

CERTIFICATION OF ENROLLMENT

ENGROSSED SUBSTITUTE SENATE BILL 5993

Chapter 422, Laws of 2019

66th Legislature
2019 Regular Session

MODEL TOXICS CONTROL PROGRAM--FINANCIAL STRUCTURE

EFFECTIVE DATE: July 1, 2019

Passed by the Senate April 25, 2019
Yeas 27 Nays 22

CYRUS HABIB

President of the Senate

Passed by the House April 27, 2019
Yeas 50 Nays 48

FRANK CHOPP

Speaker of the House of Representatives

Approved May 21, 2019 10:50 AM

JAY INSLEE

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 **ENGROSSED SUBSTITUTE SENATE BILL 5993** as passed by the Senate and the House of Representatives on the dates hereon set forth.

BRAD HENDRICKSON

Secretary

FILED

May 21, 2019

**Secretary of State
State of Washington**

1 as follows, after first depositing the tax as provided in (c) of this
2 subsection (1):

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

5 (ii) Twenty-five percent to the model toxics control capital
6 account 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) Until the beginning of the ensuing biennium after the
10 enactment of an additive transportation funding act, fifty million
11 dollars per biennium to the motor vehicle fund to be used exclusively
12 for transportation stormwater activities and projects. For purposes
13 of this subsection, "additive transportation funding act" means an
14 act in which the combined total of new revenues deposited into the
15 motor vehicle fund and the multimodal transportation account exceed
16 two billion dollars per biennium attributable solely to an increase
17 in revenue from the enactment of the act.

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

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

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

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

1 NEW SECTION. **Sec. 202.** A new section is added to chapter
2 70.105D RCW to read as follows:

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

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

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

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

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

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

17 (e) Financial assistance for local programs and plans, including
18 local solid waste financial assistance, in accordance with chapters
19 70.76, 70.95, 70.95C, 70.95I, and 70.105 RCW;

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

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

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

27 (i) Programs authorized under chapter 70.146 RCW;

28 (j) A public participation program;

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

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

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

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

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

1 (3) Except for unanticipated receipts under RCW 43.79.260 through
2 43.79.282, moneys in model toxics control operating account may be
3 spent only after appropriation by statute.

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

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

18 NEW SECTION. **Sec. 203.** A new section is added to chapter
19 70.105D RCW to read as follows:

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

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

26 (a) The costs of remedial actions recovered under this chapter,
27 except as provided under RCW 70.105D.---(7) (section 2(7),
28 chapter . . . (SHB 1290), Laws of 2019);

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

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

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

36 (4) Moneys in the model toxics control capital account may be
37 used only for capital projects and activities that carry out the
38 purposes of this chapter and for financial assistance to local
39 governments or other persons to carry out those projects or

1 activities, including but not limited to the following, generally in
2 descending order of priority:

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

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

7 (ii) Grants or loans to local governments for remedial actions,
8 including planning for adaptive reuse of properties as provided for
9 under subsection (5)(d) of this section. The department must
10 prioritize funding of remedial actions at:

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

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

18 (iii) Department-conducted remedial actions;

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

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

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

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

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

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

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

37 (C) The director has found the funding will achieve a
38 substantially more expeditious or enhanced cleanup than would
39 otherwise occur, provide a public benefit in addition to cleanup

1 commensurate with the scope of the public funding; and meet any
2 additional criteria established in rule by the department; and

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

5 (b) Grants, or loans, or contracts to local governments for solid
6 waste plans and programs under chapters 70.95, 70.95C, 70.95I,
7 70.95G, 70.95M, and 70.105 RCW. Funds must be allocated consistent
8 with priorities and matching requirements in the respective chapters;

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

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

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

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

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

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

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

38 (iii) The department may not allocate future funding to an
39 extended grant agreement unless the local government has demonstrated
40 to the department that funds awarded under the agreement during the

1 previous biennium have been substantially expended or contracts have
2 been entered into to substantially expend the funds;

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

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

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

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

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

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

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

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

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

1 (6) Except for unanticipated receipts under RCW 43.79.260 through
2 43.79.282, moneys in model toxics control capital account may be
3 spent only after appropriation by statute.

4 NEW SECTION. **Sec. 204.** A new section is added to chapter
5 70.105D RCW to read as follows:

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

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

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

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

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

22 (4) Except for unanticipated receipts under RCW 43.79.260 through
23 43.79.282, moneys in the model toxics control stormwater account may
24 be spent only after appropriation by statute.

25 **Part III**

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

36 (2) The office of financial management and the legislative
37 evaluation and accountability program committee must identify

1 proposed improvements and, as appropriate, necessary funding and
2 legislative changes to the governor and legislature by September 1,
3 2020. To the extent possible, the office of financial management and
4 the legislative evaluation and accountability program committee may
5 implement low and no-cost changes during the 2019-2021 biennium.

