
SENATE BILL 6422

State of Washington

65th Legislature

2018 Regular Session

By Senators Ranker, Kuderer, Saldaña, and Rolfes

Read first time 01/17/18. Referred to Committee on Energy,
Environment & Technology.

1 AN ACT Relating to cleaning up toxic substances from Washington's
2 marine waters; amending RCW 70.105D.030, 70.105D.070, and
3 70.105D.120; and creating new sections.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that nearshore
6 marine waters in the state's Puget Sound portion of the Salish Sea
7 are critical to the production of benthic organisms that support the
8 entire food chain up through forage fish, salmon, shellfish, and
9 other aquatic species upon which orca whales and people alike depend.
10 Recent studies of salmon indicate that the presence of toxic
11 substances in these nearshore areas present perhaps the greatest
12 source of mortality to juvenile salmon, even greater than the risks
13 faced in other phases of their life cycle from headwater streams to
14 far out into the Pacific ocean and upon their return to their natal
15 streams. The declining health of the Salish Sea ecosystem is also
16 implicated in the faltering population of resident orca whales, and
17 the toxic substances in their primary food source, salmon, may be one
18 important factor jeopardizing the existence of these orca pods.

19 In addition to the critical role that the marine nearshore
20 environment plays in the ecological health of the Salish Sea, many of
21 these areas are also critical to the state's economy as a center of

1 industry, marine transport, and urban development. Delays in cleanup
2 of the historical legacy of improper management of hazardous
3 substances may impede advancing new development as well as
4 redevelopment in these urbanized areas, to the detriment of the
5 region's economy.

6 For these reasons, the legislature finds it necessary to direct
7 that a higher priority be placed upon the cleanup of toxic substances
8 in the marine areas. In doing so, the department of ecology and other
9 state and local authorities should design and implement cleanup in a
10 manner that incorporates projected climate change impacts.

11 NEW SECTION. **Sec. 2.** (1) The Puget Sound partnership, in
12 consultation with the department of ecology, shall prepare a report
13 on the effectiveness and pace of the removal of toxic substances from
14 nearshore areas of Puget Sound. The report must include but is not
15 limited to the following:

16 (a) An assessment of the effectiveness of the remedial action
17 framework and funding priorities established under the model toxics
18 control act, chapter 70.105D RCW, and its implementing rules, in
19 providing for effective and timely cleanup of hazardous waste sites
20 in nearshore areas;

21 (b) A review of the effectiveness of the coordination among
22 potentially liable parties and state, federal, tribal, and local
23 governments in developing and timely implementing remedial actions in
24 the Puget Sound nearshore;

25 (c) A review of the projected impacts of climate change on the
26 health of Puget Sound, including sea level rise, ocean acidification,
27 peak runoff events, and other impacts, and how those impacts are
28 being considered in the design of remedial actions; and

29 (d) Recommendations to improve and speed up remedial actions in
30 the nearshore, including legislative or administrative actions.

31 (2) The report must be provided to the appropriate committees of
32 the senate and house of representatives by December 1, 2018.

33 **Sec. 3.** RCW 70.105D.030 and 2013 2nd sp.s. c 1 s 6 are each
34 amended to read as follows:

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

37 (a) Investigate, provide for investigating, or require
38 potentially liable persons to investigate any releases or threatened

1 releases of hazardous substances, including but not limited to
2 inspecting, sampling, or testing to determine the nature or extent of
3 any release or threatened release. If there is a reasonable basis to
4 believe that a release or threatened release of a hazardous substance
5 may exist, the department's authorized employees, agents, or
6 contractors may enter upon any property and conduct investigations.
7 The department shall give reasonable notice before entering property
8 unless an emergency prevents such notice. The department may by
9 subpoena require the attendance or testimony of witnesses and the
10 production of documents or other information that the department
11 deems necessary;

12 (b) Conduct, provide for conducting, or require potentially
13 liable persons to conduct remedial actions (including investigations
14 under (a) of this subsection) to remedy releases or threatened
15 releases of hazardous substances. In carrying out such powers, the
16 department's authorized employees, agents, or contractors may enter
17 upon property. The department shall give reasonable notice before
18 entering property unless an emergency prevents such notice. In
19 conducting, providing for, or requiring remedial action, the
20 department shall: (i) Give preference to permanent solutions to the
21 maximum extent practicable; (ii) consider the potential impacts from
22 climate change on the long-term effectiveness of the remedial action;
23 and ~~((shall))~~ (iii) provide for or require adequate monitoring to
24 ensure the effectiveness of the remedial action;

