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SENATE BILL 6211

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State of Washington

62nd Legislature

2012 Regular Session

By Senators Ranker, Litzow, Fain, Hargrove, Kilmer, Hill, Nelson, Keiser, and Conway

Read first time 01/16/12. Referred to Committee on Environment.

1 AN ACT Relating to accelerating cleanup of hazardous waste sites;  
2 amending RCW 70.105D.010, 70.105D.020, and 70.105D.040; reenacting and  
3 amending RCW 70.105D.070; adding new sections to chapter 70.105D RCW;  
4 and creating new sections.

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

6 NEW SECTION. **Sec. 1.** The legislature finds that the cleanup and  
7 reuse of former commercial, industrial, and other sites contaminated  
8 with hazardous substances has both economic and public health benefits  
9 for the communities hosting these sites. Public investment in the  
10 cleanup of hazardous waste sites has multiple benefits, with some  
11 estimates indicating that for every state dollar invested toward  
12 cleanup, there is generated six dollars in local tax revenue, seven  
13 dollars in payroll revenue, and thirty-two dollars in business revenue.  
14 The legislature further finds that these "brownfield" cleanups should  
15 not be conducted in isolation from the community's plans for future  
16 economic and social uses of the property, and that integrating the  
17 cleanup with future site uses provides a greater opportunity to bring  
18 substantial private resources into the cleanup.

1           Therefore, it is the intent of this act to authorize a greater  
2 emphasis in the allocation of state resources toward the cleanup and  
3 reuse of brownfield properties, to provide more flexible funding and  
4 oversight authority for local governments guiding clean-up efforts in  
5 brownfield areas, and to modify the state's cleanup program in ways  
6 that will accelerate cleanups throughout the state, thus providing both  
7 near-term job benefits in the clean-up work as well as ongoing economic  
8 benefits through reuse of the cleaned up properties.

9           **Sec. 2.** RCW 70.105D.010 and 2002 c 288 s 1 are each amended to  
10 read as follows:

11           (1) Each person has a fundamental and inalienable right to a  
12 healthful environment, and each person has a responsibility to preserve  
13 and enhance that right. The beneficial stewardship of the land, air,  
14 and waters of the state is a solemn obligation of the present  
15 generation for the benefit of future generations.

16           (2) A healthful environment is now threatened by the irresponsible  
17 use and disposal of hazardous substances. There are hundreds of  
18 hazardous waste sites in this state, and more will be created if  
19 current waste practices continue. Hazardous waste sites threaten the  
20 state's water resources, including those used for public drinking  
21 water. Many of our municipal landfills are current or potential  
22 hazardous waste sites and present serious threats to human health and  
23 environment. The costs of eliminating these threats in many cases are  
24 beyond the financial means of our local governments and ratepayers.  
25 The ((main)) overriding purpose of chapter 2, Laws of 1989 is to raise  
26 sufficient funds to clean up all hazardous waste sites and to prevent  
27 the creation of future hazards due to improper disposal of toxic wastes  
28 into the state's land and waters.

29           (3) Many farmers and small business owners who have followed the  
30 law with respect to their uses of pesticides and other chemicals  
31 nonetheless may face devastating economic consequences because their  
32 uses have contaminated the environment or the water supplies of their  
33 neighbors. With a source of funds, the state may assist these farmers  
34 and business owners, as well as those persons who sustain damages, such  
35 as the loss of their drinking water supplies, as a result of the  
36 contamination.

1 (4) It is in the public's interest to efficiently use our finite  
2 land base, to integrate our land use planning policies with our clean-  
3 up policies, and to clean up and reuse contaminated industrial and  
4 other brownfield properties in order to minimize (~~industrial~~)  
5 development pressures on undeveloped land and to make clean land  
6 available for (~~future~~) economic, environmental, and social (~~use~~)  
7 reuses.

8 (5) Because it is often difficult or impossible to allocate  
9 responsibility among persons liable for hazardous waste sites and  
10 because it is essential that sites be cleaned up well and  
11 expeditiously, each responsible person should be liable jointly and  
12 severally.

