

CERTIFICATION OF ENROLLMENT

SUBSTITUTE SENATE BILL 5135

66th Legislature
2019 Regular Session

Passed by the Senate April 22, 2019
Yeas 27 Nays 22

President of the Senate

Passed by the House April 15, 2019
Yeas 60 Nays 37

Speaker of the House of Representatives

Approved

Governor of the State of Washington

CERTIFICATE

I, Brad Hendrickson, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **SUBSTITUTE SENATE BILL 5135** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

SUBSTITUTE SENATE BILL 5135

AS AMENDED BY THE HOUSE

Passed Legislature - 2019 Regular Session

State of Washington

66th Legislature

2019 Regular Session

By Senate Environment, Energy & Technology (originally sponsored by Senators Rolfes, Frockt, Salomon, Palumbo, Cleveland, Carlyle, Kuderer, Saldaña, Billig, Dhingra, Pedersen, Wellman, Hunt, Das, McCoy, Lias, Darneille, Hasegawa, Keiser, and Van De Wege)

READ FIRST TIME 02/15/19.

1 AN ACT Relating to preventing toxic pollution that affects public
2 health or the environment; amending RCW 70.240.040, 43.21B.110, and
3 34.05.272; adding a new chapter to Title 70 RCW; and prescribing
4 penalties.

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

6 NEW SECTION. **Sec. 1.** The definitions in this section apply
7 throughout this chapter unless the context clearly requires
8 otherwise.

9 (1) "Consumer product" means any item, including any component
10 parts and packaging, sold for residential or commercial use.

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

12 (3) "Director" means the director of the department.

13 (4) "Manufacturer" means any person, firm, association,
14 partnership, corporation, governmental entity, organization, or joint
15 venture that produces a product or is an importer or domestic
16 distributor of a product sold or offered for sale in or into the
17 state.

18 (5) "Organohalogen" means a class of chemicals that includes any
19 chemical containing one or more halogen elements bonded to carbon.

1 (6) "Perfluoroalkyl and polyfluoroalkyl substances" or "PFAS
2 chemicals" means a class of fluorinated organic chemicals containing
3 at least one fully fluorinated carbon atom.

4 (7) "Phenolic compounds" means alkylphenol ethoxylates and
5 bisphenols.

6 (8) "Phthalates" means synthetic chemical esters of phthalic
7 acid.

8 (9) "Polychlorinated biphenyls" or "PCBs" means chemical forms
9 that consist of two benzene rings joined together and containing one
10 to ten chlorine atoms attached to the benzene rings.

11 (10) "Priority chemical" means a chemical or chemical class used
12 as, used in, or put in a consumer product including:

13 (a) Perfluoroalkyl and polyfluoroalkyl substances;

14 (b) Phthalates;

15 (c) Organohalogen flame retardants;

16 (d) Flame retardants, as identified by the department under
17 chapter 70.240 RCW;

18 (e) Phenolic compounds;

19 (f) Polychlorinated biphenyls; or

20 (g) A chemical identified by the department as a priority
21 chemical under section 2 of this act.

22 (11) "Safer alternative" means an alternative that is less
23 hazardous to humans or the environment than the existing chemical or
24 chemical process. A safer alternative to a particular chemical may
25 include a chemical substitute or a change in materials or design that
26 eliminates the need for a chemical alternative.

27 (12) "Sensitive population" means a category of people that is
28 identified by the department that may be or is disproportionately or
29 more severely affected by priority chemicals, such as:

30 (a) Men and women of childbearing age;

31 (b) Infants and children;

32 (c) Pregnant women;

33 (d) Communities that are highly impacted by toxic chemicals;

34 (e) Persons with occupational exposure; and

35 (f) The elderly.

36 (13) "Sensitive species" means a species or grouping of animals
37 that is identified by the department that may be or is
38 disproportionately or more severely affected by priority chemicals,
39 such as:

40 (a) Southern resident killer whales;

- 1 (b) Salmon; and
- 2 (c) Forage fish.

