

2 SSB 6123 - S AMD  
3 By Senators Talmadge, Deccio and Fraser

4 WITHDRAWN 2/10/94

5 On page 10, line 6 after "section" insert "and section 7 of this  
6 act"

7 On page 10, line 20 after "section." delete "Any" and insert  
8 "Except for covenants authorized under section 7 of this act, any"

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11 On page 12, after line 22 insert the following:

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

14 (1) The attorney general, with the concurrence of the director, may  
15 enter a settlement agreement under the authority of RCW 70.105D.040(4)  
16 that includes a covenant not to sue without the reopener clause  
17 described by RCW 70.105D.040(4)(c), if the attorney general determines  
18 that:

19 (a) The agreement meets the requirements applicable to all  
20 settlement agreements under RCW 70.105D.040(4)(a);

21 (b) The agreement requires the persons entering the agreement to  
22 make payment into the site cleanup reserve account in an amount meeting  
23 the standards under subsection (3) of this section; and

24 (c) The director has provided his or her concurrence that the  
25 covenant not to sue is in the public interest, considering the factors  
26 in subsection (2) of this section.

27 (2) In making the public interest determination under subsection  
28 (1)(c) of this section, the director shall consider such factors as:

29 (a) The effectiveness and reliability of the remedial action, in  
30 light of the other alternative actions considered for the facility  
31 concerned;

1 (b) The nature of the risks remaining at the facility;

2 (c) The extent to which performance standards are included in the  
3 settlement agreement;

4 (d) The extent to which the actions provide a complete remedy,  
5 including a reduction in the hazardous nature of the substances at the  
6 facility;

7 (e) The extent to which the technology used is demonstrated to be  
8 effective;

9 (f) Whether the payment to the site cleanup reserve account would  
10 be sufficient to fund additional remedial actions that might eventually  
11 be necessary at the facility;

12 (g) Whether the remedial action will be carried out, in whole or in  
13 significant part, by the potentially liable persons entering the  
14 settlement agreement; and

15 (h) The size and proximity of populations that may be exposed to a  
16 future release of hazardous substances from the facility.

17 (3) The attorney general, with the assistance of the director,  
18 shall determine the amount of a monetary payment to be made to the site  
19 cleanup reserve account, which shall be made by the potentially liable  
20 persons entering a settlement agreement containing a covenant not to  
21 sue described under subsection (1) of this section. The amount shall  
22 be sufficient to cover the cost of periodically monitoring the facility  
23 to ensure maintenance of the remedy, and to cover the risk that future  
24 remedial action may be necessary at the facility. In determining the  
25 amount the attorney general shall consider:

26 (a) The completeness of the remedial action to be undertaken, and  
27 the degree to which the action encompasses permanent remedies that  
28 destroy the hazardous substances or otherwise treat or stabilize the  
29 substances to eliminate their hazardous nature;

30 (b) The potential future uses of the facility after cleanup;

31 (c) The current balance in the site cleanup reserve account in  
32 comparison to the total number of sites eligible for funding from the  
33 account for future remedial action that may become necessary.

34 (4) The attorney general, with the assistance of the director,  
35 shall develop by rule a payment schedule for determining the amount of  
36 payments to the site cleanup reserve account, to ensure consistency and  
37 fairness among all settlement agreements. The schedule may be revised  
38 from time to time to reflect new information regarding expenditures  
39 from the account in relation to payments into the account. The payment

1 schedule may establish criteria to waive an amount for facility  
2 monitoring costs where, because of the size of the facility or the  
3 amount or toxicity of hazardous substances remaining at the facility  
4 after remedial action, it is not anticipated that periodic monitoring  
5 of the facility will be necessary. The schedule shall also establish  
6 criteria for the reduction or waiver of the fee, where the remedial  
7 action will employ cleanup technologies with a high degree of  
8 demonstrated effectiveness in complete remediation at sites with  
9 substantially similar circumstances to that addressed in the proposed  
10 settlement agreement.

11 (5) A covenant not to sue under subsection (1) of this section is  
12 subject to the satisfactory performance by such person of its  
13 obligations under the settlement agreement, and shall not take effect  
14 until the director certifies that remedial action has been completed in  
15 accordance with the requirements of this chapter and with the terms of  
16 the settlement agreement. The covenant shall not bar the state from  
17 taking actions necessary to protect members of the public from a health  
18 hazard, including, but not limited to, actions to prevent entrance upon  
19 the facility, or to enter the facility for the purpose of assessing the  
20 need for or for conducting remedial action at the facility. The  
21 covenant shall not bar the state from taking action against a person  
22 entering the settlement agreement regarding releases or potential  
23 releases at the facility known by the person at the time of entering  
24 the settlement agreement but not disclosed to the attorney general.

25 (6) The issuance of a covenant not to sue to a potentially liable  
26 person does not relieve or decrease any other person's liability to the  
27 state.

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

30 The site cleanup reserve account is created in the state treasury.  
31 All payments made as a condition of a settlement agreement under  
32 section 7(1) of this act shall be deposited to the account. Money in  
33 the account shall be used solely for:

34 (1) Remedial action by the state to address releases or potential  
35 releases at or from facilities for which remedial action had previously  
36 been completed under the terms of a settlement agreement containing a  
37 covenant not to sue under section 7(1) of this act; and

1 (2) Periodically monitoring such facilities to determine whether  
2 further remedial action is necessary.

3 Money deposited in the account shall be administered by the  
4 department and is subject to legislative appropriation. All earnings  
5 from investment of balances in the site cleanup reserve account shall  
6 be credited to the account.

7 NEW SECTION. **Sec. 9.** (1) The pollution liability insurance agency  
8 shall conduct a study on insurance coverage for environmental  
9 remediation liability. The study shall include a review of: (a) The  
10 availability of policies for such coverage in all areas of the state,  
11 and the insurance firms offering such policies; (b) the prevailing  
12 policy coverage available, including types of liability covered,  
13 exclusions from coverage, and other significant policy limitations; (c)  
14 premium costs; (d) prevailing policy provisions and insurance industry  
15 practices regarding future liability of insureds at remediated  
16 hazardous waste sites; and (e) methods by which the risks to the state  
17 of costs for future cleanup at remediated site subject to settlements  
18 entered under section 7 of this act may be managed through obtaining  
19 private insurance coverage. The study shall include recommendations  
20 for legislative and administrative actions to assist in making  
21 affordable clean-up liability insurance available and reducing  
22 transactional costs associated with determining policy coverage and  
23 payments made under such policies.

24 (2) The department of ecology, office of the insurance  
25 commissioner, office of financial management, and the attorney  
26 general's office shall provide assistance to the agency in preparing  
27 the report. The agency shall also consult with insurance industry  
28 representatives as well as persons or businesses who are insured under  
29 such policies, may desire such insurance, or may be undertaking  
30 environmental cleanup.

31 (3) The report shall be submitted to the standing committees of the  
32 house of representatives and the senate with jurisdiction over  
33 environmental and insurance matters on or before December 1, 1994."

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