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**SUBSTITUTE SENATE BILL 5296**

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**State of Washington**

**63rd Legislature**

**2013 Regular Session**

**By** Senate Energy, Environment & Telecommunications (originally sponsored by Senators Ericksen, Baumgartner, Rivers, Bailey, Delvin, and Honeyford)

READ FIRST TIME 02/14/13.

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

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

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

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

17 The definitions in this section apply throughout this chapter  
18 unless the context clearly requires otherwise.

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

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

10 (3) "Director" means the director of ecology or the director's  
11 designee.

12 (4) "Environmental covenant" has the same meaning as defined in RCW  
13 64.70.020.

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

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

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

36 (b) "Fiduciary" does not mean:

37 (i) A person acting as a fiduciary with respect to a trust or other  
38 fiduciary estate that was organized for the primary purpose of, or is

1 engaged in, actively carrying on a trade or business for profit, unless  
2 the trust or other fiduciary estate was created as part of, or to  
3 facilitate, one or more estate plans or because of the incapacity of a  
4 natural person;

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

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

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

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

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

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

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

36 (10) "Hazardous substance" means:

37 (a) Any dangerous or extremely hazardous waste as defined in RCW

1 70.105.010 (~~(5) and (6)~~) (1) and (7), or any dangerous or extremely  
2 dangerous waste designated by rule pursuant to chapter 70.105 RCW;

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

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

9 (d) Petroleum or petroleum products; and

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

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

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

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

35 (13) "Indicia of ownership" means evidence of a security interest,  
36 evidence of an interest in a security interest, or evidence of an  
37 interest in a facility securing a loan or other obligation, including  
38 any legal or equitable title to a facility acquired incident to

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

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

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

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

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

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

35 (17) "Owner or operator" means:

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

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

4 The term does not include:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1        (iii) If a facility meets the requirements for use of a model  
2 remedy, then the department must accept use of the model remedy and an  
3 analysis of the feasibility of alternative remedies is not required  
4 under this chapter. The department shall waive collection of its costs  
5 for providing a written opinion under (i) of this subsection on a  
6 cleanup that qualifies for and appropriately uses a model remedy; and

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

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

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

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

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

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

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

37        (f) Apply industrial clean-up standards at industrial properties.  
38 Rules adopted under this subsection shall ensure that industrial

1 properties cleaned up to industrial standards cannot be converted to  
2 nonindustrial uses without approval from the department. The  
3 department may require that a property cleaned up to industrial  
4 standards is cleaned up to a more stringent applicable standard as a  
5 condition of conversion to a nonindustrial use. Industrial clean-up  
6 standards may not be applied to industrial properties where hazardous  
7 substances remaining at the property after remedial action pose a  
8 threat to human health or the environment in adjacent nonindustrial  
9 areas.

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

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

35 (5) Before (~~(December)~~) September 20th of each even-numbered year,  
36 the department shall:

37 (a) Develop a comprehensive ten-year financing report in  
38 coordination with all local governments with clean-up responsibilities



1 that identifies the projected biennial hazardous waste site remedial  
2 action needs that are eligible for funding from the state and local  
3 toxics control account and the special category E account;

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

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

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

22 (e) Provide the legislature and the public each year with an  
23 accounting of the department's activities supported by appropriations  
24 from the state and local toxics control accounts and the special  
25 category E account, including a list of known hazardous waste sites and  
26 their hazard rankings, actions taken and planned at each site, how the  
27 department is meeting its waste management priorities under RCW  
28 70.105.150, and all funds expended under this chapter.

29 ~~((+5))~~ (6) The department shall establish a program to identify  
30 potential hazardous waste sites and to encourage persons to provide  
31 information about hazardous waste sites.