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

7 **Part IV**

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

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

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

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

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

4 (d) Carry out all state programs authorized under the federal
5 cleanup law and the federal resource, conservation, and recovery act,
6 42 U.S.C. Sec. 6901 et seq., as amended;

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

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

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

24 (h) Require holders to conduct remedial actions necessary to
25 abate an imminent or substantial endangerment pursuant to RCW
26 70.105D.020(22)(b)(ii)(C);

27 (i) Provide informal advice and assistance to persons regarding
28 the administrative and technical requirements of this chapter. This
29 may include site-specific advice to persons who are conducting or
30 otherwise interested in independent remedial actions. Any such advice
31 or assistance (~~shall be~~) is advisory only, and (~~shall~~) is not
32 (~~be~~) binding on the department. As a part of providing this advice
33 and assistance for independent remedial actions, the department may
34 prepare written opinions regarding whether the independent remedial
35 actions or proposals for those actions meet the substantive
36 requirements of this chapter or whether the department believes
37 further remedial action is necessary at the facility. Nothing in this
38 chapter may be construed to preclude the department from issuing a
39 written opinion on whether further remedial action is necessary at
40 any portion of the real property located within a facility, even if

1 further remedial action is still necessary elsewhere at the same
2 facility. Such a written opinion on a portion of a facility must also
3 provide an opinion on the status of the facility as a whole. The
4 department may collect, from persons requesting advice and
5 assistance, the costs incurred by the department in providing such
6 advice and assistance; however, the department (~~shall~~) must, where
7 appropriate, waive collection of costs in order to provide an
8 appropriate level of technical assistance in support of public
9 participation. The state, the department, and officers and employees
10 of the state are immune from all liability, and no cause of action of
11 any nature may arise from any act or omission in providing, or
12 failing to provide, informal advice and assistance. The department
13 must track the number of requests for reviews of planned or completed
14 independent remedial actions and establish performance measures to
15 track how quickly the department is able to respond to those
16 requests. By November 1, 2015, the department must submit to the
17 governor and the appropriate legislative fiscal and policy committees
18 a report on achieving the performance measures and provide
19 recommendations for improving performance, including staffing needs;

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

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

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

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

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

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

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

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

14 (1) Take any other actions necessary to carry out the provisions
15 of this chapter, including the power to adopt rules under chapter
16 34.05 RCW.

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

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

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

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

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

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

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

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

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

1 ~~acres of land restored, and the number and types of hazardous waste~~
2 ~~sites successfully remediated using model remedies.~~

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

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

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

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

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

33 ~~((6))~~ (5) By December 1st of each odd-numbered year, the
34 department must provide the legislature and the public a report of
35 the department's activities supported by appropriations from the
36 ~~((state and local toxics control accounts and the environmental~~
37 ~~legacy stewardship))~~ model toxics control operating, capital, and
38 stormwater accounts. The report must be prepared and displayed in a
39 manner that allows the legislature and the public to easily determine

1 the statewide and local progress made in cleaning up hazardous waste
2 sites under this chapter. The report must include, at a minimum:

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

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

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

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

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

17 (B) Remedial investigation;

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

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

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

22 (F) The final completion date.

23 (~~(7)~~) (6) The department (~~shall~~) must establish a program to
24 identify potential hazardous waste sites and to encourage persons to
25 provide information about hazardous waste sites.

26 (~~(8)~~) (7) For all facilities where an environmental covenant
27 has been required under subsection (1)(f) of this section, including
28 all facilities where the department has required an environmental
29 covenant under an order, agreed order, or consent decree, or as a
30 condition of a written opinion issued under the authority of
31 subsection (1)(i) of this section, the department (~~shall~~) must
32 periodically review the environmental covenant for effectiveness.
33 (~~Except as otherwise provided in (c) of this subsection,~~) The
34 department (~~shall~~) must conduct a review at least once every five
35 years after an environmental covenant is recorded.

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

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

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

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

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

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

23 ~~(i) Enter all required information about the environmental
24 covenant into the registry established under RCW 64.70.120 by June
25 30, 2008;~~

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

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

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

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

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

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

37 (1) With respect to any release, or threatened release, for which
38 the department does not conduct or contract for conducting remedial
39 action and for which the department believes remedial action is in

1 the public interest, the director (~~shall~~) must issue orders or
2 agreed orders requiring potentially liable persons to provide the
3 remedial action. Any liable person, or prospective purchaser who has
4 entered into an agreed order under RCW 70.105D.040(6), who refuses,
5 without sufficient cause, to comply with an order or agreed order of
6 the director is liable in an action brought by the attorney general
7 for:

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

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

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

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

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

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

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

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

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

1 (7) Any person who owns real property or lender holding a
2 mortgage on real property that is subject to a lien filed under RCW
3 70.105D.055 may petition the department to have the lien removed or
4 the amount of the lien reduced. If, after consideration of the
5 petition and the information supporting the petition, the department
6 decides to deny the request, the person may, within ninety days after
7 receipt of the department's denial, file suit for removal or
8 reduction of the lien. The person is entitled to removal of a lien
9 filed under RCW 70.105D.055(2)(a) if they can prove by a
10 preponderance of the evidence that the person is not a liable party
11 under RCW 70.105D.040. The person is entitled to a reduction of the
12 amount of the lien if they can prove by a preponderance of the
13 evidence:

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

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

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

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

31 A manufacturer of class B firefighting foam in violation of RCW
32 70.75A.020 or 70.75A.040 or a person in violation of RCW 70.75A.010
33 or 70.75A.030 is subject to a civil penalty not to exceed five
34 thousand dollars for each violation in the case of a first offense.
35 Manufacturers, local governments, or persons that are repeat
36 violators are subject to a civil penalty not to exceed ten thousand
37 dollars for each repeat offense. Penalties collected under this
38 section must be deposited in the (~~state~~) model toxics control

1 operating account created in ((~~RCW 70.105D.070~~)) section 202 of this
2 act.

