

ESSB 5993 - H COMM AMD
By Committee on Finance

NOT ADOPTED 04/27/2019

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** It is the intent of the legislature that
4 during the 2019-2021 biennium no transfers to the state general fund,
5 education legacy trust account, or opportunities pathway account must
6 be made from the state toxics control account, local toxics control
7 account, environmental legacy stewardship account, model toxics
8 control operating account, model toxics control capital account, or
9 model toxics control stormwater account.

10 **Part I**

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

13 (1) It is the intent of this chapter to impose a tax only once
14 for each hazardous substance possessed in this state and to tax the
15 first possession of all hazardous substances, including substances
16 and products that the department of ecology determines to present a
17 threat to human health or the environment. However, it is not
18 intended to impose a tax on the first possession of small amounts of
19 any hazardous substance (other than petroleum and pesticide products)
20 that is first possessed by a retailer for the purpose of sale to
21 ultimate consumers. This chapter is not intended to exempt any person
22 from tax liability under any other law.

23 (2) It is the specific purpose of the model toxics control reform
24 act (this act) to update the model toxics control program and its
25 primary funding mechanism. These reforms are intended to achieve the
26 financial stability, transparency, and long-term protection of
27 revenues. Specifically, this reform act makes the following changes:

28 (a) Increases funding for programs and projects related to clean
29 air, clean water, toxic cleanup, and prevention, with specific focus
30 on stormwater pollution;

1 (b) Provides distinct and transparent financial separation of
2 capital and operating budget funding under the model toxics control
3 program;

4 (c) Improves the transparency and visibility of operating and
5 capital project expenditures under the model toxics control program;
6 and

7 (d) Eliminates the year-to-year volatility of hazardous substance
8 tax revenues by moving to a volumetric rate for petroleum products.

9 **Part II**

10 **Sec. 201.** RCW 82.21.030 and 1989 c 2 s 10 are each amended to
11 read as follows:

12 (1)(a) A tax is imposed on the privilege of possession of
13 hazardous substances in this state. Except as provided in (b) of this
14 subsection, the rate of the tax ((shall be)) is seven-tenths of one
15 percent multiplied by the wholesale value of the substance. Moneys
16 collected under this subsection (1)(a) must be deposited in the model
17 toxics control capital account.

18 (b) Beginning July 1, 2019, the rate of the tax on petroleum
19 products is one dollar and nine cents per barrel. The tax collected
20 under this subsection (1)(b) on petroleum products must be deposited
21 as follows, after first depositing the tax as provided in (c) of this
22 subsection (1):

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

25 (ii) Twenty-five percent to the model toxics control capital
26 account created under section 203 of this act; and

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

29 (c) Until the beginning of the ensuing biennium after the
30 enactment of an additive transportation funding act, fifty million
31 dollars per biennium to the motor vehicle fund to be used exclusively
32 for transportation stormwater activities and projects. For purposes
33 of this subsection, "additive transportation funding act" means an
34 act in which the combined total of new revenues deposited into the
35 motor vehicle fund and the multimodal transportation account exceed
36 two billion dollars per biennium attributable solely to an increase
37 in revenue from the enactment of the act.

1 (d) The department must compile a list of petroleum products that
2 are not easily measured on a per barrel basis. Petroleum products
3 identified on the list are subject to the rate under (a) of this
4 subsection in lieu of the volumetric rate under (b) of this
5 subsection. The list will be made in a form and manner prescribed by
6 the department and must be made available on the department's
7 internet web site. In compiling the list, the department may accept
8 technical assistance from persons that sell, market, or distribute
9 petroleum products and consider any other resource the department
10 finds useful in compiling the list.

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

13 ~~(3))~~ Chapter 82.32 RCW applies to the tax imposed in this
14 chapter. The tax due dates, reporting periods, and return
15 requirements applicable to chapter 82.04 RCW apply equally to the tax
16 imposed in this chapter.

