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**SUBSTITUTE SENATE BILL 5993**

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**State of Washington**

**66th Legislature**

**2019 Regular Session**

**By** Senate Ways & Means (originally sponsored by Senators Frockt, Billig, Lias, and Hunt)

1 AN ACT Relating to reforming the financial structure of the model  
2 toxics control program; amending RCW 82.21.010, 82.21.030,  
3 70.105D.030, 70.105D.050, 70.75A.060, 70.76.100, 70.95M.080,  
4 70.95M.120, 70.240.050, 70.270.050, 70.285.090, 70.280.050,  
5 70.300.040, 90.71.370, 70.105D.130, and 70.105D.140; adding new  
6 sections to chapter 70.105D RCW; creating new sections; repealing RCW  
7 70.105D.170 and 70.105D.070; providing an effective date; providing  
8 an expiration date; and declaring an emergency.

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

10 NEW SECTION. **Sec. 1.** It is the intent of the legislature that  
11 during the 2017-2019 and 2019-2021 fiscal biennia no transfers to the  
12 state general fund, education legacy trust account, or opportunities  
13 pathway account must be made from the state toxics control account,  
14 local toxics control account, environmental legacy stewardship  
15 account, model toxics control operating account, model toxics control  
16 capital account, or model toxics control stormwater account.

17 **Part I**

18 **Sec. 101.** RCW 82.21.010 and 1989 c 2 s 8 are each amended to  
19 read as follows:



1 collected under this subsection (1)(b) on petroleum products must be  
2 deposited as follows:

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

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

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

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

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

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

25 (3) Beginning July 1, 2020, and every July 1st thereafter, the  
26 rate specified in subsection (1)(b) of this section must be adjusted  
27 to reflect the percentage change in the implicit price deflator for  
28 nonresidential structures as published by the United States  
29 department of commerce, bureau of economic analysis for the most  
30 recent twelve-month period ending December 31st of the prior year.

31 NEW SECTION. Sec. 202. A new section is added to chapter  
32 70.105D RCW to read as follows:

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

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

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

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

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

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

10 (e) Financial assistance for local programs and plans, including  
11 local solid waste financial assistance, in accordance with chapters  
12 70.76, 70.95, 70.95C, 70.95I, and 70.105 RCW;

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

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

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

20 (i) Programs authorized under chapter 70.146 RCW;

21 (j) A public participation program;

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

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

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

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

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

34 (3) Except for unanticipated receipts under RCW 43.79.260 through  
35 43.79.282, moneys in model toxics control operating account may be  
36 spent only after appropriation by statute.

37 (4) One percent of the moneys collected under RCW 82.21.030 must  
38 be allocated only for public participation grants to persons who may  
39 be adversely affected by a release or threatened release of a  
40 hazardous substance and to not-for-profit public interest

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

9 (5) The department must adopt rules for grant or loan issuance  
10 and performance.

11 NEW SECTION. **Sec. 203.** A new section is added to chapter  
12 70.105D RCW to read as follows:

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

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

- 19 (a) The costs of remedial actions recovered under this chapter;  
20 (b) Penalties collected or recovered under this chapter; and  
21 (c) Any other money appropriated or transferred to the account by  
22 the legislature.

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

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

33 (a) Remedial actions, including the following generally in  
34 descending order of priority:

35 (i) Extended grant agreements entered into under subsection  
36 (5)(a) of this section;

37 (ii) Grants or loans to local governments for remedial actions,  
38 including planning for adaptive reuse of properties as provided for

1 under subsection (5)(d) of this section. The department must  
2 prioritize funding of remedial actions at:

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

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

10 (iii) Department-conducted remedial actions;

11 (iv) Grants to persons intending to remediate contaminated real  
12 property for development of affordable housing;

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

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

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

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

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

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

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

34 (vii) To expedite multiparty clean-up efforts, purchase of  
35 remedial action cost-cap insurance;

36 (b) Grants, or loans, or contracts to local governments for solid  
37 waste plans and programs under chapters 70.95, 70.95C, 70.95I,  
38 70.95G, 70.95M, and 70.105 RCW. Funds must be allocated consistent  
39 with priorities and matching requirements in the respective chapters;

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

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

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

10 (5) The department may establish and administer a program to  
11 provide grants and loans to local governments for remedial actions,  
12 including planning for adaptive reuse of contaminated properties. The  
13 department may not award a grant or loan for a remedial action unless  
14 the local government has obtained all of the required permits for the  
15 action within one year of the effective date of the enacted budget.  
16 To expedite cleanups throughout the state, the department may use the  
17 following strategies when providing grants to local governments under  
18 this subsection:

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

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

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

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

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

39 (c) Enter into a grant agreement with a local government prior to  
40 it acquiring a property or obtaining necessary access to conduct

1 remedial actions, provided the agreement is conditioned upon the  
2 local government acquiring the property or obtaining the access in  
3 accordance with a schedule specified in the agreement;

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

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

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

21 (i) Funding would prevent or mitigate unfair economic hardship  
22 imposed by the clean-up liability;

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

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

29 (g) When pending grant applications under subsection (4)(d) and  
30 (e) of this section exceed the amount of funds available, designated  
31 redevelopment opportunity zones must receive priority for  
32 distribution of available funds.

33 (6) Except for unanticipated receipts under RCW 43.79.260 through  
34 43.79.282, moneys in model toxics control capital account may be  
35 spent only after appropriation by statute.

36 NEW SECTION. **Sec. 204.** A new section is added to chapter  
37 70.105D RCW to read as follows:

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



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

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

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

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

15 (4) Except for unanticipated receipts under RCW 43.79.260 through  
16 43.79.282, moneys in the model toxics control stormwater account may  
17 be spent only after appropriation by statute.

18 **Part III**

19 NEW SECTION. **Sec. 301.** (1) The office of financial management  
20 and the legislative evaluation and accountability program committee  
21 must identify changes to existing budgeting and reporting systems,  
22 including enterprise, internal, and public-facing systems, that will  
23 improve access to and understanding of relevant model toxics control  
24 act account-related budget information available at the time  
25 governor-recommended and legislative budgets are released. In  
26 carrying out this work, the office of financial management and the  
27 legislative evaluation and accountability program committee must  
28 consult with legislative fiscal staff.

29 (2) The office of financial management and the legislative  
30 evaluation and accountability program committee must identify  
31 proposed improvements and, as appropriate, necessary funding and  
32 legislative changes to the governor and legislature by September 1,  
33 2020. To the extent possible, the office of financial management and  
34 the legislative evaluation and accountability program committee may  
35 implement low and no-cost changes during the 2019-2021 biennium.

36 (3) This section expires June 30, 2021.

37 **Part IV**

1       **Sec. 401.** RCW 70.105D.030 and 2013 2nd sp.s. c 1 s 6 are each  
2 amended to read as follows:

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

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

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

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

33       (d) Carry out all state programs authorized under the federal  
34 cleanup law and the federal resource, conservation, and recovery act,  
35 42 U.S.C. Sec. 6901 et seq., as amended;

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

39       (f) Issue orders or enter into consent decrees or agreed orders  
40 that include, or issue written opinions under (i) of this subsection

1 that may be conditioned upon, environmental covenants where necessary  
2 to protect human health and the environment from a release or  
3 threatened release of a hazardous substance from a facility. Prior to  
4 establishing an environmental covenant under this subsection, the  
5 department (~~shall~~) must consult with and seek comment from a city  
6 or county department with land use planning authority for real  
7 property subject to the environmental covenant;

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

13 (h) Require holders to conduct remedial actions necessary to  
14 abate an imminent or substantial endangerment pursuant to RCW  
15 70.105D.020(22)(b)(ii)(C);

16 (i) Provide informal advice and assistance to persons regarding  
17 the administrative and technical requirements of this chapter. This  
18 may include site-specific advice to persons who are conducting or  
19 otherwise interested in independent remedial actions. Any such advice  
20 or assistance (~~shall be~~) is advisory only, and (~~shall~~) is not  
21 (~~be~~) binding on the department. As a part of providing this advice  
22 and assistance for independent remedial actions, the department may  
23 prepare written opinions regarding whether the independent remedial  
24 actions or proposals for those actions meet the substantive  
25 requirements of this chapter or whether the department believes  
26 further remedial action is necessary at the facility. Nothing in this  
27 chapter may be construed to preclude the department from issuing a  
28 written opinion on whether further remedial action is necessary at  
29 any portion of the real property located within a facility, even if  
30 further remedial action is still necessary elsewhere at the same  
31 facility. Such a written opinion on a portion of a facility must also  
32 provide an opinion on the status of the facility as a whole. The  
33 department may collect, from persons requesting advice and  
34 assistance, the costs incurred by the department in providing such  
35 advice and assistance; however, the department (~~shall~~) must, where  
36 appropriate, waive collection of costs in order to provide an  
37 appropriate level of technical assistance in support of public  
38 participation. The state, the department, and officers and employees  
39 of the state are immune from all liability, and no cause of action of  
40 any nature may arise from any act or omission in providing, or