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

28 (d) Carry out all state programs authorized under the federal
29 cleanup law and the federal resource, conservation, and recovery act,
30 42 U.S.C. Sec. 6901 et seq., as amended;

31 (e) Classify substances as hazardous substances for purposes of
32 RCW 70.105D.020 and classify substances and products as hazardous
33 substances for purposes of RCW 82.21.020(1);

34 (f) Issue orders or enter into consent decrees or agreed orders
35 that include, or issue written opinions under (i) of this subsection
36 that may be conditioned upon, environmental covenants where necessary
37 to protect human health and the environment from a release or
38 threatened release of a hazardous substance from a facility. Prior to
39 establishing an environmental covenant under this subsection, the
40 department shall consult with and seek comment from a city or county

1 department with land use planning authority for real property subject
2 to the environmental covenant;

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

8 (h) Require holders to conduct remedial actions necessary to
9 abate an imminent or substantial endangerment pursuant to RCW
10 70.105D.020(22)(b)(ii)(C);

11 (i) Provide informal advice and assistance to persons regarding
12 the administrative and technical requirements of this chapter. This
13 may include site-specific advice to persons who are conducting or
14 otherwise interested in independent remedial actions. Any such advice
15 or assistance shall be advisory only, and shall not be binding on the
16 department. As a part of providing this advice and assistance for
17 independent remedial actions, the department may prepare written
18 opinions regarding whether the independent remedial actions or
19 proposals for those actions meet the substantive requirements of this
20 chapter or whether the department believes further remedial action is
21 necessary at the facility. Nothing in this chapter may be construed
22 to preclude the department from issuing a written opinion on whether
23 further remedial action is necessary at any portion of the real
24 property located within a facility, even if further remedial action
25 is still necessary elsewhere at the same facility. Such a written
26 opinion on a portion of a facility must also provide an opinion on
27 the status of the facility as a whole. The department may collect,
28 from persons requesting advice and assistance, the costs incurred by
29 the department in providing such advice and assistance; however, the
30 department shall, where appropriate, waive collection of costs in
31 order to provide an appropriate level of technical assistance in
32 support of public participation. The state, the department, and
33 officers and employees of the state are immune from all liability,
34 and no cause of action of any nature may arise from any act or
35 omission in providing, or failing to provide, informal advice and
36 assistance. The department must track the number of requests for
37 reviews of planned or completed independent remedial actions and
38 establish performance measures to track how quickly the department is
39 able to respond to those requests. By November 1, 2015, the
40 department must submit to the governor and the appropriate

1 legislative fiscal and policy committees a report on achieving the
2 performance measures and provide recommendations for improving
3 performance, including staffing needs;

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

10 (k) Establish model remedies for common categories of facilities,
11 types of hazardous substances, types of media, or geographic areas to
12 streamline and accelerate the selection of remedies for routine types
13 of cleanups at facilities;

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

15 (A) Identify the requirements for characterizing a facility to
16 select a model remedy, the applicability of the model remedy for use
17 at a facility, and monitoring requirements;

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

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

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

28 (iii) If a facility meets the requirements for use of a model
29 remedy, an analysis of the feasibility of alternative remedies is not
30 required under this chapter. For department-conducted and department-
31 supervised remedial actions, the department must provide public
32 notice and consider public comments on the proposed use of a model
33 remedy at a facility. The department may waive collection of its
34 costs for providing a written opinion under (i) of this subsection on
35 a cleanup that qualifies for and appropriately uses a model remedy;
36 and

37 (l) Take any other actions necessary to carry out the provisions
38 of this chapter, including the power to adopt rules under chapter
39 34.05 RCW.

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

6 (a) Provide for public participation, including at least (i)
7 public notice of the development of investigative plans or remedial
8 plans for releases or threatened releases and (ii) concurrent public
9 notice of all compliance orders, agreed orders, enforcement orders,
10 or notices of violation;

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

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

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

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

29 (f) Apply industrial clean-up standards at industrial properties.
30 Rules adopted under this subsection shall ensure that industrial
31 properties cleaned up to industrial standards cannot be converted to
32 nonindustrial uses without approval from the department. The
33 department may require that a property cleaned up to industrial
34 standards is cleaned up to a more stringent applicable standard as a
35 condition of conversion to a nonindustrial use. Industrial clean-up
36 standards may not be applied to industrial properties where hazardous
37 substances remaining at the property after remedial action pose a
38 threat to human health or the environment in adjacent nonindustrial
39 areas.

