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**SENATE BILL 5993**

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**State of Washington**

**66th Legislature**

**2019 Regular Session**

**By** Senators Frockt, Billig, Lias, and Hunt

Read first time 03/26/19. Referred to Committee on Ways & Means.

1 AN ACT Relating to reforming the financial structure of the model  
2 toxics control program; amending RCW 82.21.010, 82.21.020, 82.21.040,  
3 82.21.030, 70.105D.030, 70.105D.050, 70.75A.060, 70.76.100,  
4 70.95M.080, 70.95M.120, 70.240.050, 70.270.050, 70.285.090,  
5 70.280.050, 70.300.040, 90.71.370, 70.105D.130, and 70.105D.140;  
6 adding new sections to chapter 70.105D RCW; creating new sections;  
7 repealing RCW 70.105D.170 and 70.105D.070; providing an effective  
8 date; and declaring an emergency.

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

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

1 ultimate consumers. This chapter is not intended to exempt any person  
2 from tax liability under any other law.

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

8 (a) Increases funding for programs and projects related to clean  
9 air, clean water, and prevention, with specific focus on stormwater  
10 pollution;

11 (b) Provides distinct and transparent financial separation of  
12 capital and operating budget funding under the model toxics control  
13 program;

14 (c) Improves the transparency and visibility of operating and  
15 capital project expenditures under the model toxics control program;  
16 and

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

19 **Sec. 102.** RCW 82.21.020 and 2002 c 105 s 1 are each amended to  
20 read as follows:

21 ~~((Unless the context clearly requires otherwise,))~~ The  
22 definitions in this section apply throughout this chapter unless the  
23 context clearly requires otherwise.

24 (1) "Fiscal growth factor" has the same meaning as provided in  
25 RCW 43.135.025.

26 (2) "Hazardous substance" means:

27 (a) Any substance that, on March 1, 2002, is a hazardous  
28 substance under section 101(14) of the federal comprehensive  
29 environmental response, compensation, and liability act of 1980, 42  
30 U.S.C. Sec. 9601(14), as amended by Public Law 99-499 on October 17,  
31 1986, except that hazardous substance does not include the following  
32 noncompound metals when in solid form in a particle larger than one  
33 hundred micrometers (0.004 inches) in diameter: Antimony, arsenic,  
34 beryllium, cadmium, chromium, copper, lead, nickel, selenium, silver,  
35 thallium, or zinc;

36 (b) Petroleum products;

37 (c) Any pesticide product required to be registered under section  
38 136a of the federal insecticide, fungicide and rodenticide act, 7

1 U.S.C. Sec. 136 et seq., as amended by Public Law 104-170 on August  
2 3, 1996; and

3 (d) Any other substance, category of substance, and any product  
4 or category of product determined by the director of ecology by rule  
5 to present a threat to human health or the environment if released  
6 into the environment. The director of ecology (~~(shall)~~) may not add  
7 or delete substances from this definition more often than twice  
8 during each calendar year. For tax purposes, changes in this  
9 definition (~~(shall)~~) take effect on the first day of the next month  
10 that is at least thirty days after the effective date of the rule.  
11 The word "product" or "products" as used in this (~~(paragraph—(d))~~)  
12 subsection (2)(d) means an item or items containing both:

13 (i) One or more substances that are hazardous substances under  
14 (a), (b), or (c) of this subsection or that are substances or  
15 categories of substances determined under this (~~(paragraph—(d))~~)  
16 subsection (2)(d) to present a threat to human health or the  
17 environment if released into the environment; and

18 (ii) One or more substances that are not hazardous substances.

19 (~~((2))~~) (3) "Petroleum product" means plant condensate,  
20 lubricating oil, gasoline, aviation fuel, kerosene, diesel motor  
21 fuel, benzol, fuel oil, residual oil, liquefied or liquefiable gases  
22 such as butane, ethane, and propane, and every other product derived  
23 from the refining of crude oil, but the term does not include crude  
24 oil.