3 (14) "Electronic product" includes personal computers, audio and
4 video equipment, calculators, wireless phones, game consoles, and
5 handheld devices incorporating a video screen that are used to access
6 interactive software, and the peripherals associated with such
7 products.

8 (15) "Inaccessible electronic component" means a part or
9 component of an electronic product that is located inside and
10 entirely enclosed within another material and is not capable of
11 coming out of the product or being accessed during any reasonably
12 foreseeable use or abuse of the product.

13 NEW SECTION. **Sec. 2.** Every five years, and consistent with the
14 timeline established in section 5 of this act, the department, in
15 consultation with the department of health, must report to the
16 appropriate committees of the legislature its decision to designate
17 at least five priority chemicals that meet at least one of the
18 following:

19 (1) The chemical or a member of a class of chemicals are
20 identified by the department as a:

21 (a) High priority chemical of high concern for children under
22 chapter 70.240 RCW; or

23 (b) Persistent, bioaccumulative toxin under chapter 70.105 RCW;

24 (2) The chemical or members of a class of chemicals are
25 regulated:

26 (a) In consumer products under chapter 70.240, 70.76, 70.95G,
27 70.280, 70.285, 70.95M, or 70.75A RCW; or

28 (b) As a hazardous substance under chapter 70.105 or 70.105D RCW;
29 or

30 (3) The department determines the chemical or members of a class
31 of chemicals are a concern for sensitive populations and sensitive
32 species after considering the following factors:

33 (a) A chemical's or members of a class of chemicals' hazard
34 traits or environmental or toxicological endpoints;

35 (b) A chemical's or members of a class of chemicals' aggregate
36 effects;

37 (c) A chemical's or members of a class of chemicals' cumulative
38 effects with other chemicals with the same or similar hazard traits
39 or environmental or toxicological endpoints;

1 (d) A chemical's or members of a class of chemicals'
2 environmental fate;

3 (e) The potential for a chemical or members of a class of
4 chemicals to degrade, form reaction products, or metabolize into
5 another chemical or a chemical that exhibits one or more hazard
6 traits or environmental or toxicological endpoints, or both;

7 (f) The potential for the chemical or class of chemicals to
8 contribute to or cause adverse health or environmental impacts;

9 (g) The chemical's or class of chemicals' potential impact on
10 sensitive populations, sensitive species, or environmentally
11 sensitive habitats;

12 (h) Potential exposures to the chemical or members of a class of
13 chemicals based on:

14 (i) Reliable information regarding potential exposures to the
15 chemical or members of a class of chemicals; and

16 (ii) Reliable information demonstrating occurrence, or potential
17 occurrence, of multiple exposures to the chemical or members of a
18 class of chemicals.

19 NEW SECTION. **Sec. 3.** (1) Every five years, and consistent with
20 the timeline established in section 5 of this act, the department, in
21 consultation with the department of health, shall identify priority
22 consumer products that are a significant source of or use of priority
23 chemicals. The department must submit a report to the appropriate
24 committees of the legislature at the time that it identifies a
25 priority consumer product.

26 (2) When identifying priority consumer products under this
27 section, the department must consider, at a minimum, the following
28 criteria:

29 (a) The estimated volume of a priority chemical or priority
30 chemicals added to, used in, or present in the consumer product;

31 (b) The estimated volume or number of units of the consumer
32 product sold or present in the state;

33 (c) The potential for exposure to priority chemicals by sensitive
34 populations or sensitive species when the consumer product is used,
35 disposed of, or has decomposed;

36 (d) The potential for priority chemicals to be found in the
37 outdoor environment, with priority given to surface water,
38 groundwater, marine waters, sediments, and other ecologically

1 sensitive areas, when the consumer product is used, disposed of, or
2 has decomposed;

3 (e) If another state or nation has identified or taken regulatory
4 action to restrict or otherwise regulate the priority chemical in the
5 consumer product;

6 (f) The availability and feasibility of safer alternatives; and

7 (g) Whether the department has already identified the consumer
8 product in a chemical action plan completed under chapter 70.105 RCW
9 as a source of a priority chemical or other reports or information
10 gathered under chapter 70.240, 70.76, 70.95G, 70.280, 70.285, 70.95M,
11 or 70.75A RCW.