1 failing to provide, informal advice and assistance. The department  
2 must track the number of requests for reviews of planned or completed  
3 independent remedial actions and establish performance measures to  
4 track how quickly the department is able to respond to those  
5 requests. By November 1, 2015, the department must submit to the  
6 governor and the appropriate legislative fiscal and policy committees  
7 a report on achieving the performance measures and provide  
8 recommendations for improving performance, including staffing needs;

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

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

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

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

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

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

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

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

1 a cleanup that qualifies for and appropriately uses a model remedy;  
2 and

3 (1) Take any other actions necessary to carry out the provisions  
4 of this chapter, including the power to adopt rules under chapter  
5 34.05 RCW.

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

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

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

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

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

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

34 (f) Apply industrial clean-up standards at industrial properties.  
35 Rules adopted under this subsection (~~shall~~) must ensure that  
36 industrial properties cleaned up to industrial standards cannot be  
37 converted to nonindustrial uses without approval from the department.  
38 The department may require that a property cleaned up to industrial  
39 standards is cleaned up to a more stringent applicable standard as a  
40 condition of conversion to a nonindustrial use. Industrial clean-up

1 standards may not be applied to industrial properties where hazardous  
2 substances remaining at the property after remedial action pose a  
3 threat to human health or the environment in adjacent nonindustrial  
4 areas.

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

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

31 ~~(5))~~ (4) Before September 20th of each even-numbered year, the  
32 department (~~shall~~) must:

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

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

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

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

21 (~~(+6)~~) (5) By December 1st of each odd-numbered year, the  
22 department must provide the legislature and the public a report of  
23 the department's activities supported by appropriations from the  
24 (~~state and local toxics control accounts and the environmental~~  
25 ~~legacy stewardship~~) model toxics control operating, capital, and  
26 stormwater accounts. The report must be prepared and displayed in a  
27 manner that allows the legislature and the public to easily determine  
28 the statewide and local progress made in cleaning up hazardous waste  
29 sites under this chapter. The report must include, at a minimum:

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

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

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

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

4 (A) Emergency or interim actions, if needed;

5 (B) Remedial investigation;

6 (C) Feasibility study and selection of a remedy;

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

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

10 (F) The final completion date.

11 (~~(7)~~) (6) The department (~~shall~~) must establish a program to  
12 identify potential hazardous waste sites and to encourage persons to  
13 provide information about hazardous waste sites.

14 (~~(8)~~) (7) For all facilities where an environmental covenant  
15 has been required under subsection (1)(f) of this section, including  
16 all facilities where the department has required an environmental  
17 covenant under an order, agreed order, or consent decree, or as a  
18 condition of a written opinion issued under the authority of  
19 subsection (1)(i) of this section, the department (~~shall~~) must  
20 periodically review the environmental covenant for effectiveness.

21 (~~Except as otherwise provided in (c) of this subsection,~~) The  
22 department (~~shall~~) must conduct a review at least once every five  
23 years after an environmental covenant is recorded.

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

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

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

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

39 (b) If an environmental covenant has been amended or terminated  
40 without proper authority, or if the terms of an environmental



1 covenant have been violated, or if the environmental covenant is no  
2 longer effective in limiting or prohibiting activities that may  
3 interfere with the integrity of the remedial action or that may  
4 result in exposure to or migration of hazardous substances, then the  
5 department (~~shall~~) must take any and all appropriate actions  
6 necessary to ensure compliance with the environmental covenant and  
7 the policies and requirements of this chapter.

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

11 ~~(i) Enter all required information about the environmental  
12 covenant into the registry established under RCW 64.70.120 by June  
13 30, 2008;~~

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

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

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

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

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

23 **Sec. 402.** RCW 70.105D.050 and 2013 2nd sp.s. c 1 s 8 are each  
24 amended to read as follows:

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

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

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

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

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

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

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

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

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

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

30 (7) Any person who owns real property or lender holding a  
31 mortgage on real property that is subject to a lien filed under RCW  
32 70.105D.055 may petition the department to have the lien removed or  
33 the amount of the lien reduced. If, after consideration of the  
34 petition and the information supporting the petition, the department  
35 decides to deny the request, the person may, within ninety days after  
36 receipt of the department's denial, file suit for removal or  
37 reduction of the lien. The person is entitled to removal of a lien  
38 filed under RCW 70.105D.055(2)(a) if they can prove by a  
39 preponderance of the evidence that the person is not a liable party  
40 under RCW 70.105D.040. The person is entitled to a reduction of the