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

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

26 (5) Before September 20th of each even-numbered year, the
27 department shall:

28 (a) Develop a comprehensive ten-year financing report in
29 coordination with all local governments with clean-up
30 responsibilities that identifies the projected biennial hazardous
31 waste site remedial action needs that are eligible for funding from
32 the state and local toxics control account and the environmental
33 legacy stewardship account;

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

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

39 (d) Project the remedial action need, cost, revenue, and any
40 recommended working capital reserve estimate to the next biennium's

1 long-term remedial action needs from both the local and state toxics
2 control account and the environmental legacy stewardship account, and
3 submit this information to the appropriate standing fiscal and
4 environmental committees of the senate and house of representatives.
5 This submittal must also include a ranked list of such remedial
6 action projects for both accounts. The submittal must also identify
7 separate budget estimates for large, multibiennia clean-up projects
8 that exceed ten million dollars. The department shall prepare its
9 ten-year capital budget plan that is submitted to the office of
10 financial management to reflect the separate budget estimates for
11 these large clean-up projects and include information on the
12 anticipated private and public funding obligations for completion of
13 the relevant projects.

14 (6) By December 1st of each odd-numbered year, the department
15 must provide the legislature and the public a report of the
16 department's activities supported by appropriations from the state
17 and local toxics control accounts and the environmental legacy
18 stewardship account. The report must be prepared and displayed in a
19 manner that allows the legislature and the public to easily determine
20 the statewide and local progress made in cleaning up hazardous waste
21 sites under this chapter. The report must include, at a minimum:

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

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

27 (i) The amount of money from the state and local toxics control
28 accounts and the environmental legacy stewardship account used to
29 conduct remedial actions at the site and the amount of that money
30 recovered from potentially liable persons;

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

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

35 (B) Remedial investigation;

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

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

38 (E) Operation and maintenance or monitoring of the constructed
39 remedy; and

40 (F) The final completion date.

1 (7) The department shall establish a program to identify
2 potential hazardous waste sites and to encourage persons to provide
3 information about hazardous waste sites.

4 (8) For all facilities where an environmental covenant has been
5 required under subsection (1)(f) of this section, including all
6 facilities where the department has required an environmental
7 covenant under an order, agreed order, or consent decree, or as a
8 condition of a written opinion issued under the authority of
9 subsection (1)(i) of this section, the department shall periodically
10 review the environmental covenant for effectiveness. Except as
11 otherwise provided in (c) of this subsection, the department shall
12 conduct a review at least once every five years after an
13 environmental covenant is recorded.

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

15 (i) A review of the title of the real property subject to the
16 environmental covenant to determine whether the environmental
17 covenant was properly recorded and, if applicable, amended or
18 terminated;

19 (ii) A physical inspection of the real property subject to the
20 environmental covenant to determine compliance with the environmental
21 covenant, including whether any development or redevelopment of the
22 real property has violated the terms of the environmental covenant;
23 and

24 (iii) A review of the effectiveness of the environmental covenant
25 in limiting or prohibiting activities that may interfere with the
26 integrity of the remedial action or that may result in exposure to or
27 migration of hazardous substances. This shall include a review of
28 available monitoring data.

29 (b) If an environmental covenant has been amended or terminated
30 without proper authority, or if the terms of an environmental
31 covenant have been violated, or if the environmental covenant is no
32 longer effective in limiting or prohibiting activities that may
33 interfere with the integrity of the remedial action or that may
34 result in exposure to or migration of hazardous substances, then the
35 department shall take any and all appropriate actions necessary to
36 ensure compliance with the environmental covenant and the policies
37 and requirements of this chapter.