13 (6) Because releases of hazardous substances can adversely affect  
14 the health and welfare of the public, the environment, and property  
15 values, it is in the public interest that affected communities be  
16 notified of where releases of hazardous substances have occurred and  
17 what is being done to clean them up.

18 **Sec. 3.** RCW 70.105D.020 and 2007 c 104 s 18 are each amended to  
19 read as follows:

20 The definitions in this section apply throughout this chapter  
21 unless the context clearly requires otherwise.

22 (1) "Agreed order" means an order issued by the department under  
23 this chapter with which the potentially liable person or prospective  
24 purchaser receiving the order agrees to comply. An agreed order may be  
25 used to require or approve any cleanup or other remedial actions but it  
26 is not a settlement under RCW 70.105D.040(4) and shall not contain a  
27 covenant not to sue, or provide protection from claims for  
28 contribution, or provide eligibility for public funding of remedial  
29 actions under RCW 70.105D.070(2)(d)(xi).

30 (2) "Department" means the department of ecology.

31 (3) "Director" means the director of ecology or the director's  
32 designee.

33 (4) "Environmental covenant" has the same meaning as defined in RCW  
34 64.70.020.

35 (5) "Facility" means (a) any building, structure, installation,  
36 equipment, pipe or pipeline (including any pipe into a sewer or  
37 publicly owned treatment works), well, pit, pond, lagoon, impoundment,

1 ditch, landfill, storage container, motor vehicle, rolling stock,  
2 vessel, or aircraft, or (b) any site or area where a hazardous  
3 substance, other than a consumer product in consumer use, has been  
4 deposited, stored, disposed of, or placed, or otherwise come to be  
5 located.

6 (6) "Federal cleanup law" means the federal comprehensive  
7 environmental response, compensation, and liability act of 1980, 42  
8 U.S.C. Sec. 9601 et seq., as amended by Public Law 99-499.

9 (7)(a) "Fiduciary" means a person acting for the benefit of another  
10 party as a bona fide trustee; executor; administrator; custodian;  
11 guardian of estates or guardian ad litem; receiver; conservator;  
12 committee of estates of incapacitated persons; trustee in bankruptcy;  
13 trustee, under an indenture agreement, trust agreement, lease, or  
14 similar financing agreement, for debt securities, certificates of  
15 interest or certificates of participation in debt securities, or other  
16 forms of indebtedness as to which the trustee is not, in the capacity  
17 of trustee, the lender. Except as provided in subsection (17)(b)(iii)  
18 of this section, the liability of a fiduciary under this chapter shall  
19 not exceed the assets held in the fiduciary capacity.

20 (b) "Fiduciary" does not mean:

21 (i) A person acting as a fiduciary with respect to a trust or other  
22 fiduciary estate that was organized for the primary purpose of, or is  
23 engaged in, actively carrying on a trade or business for profit, unless  
24 the trust or other fiduciary estate was created as part of, or to  
25 facilitate, one or more estate plans or because of the incapacity of a  
26 natural person;

27 (ii) A person who acquires ownership or control of a facility with  
28 the objective purpose of avoiding liability of the person or any other  
29 person. It is prima facie evidence that the fiduciary acquired  
30 ownership or control of the facility to avoid liability if the facility  
31 is the only substantial asset in the fiduciary estate at the time the  
32 facility became subject to the fiduciary estate;

33 (iii) A person who acts in a capacity other than that of a  
34 fiduciary or in a beneficiary capacity and in that capacity directly or  
35 indirectly benefits from a trust or fiduciary relationship;

36 (iv) A person who is a beneficiary and fiduciary with respect to  
37 the same fiduciary estate, and who while acting as a fiduciary receives

1 benefits that exceed customary or reasonable compensation, and  
2 incidental benefits permitted under applicable law;

3 (v) A person who is a fiduciary and receives benefits that  
4 substantially exceed customary or reasonable compensation, and  
5 incidental benefits permitted under applicable law; or

6 (vi) A person who acts in the capacity of trustee of state or  
7 federal lands or resources.

