
SUBSTITUTE HOUSE BILL 1290

State of Washington

66th Legislature

2019 Regular Session

By House Environment & Energy (originally sponsored by Representatives Peterson, Barkis, Robinson, Lekanoff, Maycumber, and Pollet; by request of Department of Ecology)

READ FIRST TIME 02/04/19.

1 AN ACT Relating to reviews of voluntary cleanups; amending RCW
2 70.105D.030, 70.105D.070, and 70.105D.110; reenacting and amending
3 RCW 43.84.092; adding a new section to chapter 70.105D RCW; and
4 creating a new section.

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

6 NEW SECTION. **Sec. 1.** Cleaning up and redeveloping contaminated
7 properties is essential to the health and economic prosperity of our
8 communities. Most cleanups are performed voluntarily by property
9 owners and are driven by the sale or redevelopment of the properties.
10 Many of these property owners request written opinions on the
11 sufficiency of their voluntary cleanups from the department of
12 ecology. Buyers and lenders often require these opinions when
13 property owners sell or redevelop contaminated properties. Providing
14 expedited reviews of voluntary cleanups would encourage and expedite
15 more cleanup and redevelopment projects. It is the intent of the
16 legislature to support the cleanup and redevelopment of contaminated
17 properties in our communities by providing the department of ecology
18 with the additional tools and resources necessary for conducting
19 expedited reviews of voluntary cleanups.

20 The availability of affordable housing is of vital importance to
21 the health, safety, and welfare of the residents of the state. It is

1 in the public interest to facilitate the cleanup and redevelopment of
2 contaminated and underutilized properties within our communities for
3 affordable housing. It is the intent of the legislature to encourage
4 voluntary cleanups of these properties for affordable housing
5 development by waiving the department of ecology's costs of reviewing
6 voluntary cleanups.

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

9 (1) The department may establish a program to provide informal
10 advice and assistance on the administrative and technical
11 requirements of this chapter to persons who are conducting or
12 otherwise interested in conducting independent remedial actions at
13 facilities where there is a suspected or confirmed release of
14 hazardous substances.

15 (a) Any advice or assistance is advisory only and is not binding
16 on the department.

17 (b) As part of this advice and assistance, the department may
18 provide written opinions on whether the independent remedial actions
19 or proposals for those actions meet the substantive requirements of
20 this chapter or whether the department believes further remedial
21 action is necessary at the facility.

22 (c) Nothing in this chapter may be construed to preclude the
23 department from issuing a written opinion on whether further remedial
24 action is necessary at any portion of the real property located
25 within a facility, even if further remedial action is still necessary
26 elsewhere at the same facility. A written opinion on a portion of a
27 facility must also provide an opinion on the status of the facility
28 as a whole.

29 (2) The department may collect, from persons requesting advice
30 and assistance under the program, all costs incurred by the
31 department in providing advice and assistance.

32 (a) To collect its costs, the department may use either a cost
33 recovery structure or a fee structure, or both.

34 (i) A fee structure may include either a single fee or a series
35 of fees for individual services.

36 (ii) The department may calculate fees based on the complexity of
37 the contaminated site and other site-specific factors determined by
38 the department.

1 (iii) The department may establish a separate fee and cost
2 recovery structure for providing expedited advice and assistance
3 under subsection (3) of this section.

4 (b) The department may waive collection of costs if the person
5 requesting technical advice and assistance under the program commits
6 to remediate contaminated real property for development of affordable
7 housing, as determined by the department. Prior to waiving costs, the
8 department must consider the requestor's ability to pay and the
9 potential public benefit of the development. To ensure the real
10 property is used for affordable housing, the department may file a
11 lien against the real property pursuant to RCW 70.105D.055, require
12 the person to record an interest in the real property in accordance
13 with RCW 64.04.130, or use other means deemed by the department to be
14 no less protective of the affordable housing use and the interests of
15 the department.

16 (c) Except when providing expedited advice and assistance under
17 subsection (3) of this section, the department may also waive
18 collection of costs:

19 (i) For providing technical assistance in support of public
20 participation;

21 (ii) For providing written opinions on a cleanup that qualifies
22 for and appropriately uses a model remedy; or

23 (iii) Based on a person's ability to pay. If costs are waived,
24 the department may file a lien against the real property for which
25 the department has incurred the costs pursuant to RCW 70.105D.055.