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

1 (i) Enter all required information about the environmental
2 covenant into the registry established under RCW 64.70.120 by June
3 30, 2008;

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

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

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

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

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

13 **Sec. 4.** RCW 70.105D.070 and 2017 3rd sp.s. c 1 s 980 are each
14 amended to read as follows:

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

17 (2)(a) Moneys collected under RCW 82.21.030 must be deposited as
18 follows: Fifty-six percent to the state toxics control account under
19 subsection (3) of this section and forty-four percent to the local
20 toxics control account under subsection (4) of this section. When the
21 cumulative amount of deposits made to the state and local toxics
22 control accounts under this section reaches the limit during a fiscal
23 year as established in (b) of this subsection, the remainder of the
24 moneys collected under RCW 82.21.030 during that fiscal year must be
25 deposited into the environmental legacy stewardship account created
26 in RCW 70.105D.170.

27 (b) The limit on distributions of moneys collected under RCW
28 82.21.030 to the state and local toxics control accounts for the
29 fiscal year beginning July 1, 2013, is one hundred forty million
30 dollars.

31 (c) In addition to the funds required under (a) of this
32 subsection, the following moneys must be deposited into the state
33 toxics control account: (i) The costs of remedial actions recovered
34 under this chapter (~~or chapter 70.105A RCW~~); (ii) penalties
35 collected or recovered under this chapter; and (iii) any other money
36 appropriated or transferred to the account by the legislature.

37 (3) Moneys in the state toxics control account must be used only
38 to carry out the purposes of this chapter, including but not limited
39 to the following activities:

- 1 (a) The state's responsibility for hazardous waste planning,
2 management, regulation, enforcement, technical assistance, and public
3 education required under chapter 70.105 RCW;
- 4 (b) The state's responsibility for solid waste planning,
5 management, regulation, enforcement, technical assistance, and public
6 education required under chapter 70.95 RCW;
- 7 (c) The hazardous waste clean-up program required under this
8 chapter;
- 9 (d) State matching funds required under federal cleanup law;
- 10 (e) Financial assistance for local programs in accordance with
11 chapters 70.95, 70.95C, 70.95I, and 70.105 RCW;
- 12 (f) State government programs for the safe reduction, recycling,
13 or disposal of paint and hazardous wastes from households, small
14 businesses, and agriculture;
- 15 (g) Oil and hazardous materials spill prevention, preparedness,
16 training, and response activities;
- 17 (h) Water and environmental health protection and monitoring
18 programs;
- 19 (i) Programs authorized under chapter 70.146 RCW;
- 20 (j) A public participation program;
- 21 (k) 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) but only when the amount and
24 terms of such funding are established under a settlement agreement
25 under RCW 70.105D.040(4) and when the director has found that the
26 funding will achieve both: (i) A substantially more expeditious or
27 enhanced cleanup than would otherwise occur; and (ii) the prevention
28 or mitigation of unfair economic hardship;
- 29 (l) Development and demonstration of alternative management
30 technologies designed to carry out the hazardous waste management
31 priorities of RCW 70.105.150;
- 32 (m) State agriculture and health programs for the safe use,
33 reduction, recycling, or disposal of pesticides;
- 34 (n) Stormwater pollution control projects and activities that
35 protect or preserve existing remedial actions or prevent hazardous
36 clean-up sites;
- 37 (o) Funding requirements to maintain receipt of federal funds
38 under the federal solid waste disposal act (42 U.S.C. Sec. 6901 et
39 seq.);

1 (p) Air quality programs and actions for reducing public exposure
2 to toxic air pollution;

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

6 (i) The facility is located within a redevelopment opportunity
7 zone designated under RCW 70.105D.150;

8 (ii) The amount and terms of the funding are established under a
9 settlement agreement under RCW 70.105D.040(5); and

10 (iii) The director has found the funding meets any additional
11 criteria established in rule by the department, will achieve a
12 substantially more expeditious or enhanced cleanup than would
13 otherwise occur, and will provide a public benefit in addition to
14 cleanup commensurate with the scope of the public funding;

15 (r) Petroleum-based plastic or expanded polystyrene foam debris
16 cleanup activities in fresh or marine waters;

17 (s) Appropriations to the local toxics control account or the
18 environmental legacy stewardship account created in RCW 70.105D.170,
19 if the legislature determines that priorities for spending exceed
20 available funds in those accounts;

21 (t) During the 2015-2017 and 2017-2019 fiscal biennia, the
22 department of ecology's water quality, shorelands, environmental
23 assessment, administration, and air quality programs;

24 (u) During the 2013-2015 fiscal biennium, actions at the state
25 conservation commission to improve water quality for shellfish;