17 NEW SECTION. Sec. 202. A new section is added to chapter
18 70.105D RCW to read as follows:

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

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

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

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

30 (c) The hazardous waste clean-up program required under this
31 chapter;

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

33 (e) Financial assistance for local programs and plans, including
34 local solid waste financial assistance, in accordance with chapters
35 70.76, 70.95, 70.95C, 70.95I, and 70.105 RCW;

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

1 (g) Oil and hazardous materials spill prevention, preparedness,
2 training, and response activities;

3 (h) Water and environmental health protection and monitoring
4 programs;

5 (i) Programs authorized under chapter 70.146 RCW;

6 (j) A public participation program;

7 (k) Development and demonstration of alternative management
8 technologies designed to carry out the hazardous waste management
9 priorities of RCW 70.105.150;

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

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

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

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

19 (3) Except for unanticipated receipts under RCW 43.79.260 through
20 43.79.282, moneys in model toxics control operating account may be
21 spent only after appropriation by statute.

22 (4) One percent of the moneys collected under RCW 82.21.030 must
23 be allocated only for public participation grants to persons who may
24 be adversely affected by a release or threatened release of a
25 hazardous substance and to not-for-profit public interest
26 organizations. The primary purpose of these grants is to facilitate
27 the participation by persons and organizations in the investigation
28 and remedying of releases or threatened releases of hazardous
29 substances and to implement the state's solid and hazardous waste
30 management priorities. No grant may exceed sixty thousand dollars.
31 Grants may be renewed annually. Moneys appropriated for public
32 participation that are not expended at the close of any biennium
33 revert to the model toxics control operating account.

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

36 NEW SECTION. **Sec. 203.** A new section is added to chapter
37 70.105D RCW to read as follows:

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

1 (2) In addition to the funds deposited into the model toxics
2 control capital account required under RCW 82.21.030, the following
3 moneys must be deposited into the model toxics control capital
4 account:

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

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

9 (c) Any other money appropriated or transferred to the account by
10 the legislature.

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

15 (4) Moneys in the model toxics control capital account may be
16 used only for capital projects and activities that carry out the
17 purposes of this chapter and for financial assistance to local
18 governments or other persons to carry out those projects or
19 activities, including but not limited to the following, generally in
20 descending order of priority:

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

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

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

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

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

36 (iii) Department-conducted remedial actions;

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

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

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

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

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

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

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

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

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

24 (b) Grants, or loans, or contracts to local governments for solid
25 waste plans and programs under chapters 70.95, 70.95C, 70.95I,
26 70.95G, 70.95M, and 70.105 RCW. Funds must be allocated consistent
27 with priorities and matching requirements in the respective chapters;

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

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

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

37 (5) The department may establish and administer a program to
38 provide grants and loans to local governments for remedial actions,
39 including planning for adaptive reuse of contaminated properties. The
40 department may not award a grant or loan for a remedial action unless

1 the local government has obtained all of the required permits for the
2 action within one year of the effective date of the enacted budget.
3 To expedite cleanups throughout the state, the department may use the
4 following strategies when providing grants to local governments under
5 this subsection:

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

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

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

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

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

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

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

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

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

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

11 (ii) Funding would create new substantial economic development,
12 public recreational opportunities, or habitat restoration
13 opportunities that would not otherwise occur; or

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

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

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

24 NEW SECTION. **Sec. 204.** A new section is added to chapter
25 70.105D RCW to read as follows:

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

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

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

37 (a) Stormwater pollution control projects and activities that
38 protect or preserve existing remedial actions or prevent hazardous
39 clean-up sites;

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

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

6 **Part III**

7 NEW SECTION. **Sec. 301.** (1) The office of financial management
8 and the legislative evaluation and accountability program committee
9 must identify changes to existing budgeting and reporting systems,
10 including enterprise, internal, and public-facing systems, that will
11 improve access to and understanding of relevant model toxics control
12 act account-related budget information available at the time
13 governor-recommended and legislative budgets are released. In
14 carrying out this work, the office of financial management and the
15 legislative evaluation and accountability program committee must
16 consult with legislative fiscal staff.

17 (2) The office of financial management and the legislative
18 evaluation and accountability program committee must identify
19 proposed improvements and, as appropriate, necessary funding and
20 legislative changes to the governor and legislature by September 1,
21 2020. To the extent possible, the office of financial management and
22 the legislative evaluation and accountability program committee may
23 implement low and no-cost changes during the 2019-2021 biennium.