26 (3) The department may offer an expedited process for providing
27 informal advice and assistance under the program. Except as provided
28 under subsection (2)(b) of this section, the department must collect,
29 from persons requesting expedited advice and assistance, all costs
30 incurred by the department in providing the advice and assistance.
31 The department may establish conditions for requesting expedited
32 advice and assistance.

33 (4) The department may adopt rules to implement the program. To
34 ensure that the adoption of rules will not delay the implementation
35 of independent remedial actions, the department may implement the
36 cost waiver and expedited process specified in subsections (2)(b) and
37 (3) of this section through interpretive guidance pending adoption of
38 rules.

39 (5) The department must track the number of requests for reviews
40 of planned or completed independent remedial actions under the

1 program and establish performance measures to track how quickly the
2 department is able to respond to those requests. The department's
3 tracking system must include a category for tracking the length of
4 time that elapses between the submission of a request for expedited
5 advice and assistance on an independent remedial action at a facility
6 under subsection (3) of this section and the issuance of a letter on
7 the sufficiency of the cleanup at the facility.

8 (6) The state, the department, and officers and employees of the
9 state are immune from all liability, and no cause of action of any
10 nature may arise from any act or omission in providing, or failing to
11 provide, informal advice and assistance under the program.

12 (7) The voluntary cleanup account is created in the state
13 treasury. All receipts from the fees collected and costs recovered
14 under the expedited process in subsection (3) of this section must be
15 deposited into the account. Moneys in the account may be spent only
16 after appropriation. Expenditures from the account may be used only
17 to support the expedited process in subsection (3) of this section.
18 If the department suspends the expedited process, any moneys
19 remaining in the account may be used to carry out the purposes of the
20 program. The account must retain its interest earnings in accordance
21 with RCW 43.84.092.

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

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

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

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

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

15 (d) Carry out all state programs authorized under the federal
16 cleanup law and the federal resource, conservation, and recovery act,
17 42 U.S.C. Sec. 6901 et seq., as amended;

18 (e) Classify substances as hazardous substances for purposes of
19 RCW 70.105D.020 and classify substances and products as hazardous
20 substances for purposes of RCW 82.21.020(1);

21 (f) Issue orders or enter into consent decrees or agreed orders
22 that include, or issue written opinions under (~~((i) of this~~
23 ~~subsection)) section 2 of this act that may be conditioned upon,
24 environmental covenants where necessary to protect human health and
25 the environment from a release or threatened release of a hazardous
26 substance from a facility. Prior to establishing an environmental
27 covenant under this subsection, the department shall consult with and
28 seek comment from a city or county department with land use planning
29 authority for real property subject to the environmental covenant;~~

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

35 (h) Require holders to conduct remedial actions necessary to
36 abate an imminent or substantial endangerment pursuant to RCW
37 70.105D.020(22)(b)(ii)(C);

38 (~~(i) ((Provide informal advice and assistance to persons regarding~~
39 ~~the administrative and technical requirements of this chapter. This~~
40 ~~may include site-specific advice to persons who are conducting or~~

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

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

37 ~~((k))~~ (j) Establish model remedies for common categories of
38 facilities, types of hazardous substances, types of media, or
39 geographic areas to streamline and accelerate the selection of
40 remedies for routine types of cleanups at facilities;

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

2 (A) Identify the requirements for characterizing a facility to
3 select a model remedy, the applicability of the model remedy for use
4 at a facility, and monitoring requirements;

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

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

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

15 (iii) If a facility meets the requirements for use of a model
16 remedy, an analysis of the feasibility of alternative remedies is not
17 required under this chapter. For department-conducted and department-
18 supervised remedial actions, the department must provide public
19 notice and consider public comments on the proposed use of a model
20 remedy at a facility(~~(. The department may waive collection of its
21 costs for providing a written opinion under (i) of this subsection on
22 a cleanup that qualifies for and appropriately uses a model remedy)~~);
23 and

24 ~~((l))~~ (k) Take any other actions necessary to carry out the
25 provisions of this chapter, including the power to adopt rules under
26 chapter 34.05 RCW.

