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**SENATE BILL 5285**

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**State of Washington**

**66th Legislature**

**2019 Regular Session**

**By** Senators Palumbo and Liiias; by request of Department of Ecology

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.

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

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

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

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

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

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

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

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

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

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

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

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

29 (h) Require holders to conduct remedial actions necessary to  
30 abate an imminent or substantial endangerment pursuant to RCW  
31 70.105D.020(22)(b)(ii)(C);

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

1 ~~chapter or whether the department believes further remedial action is~~  
2 ~~necessary at the facility. Nothing in this chapter may be construed~~  
3 ~~to preclude the department from issuing a written opinion on whether~~  
4 ~~further remedial action is necessary at any portion of the real~~  
5 ~~property located within a facility, even if further remedial action~~  
6 ~~is still necessary elsewhere at the same facility. Such a written~~  
7 ~~opinion on a portion of a facility must also provide an opinion on~~  
8 ~~the status of the facility as a whole. The department may collect,~~  
9 ~~from persons requesting advice and assistance, the costs incurred by~~  
10 ~~the department in providing such advice and assistance; however, the~~  
11 ~~department shall, where appropriate, waive collection of costs in~~  
12 ~~order to provide an appropriate level of technical assistance in~~  
13 ~~support of public participation. The state, the department, and~~  
14 ~~officers and employees of the state are immune from all liability,~~  
15 ~~and no cause of action of any nature may arise from any act or~~  
16 ~~omission in providing, or failing to provide, informal advice and~~  
17 ~~assistance. The department must track the number of requests for~~  
18 ~~reviews of planned or completed independent remedial actions and~~  
19 ~~establish performance measures to track how quickly the department is~~  
20 ~~able to respond to those requests. By November 1, 2015, the~~  
21 ~~department must submit to the governor and the appropriate~~  
22 ~~legislative fiscal and policy committees a report on achieving the~~  
23 ~~performance measures and provide recommendations for improving~~  
24 ~~performance, including staffing needs;~~

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

31 ~~((k))~~) (j) Establish model remedies for common categories of  
32 facilities, types of hazardous substances, types of media, or  
33 geographic areas to streamline and accelerate the selection of  
34 remedies for routine types of cleanups at facilities;

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

36 (A) Identify the requirements for characterizing a facility to  
37 select a model remedy, the applicability of the model remedy for use  
38 at a facility, and monitoring requirements;

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

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

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

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

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

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

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

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

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

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

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

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

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

35 ~~(4) ((By November 1, 2016, the department must submit to the~~  
36 ~~governor and the appropriate legislative committees a report on the~~  
37 ~~status of developing model remedies and their use under this chapter.~~  
38 ~~The report must include: The number and types of model remedies~~  
39 ~~identified by the department under subsection (1)(k) of this section;~~  
40 ~~the number and types of model remedy proposals prepared by qualified~~



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

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

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

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

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

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

36 ~~((6))~~ (5) By December 1st of each odd-numbered year, the  
37 department must provide the legislature and the public a report of  
38 the department's activities supported by appropriations from the  
39 state and local toxics control accounts and the environmental legacy  
40 stewardship account. The report must be prepared and displayed in a

1 manner that allows the legislature and the public to easily determine  
2 the statewide and local progress made in cleaning up hazardous waste  
3 sites under this chapter. The report must include, at a minimum:

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

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

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

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

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

17 (B) Remedial investigation;

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

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

20 (E) Operation and maintenance or monitoring of the constructed  
21 remedy; and

22 (F) The final completion date.

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

26 ~~((8))~~ (7) For all facilities where an environmental covenant  
27 has been required under subsection (1)(f) of this section, including  
28 all facilities where the department has required an environmental  
29 covenant under an order, agreed order, or consent decree, or as a  
30 condition of a written opinion issued under the authority of  
31 ~~((subsection (1)(i) of this section))~~ section 2 of this act, the  
32 department shall periodically review the environmental covenant for  
33 effectiveness. ~~((Except as otherwise provided in (c) of this~~  
34 ~~subsection,))~~ The department shall conduct a review at least once  
35 every five years after an environmental covenant is recorded.

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

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

1 (ii) A physical inspection of the real property subject to the  
2 environmental covenant to determine compliance with the environmental  
3 covenant, including whether any development or redevelopment of the  
4 real property has violated the terms of the environmental covenant;  
5 and

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

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

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

23 ~~(i) Enter all required information about the environmental~~  
24 ~~covenant into the registry established under RCW 64.70.120 by June~~  
25 ~~30, 2008;~~

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

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

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

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

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

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

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

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

11 (b) The limit on distributions of moneys collected under RCW  
12 82.21.030 to the state and local toxics control accounts for the  
13 fiscal year beginning July 1, 2013, is one hundred forty million  
14 dollars.