25 (~~((3))~~) (4) "Possession" means the control of a hazardous  
26 substance located within this state and includes both actual and  
27 constructive possession. "Actual possession" occurs when the person  
28 with control has physical possession. "Constructive possession"  
29 occurs when the person with control does not have physical  
30 possession. "Control" means the power to sell or use a hazardous  
31 substance or to authorize the sale or use by another.

32 (~~((4))~~) (5) "Previously taxed hazardous substance" means a  
33 hazardous substance in respect to which a tax has been paid under  
34 this chapter and which has not been remanufactured or reprocessed in  
35 any manner (other than mere repackaging or recycling for beneficial  
36 reuse) since the tax was paid.

37 (~~((5))~~) (6) "Wholesale value" means fair market wholesale value,  
38 determined as nearly as possible according to the wholesale selling  
39 price at the place of use of similar substances of like quality and  
40 character, in accordance with rules of the department.

1       (~~(6)~~) (7) Except for terms defined in this section, the  
2 definitions in chapters 82.04, 82.08, and 82.12 RCW apply to this  
3 chapter.

4       **Sec. 103.** RCW 82.21.040 and 2015 3rd sp.s. c 6 s 1902 are each  
5 amended to read as follows:

6       The following are exempt from the tax imposed in this chapter:

7       (1) Any successive possession of a previously taxed hazardous  
8 substance. If tax due under this chapter has not been paid with  
9 respect to a hazardous substance, the department may collect the tax  
10 from any person who has had possession of the hazardous substance. If  
11 the tax is paid by any person other than the first person having  
12 taxable possession of a hazardous substance, the amount of tax paid  
13 (~~(shall)~~) constitutes a debt owed by the first person having taxable  
14 possession to the person who paid the tax.

15       (2) Any possession of a hazardous substance by a natural person  
16 under circumstances where the substance is used, or is to be used,  
17 for a personal or domestic purpose (and not for any business purpose)  
18 by that person or a relative of, or person residing in the same  
19 dwelling as, that person.

20       (3) Any possession of a hazardous substance amount which is  
21 determined as minimal by the department of ecology and which is  
22 possessed by a retailer for the purpose of making sales to ultimate  
23 consumers. This exemption does not apply to pesticide or petroleum  
24 products.

25       (4) Any possession of alumina or natural gas.

26       (5)(a) Until January 1, 2026, any possession of a hazardous  
27 substance as defined in RCW 82.21.020(~~(1)~~) (2)(c) that is solely  
28 for use by a farmer or certified applicator as an agricultural crop  
29 protection product and warehoused in this state or transported to or  
30 from this state, provided that the person possessing the substance  
31 does not otherwise use, manufacture, package for sale, or sell the  
32 substance in this state.

33       (b) The definitions in this subsection apply throughout this  
34 section unless the context clearly requires otherwise.

35       (i) "Agricultural crop protection product" means a chemical  
36 regulated under the federal insecticide, fungicide, and rodenticide  
37 act, 7 U.S.C. Sec. 136 as amended as of September 1, 2015, when used  
38 to prevent, destroy, repel, mitigate, or control predators, diseases,  
39 weeds, or other pests.

1 (ii) "Certified applicator" has the same meaning as provided in  
2 RCW 17.21.020.

3 (iii) "Farmer" has the same meaning as in RCW 82.04.213.

4 (iv) "Manufacturing" includes mixing or combining agricultural  
5 crop protection products with other chemicals or other agricultural  
6 crop protection products.

7 (v) "Package for sale" includes transferring agricultural crop  
8 protection products from one container to another, including the  
9 transfer of fumigants and other liquid or gaseous chemicals from one  
10 tank to another.

11 (vi) "Use" has the same meaning as in RCW 82.12.010.

12 (6) Persons or activities which the state is prohibited from  
13 taxing under the United States Constitution.

14 **Part II**

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

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

23 (b) The rate of the tax on petroleum products is two dollars and  
24 fifty-two cents per barrel. The tax collected under this subsection  
25 (1) (b) on petroleum products must be deposited as follows:

26 (i) Forty-three percent to the model toxics control operating  
27 account created under section 202 of this act;

28 (ii) Forty-three percent to the model toxics control capital  
29 account created under section 203 of this act; and

30 (iii) Fourteen percent to the model toxics control stormwater  
31 account created under section 204 of this act.