12 (3) The department is not required to give equal weight to each
13 of the criteria in subsection (2)(a) through (g) of this section when
14 identifying priority consumer products that use or are a significant
15 source of priority chemicals.

16 (4) To assist with identifying priority consumer products under
17 this section and making determinations as authorized under section 4
18 of this act, the department may request a manufacturer to submit a
19 notice to the department that contains the information specified in
20 RCW 70.240.040 (1) through (6) or other information relevant to
21 subsection (2)(a) through (d) of this section. The manufacturer must
22 provide the notice to the department no later than six months after
23 receipt of such a demand by the department.

24 (5)(a) Except as provided in (b) of this subsection, the
25 department may not identify the following as priority consumer
26 products under this section:

27 (i) Plastic shipping pallets manufactured prior to 2012;

28 (ii) Food or beverages;

29 (iii) Tobacco products;

30 (iv) Drug or biological products regulated by the United States
31 food and drug administration;

32 (v) Finished products certified or regulated by the federal
33 aviation administration or the department of defense, or both, when
34 used in a manner that was certified or regulated by such agencies,
35 including parts, materials, and processes when used to manufacture or
36 maintain such regulated or certified finished products;

37 (vi) Motorized vehicles, including on and off-highway vehicles,
38 such as all-terrain vehicles, motorcycles, side-by-side vehicles,
39 farm equipment, and personal assistive mobility devices; and

1 (vii) Chemical products used to produce an agricultural
2 commodity, as defined in RCW 17.21.020.

3 (b) The department may identify the packaging of products listed
4 in (a) of this subsection as priority consumer products.

5 (6) For an electronic product identified by the department as a
6 priority consumer product under this section, the department may not
7 make a regulatory determination under section 4 of this act to
8 restrict or require the disclosure of a priority chemical in an
9 inaccessible electronic component of the electronic product.

10 NEW SECTION. **Sec. 4.** (1) Every five years, and consistent with
11 the timeline established in section 5 of this act, the department, in
12 consultation with the department of health, must determine regulatory
13 actions to increase transparency and to reduce the use of priority
14 chemicals in priority consumer products. The department must submit a
15 report to the appropriate committees of the legislature at the time
16 that it determines regulatory actions. The department may:

17 (a) Determine that no regulatory action is currently required;

18 (b) Require a manufacturer to provide notice of the use of a
19 priority chemical or class of priority chemicals consistent with RCW
20 70.240.040; or

21 (c) Restrict or prohibit the manufacture, wholesale,
22 distribution, sale, retail sale, or use, or any combination thereof,
23 of a priority chemical or class of priority chemicals in a consumer
24 product.

25 (2) (a) The department may order a manufacturer to submit
26 information consistent with section 3(4) of this act.

27 (b) The department may require a manufacturer to provide:

28 (i) A list of products containing priority chemicals;

29 (ii) Product ingredients;

30 (iii) Information regarding exposure and chemical hazard; and

31 (iv) A description of the amount and the function of the high
32 priority chemical in the product.

33 (3) The department may restrict or prohibit a priority chemical
34 or members of a class of priority chemicals in a priority consumer
35 product when it determines:

36 (a) Safer alternatives are feasible and available; and

37 (b) (i) The restriction will reduce a significant source of or use
38 of a priority chemical; or

1 (ii) The restriction is necessary to protect the health of
2 sensitive populations or sensitive species.