27 (2) The department shall immediately implement all provisions of
28 this chapter to the maximum extent practicable, including
29 investigative and remedial actions where appropriate. The department
30 shall adopt, and thereafter enforce, rules under chapter 34.05 RCW
31 to:

32 (a) Provide for public participation, including at least (i)
33 public notice of the development of investigative plans or remedial
34 plans for releases or threatened releases and (ii) concurrent public
35 notice of all compliance orders, agreed orders, enforcement orders,
36 or notices of violation;

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

38 (c) Provide for requiring the reporting by an owner or operator
39 of releases of hazardous substances to the environment that may be a
40 threat to human health or the environment within ninety days of

1 discovery, including such exemptions from reporting as the department
2 deems appropriate, however this requirement shall not modify any
3 existing requirements provided for under other laws;

4 (d) Establish reasonable deadlines not to exceed ninety days for
5 initiating an investigation of a hazardous waste site after the
6 department receives notice or otherwise receives information that the
7 site may pose a threat to human health or the environment and other
8 reasonable deadlines for remedying releases or threatened releases at
9 the site;

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

15 (f) Apply industrial clean-up standards at industrial properties.
16 Rules adopted under this subsection shall ensure that industrial
17 properties cleaned up to industrial standards cannot be converted to
18 nonindustrial uses without approval from the department. The
19 department may require that a property cleaned up to industrial
20 standards is cleaned up to a more stringent applicable standard as a
21 condition of conversion to a nonindustrial use. Industrial clean-up
22 standards may not be applied to industrial properties where hazardous
23 substances remaining at the property after remedial action pose a
24 threat to human health or the environment in adjacent nonindustrial
25 areas.

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

38 ~~(4) ((By November 1, 2016, the department must submit to the~~
39 ~~governor and the appropriate legislative committees a report on the~~
40 ~~status of developing model remedies and their use under this chapter.~~

1 ~~The report must include: The number and types of model remedies~~
2 ~~identified by the department under subsection (1)(k) of this section;~~
3 ~~the number and types of model remedy proposals prepared by qualified~~
4 ~~private sector engineers, consultants, or contractors that were~~
5 ~~accepted or rejected under subsection (1)(k) of this section and the~~
6 ~~reasons for rejection; and the success of model remedies in~~
7 ~~accelerating the cleanup as measured by the number of jobs created by~~
8 ~~the cleanup, where this information is available to the department,~~
9 ~~acres of land restored, and the number and types of hazardous waste~~
10 ~~sites successfully remediated using model remedies.~~

11 ~~(5))~~ Before September 20th of each even-numbered year, the
12 department shall:

13 (a) Develop a comprehensive ten-year financing report in
14 coordination with all local governments with clean-up
15 responsibilities that identifies the projected biennial hazardous
16 waste site remedial action needs that are eligible for funding from
17 the state and local toxics control accounts and the environmental
18 legacy stewardship account;

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

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

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

39 ~~((6))~~ (5) By December 1st of each odd-numbered year, the
40 department must provide the legislature and the public a report of

1 the department's activities supported by appropriations from the
2 state and local toxics control accounts and the environmental legacy
3 stewardship account. The report must be prepared and displayed in a
4 manner that allows the legislature and the public to easily determine
5 the statewide and local progress made in cleaning up hazardous waste
6 sites under this chapter. The report must include, at a minimum:

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

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

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

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

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

20 (B) Remedial investigation;

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

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

23 (E) Operation and maintenance or monitoring of the constructed
24 remedy; and

25 (F) The final completion date.

26 ~~((7))~~ (6) The department shall establish a program to identify
27 potential hazardous waste sites and to encourage persons to provide
28 information about hazardous waste sites.

29 ~~((8))~~ (7) For all facilities where an environmental covenant
30 has been required under subsection (1)(f) of this section, including
31 all facilities where the department has required an environmental
32 covenant under an order, agreed order, or consent decree, or as a
33 condition of a written opinion issued under the authority of
34 ~~((subsection (1)(i) of this section))~~ section 2 of this act, the

35 department shall periodically review the environmental covenant for
36 effectiveness. ~~((Except as otherwise provided in (c) of this~~

37 ~~subsection,))~~ The department shall conduct a review at least once
38 every five years after an environmental covenant is recorded.