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

25 **Part IV**

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

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

30 (a) Investigate, provide for investigating, or require
31 potentially liable persons to investigate any releases or threatened
32 releases of hazardous substances, including but not limited to
33 inspecting, sampling, or testing to determine the nature or extent of
34 any release or threatened release. If there is a reasonable basis to
35 believe that a release or threatened release of a hazardous substance
36 may exist, the department's authorized employees, agents, or

1 contractors may enter upon any property and conduct investigations.
2 The department shall give reasonable notice before entering property
3 unless an emergency prevents such notice. The department may by
4 subpoena require the attendance or testimony of witnesses and the
5 production of documents or other information that the department
6 deems necessary;

7 (b) Conduct, provide for conducting, or require potentially
8 liable persons to conduct remedial actions (including investigations
9 under (a) of this subsection) to remedy releases or threatened
10 releases of hazardous substances. In carrying out such powers, the
11 department's authorized employees, agents, or contractors may enter
12 upon property. The department (~~shall~~) must give reasonable notice
13 before entering property unless an emergency prevents such notice. In
14 conducting, providing for, or requiring remedial action, the
15 department (~~shall~~) must give preference to permanent solutions to
16 the maximum extent practicable and (~~shall~~) must provide for or
17 require adequate monitoring to ensure the effectiveness of the
18 remedial action;

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

22 (d) Carry out all state programs authorized under the federal
23 cleanup law and the federal resource, conservation, and recovery act,
24 42 U.S.C. Sec. 6901 et seq., as amended;

25 (e) Classify substances as hazardous substances for purposes of
26 RCW 70.105D.020 and classify substances and products as hazardous
27 substances for purposes of RCW 82.21.020(1);

28 (f) Issue orders or enter into consent decrees or agreed orders
29 that include, or issue written opinions under (i) of this subsection
30 that may be conditioned upon, environmental covenants where necessary
31 to protect human health and the environment from a release or
32 threatened release of a hazardous substance from a facility. Prior to
33 establishing an environmental covenant under this subsection, the
34 department (~~shall~~) must consult with and seek comment from a city
35 or county department with land use planning authority for real
36 property subject to the environmental covenant;

37 (g) Enforce the application of permanent and effective
38 institutional controls that are necessary for a remedial action to be
39 protective of human health and the environment and the notification

1 requirements established in RCW 70.105D.110, and impose penalties for
2 violations of that section consistent with RCW 70.105D.050;

3 (h) Require holders to conduct remedial actions necessary to
4 abate an imminent or substantial endangerment pursuant to RCW
5 70.105D.020(22)(b)(ii)(C);

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

39 (j) In fulfilling the objectives of this chapter, the department
40 (~~(shall)~~) must allocate staffing and financial assistance in a manner

1 that considers both the reduction of human and environmental risks
2 and the land reuse potential and planning for the facilities to be
3 cleaned up. This does not preclude the department from allocating
4 resources to a facility based solely on human or environmental risks;

5 (k) Establish model remedies for common categories of facilities,
6 types of hazardous substances, types of media, or geographic areas to
7 streamline and accelerate the selection of remedies for routine types
8 of cleanups at facilities;

9 (i) When establishing a model remedy, the department (~~shall~~)
10 must:

11 (A) Identify the requirements for characterizing a facility to
12 select a model remedy, the applicability of the model remedy for use
13 at a facility, and monitoring requirements;

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

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

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

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

33 (1) Take any other actions necessary to carry out the provisions
34 of this chapter, including the power to adopt rules under chapter
35 34.05 RCW.

36 (2) The department (~~shall~~) must immediately implement all
37 provisions of this chapter to the maximum extent practicable,
38 including investigative and remedial actions where appropriate. The
39 department (~~shall~~) must adopt, and thereafter enforce, rules under
40 chapter 34.05 RCW to:

1 (a) Provide for public participation, including at least (i)
2 public notice of the development of investigative plans or remedial
3 plans for releases or threatened releases and (ii) concurrent public
4 notice of all compliance orders, agreed orders, enforcement orders,
5 or notices of violation;

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

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

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

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

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

35 (3) To achieve and protect the state's long-term ecological
36 health, the department (~~shall~~) must plan to clean up hazardous
37 waste sites and prevent the creation of future hazards due to
38 improper disposal of toxic wastes at a pace that matches the
39 estimated cash resources in the (~~state and local toxics control~~
40 ~~accounts and the environmental legacy stewardship account created in~~