3 (4) When determining regulatory actions under this section, the
4 department may consider, in addition to the criteria pertaining to
5 the selection of priority chemicals and priority consumer products
6 that are specified in sections 2 and 3 of this act, whether:

7 (a) The priority chemical or members of a class of priority
8 chemicals are functionally necessary in the priority consumer
9 product; and

10 (b) A restriction would be consistent with regulatory actions
11 taken by another state or nation on a priority chemical or members of
12 a class of priority chemicals in a product.

13 (5) A restriction or prohibition on a priority chemical in a
14 consumer product may include exemptions or exceptions, including
15 exemptions to address existing stock of a product in commerce at the
16 time that a restriction takes effect.

17 NEW SECTION. **Sec. 5.** (1)(a) By June 1, 2020, and consistent
18 with section 3 of this act, the department shall identify priority
19 consumer products that are a significant source of or use of priority
20 chemicals specified in section 1(10) (a) through (f) of this act.

21 (b) By June 1, 2022, and consistent with section 4 of this act,
22 the department must determine regulatory actions regarding the
23 priority chemicals and priority consumer products identified in (a)
24 of this subsection.

25 (c) By June 1, 2023, the department must adopt rules to implement
26 regulatory actions determined under (b) of this subsection.

27 (2)(a) By June 1, 2024, and every five years thereafter, the
28 department shall select at least five priority chemicals specified in
29 section 1(10) (a) through (g) of this act that are identified
30 consistent with section 2 of this act.

31 (b) By June 1, 2025, and every five years thereafter, the
32 department must identify priority consumer products that contain any
33 new priority chemicals after notifying the appropriate committees of
34 the legislature, consistent with section 3 of this act.

35 (c) By June 1, 2027, and every five years thereafter, the
36 department must determine regulatory actions for any priority
37 chemicals in priority consumer products identified under (b) of this
38 subsection, consistent with section 4 of this act.

1 (d) By June 1, 2028, and every five years thereafter, the
2 department must adopt rules to implement regulatory actions
3 identified under (c) of this subsection.

4 (3) (a) The designation of priority chemicals by the department
5 does not take effect until the adjournment of the regular legislative
6 session immediately following the identification of chemicals, in
7 order to allow an opportunity for the legislature to add to, limit,
8 or otherwise amend the list of priority chemicals to be considered by
9 the department.

10 (b) The designation of priority consumer products by the
11 department does not take effect until the adjournment of the regular
12 legislative session immediately following the identification of
13 priority consumer products, in order to allow an opportunity for the
14 legislature to add to, limit, or otherwise amend the list of priority
15 consumer products to be considered by the department.

16 (c) The determination of regulatory actions by the department
17 does not take effect until the adjournment of the regular legislative
18 session immediately following the determination by the department, in
19 order to allow an opportunity for the legislature to add to, limit,
20 or otherwise amend the regulatory determinations by the department.

21 (d) Nothing in this subsection (3) limits the authority of the
22 department to:

23 (i) Begin to identify priority consumer products for a priority
24 chemical prior to the effective date of the designation of a priority
25 chemical;

26 (ii) Begin to consider possible regulatory actions prior to the
27 effective date of the designation of a priority consumer product; or

28 (iii) Initiate a rule-making process prior to the effective date
29 of a determination of a regulatory action.

30 (4) (a) When identifying priority chemicals and priority consumer
31 products under this chapter, the department must notify the public of
32 the selection, including the identification of the peer-reviewed
33 science and other sources of information that the department relied
34 upon, the basis for the selection, and a draft schedule for making
35 determinations. The notice must be published in the Washington State
36 Register. The department shall provide the public with an opportunity
37 for review and comment on the regulatory determinations.

38 (b) (i) By June 1, 2020, the department must create a stakeholder
39 advisory process to provide expertise, input, and a review of the
40 department's rationale for identifying priority chemicals and

1 priority consumer products and proposed regulatory determinations.
2 The input received from a stakeholder process must be considered and
3 addressed when adopting rules.

4 (ii) The stakeholder process must include, but is not limited to,
5 representatives from: Large and small business sectors; community,
6 environmental, and public health advocacy groups; local governments;
7 affected and interested businesses; an expert in scientific data
8 analysis; and public health agencies.