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

1 (i) A review of the title of the real property subject to the
2 environmental covenant to determine whether the environmental
3 covenant was properly recorded and, if applicable, amended or
4 terminated;

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

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

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

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

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

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

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

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

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

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

1 **Sec. 4.** RCW 70.105D.070 and 2018 c 299 s 911 are each amended to
2 read as follows:

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

5 (2) (a) Moneys collected under RCW 82.21.030 must be deposited as
6 follows: Fifty-six percent to the state toxics control account under
7 subsection (3) of this section and forty-four percent to the local
8 toxics control account under subsection (4) of this section. When the
9 cumulative amount of deposits made to the state and local toxics
10 control accounts under this section reaches the limit during a fiscal
11 year as established in (b) of this subsection, the remainder of the
12 moneys collected under RCW 82.21.030 during that fiscal year must be
13 deposited into the environmental legacy stewardship account created
14 in RCW 70.105D.170.

15 (b) The limit on distributions of moneys collected under RCW
16 82.21.030 to the state and local toxics control accounts for the
17 fiscal year beginning July 1, 2013, is one hundred forty million
18 dollars.

19 (c) In addition to the funds required under (a) of this
20 subsection, the following moneys must be deposited into the state
21 toxics control account: (i) The costs of remedial actions recovered
22 under this chapter (~~(or chapter 70.105A RCW)~~), except as provided
23 under section 2(7) of this act; (ii) penalties collected or recovered
24 under this chapter; and (iii) any other money appropriated or
25 transferred to the account by the legislature.

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

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

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

35 (c) The hazardous waste clean-up program required under this
36 chapter;

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

38 (e) Financial assistance for local programs in accordance with
39 chapters 70.95, 70.95C, 70.95I, and 70.105 RCW;

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

4 (g) Oil and hazardous materials spill prevention, preparedness,
5 training, and response activities;

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

8 (i) Programs authorized under chapter 70.146 RCW;

9 (j) A public participation program;

10 (k) Public funding to assist potentially liable persons to pay
11 for the costs of remedial action in compliance with clean-up
12 standards under RCW 70.105D.030(2)(e) but only when the amount and
13 terms of such funding are established under a settlement agreement
14 under RCW 70.105D.040(4) and when the director has found that the
15 funding will achieve both: (i) A substantially more expeditious or
16 enhanced cleanup than would otherwise occur; and (ii) the prevention
17 or mitigation of unfair economic hardship;

18 (l) Development and demonstration of alternative management
19 technologies designed to carry out the hazardous waste management
20 priorities of RCW 70.105.150;

21 (m) State agriculture and health programs for the safe use,
22 reduction, recycling, or disposal of pesticides;

23 (n) Stormwater pollution control projects and activities that
24 protect or preserve existing remedial actions or prevent hazardous
25 clean-up sites;

26 (o) Funding requirements to maintain receipt of federal funds
27 under the federal solid waste disposal act (42 U.S.C. Sec. 6901 et
28 seq.);

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

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

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

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

38 (iii) The director has found the funding meets any additional
39 criteria established in rule by the department, will achieve a
40 substantially more expeditious or enhanced cleanup than would

1 otherwise occur, and will provide a public benefit in addition to
2 cleanup commensurate with the scope of the public funding;

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

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

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

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

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

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

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

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

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

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

30 (i) Extended grant agreements entered into under (~~(e)~~) (e)(i)
31 of this subsection;

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

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

38 (B) Brownfield properties within a redevelopment opportunity zone
39 if the local government is a prospective purchaser of the property

1 and there is a department-approved remedial action work plan or
2 equivalent document under the federal cleanup law;

3 (iii) Stormwater pollution source projects that: (A) Work in
4 conjunction with a remedial action; (B) protect completed remedial
5 actions against recontamination; or (C) prevent hazardous clean-up
6 sites;

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

8 (v) Solid waste plans and programs under chapters 70.95, 70.95C,
9 70.95I, and 70.105 RCW;

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

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

16 (b) Funds for plans and programs must be allocated consistent
17 with the priorities and matching requirements established in chapters
18 70.105, 70.95C, 70.95I, and 70.95 RCW.