32 (c) The department must compile a list of petroleum products that  
33 are not easily measured on a per barrel basis. Petroleum products  
34 identified on the list are subject to the rate under (a) of this  
35 subsection in lieu of the volumetric rate under this subsection  
36 (1) (c). The list will be made in a form and manner prescribed by the  
37 department and must be made available on the department's internet  
38 web site. In compiling the list, the department may accept technical

1 assistance from persons that sell, market, or distribute petroleum  
2 products and consider any other resource the department finds useful  
3 in compiling the list.

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

6 ~~(3))~~ Chapter 82.32 RCW applies to the tax imposed in this  
7 chapter. The tax due dates, reporting periods, and return  
8 requirements applicable to chapter 82.04 RCW apply equally to the tax  
9 imposed in this chapter.

10 (3) Beginning July 1, 2020, and each July 1st thereafter, the  
11 rate specified under subsection (1)(b) of this section must be  
12 adjusted by a percentage that equals the fiscal growth factor, as  
13 most recently adjusted by the state expenditure limit committee. The  
14 rate must be calculated to the nearest one-thousandth of a cent.

15 NEW SECTION. Sec. 202. A new section is added to chapter  
16 70.105D RCW to read as follows:

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

19 (2) Moneys in the model toxics control operating account must be  
20 used only to carry out the administrative and service activities of  
21 those programs and activities identified in subsection (3) of this  
22 section.

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

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

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

32 (c) The hazardous waste clean-up program required under this  
33 chapter;

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

35 (e) Financial assistance for local programs in accordance with  
36 chapters 70.76, 70.95, 70.95C, 70.95I, and 70.105 RCW;

37 (f) State government programs for the safe reduction, recycling,  
38 or disposal of paint and hazardous wastes from households, small  
39 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;

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

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

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

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

29 (p) Petroleum-based plastic or expanded polystyrene foam debris  
30 clean-up activities in fresh or marine waters.

31 (4) Except for unanticipated receipts under RCW 43.79.260 through  
32 43.79.282, moneys in model toxics control operating account may be  
33 spent only after appropriation by statute.

34 (5) One percent of the moneys collected under RCW 82.21.030 must  
35 be allocated only for public participation grants to persons who may  
36 be adversely affected by a release or threatened release of a  
37 hazardous substance and to not-for-profit public interest  
38 organizations. The primary purpose of these grants is to facilitate  
39 the participation by persons and organizations in the investigation  
40 and remedying of releases or threatened releases of hazardous

1 substances and to implement the state's solid and hazardous waste  
2 management priorities. No grant may exceed sixty thousand dollars.  
3 Grants may be renewed annually. Moneys appropriated for public  
4 participation that are not expended at the close of any biennium  
5 revert to the model toxics control operating account.

6 (6) The department must adopt rules for grant or loan issuance  
7 and performance.

8 NEW SECTION. **Sec. 203.** A new section is added to chapter  
9 70.105D RCW to read as follows:

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

12 (2) In addition to the funds deposited into the model toxics  
13 control capital account required under RCW 82.21.030, the following  
14 moneys must be deposited into the model toxics control capital  
15 account:

- 16 (a) The costs of remedial actions recovered under this chapter;
- 17 (b) Penalties collected or recovered under this chapter; and
- 18 (c) Any other money appropriated or transferred to the account by  
19 the legislature.

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

24 (4)(a) Moneys in the model toxics control capital account may be  
25 used by the department only for capital projects and activities that  
26 carry out the purposes of this chapter and for financial assistance  
27 to local governments or other persons to carry out those projects or  
28 activities, including but not limited to the following, generally in  
29 descending order of priority:

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

32 (ii) Remedial actions, including planning for adaptive reuse of  
33 properties as provided for under (f)(iv) of this subsection. The  
34 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) Department-conducted remedial actions;

4 (iv) Grants to persons intending to remediate contaminated real  
5 property for development of affordable housing under subsection (6)  
6 of this section;

7 (v) Department-conducted remedial actions;

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

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

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

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

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

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

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

29 (viii) To expedite multiparty clean-up efforts, purchase of  
30 remedial action cost-cap insurance; and

31 (ix) Petroleum-based plastic or expanded polystyrene foam debris  
32 clean-up activities in fresh or marine waters.