1 ~~RCW 70.105D.170~~) model toxics control capital account. Estimated
2 cash resources must consider the annual cash flow requirements of
3 major projects that receive appropriations expected to cross multiple
4 biennia. ~~((To effectively monitor toxic accounts expenditures, the~~
5 ~~department shall develop a comprehensive ten-year financing report~~
6 ~~that identifies long-term remedial action project costs, tracks~~
7 ~~expenses, and projects future needs.~~

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

21 ~~(5))~~ (4) Before September 20th of each even-numbered year, the
22 department ~~((shall))~~ must:

23 (a) Develop a comprehensive ten-year financing report in
24 coordination with all local governments with clean-up
25 responsibilities that identifies the projected biennial hazardous
26 waste site remedial action needs that are eligible for funding from
27 the ~~((state and local toxics control account and the environmental~~
28 ~~legacy stewardship account))~~ model toxics control capital account;

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

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

35 (d) Project the remedial action need, cost, revenue, and any
36 recommended working capital reserve estimate to the next biennium's
37 long-term remedial action needs from ~~((both the local and state~~
38 ~~toxics control account and the environmental legacy stewardship~~
39 ~~account))~~ model toxics control capital account, and submit this
40 information to the appropriate standing fiscal and environmental

1 committees of the senate and house of representatives. This submittal
2 must also include a ranked list of such remedial action projects for
3 ~~((both))~~ the model toxics control capital account~~((s))~~. The submittal
4 must also identify separate budget estimates for large, multibiennia
5 clean-up projects that exceed ten million dollars. The department
6 ~~((shall))~~ must prepare its ten-year capital budget plan that is
7 submitted to the office of financial management to reflect the
8 separate budget estimates for these large clean-up projects and
9 include information on the anticipated private and public funding
10 obligations for completion of the relevant projects.

11 ~~((+6))~~ (5) By December 1st of each odd-numbered year, the
12 department must provide the legislature and the public a report of
13 the department's activities supported by appropriations from the
14 ~~((state and local toxics control accounts and the environmental
15 legacy stewardship))~~ model toxics control operating, capital, and
16 stormwater accounts. The report must be prepared and displayed in a
17 manner that allows the legislature and the public to easily determine
18 the statewide and local progress made in cleaning up hazardous waste
19 sites under this chapter. The report must include, at a minimum:

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

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

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

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

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

34 (B) Remedial investigation;

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

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

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

39 (F) The final completion date.

1 ~~((7))~~ (6) The department ~~((shall))~~ must establish a program to
2 identify potential hazardous waste sites and to encourage persons to
3 provide information about hazardous waste sites.

4 ~~((8))~~ (7) For all facilities where an environmental covenant
5 has been required under subsection (1)(f) of this section, including
6 all 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))~~ must
10 periodically review the environmental covenant for effectiveness.
11 ~~((Except as otherwise provided in (c) of this subsection,))~~ The
12 department ~~((shall))~~ must conduct a review at least once every five
13 years after an environmental covenant is recorded.

14 (a) The review ~~((shall))~~ must 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))~~ must include a
28 review of 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))~~ must take any and all appropriate actions
36 necessary to ensure compliance with the environmental covenant and
37 the policies 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. 402.** RCW 70.105D.050 and 2013 2nd sp.s. c 1 s 8 are each
14 amended to read as follows:

15 (1) With respect to any release, or threatened release, for which
16 the department does not conduct or contract for conducting remedial
17 action and for which the department believes remedial action is in
18 the public interest, the director (~~shall~~) must issue orders or
19 agreed orders requiring potentially liable persons to provide the
20 remedial action. Any liable person, or prospective purchaser who has
21 entered into an agreed order under RCW 70.105D.040(6), who refuses,
22 without sufficient cause, to comply with an order or agreed order of
23 the director is liable in an action brought by the attorney general
24 for:

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

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

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

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

37 (3) The attorney general (~~shall~~) must seek, by filing an action
38 if necessary, to recover the amounts spent by the department for

1 investigative and remedial actions and orders, and agreed orders,
2 including amounts spent prior to March 1, 1989.