26 (v) During the 2013-2015 and 2015-2017 fiscal biennia, actions at
27 the University of Washington for reducing ocean acidification;

28 (w) During the 2015-2017 and 2017-2019 fiscal biennia, for the
29 University of Washington Tacoma soil remediation project;

30 (x) For the 2013-2015 fiscal biennium, moneys in the state toxics
31 control account may be spent on projects in section 3160, chapter 19,
32 Laws of 2013 2nd sp. sess. and for transfer to the local toxics
33 control account;

34 (y) For the 2013-2015 fiscal biennium, moneys in the state toxics
35 control account may be transferred to the radioactive mixed waste
36 account; and

37 (z) For the 2015-2017 and 2017-2019 fiscal biennia, forest
38 practices regulation at the department of natural resources.

1 (4)(a) The department shall use moneys deposited in the local
2 toxics control account for grants or loans to local governments for
3 the following purposes in descending order of priority:

4 (i) Extended grant agreements entered into under (e)(i) of this
5 subsection;

6 (ii) Remedial actions, including planning for adaptive reuse of
7 properties as provided for under (e)(iv) of this subsection. The
8 department must prioritize funding of remedial actions at:

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

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

16 (C) Nearshore and marine zones that impact the recovery of Puget
17 Sound, including the removal of creosote pilings;

18 (iii) Stormwater pollution source projects that: (A) Work in
19 conjunction with a remedial action; (B) protect completed remedial
20 actions against recontamination; (~~(C)~~) (C) prevent hazardous clean-
21 up sites; or (D) hasten the recovery of Puget Sound;

22 (iv) Hazardous waste plans and programs under chapter 70.105 RCW;

23 (v) Solid waste plans and programs under chapters 70.95, 70.95C,
24 70.95I, and 70.105 RCW;

25 (vi) Petroleum-based plastic or expanded polystyrene foam debris
26 cleanup activities in fresh or marine waters; and

27 (vii) Appropriations to the state toxics control account or the
28 environmental legacy stewardship account created in RCW 70.105D.170,
29 if the legislature determines that priorities for spending exceed
30 available funds in those accounts.

31 (b) Funds for plans and programs must be allocated consistent
32 with the priorities and matching requirements established in chapters
33 70.105, 70.95C, 70.95I, and 70.95 RCW.

34 (c) During the 2013-2015 fiscal biennium, the local toxics
35 control account may also be used for local government stormwater
36 planning and implementation activities.

37 (d) During the 2013-2015 fiscal biennium, the legislature may
38 transfer from the local toxics control account to the state general
39 fund, such amounts as reflect the excess fund balance in the account.

1 (e) To expedite cleanups throughout the state, the department may
2 use the following strategies when providing grants to local
3 governments under this subsection:

4 (i) Enter into an extended grant agreement with a local
5 government conducting remedial actions at a facility where those
6 actions extend over multiple biennia and the total eligible cost of
7 those actions exceeds twenty million dollars. The agreement is
8 subject to the following limitations:

9 (A) The initial duration of such an agreement may not exceed ten
10 years. The department may extend the duration of such an agreement
11 upon finding substantial progress has been made on remedial actions
12 at the facility;

13 (B) Extended grant agreements may not exceed fifty percent of the
14 total eligible remedial action costs at the facility; and

15 (C) The department may not allocate future funding to an extended
16 grant agreement unless the local government has demonstrated to the
17 department that funds awarded under the agreement during the previous
18 biennium have been substantially expended or contracts have been
19 entered into to substantially expend the funds;

20 (ii) Enter into a grant agreement with a local government
21 conducting a remedial action that provides for periodic reimbursement
22 of remedial action costs as they are incurred as established in the
23 agreement;

24 (iii) Enter into a grant agreement with a local government prior
25 to it acquiring a property or obtaining necessary access to conduct
26 remedial actions, provided the agreement is conditioned upon the
27 local government acquiring the property or obtaining the access in
28 accordance with a schedule specified in the agreement;

29 (iv) Provide integrated planning grants to local governments to
30 fund studies necessary to facilitate remedial actions at brownfield
31 properties and adaptive reuse of properties following remediation.
32 Eligible activities include, but are not limited to: Environmental
33 site assessments; remedial investigations; health assessments;
34 feasibility studies; site planning; community involvement; land use
35 and regulatory analyses; building and infrastructure assessments;
36 economic and fiscal analyses; and any environmental analyses under
37 chapter 43.21C RCW;