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

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

9 (a) Before the effective date of the product prohibition in RCW
10 70.76.020 or 70.76.030, the department ((~~shall~~)) must prepare and
11 distribute information to in-state manufacturers and out-of-state
12 manufacturers, to the maximum extent practicable, to assist them in
13 identifying products prohibited for manufacture, sale, or
14 distribution under this chapter.

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

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

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

30 (3) A manufacturer of products containing PBDEs in violation of
31 this chapter is subject to a civil penalty not to exceed one thousand
32 dollars for each violation in the case of a first offense.
33 Manufacturers who are repeat violators are subject to a civil penalty
34 not to exceed five thousand dollars for each repeat offense.
35 Penalties collected under this section must be deposited in the
36 ((~~state~~)) model toxics control operating account created in ((~~RCW~~
37 ~~70.105D.070~~)) section 202 of this act.

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

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

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

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

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

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

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

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

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

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

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

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

11 (2) Penalties collected under this section must be deposited in
12 the ((state)) model toxics control operating account created in ((RCW
13 70.105D.070)) section 202 of this act.

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

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

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

34 (3) A brake friction material distributor or retailer that
35 violates this chapter is subject to a civil penalty not to exceed ten
36 thousand dollars for each violation. Brake friction material
37 distributors or retailers that sell brake friction material that is
38 packaged consistent with RCW 70.285.080(2)(b) are not in violation of

1 this chapter. However, if the department conclusively proves that the
2 brake friction material distributor or retailer was aware that the
3 brake friction material being sold violates RCW 70.285.030 or
4 70.285.050, the brake friction material distributor or retailer is
5 subject to civil penalties according to this section.

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

13 (5) A motor vehicle distributor or retailer that violates this
14 chapter is subject to a civil penalty not to exceed ten thousand
15 dollars for each violation. A motor vehicle distributor or retailer
16 is not in violation of this chapter for selling a vehicle that was
17 previously sold at retail and that contains brake friction material
18 failing to meet the requirements of this chapter. However, if the
19 department conclusively proves that the motor vehicle distributor or
20 retailer installed brake friction material that violates RCW
21 70.285.030, 70.285.050, or 70.285.080(2)(b) on the vehicle being sold
22 and was aware that the brake friction material violates RCW
23 70.285.030, 70.285.050, or 70.285.080(2)(b), the motor vehicle
24 distributor or retailer is subject to civil penalties under this
25 section.

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

1 (7) Before the effective date of the prohibitions in RCW
2 70.285.030 or 70.285.050, the department (~~shall~~) must prepare and
3 distribute information about the prohibitions to manufacturers,
4 distributors, and retailers to the maximum extent practicable.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 (vii) The salmon recovery funding board, RCW 77.85.110 through
17 77.85.150;

18 (viii) The community economic revitalization board, chapter
19 43.160 RCW;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 (a) Moneys appropriated by the legislature to the account for a
10 specific redevelopment opportunity zone established under RCW
11 70.105D.150 or a specific brownfield renewal authority established
12 under RCW 70.105D.160;

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

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

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

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

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

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

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

38 (8) All expenditures must be used to conduct remediation and
39 cleanup consistent with a plan for the remediation and cleanup of the
40 properties or facilities approved by the department under this

1 chapter. All expenditures must meet the eligibility requirements for
2 the use by local governments under the rules for remedial action
3 grants adopted by the department under this chapter, including
4 requirements for the expenditure of nonstate match funding.

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

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

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

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

28 NEW SECTION. **Sec. 415.** The following acts or parts of acts are
29 each repealed:

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

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

36 NEW SECTION. **Sec. 416.** Any residual balance of funds remaining
37 in the state toxics control account repealed by section 415 of this
38 act on the effective date of this section must be transferred to the

1 model toxics control operating account created in section 202 of this
2 act.

3 NEW SECTION. **Sec. 417.** Any residual balance of funds remaining
4 in the local toxics control account repealed by section 415 of this
5 act on the effective date of this section must be transferred to the
6 model toxics control capital account created in section 203 of this
7 act.

8 NEW SECTION. **Sec. 418.** Any residual balance of funds remaining
9 in the environmental legacy stewardship account repealed by section
10 415 of this act on the effective date of this section must be
11 transferred to the model toxics control stormwater account created in
12 section 204 of this act.

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

Passed by the Senate April 25, 2019.
Passed by the House April 27, 2019.
Approved by the Governor May 21, 2019.
Filed in Office of Secretary of State May 21, 2019.

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