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

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

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

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

20 (7) Any person who owns real property or lender holding a
21 mortgage on real property that is subject to a lien filed under RCW
22 70.105D.055 may petition the department to have the lien removed or
23 the amount of the lien reduced. If, after consideration of the
24 petition and the information supporting the petition, the department
25 decides to deny the request, the person may, within ninety days after
26 receipt of the department's denial, file suit for removal or
27 reduction of the lien. The person is entitled to removal of a lien
28 filed under RCW 70.105D.055(2)(a) if they can prove by a
29 preponderance of the evidence that the person is not a liable party
30 under RCW 70.105D.040. The person is entitled to a reduction of the
31 amount of the lien if they can prove by a preponderance of the
32 evidence:

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

36 (b) For liens filed under RCW 70.105D.055(2)(c), the amount of
37 the lien exceeds the remedial action costs the department incurred
38 related to cleanup of the real property or exceeds the increase of
39 the fair market value of the real property solely attributable to the
40 remedial action conducted by the department.

1 (8) The expenditure of moneys under the (~~state and local toxics~~
2 ~~control~~) model toxics control operating, capital, and stormwater
3 accounts created in (~~RCW 70.105D.170 [70.105D.070] and the~~
4 ~~environmental legacy stewardship account created in RCW 70.105D.170~~)
5 sections 202 through 204 of this act does not alter the liability of
6 any person under this chapter, or the authority of the department
7 under this chapter, including the authority to recover those moneys.

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

10 A manufacturer of class B firefighting foam in violation of RCW
11 70.75A.020 or 70.75A.040 or a person in violation of RCW 70.75A.010
12 or 70.75A.030 is subject to a civil penalty not to exceed five
13 thousand dollars for each violation in the case of a first offense.
14 Manufacturers, local governments, or persons that are repeat
15 violators are subject to a civil penalty not to exceed ten thousand
16 dollars for each repeat offense. Penalties collected under this
17 section must be deposited in the (~~state~~) model toxics control
18 operating account created in (~~RCW 70.105D.070~~) section 202 of this
19 act.

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

22 (1) Enforcement of this chapter must rely on notification and
23 information exchange between the department and manufacturers. The
24 department (~~shall~~) must achieve compliance with this chapter using
25 the following enforcement sequence:

26 (a) Before the effective date of the product prohibition in RCW
27 70.76.020 or 70.76.030, the department (~~shall~~) must prepare and
28 distribute information to in-state manufacturers and out-of-state
29 manufacturers, to the maximum extent practicable, to assist them in
30 identifying products prohibited for manufacture, sale, or
31 distribution under this chapter.

32 (b) The department may request a certificate of compliance from a
33 manufacturer. A certificate of compliance attests that a
34 manufacturer's product or products meets the requirements of this
35 chapter.

36 (c) The department may issue a warning letter to a manufacturer
37 that produces, sells, or distributes prohibited products in violation
38 of this chapter. The department (~~shall~~) must offer information or

1 other appropriate assistance to the manufacturer in complying with
2 this chapter. If, after one year, compliance is not achieved,
3 penalties may be assessed under subsection (3) of this section.

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

9 (3) A manufacturer of products containing PBDEs in violation of
10 this chapter is subject to a civil penalty not to exceed one thousand
11 dollars for each violation in the case of a first offense.
12 Manufacturers who are repeat violators are subject to a civil penalty
13 not to exceed five thousand dollars for each repeat offense.
14 Penalties collected under this section must be deposited in the
15 (~~state~~) model toxics control operating account created in (~~RCW~~
16 ~~70.105D.070~~) section 202 of this act.

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

19 A violation of this chapter is punishable by a civil penalty not
20 to exceed one thousand dollars for each violation in the case of a
21 first violation. Repeat violators are liable for a civil penalty not
22 to exceed five thousand dollars for each repeat violation. Penalties
23 collected under this section must be deposited in the (~~state~~) model
24 toxics control operating account created in (~~RCW—70.105D.070~~)
25 section 202 of this act.

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

28 Any fiscal impact on the department or the department of health
29 that results from the implementation of this chapter must be paid for
30 out of funds that are appropriated by the legislature from the
31 (~~state~~) model toxics control operating account for the
32 implementation of the department's persistent bioaccumulative toxic
33 chemical strategy.

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

36 (1) A manufacturer of products that are restricted under this
37 chapter must notify persons that sell the manufacturer's products in

1 this state about the provisions of this chapter no less than ninety
2 days prior to the effective date of the restrictions.