9 NEW SECTION. **Sec. 6.** (1) A manufacturer that submits
10 information or records to the department under this chapter may
11 request that the information or records be made available only for
12 the confidential use of the department, the director, or the
13 appropriate division of the department. The director shall give
14 consideration to the request and if this action is not detrimental to
15 the public interest and is otherwise within accord with the policies
16 and purposes of chapter 43.21A RCW, the director must grant the
17 request for the information to remain confidential as authorized in
18 RCW 43.21A.160. Under the procedures established under RCW
19 43.21A.160, the director must keep confidential any records furnished
20 by a manufacturer under this chapter that relate to proprietary
21 manufacturing processes or chemical formulations used in products or
22 processes.

23 (2) For records or other information furnished to the department
24 by a federal agency on the condition that the information be afforded
25 the same confidentiality protections as under federal law, the
26 director may determine that the information or records be available
27 only for the confidential use of the director, the department, or the
28 appropriate division of the department. All such records and
29 information are exempt from public disclosure. The director is
30 authorized to enter into an agreement with the federal agency
31 furnishing the records or information to ensure the confidentiality
32 of the records or information.

33 NEW SECTION. **Sec. 7.** (1) A manufacturer violating a requirement
34 of this chapter, a rule adopted under this chapter, or an order
35 issued under this chapter, is subject to a civil penalty not to
36 exceed five thousand dollars for each violation in the case of a
37 first offense. Manufacturers who are repeat violators are subject to

1 a civil penalty not to exceed ten thousand dollars for each repeat
2 offense.

3 (2) Any penalty provided for in this section, and any order
4 issued by the department under this chapter, may be appealed to the
5 pollution control hearings board.

6 (3) All penalties collected under this chapter shall be deposited
7 in the state toxics control account created in RCW 70.105D.070.

8 NEW SECTION. **Sec. 8.** (1) The department may adopt rules as
9 necessary for the purpose of implementing, administering, and
10 enforcing this chapter.

11 (2) (a) The department must adopt rules to implement the
12 determinations of regulatory actions specified in section 4(1) (b) or
13 (c) of this act. When proposing or adopting rules to implement
14 regulatory determinations specified in this subsection, the
15 department must identify the expected costs and benefits of the
16 proposed or adopted rules to state agencies to administer and enforce
17 the rules and to private persons or businesses, by category of type
18 of person or business affected.

19 (b) A rule adopted to implement a regulatory determination
20 involving a restriction on the manufacture, wholesale, distribution,
21 sale, retail sale, or use of a priority consumer product containing a
22 priority chemical may take effect no sooner than three hundred sixty-
23 five days after the adoption of the rule.

24 (c) Each rule adopted to implement a determination of regulatory
25 action specified in section 4(1) (b) or (c) of this act is a
26 significant legislative rule for purposes of RCW 34.05.328. The
27 department must prepare a small business economic impact statement
28 consistent with the requirements of RCW 19.85.040 for each rule to
29 implement a determination of a regulatory action specified in section
30 4(1) (b) or (c) of this act.

31 **Sec. 9.** RCW 70.240.040 and 2008 c 288 s 5 are each amended to
32 read as follows:

33 (~~Beginning six months after the department has adopted rules~~
34 ~~under section 8(5) of this act,~~) A manufacturer of a children's
35 product or a consumer product containing a priority chemical subject
36 to a rule adopted to implement a determination made consistent with
37 section 4(1)(b) of this act, or a trade organization on behalf of its
38 member manufacturers, shall provide notice to the department that the

1 manufacturer's product contains a high priority chemical or a
2 priority chemical identified under chapter 70.--- RCW (the new
3 chapter created in section 13 of this act). The notice must be filed
4 annually with the department and must include the following
5 information:

6 (1) The name of the chemical used or produced and its chemical
7 abstracts service registry number;

8 (2) A brief description of the product or product component
9 containing the substance;

10 (3) A description of the function of the chemical in the product;

11 (4) The amount of the chemical used in each unit of the product
12 or product component. The amount may be reported in ranges, rather
13 than the exact amount;

14 (5) The name and address of the manufacturer and the name,
15 address, and phone number of a contact person for the manufacturer;
16 and

17 (6) Any other information the manufacturer deems relevant to the
18 appropriate use of the product.