32 ~~((+6))~~ (7) For all facilities where an environmental covenant has  
33 been required under subsection (1)(f) of this section, including all  
34 facilities where the department has required an environmental covenant  
35 under an order, agreed order, or consent decree, or as a condition of  
36 a written opinion issued under the authority of subsection (1)(i) of  
37 this section, the department shall periodically review the  
38 environmental covenant for effectiveness. Except as otherwise provided

1 in (c) of this subsection, the department shall conduct a review at  
2 least once every five years after an environmental covenant is  
3 recorded.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 (a) Moneys collected under RCW 82.21.030 must be deposited as  
8 follows: Forty-seven percent to the state toxics control account under  
9 subsection (2) of this section and fifty-three percent to the local  
10 toxics control account under subsection (3) of this section. When the  
11 cumulative amount of deposits made to the state and local toxics  
12 control accounts under this section reaches the limit during a fiscal  
13 year as established in (b) of this subsection, the remainder of the  
14 moneys collected under RCW 82.21.030 during that fiscal year must be  
15 deposited into the special category E account created in section 5 of  
16 this act.

17 (b) The limit on distributions of moneys collected under RCW  
18 82.21.030 to the state and local toxics control accounts for the fiscal  
19 year beginning July 1, 2013, is one-hundred fifty million dollars.  
20 This limit for each succeeding fiscal year must be increased by a  
21 percentage rate that equals the fiscal growth factor as defined in RCW  
22 43.135.025.

23 (2)(a) In addition to the funds required under subsection (1) of  
24 this section, the following moneys shall be deposited into the state  
25 toxics control account: (~~(a)~~) Those revenues which are raised by the  
26 tax imposed under RCW 82.21.030 and which are attributable to that  
27 portion of the rate equal to thirty-three one-hundredths of one  
28 percent; (~~b~~) (i) The costs of remedial actions recovered under this  
29 chapter or chapter 70.105A RCW; (~~(e)~~) (ii) penalties collected or  
30 recovered under this chapter; and (~~(d)~~) (iii) any other money  
31 appropriated or transferred to the account by the legislature.

32 (b) Moneys in the state toxics control account (~~may~~) must be used  
33 only to carry out the purposes of this chapter(~~, including but not~~  
34 limited to the following activities:

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

- 1       ~~(ii) The state's responsibility for solid waste planning,~~  
2 ~~management, regulation, enforcement, technical assistance, and public~~  
3 ~~education required under chapter 70.95 RCW;~~
- 4       ~~(iii) The hazardous waste cleanup program required under this~~  
5 ~~chapter;~~
- 6       ~~(iv) State matching funds required under the federal cleanup law;~~
- 7       ~~(v) Financial assistance for local programs in accordance with~~  
8 ~~chapters 70.95, 70.95C, 70.95I, and 70.105 RCW;~~
- 9       ~~(vi) State government programs for the safe reduction, recycling,~~  
10 ~~or disposal of hazardous wastes from households, small businesses, and~~  
11 ~~agriculture;~~
- 12       ~~(vii) Hazardous materials emergency response training;~~
- 13       ~~(viii) Water and environmental health protection and monitoring~~  
14 ~~programs;~~
- 15       ~~(ix) Programs authorized under chapter 70.146 RCW;~~
- 16       ~~(x) A public participation program, including regional citizen~~  
17 ~~advisory committees;~~
- 18       ~~(xi) Public funding to assist potentially liable persons to pay for~~  
19 ~~the costs of remedial action in compliance with cleanup standards under~~  
20 ~~RCW 70.105D.030(2)(e) but only when the amount and terms of such~~  
21 ~~funding are established under a settlement agreement under RCW~~  
22 ~~70.105D.040(4) and when the director has found that the funding will~~  
23 ~~achieve both (A) a substantially more expeditious or enhanced cleanup~~  
24 ~~than would otherwise occur, and (B) the prevention or mitigation of~~  
25 ~~unfair economic hardship;~~
- 26       ~~(xii) Development and demonstration of alternative management~~  
27 ~~technologies designed to carry out the hazardous waste management~~  
28 ~~priorities of RCW 70.105.150;~~
- 29       ~~(xiii) During the 2009-2011 and 2011-2013 fiscal biennia, shoreline~~  
30 ~~update technical assistance;~~
- 31       ~~(xiv) During the 2009-2011 fiscal biennium, multijurisdictional~~  
32 ~~permitting teams;~~
- 33       ~~(xv) During the 2011-2013 fiscal biennium, actions for reducing~~  
34 ~~public exposure to toxic air pollution, and actions taken through the~~  
35 ~~family forest fish passage program to correct barriers to fish passage~~  
36 ~~on privately owned small forest lands; and~~
- 37       ~~(xvi) During the 2011-2013 fiscal biennium, the department of~~