33 (b) Grants, or loans, or contracts to local governments for solid  
34 waste plans and programs under chapters 70.95, 70.95C, 70.95I,  
35 70.95E, 70.95G, 70.95M, and 70.105 RCW. Funds must be allocated  
36 consistent with priorities and matching requirements in the  
37 respective chapters;

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

1 (d) Grants, or loans, or contracts to local governments for  
2 hazardous waste plans and programs under chapters 70.76 and 70.105  
3 RCW, including chemical action plan implementation. Funds must be  
4 allocated consistent with priorities and matching requirements in the  
5 chapter;

6 (e) Funds for plans and programs must be allocated consistent  
7 with the priorities and matching requirements established in chapters  
8 70.105, 70.95C, 70.95I, and 70.95 RCW; and

9 (f) The department may establish and administer a program to  
10 provide grants and loans to local governments for remedial actions,  
11 including planning for adaptive reuse of contaminated properties. To  
12 expedite cleanups throughout the state, the department may use the  
13 following strategies when providing grants to local governments under  
14 this subsection:

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

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

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

26 (C) The department may not allocate future funding to an extended  
27 grant agreement unless the local government has demonstrated to the  
28 department that funds awarded under the agreement during the previous  
29 biennium have been substantially expended or contracts have been  
30 entered into to substantially expend the funds;

31 (ii) Enter into a grant agreement with a local government  
32 conducting a remedial action that provides for periodic reimbursement  
33 of remedial action costs as they are incurred as established in the  
34 agreement;

35 (iii) Enter into a grant agreement with a local government prior  
36 to it acquiring a property or obtaining necessary access to conduct  
37 remedial actions, provided the agreement is conditioned upon the  
38 local government acquiring the property or obtaining the access in  
39 accordance with a schedule specified in the agreement;

1 (iv) Provide integrated planning grants to local governments to  
2 fund studies necessary to facilitate remedial actions at brownfield  
3 properties and adaptive reuse of properties following remediation.  
4 Eligible activities include, but are not limited to: Environmental  
5 site assessments; remedial investigations; health assessments;  
6 feasibility studies; site planning; community involvement; land use  
7 and regulatory analyses; building and infrastructure assessments;  
8 economic and fiscal analyses; and any environmental analyses under  
9 chapter 43.21C RCW;

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

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

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

20 (B) Funding would create new substantial economic development,  
21 public recreational opportunities, or habitat restoration  
22 opportunities that would not otherwise occur; or

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

26 (vii) When pending grant applications under (f)(iv) and (v) of  
27 this subsection (5) exceed the amount of funds available, designated  
28 redevelopment opportunity zones must receive priority for  
29 distribution of available funds.

30 (6) Except for unanticipated receipts under RCW 43.79.260 through  
31 43.79.282, moneys in model toxics control capital account may be  
32 spent only after appropriation by statute.

33 NEW SECTION. **Sec. 204.** A new section is added to chapter  
34 70.105D RCW to read as follows:

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

37 (2) Moneys in the model toxics control stormwater account must be  
38 used for operating and capital programs, activities, and projects

1 identified in subsection (3) of this section directly relating to  
2 stormwater pollution control.

3 (3) Moneys in the model toxics control stormwater account must be  
4 used only to carry out the operating and capital directly relating to  
5 stormwater activities under sections 202 and 203 of this act,  
6 including but not limited to the following:

7 (a) Stormwater pollution control projects and activities that  
8 protect or preserve existing remedial actions or prevent hazardous  
9 clean-up sites;

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

12 (4) Except for unanticipated receipts under RCW 43.79.260 through  
13 43.79.282, moneys in the model toxics control stormwater account may  
14 be spent only after appropriation by statute.