8 (8) "Fiduciary capacity" means the capacity of a person holding  
9 title to a facility, or otherwise having control of an interest in the  
10 facility pursuant to the exercise of the responsibilities of the person  
11 as a fiduciary.

12 (9) "Foreclosure and its equivalents" means purchase at a  
13 foreclosure sale, acquisition, or assignment of title in lieu of  
14 foreclosure, termination of a lease, or other repossession, acquisition  
15 of a right to title or possession, an agreement in satisfaction of the  
16 obligation, or any other comparable formal or informal manner, whether  
17 pursuant to law or under warranties, covenants, conditions,  
18 representations, or promises from the borrower, by which the holder  
19 acquires title to or possession of a facility securing a loan or other  
20 obligation.

21 (10) "Hazardous substance" means:

22 (a) Any dangerous or extremely hazardous waste as defined in RCW  
23 70.105.010 (~~((+5) and (+6))~~) (1) and (7), or any dangerous or extremely  
24 dangerous waste designated by rule pursuant to chapter 70.105 RCW;

25 (b) Any hazardous substance as defined in RCW 70.105.010(~~((+14))~~)  
26 (10) or any hazardous substance as defined by rule pursuant to chapter  
27 70.105 RCW;

28 (c) Any substance that, on March 1, 1989, is a hazardous substance  
29 under section 101(14) of the federal cleanup law, 42 U.S.C. Sec.  
30 9601(14);

31 (d) Petroleum or petroleum products; and

32 (e) Any substance or category of substances, including solid waste  
33 decomposition products, determined by the director by rule to present  
34 a threat to human health or the environment if released into the  
35 environment.

36 The term hazardous substance does not include any of the following  
37 when contained in an underground storage tank from which there is not

1 a release: Crude oil or any fraction thereof or petroleum, if the tank  
2 is in compliance with all applicable federal, state, and local law.

3 (11) "Holder" means a person who holds indicia of ownership  
4 primarily to protect a security interest. A holder includes the  
5 initial holder such as the loan originator, any subsequent holder such  
6 as a successor-in-interest or subsequent purchaser of the security  
7 interest on the secondary market, a guarantor of an obligation, surety,  
8 or any other person who holds indicia of ownership primarily to protect  
9 a security interest, or a receiver, court-appointed trustee, or other  
10 person who acts on behalf or for the benefit of a holder. A holder can  
11 be a public or privately owned financial institution, receiver,  
12 conservator, loan guarantor, or other similar persons that loan money  
13 or guarantee repayment of a loan. Holders typically are banks or  
14 savings and loan institutions but may also include others such as  
15 insurance companies, pension funds, or private individuals that engage  
16 in loaning of money or credit.

17 (12) "Independent remedial actions" means remedial actions  
18 conducted without department oversight or approval, and not under an  
19 order, agreed order, or consent decree.

20 (13) "Indicia of ownership" means evidence of a security interest,  
21 evidence of an interest in a security interest, or evidence of an  
22 interest in a facility securing a loan or other obligation, including  
23 any legal or equitable title to a facility acquired incident to  
24 foreclosure and its equivalents. Evidence of such interests includes,  
25 mortgages, deeds of trust, sellers interest in a real estate contract,  
26 liens, surety bonds, and guarantees of obligations, title held pursuant  
27 to a lease financing transaction in which the lessor does not select  
28 initially the leased facility, or legal or equitable title obtained  
29 pursuant to foreclosure and their equivalents. Evidence of such  
30 interests also includes assignments, pledges, or other rights to or  
31 other forms of encumbrance against the facility that are held primarily  
32 to protect a security interest.

33 (14) "Industrial properties" means properties that are or have been  
34 characterized by, or are to be committed to, traditional industrial  
35 uses such as processing or manufacturing of materials, marine terminal  
36 and transportation areas and facilities, fabrication, assembly,  
37 treatment, or distribution of manufactured products, or storage of bulk  
38 materials, that are either:

1 (a) Zoned for industrial use by a city or county conducting land  
2 use planning under chapter 36.70A RCW; or

3 (b) For counties not planning under chapter 36.70A RCW and the  
4 cities within them, zoned for industrial use and adjacent to properties  
5 currently used or designated for industrial purposes.