1 ~~ecology's water quality, shorelands and environmental assessment,~~  
2 ~~hazardous waste, waste to resources, nuclear waste, and air quality~~  
3 ~~programs)) and must be expended for the following:~~

4 (i)(A) The hazardous waste clean-up program required under this  
5 chapter;

6 (B) Water and environmental health protection and monitoring  
7 programs;

8 (C) Storm water pollution control projects and activities that  
9 protect or preserve existing remedial actions or prevent hazardous  
10 clean-up sites;

11 (D) Oil and hazardous materials spill prevention, preparedness,  
12 training, and response activities;

13 (E) State matching funds required under federal clean-up law;

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

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

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

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

22 (ii) Priority for use of the funds is given to cleanup of:

23 (A) High priority contaminated toxic sites on the department's  
24 hazardous sites list that have a completed remedial investigation or  
25 feasibility study, a finalized clean-up action plan, and are prepared  
26 to begin the clean-up action;

27 (B) Brownfield properties to make land available for economic and  
28 job development opportunities that would not otherwise occur; and

29 (C) Properties where local communities and liable parties have a  
30 completed remedial investigation or feasibility study, a finalized  
31 clean-up action plan, and are prepared to begin the clean-up action, in  
32 compliance with clean-up standards under RCW 70.105D.030(2)(e) but only  
33 when the amount and terms of such funding are established under a  
34 settlement agreement under RCW 70.105D.040(4) and when the director has  
35 found that the funding will achieve both: (I) A substantially more  
36 expeditious or enhanced cleanup than would otherwise occur; and (II)  
37 the prevention or mitigation of unfair economic hardship.

1           (3) (~~The following moneys shall be deposited into the local toxics~~  
2 ~~control account: Those revenues which are raised by the tax imposed~~  
3 ~~under RCW 82.21.030 and which are attributable to that portion of the~~  
4 ~~rate equal to thirty seven one hundredths of one percent)) (a) The  
5 department shall use moneys deposited in the local toxics control  
6 account for grants to local governments for the following purposes:~~

7           (i) Remedial actions;

8           (ii) Storm water pollution source projects that protect completed  
9 remedial actions against recontamination or prevent hazardous clean-up  
10 sites; and

11           (iii) Hazardous waste plans and programs under chapter 70.105 RCW.

12           (b) To expedite clean-up projects throughout the state, the  
13 department must prioritize funding for projects that:

14           (i) Are identified on the department's hazardous site list as a  
15 high priority, have a completed remedial investigation or feasibility  
16 study, a finalized clean-up action plan, and are prepared to begin the  
17 clean-up action;

18           (ii) Make brownfield properties available for economic and job  
19 development opportunities that would not otherwise occur; and

20           (iii) Advance cleanup of properties where local communities and  
21 liable parties have a completed remedial investigation or feasibility  
22 study, a finalized clean-up action plan, and are prepared to begin the  
23 clean-up action in compliance with clean-up standards under RCW  
24 70.105D.030(2)(e) but only when:

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

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

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

34           ~~(i) Remedial actions;~~

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

36           ~~(iii) Solid waste plans and programs under chapters 70.95, 70.95C,~~  
37 ~~70.95I, and 70.105 RCW;~~