15 **Part III**

16 NEW SECTION. **Sec. 301.** A new section is added to chapter  
17 70.105D RCW to read as follows:

18 (1) Budget proposals by the governor and enacted budgets by the  
19 legislature must include a summary document that provides the capital  
20 and operating budget expenditures funded in whole or in part by  
21 revenues deposited into the accounts specified in RCW 82.21.030,  
22 detailed by agency and, if practicable, by program. The document must  
23 provide the percentage allocation of these revenues within the  
24 operating and capital budgets by agency for the current budget  
25 proposal. Transfers of model toxics control revenues into other  
26 accounts must be noted accordingly.

27 (2) In addition to the summary document required under subsection  
28 (1) of this section, capital budget proposals by the governor and  
29 enacted budgets by the legislature must include detailed capital  
30 project lists funded in whole, or in part, or program specific  
31 funding for yet to be identified projects, by revenues deposited into  
32 the model toxics control capital account created in section 203 of  
33 this act, that identify the following: The project recipient, project  
34 name, county, legislative district, the amount of the budget request  
35 for the project for the biennium, and the projected ten-year need for  
36 the project delineated between the state funding and local government  
37 match. For any capital budget proposal that is submitted by the  
38 governor or adopted by any fiscal committee or chamber of the

1 legislature, a model toxics control capital project list must be  
2 electronically distributed to all legislators, and any other  
3 interested parties, with the information required under this  
4 subsection (2).

5 **Part IV**

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

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

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

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

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

1 (d) Carry out all state programs authorized under the federal  
2 cleanup law and the federal resource, conservation, and recovery act,  
3 42 U.S.C. Sec. 6901 et seq., as amended;

4 (e) Classify substances as hazardous substances for purposes of  
5 RCW 70.105D.020 and classify substances and products as hazardous  
6 substances for purposes of RCW 82.21.020(1);

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

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

21 (h) Require holders to conduct remedial actions necessary to  
22 abate an imminent or substantial endangerment pursuant to RCW  
23 70.105D.020(22)(b)(ii)(C);

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

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

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

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

27 (i) When establishing a model remedy, the department (~~shall~~)  
28 must:

29 (A) Identify the requirements for characterizing a facility to  
30 select a model remedy, the applicability of the model remedy for use  
31 at a facility, and monitoring requirements;

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

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

38 (ii) When developing model remedies, the department (~~shall~~)  
39 must solicit and consider proposals from qualified persons. The

1 proposals must, in addition to describing the model remedy, provide  
2 the information required under (k) (i) (A) and (B) of this subsection;

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

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

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

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

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

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

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

38 (e) Publish and periodically update minimum clean-up standards  
39 for remedial actions at least as stringent as the clean-up standards  
40 under section 121 of the federal cleanup law, 42 U.S.C. Sec. 9621,



1 and at least as stringent as all applicable state and federal laws,  
2 including health-based standards under state and federal law; and

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

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

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

1       ~~(5))~~ (4) Before September 20th of each even-numbered year, the  
2 department (~~shall~~) must:

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

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

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

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

31       ~~((6))~~ (5) By December 1st of each odd-numbered year, the  
32 department must provide the legislature and the public a report of  
33 the department's activities supported by appropriations from the  
34 (~~state and local toxics control accounts and the environmental~~  
35 ~~legacy stewardship~~) model toxics control operating, capital, and  
36 stormwater accounts. The report must be prepared and displayed in a  
37 manner that allows the legislature and the public to easily determine  
38 the statewide and local progress made in cleaning up hazardous waste  
39 sites under this chapter. The report must include, at a minimum:

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

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

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

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

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

15 (B) Remedial investigation;

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

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

18 (E) Operation and maintenance or monitoring of the constructed  
19 remedy; and

20 (F) The final completion date.

21 (~~(7)~~) (6) The department (~~shall~~) must establish a program to  
22 identify potential hazardous waste sites and to encourage persons to  
23 provide information about hazardous waste sites.

24 (~~(8)~~) (7) For all facilities where an environmental covenant  
25 has been required under subsection (1)(f) of this section, including  
26 all facilities where the department has required an environmental  
27 covenant under an order, agreed order, or consent decree, or as a  
28 condition of a written opinion issued under the authority of  
29 subsection (1)(i) of this section, the department (~~shall~~) must  
30 periodically review the environmental covenant for effectiveness.