3 (2) A manufacturer that produces, sells, or distributes a product
4 prohibited from manufacture, sale, or distribution in this state
5 under this chapter (~~shall~~) must recall the product and reimburse
6 the retailer or any other purchaser for the product.

7 (3) A manufacturer of products in violation of this chapter is
8 subject to a civil penalty not to exceed five thousand dollars for
9 each violation in the case of a first offense. Manufacturers who are
10 repeat violators are subject to a civil penalty not to exceed ten
11 thousand dollars for each repeat offense. Penalties collected under
12 this section must be deposited in the (~~state~~) model toxics control
13 operating account created in (~~RCW 70.105D.070~~) section 202 of this
14 act.

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

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

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

23 (1) An initial violation of RCW 70.270.030(1) is punishable by a
24 civil penalty not to exceed five hundred dollars. Subsequent
25 violations of RCW 70.270.030(1) are punishable by civil penalties not
26 to exceed one thousand dollars for each violation.

27 (2) Penalties collected under this section must be deposited in
28 the (~~state~~) model toxics control operating account created in (~~RCW~~
29 ~~70.105D.070~~) section 202 of this act.

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

32 (1) The department (~~shall~~) must enforce this chapter. The
33 department may periodically purchase and test brake friction material
34 sold or offered for sale in Washington state to verify that the
35 material complies with this chapter.

36 (2) Enforcement of this chapter by the department must rely on
37 notification and information exchange between the department and
38 manufacturers, distributors, and retailers. The department (~~shall~~)

1 must issue one warning letter by certified mail to a manufacturer,
2 distributor, or retailer that sells or offers to sell brake friction
3 material in violation of this chapter, and offer information or other
4 appropriate assistance regarding compliance with this chapter. Once a
5 warning letter has been issued to a distributor or retailer for
6 violations under subsections (3) and (5) of this section, the
7 department need not provide warning letters for subsequent violations
8 by that distributor or retailer. For the purposes of subsection (6)
9 of this section, a warning letter serves as notice of the violation.
10 If compliance is not achieved, the department may assess penalties
11 under this section.

12 (3) A brake friction material distributor or retailer that
13 violates this chapter is subject to a civil penalty not to exceed ten
14 thousand dollars for each violation. Brake friction material
15 distributors or retailers that sell brake friction material that is
16 packaged consistent with RCW 70.285.080(2)(b) are not in violation of
17 this chapter. However, if the department conclusively proves that the
18 brake friction material distributor or retailer was aware that the
19 brake friction material being sold violates RCW 70.285.030 or
20 70.285.050, the brake friction material distributor or retailer is
21 subject to civil penalties according to this section.

22 (4) A brake friction material manufacturer that knowingly
23 violates this chapter (~~(shall)~~) must recall the brake friction
24 material and reimburse the brake friction distributor, retailer, or
25 any other purchaser for the material and any applicable shipping and
26 handling charges for returning the material. A brake friction
27 material manufacturer that violates this chapter is subject to a
28 civil penalty not to exceed ten thousand dollars for each violation.

29 (5) A motor vehicle distributor or retailer that violates this
30 chapter is subject to a civil penalty not to exceed ten thousand
31 dollars for each violation. A motor vehicle distributor or retailer
32 is not in violation of this chapter for selling a vehicle that was
33 previously sold at retail and that contains brake friction material
34 failing to meet the requirements of this chapter. However, if the
35 department conclusively proves that the motor vehicle distributor or
36 retailer installed brake friction material that violates RCW
37 70.285.030, 70.285.050, or 70.285.080(2)(b) on the vehicle being sold
38 and was aware that the brake friction material violates RCW
39 70.285.030, 70.285.050, or 70.285.080(2)(b), the motor vehicle

1 distributor or retailer is subject to civil penalties under this
2 section.

3 (6) A motor vehicle manufacturer that violates this chapter must
4 notify the registered owner of the vehicle within six months of
5 knowledge of the violation and must replace at no cost to the owner
6 the noncompliant brake friction material with brake friction material
7 that complies with this chapter. A motor vehicle manufacturer that
8 fails to provide the required notification to registered owners of
9 the affected vehicles within six months of knowledge of the violation
10 is subject to a civil penalty not to exceed one hundred thousand
11 dollars. A motor vehicle manufacturer that fails to provide the
12 required notification to registered owners of the affected vehicles
13 after twelve months of knowledge of the violation is subject to a
14 civil penalty not to exceed ten thousand dollars per vehicle. For
15 purposes of this section, "motor vehicle manufacturer" does not
16 include a vehicle dealer defined under RCW 46.70.011 and required to
17 be licensed as a vehicle dealer under chapter 46.70 RCW.