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

5       ~~(v) Cleanup and disposal of hazardous substances from abandoned or~~  
6 ~~derelict vessels, defined for the purposes of this section as vessels~~  
7 ~~that have little or no value and either have no identified owner or~~  
8 ~~have an identified owner lacking financial resources to clean up and~~  
9 ~~dispose of the vessel, that pose a threat to human health or the~~  
10 ~~environment.~~

11       ~~(b) Funds for plans and programs shall be allocated consistent with~~  
12 ~~the priorities and matching requirements established in chapters~~  
13 ~~70.105, 70.95C, 70.95I, and 70.95 RCW, except that any applicant that~~  
14 ~~is a Puget Sound partner, as defined in RCW 90.71.010, along with any~~  
15 ~~project that is referenced in the action agenda developed by the Puget~~  
16 ~~Sound partnership under RCW 90.71.310, shall, except as conditioned by~~  
17 ~~RCW 70.105D.120, receive priority for any available funding for any~~  
18 ~~grant or funding programs or sources that use a competitive bidding~~  
19 ~~process. During the 2007-2009 fiscal biennium, moneys in the account~~  
20 ~~may also be used for grants to local governments to retrofit public~~  
21 ~~sector diesel equipment and for storm water planning and implementation~~  
22 ~~activities.~~

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

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

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

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

35       ~~(C) Funding would create an opportunity for acquisition and~~  
36 ~~redevelopment of vacant, orphaned, or abandoned property under RCW~~  
37 ~~70.105D.040(5) that would not otherwise occur;~~

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

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

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

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

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

14       ~~((5) Except during the 2011-2013 fiscal biennium, one percent of~~  
15 ~~the moneys deposited into the state and local toxics control accounts~~  
16 ~~shall be allocated only for public participation grants to persons who~~  
17 ~~may be adversely affected by a release or threatened release of a~~  
18 ~~hazardous substance and to not for profit public interest~~  
19 ~~organizations. The primary purpose of these grants is to facilitate~~  
20 ~~the participation by persons and organizations in the investigation and~~  
21 ~~remedying of releases or threatened releases of hazardous substances~~  
22 ~~and to implement the state's solid and hazardous waste management~~  
23 ~~priorities. No grant may exceed sixty thousand dollars. Grants may be~~  
24 ~~renewed annually. Moneys appropriated for public participation from~~  
25 ~~either account which are not expended at the close of any biennium~~  
26 ~~shall revert to the state toxics control account.))~~

27       (6) No moneys deposited into either the state or local toxics  
28 control account may be used for: Activities without a clear nexus to  
29 hazardous waste or substance prevention, control, or remedial action;  
30 natural disasters where there is no hazardous substance contamination;  
31 high performance buildings; solid waste incinerator and organic  
32 composting facility feasibility studies, construction, maintenance, or  
33 operation((~~τ~~)); or((~~τ~~)) after January 1, 2010, for projects designed to  
34 address the restoration of Puget Sound, funded in a competitive grant  
35 process, that are in conflict with the action agenda developed by the  
36 Puget Sound partnership under RCW 90.71.310.

37       (7) The department shall adopt rules for grant ((~~or loan~~)) issuance  
38 and performance.



1       ~~((8) During the 2011-2013 fiscal biennium, the legislature may~~  
2 ~~transfer from the local toxics control account to the state toxics~~  
3 ~~control account such amounts as reflect excess fund balance in the~~  
4 ~~account.~~

5       ~~(9) During the 2011-2013 fiscal biennium, the local toxics control~~  
6 ~~account may also be used for local government shoreline update grants~~  
7 ~~and actions for reducing public exposure to toxic air pollution;~~  
8 ~~funding to local governments for flood levee improvements; and grants~~  
9 ~~to local governments for brownfield redevelopment.))~~

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

12       (1) The special category E account is created in the state  
13 treasury. Beginning July 1, 2013, and every fiscal year thereafter,  
14 the annual amount received from the tax imposed by RCW 82.21.030 that  
15 exceeds one hundred fifty million dollars, plus the fiscal growth  
16 factor under chapter 43.135 RCW, must be deposited into the special  
17 category E account. The state treasurer may make periodic deposits  
18 into the special category E account based on forecasted revenue.  
19 Moneys in the account may only be spent after appropriation.