38 (v) Provide grants to local governments for remedial actions
39 related to area-wide groundwater contamination. To receive the
40 funding, the local government does not need to be a potentially

1 liable person or be required to seek reimbursement of grant funds
2 from a potentially liable person;

3 (vi) The director may alter grant matching requirements to create
4 incentives for local governments to expedite cleanups when one of the
5 following conditions exists:

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

8 (B) Funding would create new substantial economic development,
9 public recreational opportunities, or habitat restoration
10 opportunities that would not otherwise occur; or

11 (C) Funding would create an opportunity for acquisition and
12 redevelopment of brownfield property under RCW 70.105D.040(5) that
13 would not otherwise occur;

14 (vii) When pending grant applications under (e)(iv) and (v) of
15 this subsection (4) exceed the amount of funds available, designated
16 redevelopment opportunity zones must receive priority for
17 distribution of available funds.

18 (f) To expedite multiparty clean-up efforts, the department may
19 purchase remedial action cost-cap insurance. For the 2013-2015 fiscal
20 biennium, moneys in the local toxics control account may be spent on
21 projects in sections 3024, 3035, 3036, and 3059, chapter 19, Laws of
22 2013 2nd sp. sess.

23 (5) Except for unanticipated receipts under RCW 43.79.260 through
24 43.79.282, moneys in the state and local toxics control accounts may
25 be spent only after appropriation by statute.

26 (6) No moneys deposited into either the state or local toxics
27 control account may be used for: Natural disasters where there is no
28 hazardous substance contamination; high performance buildings; solid
29 waste incinerator facility feasibility studies, construction,
30 maintenance, or operation; or after January 1, 2010, for projects
31 designed to address the restoration of Puget Sound, funded in a
32 competitive grant process, that are in conflict with the action
33 agenda developed by the Puget Sound partnership under RCW 90.71.310.
34 However, this subsection does not prevent an appropriation from the
35 state toxics control account to the department of revenue to enforce
36 compliance with the hazardous substance tax imposed in chapter 82.21
37 RCW.

38 (7) Except during the 2011-2013 and the 2015-2017 fiscal biennia,
39 one percent of the moneys collected under RCW 82.21.030 shall be
40 allocated only for public participation grants to persons who may be

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

11 (8) The department shall adopt rules for grant or loan issuance
12 and performance. To accelerate both remedial action and economic
13 recovery, the department may expedite the adoption of rules necessary
14 to implement chapter 1, Laws of 2013 2nd sp. sess. using the
15 expedited procedures in RCW 34.05.353. The department shall initiate
16 the award of financial assistance by August 1, 2013. To ensure the
17 adoption of rules will not delay financial assistance, the department
18 may administer the award of financial assistance through interpretive
19 guidance pending the adoption of rules through July 1, 2014.

20 (9) Except as provided under subsection (3)(k) and (q) of this
21 section, nothing in chapter 1, Laws of 2013 2nd sp. sess. affects the
22 ability of a potentially liable person to receive public funding.

23 (10) During the 2015-2017 fiscal biennium the local toxics
24 control account may also be used for the centennial clean water
25 program and for the stormwater financial assistance program
26 administered by the department of ecology.

27 (11) During the 2017-2019 biennium the state toxics control
28 account, the local toxics control account, and the environmental
29 legacy stewardship account may be used for interchangeable purposes
30 and funds may be transferred between accounts to accomplish those
31 purposes.

32 **Sec. 5.** RCW 70.105D.120 and 2007 c 341 s 31 are each amended to
33 read as follows:

34 (1) When administering funds under this chapter, the department
35 shall give preference only to Puget Sound partners, as defined in RCW
36 90.71.010, in comparison to other entities that are eligible to be
37 included in the definition of Puget Sound partner. Entities that are
38 not eligible to be a Puget Sound partner due to geographic location,
39 composition, exclusion from the scope of the Puget Sound action

1 agenda developed by the Puget Sound partnership under RCW 90.71.310,
2 or for any other reason, shall not be given less preferential
3 treatment than Puget Sound partners.

4 (2) The department shall give preference to clean-up projects by
5 Puget Sound partners that incorporate climate change impacts into
6 remedial action designs and that address marine nearshore
7 environments critical to either or both ecological health and the
8 local economy.

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