6 (15) "Institutional controls" means measures undertaken to limit or  
7 prohibit activities that may interfere with the integrity of a remedial  
8 action or result in exposure to or migration of hazardous substances at  
9 a site. "Institutional controls" include environmental covenants.

10 (16) "Operating a facility primarily to protect a security  
11 interest" occurs when all of the following are met: (a) Operating the  
12 facility where the borrower has defaulted on the loan or otherwise  
13 breached the security agreement; (b) operating the facility to preserve  
14 the value of the facility as an ongoing business; (c) the operation is  
15 being done in anticipation of a sale, transfer, or assignment of the  
16 facility; and (d) the operation is being done primarily to protect a  
17 security interest. Operating a facility for longer than one year prior  
18 to foreclosure or its equivalents shall be presumed to be operating the  
19 facility for other than to protect a security interest.

20 (17) "Owner or operator" means:

21 (a) Any person with any ownership interest in the facility or who  
22 exercises any control over the facility; or

23 (b) In the case of an abandoned facility, any person who had owned,  
24 or operated, or exercised control over the facility any time before its  
25 abandonment;

26 The term does not include:

27 (i) An agency of the state or unit of local government which  
28 acquired ownership or control through a drug forfeiture action under  
29 RCW 69.50.505, or involuntarily through bankruptcy, tax delinquency,  
30 abandonment, or other circumstances in which the government  
31 involuntarily acquires title. This exclusion does not apply to an  
32 agency of the state or unit of local government which has caused or  
33 contributed to the release or threatened release of a hazardous  
34 substance from the facility;

35 (ii) A person who, without participating in the management of a  
36 facility, holds indicia of ownership primarily to protect the person's  
37 security interest in the facility. Holders after foreclosure and its

1 equivalent and holders who engage in any of the activities identified  
2 in subsection (18)(e) through (g) of this section shall not lose this  
3 exemption provided the holder complies with all of the following:

4 (A) The holder properly maintains the environmental compliance  
5 measures already in place at the facility;

6 (B) The holder complies with the reporting requirements in the  
7 rules adopted under this chapter;

8 (C) The holder complies with any order issued to the holder by the  
9 department to abate an imminent or substantial endangerment;

10 (D) The holder allows the department or potentially liable persons  
11 under an order, agreed order, or settlement agreement under this  
12 chapter access to the facility to conduct remedial actions and does not  
13 impede the conduct of such remedial actions;

14 (E) Any remedial actions conducted by the holder are in compliance  
15 with any preexisting requirements identified by the department, or, if  
16 the department has not identified such requirements for the facility,  
17 the remedial actions are conducted consistent with the rules adopted  
18 under this chapter; and

19 (F) The holder does not exacerbate an existing release. The  
20 exemption in this subsection (17)(b)(ii) does not apply to holders who  
21 cause or contribute to a new release or threatened release or who are  
22 otherwise liable under RCW 70.105D.040(1) (b), (c), (d), and (e);  
23 provided, however, that a holder shall not lose this exemption if it  
24 establishes that any such new release has been remediated according to  
25 the requirements of this chapter and that any hazardous substances  
26 remaining at the facility after remediation of the new release are  
27 divisible from such new release;

28 (iii) A fiduciary in his, her, or its personal or individual  
29 capacity. This exemption does not preclude a claim against the assets  
30 of the estate or trust administered by the fiduciary or against a  
31 nonemployee agent or independent contractor retained by a fiduciary.  
32 This exemption also does not apply to the extent that a person is  
33 liable under this chapter independently of the person's ownership as a  
34 fiduciary or for actions taken in a fiduciary capacity which cause or  
35 contribute to a new release or exacerbate an existing release of  
36 hazardous substances. This exemption applies provided that, to the  
37 extent of the fiduciary's powers granted by law or by the applicable