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

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

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

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

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

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

39 (C) The department may not allocate future funding to an extended
40 grant agreement unless the local government has demonstrated to the

1 department that funds awarded under the agreement during the previous
2 biennium have been substantially expended or contracts have been
3 entered into to substantially expend the funds;

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

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

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

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

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

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

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

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

38 (vii) When pending grant applications under (e)(iv) and (v) of
39 this subsection (4) exceed the amount of funds available, designated

1 redevelopment opportunity zones must receive priority for
2 distribution of available funds.

3 (f) To expedite multiparty clean-up efforts, the department may
4 purchase remedial action cost-cap insurance. For the 2013-2015 fiscal
5 biennium, moneys in the local toxics control account may be spent on
6 projects in sections 3024, 3035, 3036, and 3059, chapter 19, Laws of
7 2013 2nd sp. sess.

8 (5) Except for unanticipated receipts under RCW 43.79.260 through
9 43.79.282, moneys in the state and local toxics control accounts may
10 be spent only after appropriation by statute.

11 (6) No moneys deposited into either the state or local toxics
12 control account may be used for: Natural disasters where there is no
13 hazardous substance contamination; high performance buildings; solid
14 waste incinerator facility feasibility studies, construction,
15 maintenance, or operation; or projects designed to address the
16 restoration of Puget Sound, funded in a competitive grant process,
17 that are in conflict with the action agenda developed by the Puget
18 Sound partnership under RCW 90.71.310. However, this subsection does
19 not prevent an appropriation from the state toxics control account to
20 the department of revenue to enforce compliance with the hazardous
21 substance tax imposed in chapter 82.21 RCW.

22 (7) Except during the 2011-2013 and the 2015-2017 fiscal biennia,
23 one percent of the moneys collected under RCW 82.21.030 shall be
24 allocated only for public participation grants to persons who may be
25 adversely affected by a release or threatened release of a hazardous
26 substance and to not-for-profit public interest organizations. The
27 primary purpose of these grants is to facilitate the participation by
28 persons and organizations in the investigation and remedying of
29 releases or threatened releases of hazardous substances and to
30 implement the state's solid and hazardous waste management
31 priorities. No grant may exceed sixty thousand dollars. Grants may be
32 renewed annually. Moneys appropriated for public participation that
33 are not expended at the close of any biennium revert to the state
34 toxics control account.

35 (8) The department shall adopt rules for grant or loan issuance
36 and performance. To accelerate both remedial action and economic
37 recovery, the department may expedite the adoption of rules necessary
38 to implement chapter 1, Laws of 2013 2nd sp. sess. using the
39 expedited procedures in RCW 34.05.353. The department shall initiate
40 the award of financial assistance by August 1, 2013. To ensure the

1 adoption of rules will not delay financial assistance, the department
2 may administer the award of financial assistance through interpretive
3 guidance pending the adoption of rules through July 1, 2014.

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

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

11 (11) During the 2017-2019 fiscal biennium:

12 (a) The state toxics control account, the local toxics control
13 account, and the environmental legacy stewardship account may be used
14 for interchangeable purposes and funds may be transferred between
15 accounts to accomplish those purposes.

16 (b) The legislature may direct the state treasurer to make
17 transfers of moneys in the state toxics control account to the water
18 pollution control revolving account.

19 **Sec. 5.** RCW 70.105D.110 and 2002 c 288 s 2 are each amended to
20 read as follows:

21 (1) Except as provided in subsection (5) of this section, any
22 owner or operator of a facility that is actively transitioning from
23 operating under a federal permit for treatment, storage, or disposal
24 of hazardous waste issued under 42 U.S.C. Sec. 6925 to operating
25 under the provisions of this chapter, who has information that a
26 hazardous substance has been released to the environment at the owner
27 or operator's facility that may be a threat to human health or the
28 environment, shall issue a notice to the department within ninety
29 days. The notice shall include a description of any remedial actions
30 planned, completed, or underway.