19 **Sec. 10.** RCW 43.21B.110 and 2013 c 291 s 34 are each amended to
20 read as follows:

21 (1) The hearings board shall only have jurisdiction to hear and
22 decide appeals from the following decisions of the department, the
23 director, local conservation districts, the air pollution control
24 boards or authorities as established pursuant to chapter 70.94 RCW,
25 local health departments, the department of natural resources, the
26 department of fish and wildlife, the parks and recreation commission,
27 and authorized public entities described in chapter 79.100 RCW:

28 (a) Civil penalties imposed pursuant to RCW 18.104.155,
29 70.94.431, 70.105.080, 70.107.050, section 7 of this act, 76.09.170,
30 77.55.291, 78.44.250, 88.46.090, 90.03.600, 90.46.270, 90.48.144,
31 90.56.310, 90.56.330, and 90.64.102.

32 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,
33 43.27A.190, 70.94.211, 70.94.332, 70.105.095, section 7 of this act,
34 86.16.020, 88.46.070, 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

35 (c) Except as provided in RCW 90.03.210(2), the issuance,
36 modification, or termination of any permit, certificate, or license
37 by the department or any air authority in the exercise of its
38 jurisdiction, including the issuance or termination of a waste
39 disposal permit, the denial of an application for a waste disposal

1 permit, the modification of the conditions or the terms of a waste
2 disposal permit, or a decision to approve or deny an application for
3 a solid waste permit exemption under RCW 70.95.300.

4 (d) Decisions of local health departments regarding the grant or
5 denial of solid waste permits pursuant to chapter 70.95 RCW.

6 (e) Decisions of local health departments regarding the issuance
7 and enforcement of permits to use or dispose of biosolids under RCW
8 70.95J.080.

9 (f) Decisions of the department regarding waste-derived
10 fertilizer or micronutrient fertilizer under RCW 15.54.820, and
11 decisions of the department regarding waste-derived soil amendments
12 under RCW 70.95.205.

13 (g) Decisions of local conservation districts related to the
14 denial of approval or denial of certification of a dairy nutrient
15 management plan; conditions contained in a plan; application of any
16 dairy nutrient management practices, standards, methods, and
17 technologies to a particular dairy farm; and failure to adhere to the
18 plan review and approval timelines in RCW 90.64.026.

19 (h) Any other decision by the department or an air authority
20 which pursuant to law must be decided as an adjudicative proceeding
21 under chapter 34.05 RCW.

22 (i) Decisions of the department of natural resources, the
23 department of fish and wildlife, and the department that are
24 reviewable under chapter 76.09 RCW, and the department of natural
25 resources' appeals of county, city, or town objections under RCW
26 76.09.050(7).

27 (j) Forest health hazard orders issued by the commissioner of
28 public lands under RCW 76.06.180.

29 (k) Decisions of the department of fish and wildlife to issue,
30 deny, condition, or modify a hydraulic project approval permit under
31 chapter 77.55 RCW.

32 (l) Decisions of the department of natural resources that are
33 reviewable under RCW 78.44.270.

34 (m) Decisions of an authorized public entity under RCW 79.100.010
35 to take temporary possession or custody of a vessel or to contest the
36 amount of reimbursement owed that are reviewable by the hearings
37 board under RCW 79.100.120.

38 (2) The following hearings shall not be conducted by the hearings
39 board:

1 (a) Hearings required by law to be conducted by the shorelines
2 hearings board pursuant to chapter 90.58 RCW.