20       (2) Moneys in the special category E account may be spent only on:

21       (a) Performance and outcome based projects, activities, programs,  
22 and services that support the clean-up, monitoring, and prevention of  
23 releases of hazardous substances, water protection and monitoring,  
24 water pollution prevention, monitoring and cleanup, and environmental  
25 health protection and monitoring;

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

30       (c) Transportation storm water projects;

31       (d) The state's responsibility for hazardous waste planning,  
32 management, regulation, enforcement, and technical assistance required  
33 under chapter 70.105 RCW;

34       (e) The state's responsibility for solid waste planning,  
35 management, regulation, enforcement, and technical assistance required  
36 under chapter 70.95 RCW;

1 (f) Water pollution control facilities financing programs  
2 authorized under chapter 70.146 RCW;

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

6 (h) Local government's solid waste plans and programs under the  
7 following chapters: Solid waste management, chapter 70.95 RCW; waste  
8 reduction, chapter 70.95C RCW; used oil recycling, chapter 70.95I RCW;  
9 and hazardous waste management, chapter 70.105 RCW; and

10 (i) Cleanup and disposal of hazardous substances from abandoned or  
11 derelict vessels, defined for the purposes of this section as vessels  
12 that have little or no value and either have no identified owner or  
13 have an identified owner lacking financial resources to cleanup and  
14 dispose of the vessel, that pose a threat to human health or the  
15 environment.

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

18 The radioactive mixed waste account is created within the state  
19 treasury. All receipts received from facilities assessed service  
20 charges established under RCW 70.105.280 must be deposited into the  
21 account. Moneys in the account may be spent only after appropriation.  
22 Expenditures from the account may only be used for carrying out the  
23 department's powers and duties under this chapter related to the  
24 regulation of facilities that treat, store, or dispose of mixed waste  
25 or mixed waste facilities that are undergoing closure.

26 NEW SECTION. **Sec. 7.** (1) For the biennium ending June 30, 2015,  
27 the state treasurer must transfer twenty-five million dollars from the  
28 state toxics control account to the special category E account created  
29 in section 5 of this act.

30 (2) For the biennium ending June 30, 2015, the state treasurer must  
31 transfer seventy-five million dollars from the local toxics control  
32 account to the special category E account created in section 5 of this  
33 act.

34 NEW SECTION. **Sec. 8.** By October 1, 2013, the state treasurer must  
35 transfer the fund balance of the mixed waste fees within the state

1 toxics control account to the radioactive mixed waste account created  
2 in section 6 of this act. The department of ecology shall report the  
3 fund balance amount to the state treasurer for transfer into the  
4 radioactive mixed waste account.

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

7 (1) The department may assess reasonable service charges against  
8 those facilities that store, treat, incinerate, or dispose of dangerous  
9 or extremely hazardous waste that contains both a nonradioactive  
10 hazardous component and a radioactive component or which are undergoing  
11 closure under this chapter in those instances where closure entails the  
12 physical characterization of remaining wastes which contain both a  
13 nonradioactive hazardous component and a radioactive component or the  
14 management of such wastes through treatment or removal, except any  
15 commercial low-level radioactive waste facility. Service charges may  
16 not exceed the costs to the department in carrying out the duties of  
17 this section.

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

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

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

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

27 (4) The department shall adopt rules necessary to implement this  
28 section. Facilities that store, treat, incinerate, or dispose of  
29 dangerous or extremely hazardous waste that contains both a  
30 nonradioactive hazardous component and a radioactive component shall  
31 not be subject to service charges prior to such rule making.  
32 Facilities undergoing closure under this chapter in those instances  
33 where closure entails the physical characterization of remaining wastes  
34 which contain both a nonradioactive hazardous component and a  
35 radioactive component or the management of such wastes through

1 treatment or removal shall not be subject to service charges prior to  
2 such rule making.

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