31 (2) The notice must be posted in a visible, publicly accessible
32 location on the facility, to remain in place until all remedial
33 actions except confirmational monitoring are complete.

34 (3) After receiving the notice from the facility, the department
35 must review the notice and mail a summary of its contents, along with
36 any additional information deemed appropriate by the department, to:

37 (a) Each residence and landowner of a residence whose property
38 boundary is within three hundred feet of the boundary of the property
39 where the release occurred or if the release occurred from a pipeline

1 or other facility that does not have a property boundary, within
2 three hundred feet of the actual release;

3 (b) Each business and landowner of a business whose property
4 boundary is within three hundred feet of the boundary of the property
5 where the release occurred;

6 (c) Each residence, landowner of a residence, and business with a
7 property boundary within the area where hazardous substances have
8 come to be located as a result of the release;

9 (d) Neighborhood associations and community organizations
10 representing an area within one mile of the facility and recognized
11 by the city or county with jurisdiction within this area;

12 (e) The city, county, and local health district with jurisdiction
13 within the areas described in (a), (b), and (c) of this subsection;
14 and

15 (f) The department of health.

16 (4) A notice produced by a facility shall provide the following
17 information:

18 (a) The common name of any hazardous substances released and, if
19 available, the chemical abstract service registry number of these
20 substances;

21 (b) The address of the facility where the release occurred;

22 (c) The date the release was discovered;

23 (d) The cause and date of the release, if known;

24 (e) The remedial actions being taken or planned to address the
25 release;

26 (f) The potential health and environmental effects of the
27 hazardous substances released; and

28 (g) The name, address, and telephone number of a contact person
29 at the facility where the release occurred.

30 (5) The following releases are exempt from the notification
31 requirements in this section:

32 (a) Application of pesticides and fertilizers for their intended
33 purposes and according to label instructions;

34 (b) The lawful and nonnegligent use of hazardous household
35 substances by a natural person for personal or domestic purposes;

36 (c) The discharge of hazardous substances in compliance with
37 permits issued under chapter 70.94, 90.48, or 90.56 RCW;

38 (d) De minimis amounts of any hazardous substance leaked or
39 discharged onto the ground;

1 (e) The discharge of hazardous substances to a permitted waste
2 water treatment facility or from a permitted waste water collection
3 system or treatment facility as allowed by a facility's discharge
4 permit;

5 (f) Any releases originating from a single-family or multifamily
6 residence, including but not limited to the discharge of oil from a
7 residential home heating oil tank with the capacity of five hundred
8 gallons or less;

9 (g) Any spill on a public road, street, or highway or to surface
10 waters of the state that has previously been reported to the United
11 States coast guard and the state division of emergency management
12 under chapter 90.56 RCW;

13 (h) Any release of hazardous substances to the air;

14 (i) Any release that occurs on agricultural land, including land
15 used to grow trees for the commercial production of wood or wood
16 fiber, that is at least five acres in size, when the effects of the
17 release do not come within three hundred feet of any property
18 boundary. For the purposes of this subsection, agricultural land
19 includes incidental uses that are compatible with agricultural or
20 silvicultural purposes, including, but not limited to, land used for
21 the housing of the owner, operator, or employees, structures used for
22 the storage or repair of equipment, machinery, and chemicals, and any
23 paths or roads on the land; and

24 (j) Releases that, before January 1, 2003, have been previously
25 reported to the department, or remediated in compliance with a
26 settlement agreement under RCW 70.105D.040(4) or enforcement order or
27 agreed order issued under this chapter or have been the subject of an
28 opinion from the department under (~~RCW 70.105D.030(1)(i)~~) section 2
29 of this act that no further remedial action is required.

30 An exemption from the notification requirements of this section
31 does not exempt the owner or operator of a facility from any other
32 notification or reporting requirements, or imply a release from
33 liability under this chapter.

34 (6) If a significant segment of the community to be notified
35 speaks a language other than English, an appropriate translation of
36 the notice must also be posted and mailed to the department in
37 accordance with the requirements of this section.