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

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

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

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

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

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

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

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

39 (g) Oil and hazardous materials spill prevention, preparedness,  
40 training, and response activities;

1 (h) Water and environmental health protection and monitoring  
2 programs;

3 (i) Programs authorized under chapter 70.146 RCW;

4 (j) A public participation program;

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

13 (l) Development and demonstration of alternative management  
14 technologies designed to carry out the hazardous waste management  
15 priorities of RCW 70.105.150;

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

18 (n) Stormwater pollution control projects and activities that  
19 protect or preserve existing remedial actions or prevent hazardous  
20 clean-up sites;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (i) Extended grant agreements entered into under ~~((e))~~ (e)(i)  
27 of this subsection;

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

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

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

38 (iii) Stormwater pollution source projects that: (A) Work in  
39 conjunction with a remedial action; (B) protect completed remedial

1 actions against recontamination; or (C) prevent hazardous clean-up  
2 sites;

3 (iv) Hazardous waste plans and programs under chapter 70.105 RCW;  
4 (v) Solid waste plans and programs under chapters 70.95, 70.95C,  
5 70.95I, and 70.105 RCW;

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

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

12 (b) Funds for plans and programs must be allocated consistent  
13 with the priorities and matching requirements established in chapters  
14 70.105, 70.95C, 70.95I, and 70.95 RCW.

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

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

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

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

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

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

35 (C) The department may not allocate future funding to an extended  
36 grant agreement unless the local government has demonstrated to the  
37 department that funds awarded under the agreement during the previous  
38 biennium have been substantially expended or contracts have been  
39 entered into to substantially expend the funds;

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

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

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

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

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

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

29 (B) Funding would create new substantial economic development,  
30 public recreational opportunities, or habitat restoration  
31 opportunities that would not otherwise occur; or

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

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

39 (f) To expedite multiparty clean-up efforts, the department may  
40 purchase remedial action cost-cap insurance. For the 2013-2015 fiscal



1 biennium, moneys in the local toxics control account may be spent on  
2 projects in sections 3024, 3035, 3036, and 3059, chapter 19, Laws of  
3 2013 2nd sp. sess.

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

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

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

31 (8) The department shall adopt rules for grant or loan issuance  
32 and performance. To accelerate both remedial action and economic  
33 recovery, the department may expedite the adoption of rules necessary  
34 to implement chapter 1, Laws of 2013 2nd sp. sess. using the  
35 expedited procedures in RCW 34.05.353. The department shall initiate  
36 the award of financial assistance by August 1, 2013. To ensure the  
37 adoption of rules will not delay financial assistance, the department  
38 may administer the award of financial assistance through interpretive  
39 guidance pending the adoption of rules through July 1, 2014.

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

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

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

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

13 (b) The legislature may direct the state treasurer to make  
14 transfers of moneys in the state toxics control account to the water  
15 pollution control revolving account.

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

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

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

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

34 (a) Each residence and landowner of a residence whose property  
35 boundary is within three hundred feet of the boundary of the property  
36 where the release occurred or if the release occurred from a pipeline  
37 or other facility that does not have a property boundary, within  
38 three hundred feet of the actual release;

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

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

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

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

13 (f) The department of health.

14 (4) A notice produced by a facility shall provide the following  
15 information:

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

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

20 (c) The date the release was discovered;

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

22 (e) The remedial actions being taken or planned to address the  
23 release;

24 (f) The potential health and environmental effects of the  
25 hazardous substances released; and

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

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

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

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

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

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

38 (e) The discharge of hazardous substances to a permitted waste  
39 water treatment facility or from a permitted waste water collection

1 system or treatment facility as allowed by a facility's discharge  
2 permit;

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

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

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

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

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

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

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

36 (7) The facility where the release occurred is responsible for  
37 reimbursing the department within thirty days for the actual costs  
38 associated with the production and mailing of the notices under this  
39 section.

1       **Sec. 6.** RCW 43.84.092 and 2018 c 287 s 7, 2018 c 275 s 10, and  
2 2018 c 203 s 14 are each reenacted and amended to read as follows:

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

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

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

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

35       (a) The following accounts and funds shall receive their  
36 proportionate share of earnings based upon each account's and fund's  
37 average daily balance for the period: The abandoned recreational  
38 vehicle disposal account, the aeronautics account, the aircraft  
39 search and rescue account, the Alaskan Way viaduct replacement  
40 project account, the brownfield redevelopment trust fund account, the

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

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

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

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

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

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