18 (7) Before the effective date of the prohibitions in RCW
19 70.285.030 or 70.285.050, the department (~~(shall)~~) must prepare and
20 distribute information about the prohibitions to manufacturers,
21 distributors, and retailers to the maximum extent practicable.

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

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

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

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

32 (1) The department (~~(shall)~~) must enforce the requirements of
33 this chapter.

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

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

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

6 (1) By December 1, 2008, and by September 1st of each even-
7 numbered year beginning in 2010, the council ((shall)) must provide
8 to the governor and the appropriate fiscal committees of the senate
9 and house of representatives its recommendations for the funding
10 necessary to implement the action agenda in the succeeding biennium.

11 The recommendations ((shall)) must:

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

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

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

18 (2) In the 2008 report required under subsection (1) of this
19 section, the council ((shall)) must include recommendations for
20 projected funding needed through 2020 to implement the action agenda;
21 funding needs for science panel staff; identify methods to secure
22 stable and sufficient funding to meet these needs; and include
23 proposals for new sources of funding to be dedicated to Puget Sound
24 protection and recovery. In preparing the science panel staffing
25 proposal, the council ((shall)) must consult with the panel.

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

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

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

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

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

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

5 (f) An identification of all funds provided to the partnership,
6 and recommendations as to how future state expenditures for all
7 entities, including the partnership, could better match the
8 priorities of the action agenda.

9 (4) (a) The council (~~shall~~) must review state programs that fund
10 facilities and activities that may contribute to action agenda
11 implementation. By November 1, 2009, the council (~~shall~~) must
12 provide initial recommendations regarding program changes to the
13 governor and appropriate fiscal and policy committees of the senate
14 and house of representatives. By November 1, 2010, the council
15 (~~shall~~) must provide final recommendations regarding program
16 changes, including proposed legislation to implement the
17 recommendation, to the governor and appropriate fiscal and policy
18 committees of the senate and house of representatives.

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

23 (i) Water pollution control facilities financing, chapter 70.146
24 RCW;

25 (ii) The water pollution control revolving fund, chapter 90.50A
26 RCW;

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

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

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

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

34 (vii) The salmon recovery funding board, RCW 77.85.110 through
35 77.85.150;

36 (viii) The community economic revitalization board, chapter
37 43.160 RCW;

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

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

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

6 (i) Determining the level of funding and types of projects and
7 activities funded through the programs that contribute to
8 implementation of the action agenda;

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

12 (iii) Assessing methods for ensuring that the goals and
13 priorities of the action agenda are given priority when program
14 funding decisions are made regarding water quality-related projects
15 and activities in the Puget Sound basin and habitat-related projects
16 and activities in the Puget Sound basin;

17 (iv) Modifying funding criteria so that projects, programs, and
18 activities that are inconsistent with the action agenda are
19 ineligible for funding;

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

24 (5) During the 2009-2011 fiscal biennium, the council's review
25 must result in a ranking of projects affecting the protection and
26 recovery of the Puget Sound basin that are proposed in the governor's
27 capital budget submitted under RCW 43.88.060. The ranking (~~(shall)~~)
28 must include recommendations for reallocation of total requested
29 funds for Puget Sound basin projects to achieve the greatest positive
30 outcomes for protection and recovery of Puget Sound and (~~(shall)~~)
31 must be submitted to the appropriate fiscal committees of the
32 legislature no later than February 1, 2011.

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

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

38 (1) The cleanup settlement account is created in the state
39 treasury. The account is not intended to replace the (~~(state)~~) model

1 toxics control capital account established under ((RCW 70.105D.070))
2 section 203 of this act. All receipts from the sources identified in
3 subsection (2) of this section must be deposited into the account.
4 Moneys in the account may be spent only after appropriation.
5 Expenditures from the account may be used only as identified in
6 subsection (4) of this section.