31 (~~Except as otherwise provided in (c) of this subsection,~~) The  
32 department (~~shall~~) must conduct a review at least once every five  
33 years after an environmental covenant is recorded.

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

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

39 (ii) A physical inspection of the real property subject to the  
40 environmental covenant to determine compliance with the environmental

1 covenant, including whether any development or redevelopment of the  
2 real property has violated the terms of the environmental covenant;  
3 and

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

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

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

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

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

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

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

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

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

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

35 (1) With respect to any release, or threatened release, for which  
36 the department does not conduct or contract for conducting remedial  
37 action and for which the department believes remedial action is in  
38 the public interest, the director ~~((shall))~~ must issue orders or  
39 agreed orders requiring potentially liable persons to provide the

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

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

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

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

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

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

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

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

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

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

39 (7) Any person who owns real property or lender holding a  
40 mortgage on real property that is subject to a lien filed under RCW

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

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

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

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

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

29 A manufacturer of class B firefighting foam in violation of RCW  
30 70.75A.020 or 70.75A.040 or a person in violation of RCW 70.75A.010  
31 or 70.75A.030 is subject to a civil penalty not to exceed five  
32 thousand dollars for each violation in the case of a first offense.  
33 Manufacturers, local governments, or persons that are repeat  
34 violators are subject to a civil penalty not to exceed ten thousand  
35 dollars for each repeat offense. Penalties collected under this  
36 section must be deposited in the (~~state~~) model toxics control  
37 operating account created in (~~RCW 70.105D.070~~) section 202 of this  
38 act.

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

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

7       (a) Before the effective date of the product prohibition in RCW  
8 70.76.020 or 70.76.030, the department (~~shall~~) must prepare and  
9 distribute information to in-state manufacturers and out-of-state  
10 manufacturers, to the maximum extent practicable, to assist them in  
11 identifying products prohibited for manufacture, sale, or  
12 distribution under this chapter.

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

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

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

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

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

38       A violation of this chapter is punishable by a civil penalty not  
39 to exceed one thousand dollars for each violation in the case of a

1 first violation. Repeat violators are liable for a civil penalty not  
2 to exceed five thousand dollars for each repeat violation. Penalties  
3 collected under this section must be deposited in the ((state)) model  
4 toxics control operating account created in ((RCW 70.105D.070))  
5 section 202 of this act.

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

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

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

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

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

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

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

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



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

3       (1) An initial violation of RCW 70.270.030(1) is punishable by a  
4 civil penalty not to exceed five hundred dollars. Subsequent  
5 violations of RCW 70.270.030(1) are punishable by civil penalties not  
6 to exceed one thousand dollars for each violation.

7       (2) Penalties collected under this section must be deposited in  
8 the ((state)) model toxics control operating account created in ((RCW  
9 70.105D.070)) section 202 of this act.

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

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

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

30       (3) A brake friction material distributor or retailer that  
31 violates this chapter is subject to a civil penalty not to exceed ten  
32 thousand dollars for each violation. Brake friction material  
33 distributors or retailers that sell brake friction material that is  
34 packaged consistent with RCW 70.285.080(2)(b) are not in violation of  
35 this chapter. However, if the department conclusively proves that the  
36 brake friction material distributor or retailer was aware that the  
37 brake friction material being sold violates RCW 70.285.030 or  
38 70.285.050, the brake friction material distributor or retailer is  
39 subject to civil penalties according to this section.

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

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

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

36 (7) Before the effective date of the prohibitions in RCW  
37 70.285.030 or 70.285.050, the department (~~shall~~) must prepare and  
38 distribute information about the prohibitions to manufacturers,  
39 distributors, and retailers to the maximum extent practicable.

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

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

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

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

11 (1) The department ((shall)) must enforce the requirements of  
12 this chapter.

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

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

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

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

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

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

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

33 (2) In the 2008 report required under subsection (1) of this  
34 section, the council ((shall)) must include recommendations for  
35 projected funding needed through 2020 to implement the action agenda;  
36 funding needs for science panel staff; identify methods to secure  
37 stable and sufficient funding to meet these needs; and include

1 proposals for new sources of funding to be dedicated to Puget Sound  
2 protection and recovery. In preparing the science panel staffing  
3 proposal, the council (~~shall~~) must consult with the panel.

