must
29 be deposited into the environmental legacy stewardship account created
30 in section 5 of this act for public participation grants.

31 (8) The department shall adopt rules for grant issuance and
32 performance.

33 NEW SECTION. Sec. 5. A new section is added to chapter 70.105D
34 RCW to read as follows:

35 (1) The environmental legacy stewardship account is created in the
36 state treasury. Beginning July 1, 2013, and every fiscal year
37 thereafter, the annual amount received from the tax imposed by RCW

1 82.21.030 that exceeds one hundred eight million dollars, plus the
2 fiscal growth factor under chapter 43.135 RCW, must be deposited into
3 the environmental legacy stewardship account. The state treasurer may
4 make periodic deposits into the environmental legacy stewardship
5 account based on forecasted revenue. Moneys in the account may only be
6 spent after appropriation.

7 (2) Moneys in the environmental legacy stewardship account may be
8 spent only on:

9 (a) Performance and outcome based projects, activities, programs,
10 and services that support the clean-up, monitoring, and prevention of
11 releases of hazardous substances, water protection and monitoring,
12 water pollution prevention, monitoring and cleanup, and environmental
13 health protection and monitoring;

14 (b) Clean-up projects using model remedies, technologies,
15 procedures, contracts, and project management and oversight that result
16 in significant reductions in the time to complete clean-up projects
17 compared to baseline averages for comparable clean-up projects;

18 (c) Storm water projects;

19 (d) Cleanup and disposal of hazardous substances from abandoned or
20 derelict vessels, defined for the purposes of this section as vessels
21 that have little or no value and either have no identified owner or
22 have an identified owner lacking financial resources to clean up and
23 dispose of the vessel, that pose a threat to human health or the
24 environment;

25 (e) Public participation grants. The money allocated for public
26 participation grants under RCW 70.105D.070(1)(a) may be provided to
27 persons who may be adversely affected by a release or threatened
28 release of a hazardous substance and to not-for-profit public interest
29 organizations. The primary purpose of these grants is to facilitate
30 the participation by persons and organizations in the investigation and
31 remedying of releases or threatened releases of hazardous substances
32 and to implement the state's solid and hazardous waste management
33 priorities. Each grant must be specifically authorized by the
34 legislature. No grant may exceed sixty thousand dollars. Moneys
35 appropriated for public participation that are not expended at the
36 close of any biennium revert to the environmental legacy stewardship
37 account;

1 (f) Appropriations to the state and local toxics control accounts
2 created in RCW 70.105D.070 if the legislature determines that
3 priorities for spending exceed available funds in those accounts; and
4 (g) Remedial action grants.

5 NEW SECTION. **Sec. 6.** A new section is added to chapter 70.105 RCW
6 to read as follows:

7 The radioactive mixed waste account is created within the state
8 treasury. All receipts received from facilities assessed service
9 charges established under RCW 70.105.280 must be deposited into the
10 account. Moneys in the account may be spent only after appropriation.
11 Expenditures from the account may only be used for carrying out the
12 department's powers and duties under this chapter related to the
13 regulation of facilities that treat, store, or dispose of mixed waste
14 or mixed waste facilities that are undergoing closure.

15 NEW SECTION. **Sec. 7.** (1) For the biennium ending June 30, 2015,
16 the state treasurer must transfer forty-five million dollars from the
17 state toxics control account to the environmental legacy stewardship
18 account created in section 5 of this act.

19 (2) For the biennium ending June 30, 2015, the state treasurer must
20 transfer thirty-five million dollars from the local toxics control
21 account to the environmental legacy stewardship account.

22 NEW SECTION. **Sec. 8.** By October 1, 2013, the state treasurer must
23 transfer the fund balance of the mixed waste fees within the state
24 toxics control account to the radioactive mixed waste account created
25 in section 6 of this act. The department of ecology shall report the
26 fund balance amount to the state treasurer for transfer into the
27 radioactive mixed waste account.

28 **Sec. 9.** RCW 70.105.280 and 1989 c 376 s 2 are each amended to read
29 as follows:

30 (1) The department may assess reasonable service charges against
31 those facilities that store, treat, incinerate, or dispose of dangerous
32 or extremely hazardous waste that contains both a nonradioactive
33 hazardous component and a radioactive component or which are undergoing
34 closure under this chapter in those instances where closure entails the

1 physical characterization of remaining wastes which contain both a
2 nonradioactive hazardous component and a radioactive component or the
3 management of such wastes through treatment or removal, except any
4 commercial low-level radioactive waste facility. Service charges may
5 not exceed the costs to the department in carrying out the duties of
6 this section.

7 (2) Program elements or activities for which service charges may be
8 assessed include:

9 (a) Office, staff, and staff support for the purposes of facility
10 or unit permit development, review, and issuance; and

11 (b) Actions taken to determine and ensure compliance with the
12 state's hazardous waste management act.

13 (3) Moneys collected through the imposition of such service charges
14 shall be deposited in the (~~state toxics control~~) radioactive mixed
15 waste account created in section 6 of this act.

16 (4) The department shall adopt rules necessary to implement this
17 section. Facilities that store, treat, incinerate, or dispose of
18 dangerous or extremely hazardous waste that contains both a
19 nonradioactive hazardous component and a radioactive component shall
20 not be subject to service charges prior to such rule making.
21 Facilities undergoing closure under this chapter in those instances
22 where closure entails the physical characterization of remaining wastes
23 which contain both a nonradioactive hazardous component and a
24 radioactive component or the management of such wastes through
25 treatment or removal shall not be subject to service charges prior to
26 such rule making.

27 NEW SECTION. **Sec. 10.** This act is necessary for the immediate
28 preservation of the public peace, health, or safety, or support of the
29 state government and its existing public institutions, and takes effect
30 July 1, 2013.

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