3 (b) Hearings conducted by the department pursuant to RCW
4 70.94.332, 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and
5 90.44.180.

6 (c) Appeals of decisions by the department under RCW 90.03.110
7 and 90.44.220.

8 (d) Hearings conducted by the department to adopt, modify, or
9 repeal rules.

10 (3) Review of rules and regulations adopted by the hearings board
11 shall be subject to review in accordance with the provisions of the
12 administrative procedure act, chapter 34.05 RCW.

13 **Sec. 11.** RCW 34.05.272 and 2014 c 22 s 1 are each amended to
14 read as follows:

15 (1) This section applies only to the water quality and shorelands
16 and environmental assistance programs within the department of
17 ecology and to actions taken by the department of ecology under
18 chapter 70.--- RCW (the new chapter created in section 13 of this
19 act).

20 (2)(a) Before taking a significant agency action, which includes
21 each department of ecology rule to implement a determination of a
22 regulatory action specified in section 4(1) (b) or (c) of this act,
23 the department of ecology must identify the sources of information
24 reviewed and relied upon by the agency in the course of preparing to
25 take significant agency action. Peer-reviewed literature, if
26 applicable, must be identified, as well as any scientific literature
27 or other sources of information used. The department of ecology shall
28 make available on the agency's web site the index of records required
29 under RCW 42.56.070 that are relied upon, or invoked, in support of a
30 proposal for significant agency action.

31 (b) On the agency's web site, the department of ecology must
32 identify and categorize each source of information that is relied
33 upon in the form of a bibliography, citation list, or similar list of
34 sources. The categories in (c) of this subsection do not imply or
35 infer any hierarchy or level of quality.

36 (c) The bibliography, citation list, or similar list of sources
37 must categorize the sources of information as belonging to one or
38 more of the following categories:

- 1 (i) Independent peer review: Review is overseen by an independent
2 third party;
- 3 (ii) Internal peer review: Review by staff internal to the
4 department of ecology;
- 5 (iii) External peer review: Review by persons that are external
6 to and selected by the department of ecology;
- 7 (iv) Open review: Documented open public review process that is
8 not limited to invited organizations or individuals;
- 9 (v) Legal and policy document: Documents related to the legal
10 framework for the significant agency action including but not limited
11 to:
- 12 (A) Federal and state statutes;
- 13 (B) Court and hearings board decisions;
- 14 (C) Federal and state administrative rules and regulations; and
- 15 (D) Policy and regulatory documents adopted by local governments;
- 16 (vi) Data from primary research, monitoring activities, or other
17 sources, but that has not been incorporated as part of documents
18 reviewed under the processes described in (c)(i), (ii), (iii), and
19 (iv) of this subsection;
- 20 (vii) Records of the best professional judgment of department of
21 ecology employees or other individuals; or
- 22 (viii) Other: Sources of information that do not fit into one of
23 the categories identified in this subsection (~~(1)~~) (2)(c).
- 24 (3) For the purposes of this section, "significant agency action"
25 means an act of the department of ecology that:
- 26 (a) Results in the development of a significant legislative rule
27 as defined in RCW 34.05.328; or
- 28 (b) Results in the development of technical guidance, technical
29 assessments, or technical documents that are used to directly support
30 implementation of a state rule or state statute.
- 31 (4) This section is not intended to affect agency action
32 regarding individual permitting, compliance and enforcement
33 decisions, or guidance provided by an agency to a local government on
34 a case-by-case basis.

35 NEW SECTION. **Sec. 12.** If any provision of this act or its
36 application to any person or circumstance is held invalid, the
37 remainder of the act or the application of the provision to other
38 persons or circumstances is not affected.

1 NEW SECTION. **Sec. 13.** Sections 1 through 8 and 14 of this act
2 constitute a new chapter in Title 70 RCW.

3 NEW SECTION. **Sec. 14.** This act may be known and cited as the
4 pollution prevention for healthy people and Puget Sound act.

--- **END** ---