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

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

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

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

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

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

22 (f) An identification of all funds provided to the partnership,  
23 and recommendations as to how future state expenditures for all  
24 entities, including the partnership, could better match the  
25 priorities of the action agenda.

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

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

1 (i) Water pollution control facilities financing, chapter 70.146  
2 RCW;

3 (ii) The water pollution control revolving fund, chapter 90.50A  
4 RCW;

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

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

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

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

12 (vii) The salmon recovery funding board, RCW 77.85.110 through  
13 77.85.150;

14 (viii) The community economic revitalization board, chapter  
15 43.160 RCW;

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

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

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

23 (i) Determining the level of funding and types of projects and  
24 activities funded through the programs that contribute to  
25 implementation of the action agenda;

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

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

34 (iv) Modifying funding criteria so that projects, programs, and  
35 activities that are inconsistent with the action agenda are  
36 ineligible for funding;

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

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

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

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

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

23 (2) The following receipts must be deposited into the cleanup  
24 settlement account:

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

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

32 (ii) Assessing or addressing the injury to natural resources  
33 caused by the release of a hazardous substance from a specific  
34 facility; and

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

36 (3) If a settlement or court order does not direct payment of  
37 receipts described in subsection (2)(a) of this section into the  
38 cleanup settlement account, then the receipts from any payment to the

1 state must be deposited into the ((state)) model toxics control  
2 capital account.

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

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

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

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

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

36 (1) The brownfield redevelopment trust fund account is created in  
37 the state treasury. All receipts from the sources identified in  
38 subsection (2) of this section must be deposited into the account.  
39 Moneys in the account may be spent only after appropriation.

1 Expenditures from the account may be used only as identified in  
2 subsection (4) of this section.

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

5 (a) Moneys appropriated by the legislature to the account for a  
6 specific redevelopment opportunity zone established under RCW  
7 70.105D.150 or a specific brownfield renewal authority established  
8 under RCW 70.105D.160;

9 (b) Moneys voluntarily deposited in the account for a specific  
10 redevelopment opportunity zone or a specific brownfield renewal  
11 authority; and

12 (c) Receipts from settlements or court orders that direct payment  
13 to the account for a specific redevelopment opportunity zone to  
14 resolve a person's liability or potential liability under this  
15 chapter.

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

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

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

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

30 (7) The local government designating the redevelopment  
31 opportunity zone under RCW 70.105D.150 or the associated brownfield  
32 renewal authority created under RCW 70.105D.160 must be the  
33 beneficiary of the deposited moneys.

34 (8) All expenditures must be used to conduct remediation and  
35 cleanup consistent with a plan for the remediation and cleanup of the  
36 properties or facilities approved by the department under this  
37 chapter. All expenditures must meet the eligibility requirements for  
38 the use by local governments under the rules for remedial action  
39 grants adopted by the department under this chapter, including  
40 requirements for the expenditure of nonstate match funding.



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

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

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

22 (12) The department is authorized to adopt rules to implement  
23 this section.

24 NEW SECTION. Sec. 415. The following acts or parts of acts are  
25 each repealed:

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

29 (2) RCW 70.105D.070 (Toxics control accounts) and 2018 c 299 s  
30 911, 2017 3rd sp.s. c 1 s 980, & 2016 sp.s. c 36 s 943.

31 NEW SECTION. Sec. 416. Any residual balance of funds remaining  
32 in the state toxics control account repealed by section 415 of this  
33 act on the effective date of this section must be transferred to the  
34 model toxics control operating account created in section 202 of this  
35 act.

36 NEW SECTION. Sec. 417. Any residual balance of funds remaining  
37 in the local toxics control account repealed by section 415 of this

1 act on the effective date of this section must be transferred to the  
2 model toxics control capital account created in section 203 of this  
3 act.

4 NEW SECTION. **Sec. 418.** Any residual balance of funds remaining  
5 in the environmental legacy stewardship account repealed by section  
6 415 of this act on the effective date of this section must be  
7 transferred to the model toxics control stormwater account created in  
8 section 204 of this act.

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

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