38 (7) The facility where the release occurred is responsible for
39 reimbursing the department within thirty days for the actual costs

1 associated with the production and mailing of the notices under this
2 section.

3 **Sec. 6.** RCW 43.84.092 and 2018 c 287 s 7, 2018 c 275 s 10, and
4 2018 c 203 s 14 are each reenacted and amended to read as follows:

5 (1) All earnings of investments of surplus balances in the state
6 treasury shall be deposited to the treasury income account, which
7 account is hereby established in the state treasury.

8 (2) The treasury income account shall be utilized to pay or
9 receive funds associated with federal programs as required by the
10 federal cash management improvement act of 1990. The treasury income
11 account is subject in all respects to chapter 43.88 RCW, but no
12 appropriation is required for refunds or allocations of interest
13 earnings required by the cash management improvement act. Refunds of
14 interest to the federal treasury required under the cash management
15 improvement act fall under RCW 43.88.180 and shall not require
16 appropriation. The office of financial management shall determine the
17 amounts due to or from the federal government pursuant to the cash
18 management improvement act. The office of financial management may
19 direct transfers of funds between accounts as deemed necessary to
20 implement the provisions of the cash management improvement act, and
21 this subsection. Refunds or allocations shall occur prior to the
22 distributions of earnings set forth in subsection (4) of this
23 section.

24 (3) Except for the provisions of RCW 43.84.160, the treasury
25 income account may be utilized for the payment of purchased banking
26 services on behalf of treasury funds including, but not limited to,
27 depository, safekeeping, and disbursement functions for the state
28 treasury and affected state agencies. The treasury income account is
29 subject in all respects to chapter 43.88 RCW, but no appropriation is
30 required for payments to financial institutions. Payments shall occur
31 prior to distribution of earnings set forth in subsection (4) of this
32 section.

33 (4) Monthly, the state treasurer shall distribute the earnings
34 credited to the treasury income account. The state treasurer shall
35 credit the general fund with all the earnings credited to the
36 treasury income account except:

37 (a) The following accounts and funds shall receive their
38 proportionate share of earnings based upon each account's and fund's
39 average daily balance for the period: The abandoned recreational

1 vehicle disposal account, the aeronautics account, the aircraft
2 search and rescue account, the Alaskan Way viaduct replacement
3 project account, the brownfield redevelopment trust fund account, the
4 budget stabilization account, the capital vessel replacement account,
5 the capitol building construction account, the Cedar River channel
6 construction and operation account, the Central Washington University
7 capital projects account, the charitable, educational, penal and
8 reformatory institutions account, the Chehalis basin account, the
9 cleanup settlement account, the Columbia river basin water supply
10 development account, the Columbia river basin taxable bond water
11 supply development account, the Columbia river basin water supply
12 revenue recovery account, the common school construction fund, the
13 community forest trust account, the connecting Washington account,
14 the county arterial preservation account, the county criminal justice
15 assistance account, the deferred compensation administrative account,
16 the deferred compensation principal account, the department of
17 licensing services account, the department of licensing tuition
18 recovery trust fund, the department of retirement systems expense
19 account, the developmental disabilities community trust account, the
20 diesel idle reduction account, the drinking water assistance account,
21 the drinking water assistance administrative account, the early
22 learning facilities development account, the early learning
23 facilities revolving account, the Eastern Washington University
24 capital projects account, the Interstate 405 express toll lanes
25 operations account, the education construction fund, the education
26 legacy trust account, the election account, the electric vehicle
27 charging infrastructure account, the energy freedom account, the
28 energy recovery act account, the essential rail assistance account,
29 The Evergreen State College capital projects account, the federal
30 forest revolving account, the ferry bond retirement fund, the freight
31 mobility investment account, the freight mobility multimodal account,
32 the grade crossing protective fund, the public health services
33 account, (~~the high capacity transportation account,~~) the state
34 higher education construction account, the higher education
35 construction account, the highway bond retirement fund, the highway
36 infrastructure account, the highway safety fund, the high occupancy
37 toll lanes operations account, the hospital safety net assessment
38 fund, the industrial insurance premium refund account, the judges'
39 retirement account, the judicial retirement administrative account,
40 the judicial retirement principal account, the local leasehold excise