1 amount of the lien if they can prove by a preponderance of the  
2 evidence:

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

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

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

18 **Sec. 403.** RCW 70.75A.060 and 2018 c 286 s 7 are each amended to  
19 read as follows:

20 A manufacturer of class B firefighting foam in violation of RCW  
21 70.75A.020 or 70.75A.040 or a person in violation of RCW 70.75A.010  
22 or 70.75A.030 is subject to a civil penalty not to exceed five  
23 thousand dollars for each violation in the case of a first offense.  
24 Manufacturers, local governments, or persons that are repeat  
25 violators are subject to a civil penalty not to exceed ten thousand  
26 dollars for each repeat offense. Penalties collected under this  
27 section must be deposited in the (~~state~~) model toxics control  
28 operating account created in (~~RCW 70.105D.070~~) section 202 of this  
29 act.

30 **Sec. 404.** RCW 70.76.100 and 2007 c 65 s 11 are each amended to  
31 read as follows:

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

36 (a) Before the effective date of the product prohibition in RCW  
37 70.76.020 or 70.76.030, the department (~~shall~~) must prepare and  
38 distribute information to in-state manufacturers and out-of-state

1 manufacturers, to the maximum extent practicable, to assist them in  
2 identifying products prohibited for manufacture, sale, or  
3 distribution under this chapter.

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

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

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

19 (3) A manufacturer of products containing PBDEs in violation of  
20 this chapter is subject to a civil penalty not to exceed one thousand  
21 dollars for each violation in the case of a first offense.  
22 Manufacturers who are repeat violators are subject to a civil penalty  
23 not to exceed five thousand dollars for each repeat offense.  
24 Penalties collected under this section must be deposited in the  
25 (~~state~~) model toxics control operating account created in (~~RCW~~  
26 ~~70.105D.070~~) section 202 of this act.

27 **Sec. 405.** RCW 70.95M.080 and 2003 c 260 s 9 are each amended to  
28 read as follows:

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

36 **Sec. 406.** RCW 70.95M.120 and 2003 c 260 s 11 are each amended to  
37 read as follows:

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

7 **Sec. 407.** RCW 70.240.050 and 2016 c 176 s 4 are each amended to  
8 read as follows:

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

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

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

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

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

31 **Sec. 408.** RCW 70.270.050 and 2009 c 243 s 5 are each amended to  
32 read as follows:

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

1 (2) Penalties collected under this section must be deposited in  
2 the ((state)) model toxics control operating account created in ((RCW  
3 70.105D.070)) section 202 of this act.

4 **Sec. 409.** RCW 70.285.090 and 2010 c 147 s 9 are each amended to  
5 read as follows:

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

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

24 (3) A brake friction material distributor or retailer that  
25 violates this chapter is subject to a civil penalty not to exceed ten  
26 thousand dollars for each violation. Brake friction material  
27 distributors or retailers that sell brake friction material that is  
28 packaged consistent with RCW 70.285.080(2)(b) are not in violation of  
29 this chapter. However, if the department conclusively proves that the  
30 brake friction material distributor or retailer was aware that the  
31 brake friction material being sold violates RCW 70.285.030 or  
32 70.285.050, the brake friction material distributor or retailer is  
33 subject to civil penalties according to this section.

34 (4) A brake friction material manufacturer that knowingly  
35 violates this chapter ((shall)) must recall the brake friction  
36 material and reimburse the brake friction distributor, retailer, or  
37 any other purchaser for the material and any applicable shipping and  
38 handling charges for returning the material. A brake friction

1 material manufacturer that violates this chapter is subject to a  
2 civil penalty not to exceed ten thousand dollars for each violation.

3 (5) A motor vehicle distributor or retailer that violates this  
4 chapter is subject to a civil penalty not to exceed ten thousand  
5 dollars for each violation. A motor vehicle distributor or retailer  
6 is not in violation of this chapter for selling a vehicle that was  
7 previously sold at retail and that contains brake friction material  
8 failing to meet the requirements of this chapter. However, if the  
9 department conclusively proves that the motor vehicle distributor or  
10 retailer installed brake friction material that violates RCW  
11 70.285.030, 70.285.050, or 70.285.080(2)(b) on the vehicle being sold  
12 and was aware that the brake friction material violates RCW  
13 70.285.030, 70.285.050, or 70.285.080(2)(b), the motor vehicle  
14 distributor or retailer is subject to civil penalties under this  
15 section.