7 (2) The following receipts must be deposited into the cleanup
8 settlement account:

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

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

16 (ii) Assessing or addressing the injury to natural resources
17 caused by the release of a hazardous substance from a specific
18 facility; and

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

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

25 (4) Expenditures from the cleanup settlement account may only be
26 used to conduct remedial actions at the specific facility or to
27 assess or address the injury to natural resources caused by the
28 release of hazardous substances from that facility for which the
29 moneys were deposited in the account. Conducting remedial actions or
30 assessing or addressing injury to natural resources includes direct
31 expenditures and indirect expenditures such as department oversight
32 costs. During the 2009-2011 fiscal biennium, the legislature may
33 transfer excess fund balances in the account into the state
34 efficiency and restructuring account. Transfers of excess fund
35 balances made under this section ((shall)) may be made only to the
36 extent amounts transferred with required repayments do not impair the
37 ten-year spending plan administered by the department of ecology for
38 environmental remedial actions dedicated for any designated clean-up
39 site associated with the Everett smelter and Tacoma smelter,
40 including plumes, or former Asarco mine sites. The cleanup settlement

1 account must be repaid with interest under provisions of the state
2 efficiency and restructuring account.

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

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

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

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

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

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

26 (a) Moneys appropriated by the legislature to the account for a
27 specific redevelopment opportunity zone established under RCW
28 70.105D.150 or a specific brownfield renewal authority established
29 under RCW 70.105D.160;

30 (b) Moneys voluntarily deposited in the account for a specific
31 redevelopment opportunity zone or a specific brownfield renewal
32 authority; and

33 (c) Receipts from settlements or court orders that direct payment
34 to the account for a specific redevelopment opportunity zone to
35 resolve a person's liability or potential liability under this
36 chapter.

37 (3) If a settlement or court order does not direct payment of
38 receipts described in subsection (2)(c) of this section into the
39 brownfield redevelopment trust fund account, then the receipts from

1 any payment to the state must be deposited into the ((state)) model
2 toxics control capital account established under ((RCW 70.105D.070))
3 section 203 of this act.

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

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

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

12 (7) The local government designating the redevelopment
13 opportunity zone under RCW 70.105D.150 or the associated brownfield
14 renewal authority created under RCW 70.105D.160 must be the
15 beneficiary of the deposited moneys.

16 (8) All expenditures must be used to conduct remediation and
17 cleanup consistent with a plan for the remediation and cleanup of the
18 properties or facilities approved by the department under this
19 chapter. All expenditures must meet the eligibility requirements for
20 the use by local governments under the rules for remedial action
21 grants adopted by the department under this chapter, including
22 requirements for the expenditure of nonstate match funding.

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

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

36 (11) If the department determines that substantial progress has
37 not been made on the plan approved under subsection (8) of this
38 section for a redevelopment opportunity zone or specific brownfield
39 renewal authority for which moneys were deposited in the account
40 within six years, or that the brownfield renewal authority is no

1 longer a viable entity, then all remaining moneys must be transferred
2 to the ((state)) model toxics control operating account established
3 under ((~~RCW 70.105D.070~~)) sections 202 of this act.

4 (12) The department is authorized to adopt rules to implement
5 this section.

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

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

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

14 NEW SECTION. **Sec. 416.** Any residual balance of funds remaining
15 in the state toxics control account repealed by section 415 of this
16 act on the effective date of this section must be transferred to the
17 model toxics control operating account created in section 202 of this
18 act.

19 NEW SECTION. **Sec. 417.** Any residual balance of funds remaining
20 in the local toxics control account repealed by section 415 of this
21 act on the effective date of this section must be transferred to the
22 model toxics control capital account created in section 203 of this
23 act.

24 NEW SECTION. **Sec. 418.** Any residual balance of funds remaining
25 in the environmental legacy stewardship account repealed by section
26 415 of this act on the effective date of this section must be
27 transferred to the model toxics control stormwater account created in
28 section 204 of this act.

29 NEW SECTION. **Sec. 419.** This act is necessary for the immediate
30 preservation of the public peace, health, or safety, or support of
31 the state government and its existing public institutions, and takes
32 effect July 1, 2019."

33 Correct the title.

EFFECT: Removes annual inflationary growth factor (IPD) from the tax rate.

--- **END** ---