1 tax account, the local real estate excise tax account, the local
2 sales and use tax account, the marine resources stewardship trust
3 account, the medical aid account, the mobile home park relocation
4 fund, the money-purchase retirement savings administrative account,
5 the money-purchase retirement savings principal account, the motor
6 vehicle fund, the motorcycle safety education account, the multimodal
7 transportation account, the multiuse roadway safety account, the
8 municipal criminal justice assistance account, the natural resources
9 deposit account, the oyster reserve land account, the pension funding
10 stabilization account, the perpetual surveillance and maintenance
11 account, the pollution liability insurance agency underground storage
12 tank revolving account, the public employees' retirement system plan
13 1 account, the public employees' retirement system combined plan 2
14 and plan 3 account, the public facilities construction loan revolving
15 account beginning July 1, 2004, the public health supplemental
16 account, the public works assistance account, the Puget Sound capital
17 construction account, the Puget Sound ferry operations account, the
18 Puget Sound taxpayer accountability account, the real estate
19 appraiser commission account, the recreational vehicle account, the
20 regional mobility grant program account, the resource management cost
21 account, the rural arterial trust account, the rural mobility grant
22 program account, the rural Washington loan fund, the sexual assault
23 prevention and response account, the site closure account, the
24 skilled nursing facility safety net trust fund, the small city
25 pavement and sidewalk account, the special category C account, the
26 special wildlife account, the state employees' insurance account, the
27 state employees' insurance reserve account, the state investment
28 board expense account, the state investment board commingled trust
29 fund accounts, the state patrol highway account, the state route
30 number 520 civil penalties account, the state route number 520
31 corridor account, the state wildlife account, the statewide tourism
32 marketing account, the student achievement council tuition recovery
33 trust fund, the supplemental pension account, the Tacoma Narrows toll
34 bridge account, the teachers' retirement system plan 1 account, the
35 teachers' retirement system combined plan 2 and plan 3 account, the
36 tobacco prevention and control account, the tobacco settlement
37 account, the toll facility bond retirement account, the
38 transportation 2003 account (nickel account), the transportation
39 equipment fund, the transportation future funding program account,
40 the transportation improvement account, the transportation

1 improvement board bond retirement account, the transportation
2 infrastructure account, the transportation partnership account, the
3 traumatic brain injury account, the tuition recovery trust fund, the
4 University of Washington bond retirement fund, the University of
5 Washington building account, the voluntary cleanup account, the
6 volunteer firefighters' and reserve officers' relief and pension
7 principal fund, the volunteer firefighters' and reserve officers'
8 administrative fund, the Washington judicial retirement system
9 account, the Washington law enforcement officers' and firefighters'
10 system plan 1 retirement account, the Washington law enforcement
11 officers' and firefighters' system plan 2 retirement account, the
12 Washington public safety employees' plan 2 retirement account, the
13 Washington school employees' retirement system combined plan 2 and 3
14 account, the Washington state health insurance pool account, the
15 Washington state patrol retirement account, the Washington State
16 University building account, the Washington State University bond
17 retirement fund, the water pollution control revolving administration
18 account, the water pollution control revolving fund, the Western
19 Washington University capital projects account, the Yakima integrated
20 plan implementation account, the Yakima integrated plan
21 implementation revenue recovery account, and the Yakima integrated
22 plan implementation taxable bond account. Earnings derived from
23 investing balances of the agricultural permanent fund, the normal
24 school permanent fund, the permanent common school fund, the
25 scientific permanent fund, the state university permanent fund, and
26 the state reclamation revolving account shall be allocated to their
27 respective beneficiary accounts.

28 (b) Any state agency that has independent authority over accounts
29 or funds not statutorily required to be held in the state treasury
30 that deposits funds into a fund or account in the state treasury
31 pursuant to an agreement with the office of the state treasurer shall
32 receive its proportionate share of earnings based upon each account's
33 or fund's average daily balance for the period.

34 (5) In conformance with Article II, section 37 of the state
35 Constitution, no treasury accounts or funds shall be allocated
36 earnings without the specific affirmative directive of this section.

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