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

31 (7) Before the effective date of the prohibitions in RCW  
32 70.285.030 or 70.285.050, the department (~~shall~~) must prepare and  
33 distribute information about the prohibitions to manufacturers,  
34 distributors, and retailers to the maximum extent practicable.

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

38 **Sec. 410.** RCW 70.280.050 and 2010 c 140 s 5 are each amended to  
39 read as follows:

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

4 **Sec. 411.** RCW 70.300.040 and 2011 c 248 s 5 are each amended to  
5 read as follows:

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

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

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

14 **Sec. 412.** RCW 90.71.370 and 2011 1st sp.s. c 50 s 977 are each  
15 amended to read as follows:

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 (vii) The salmon recovery funding board, RCW 77.85.110 through  
7 77.85.150;

8 (viii) The community economic revitalization board, chapter  
9 43.160 RCW;

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

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

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

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

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

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

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

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

35 (5) During the 2009-2011 fiscal biennium, the council's review  
36 must result in a ranking of projects affecting the protection and  
37 recovery of the Puget Sound basin that are proposed in the governor's  
38 capital budget submitted under RCW 43.88.060. The ranking (~~shall~~)  
39 must include recommendations for reallocation of total requested  
40 funds for Puget Sound basin projects to achieve the greatest positive

1 outcomes for protection and recovery of Puget Sound and (~~shall~~)  
2 must be submitted to the appropriate fiscal committees of the  
3 legislature no later than February 1, 2011.

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

7 **Sec. 413.** RCW 70.105D.130 and 2010 1st sp.s. c 37 s 947 are each  
8 amended to read as follows:

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

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

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

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

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

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

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

35 (4) Expenditures from the cleanup settlement account may only be  
36 used to conduct remedial actions at the specific facility or to  
37 assess or address the injury to natural resources caused by the  
38 release of hazardous substances from that facility for which the  
39 moneys were deposited in the account. Conducting remedial actions or

1 assessing or addressing injury to natural resources includes direct  
2 expenditures and indirect expenditures such as department oversight  
3 costs. During the 2009-2011 fiscal biennium, the legislature may  
4 transfer excess fund balances in the account into the state  
5 efficiency and restructuring account. Transfers of excess fund  
6 balances made under this section (~~shall~~) may be made only to the  
7 extent amounts transferred with required repayments do not impair the  
8 ten-year spending plan administered by the department of ecology for  
9 environmental remedial actions dedicated for any designated clean-up  
10 site associated with the Everett smelter and Tacoma smelter,  
11 including plumes, or former Asarco mine sites. The cleanup settlement  
12 account must be repaid with interest under provisions of the state  
13 efficiency and restructuring account.

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

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

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

27 **Sec. 414.** RCW 70.105D.140 and 2013 2nd sp.s. c 1 s 3 are each  
28 amended to read as follows:

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

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

37 (a) Moneys appropriated by the legislature to the account for a  
38 specific redevelopment opportunity zone established under RCW

1 70.105D.150 or a specific brownfield renewal authority established  
2 under RCW 70.105D.160;

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

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

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

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

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

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

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

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

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

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

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

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

18 NEW SECTION. Sec. 415. The following acts or parts of acts are  
19 each repealed:

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

23 (2) RCW 70.105D.070 (Toxics control accounts) and 2019 c . . .  
24 (SHB 1290) s 4, 2018 c 299 s 911, 2017 3rd sp.s. c 1 s 980, & 2016  
25 sp.s. c 36 s 943.

26 NEW SECTION. Sec. 416. Any residual balance of funds remaining  
27 in the state toxics control account repealed by section 415 of this  
28 act on the effective date of this section must be transferred to the  
29 model toxics control operating account created in section 202 of this  
30 act.

31 NEW SECTION. Sec. 417. Any residual balance of funds remaining  
32 in the local toxics control account repealed by section 415 of this  
33 act on the effective date of this section must be transferred to the  
34 model toxics control capital account created in section 203 of this  
35 act.

1        NEW SECTION.    **Sec. 418.**    Any residual balance of funds remaining  
2    in the environmental legacy stewardship account repealed by section  
3    415 of this act on the effective date of this section must be  
4    transferred to the model toxics control stormwater account created in  
5    section 204 of this act.

6        NEW SECTION.    **Sec. 419.**    This act is necessary for the immediate  
7    preservation of the public peace, health, or safety, or support of  
8    the state government and its existing public institutions, and takes  
9    effect July 1, 2019.

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