1 governing instrument granting fiduciary powers, the fiduciary complies  
2 with all of the following:

3 (A) The fiduciary properly maintains the environmental compliance  
4 measures already in place at the facility;

5 (B) The fiduciary complies with the reporting requirements in the  
6 rules adopted under this chapter;

7 (C) The fiduciary complies with any order issued to the fiduciary  
8 by the department to abate an imminent or substantial endangerment;

9 (D) The fiduciary allows the department or potentially liable  
10 persons under an order, agreed order, or settlement agreement under  
11 this chapter access to the facility to conduct remedial actions and  
12 does not impede the conduct of such remedial actions;

13 (E) Any remedial actions conducted by the fiduciary are in  
14 compliance with any preexisting requirements identified by the  
15 department, or, if the department has not identified such requirements  
16 for the facility, the remedial actions are conducted consistent with  
17 the rules adopted under this chapter; and

18 (F) The fiduciary does not exacerbate an existing release.

19 The exemption in this subsection (17)(b)(iii) does not apply to  
20 fiduciaries who cause or contribute to a new release or threatened  
21 release or who are otherwise liable under RCW 70.105D.040(1) (b), (c),  
22 (d), and (e); provided however, that a fiduciary shall not lose this  
23 exemption if it establishes that any such new release has been  
24 remediated according to the requirements of this chapter and that any  
25 hazardous substances remaining at the facility after remediation of the  
26 new release are divisible from such new release. The exemption in this  
27 subsection (17)(b)(iii) also does not apply where the fiduciary's  
28 powers to comply with this subsection (17)(b)(iii) are limited by a  
29 governing instrument created with the objective purpose of avoiding  
30 liability under this chapter or of avoiding compliance with this  
31 chapter; or

32 (iv) Any person who has any ownership interest in, operates, or  
33 exercises control over real property where a hazardous substance has  
34 come to be located solely as a result of migration of the hazardous  
35 substance to the real property through the groundwater from a source  
36 off the property, if:

37 (A) The person can demonstrate that the hazardous substance has not

1 been used, placed, managed, or otherwise handled on the property in a  
2 manner likely to cause or contribute to a release of the hazardous  
3 substance that has migrated onto the property;

4 (B) The person has not caused or contributed to the release of the  
5 hazardous substance;

6 (C) The person does not engage in activities that damage or  
7 interfere with the operation of remedial actions installed on the  
8 person's property or engage in activities that result in exposure of  
9 humans or the environment to the contaminated groundwater that has  
10 migrated onto the property;

11 (D) If requested, the person allows the department, potentially  
12 liable persons who are subject to an order, agreed order, or consent  
13 decree, and the authorized employees, agents, or contractors of each,  
14 access to the property to conduct remedial actions required by the  
15 department. The person may attempt to negotiate an access agreement  
16 before allowing access; and

17 (E) Legal withdrawal of groundwater does not disqualify a person  
18 from the exemption in this subsection (17)(b)(iv).

19 (18) "Participation in management" means exercising decision-making  
20 control over the borrower's operation of the facility, environmental  
21 compliance, or assuming or manifesting responsibility for the overall  
22 management of the enterprise encompassing the day-to-day decision  
23 making of the enterprise.

24 The term does not include any of the following: (a) A holder with  
25 the mere capacity or ability to influence, or the unexercised right to  
26 control facility operations; (b) a holder who conducts or requires a  
27 borrower to conduct an environmental audit or an environmental site  
28 assessment at the facility for which indicia of ownership is held; (c)  
29 a holder who requires a borrower to come into compliance with any  
30 applicable laws or regulations at the facility for which indicia of  
31 ownership is held; (d) a holder who requires a borrower to conduct  
32 remedial actions including setting minimum requirements, but does not  
33 otherwise control or manage the borrower's remedial actions or the  
34 scope of the borrower's remedial actions except to prepare a facility  
35 for sale, transfer, or assignment; (e) a holder who engages in workout  
36 or policing activities primarily to protect the holder's security  
37 interest in the facility; (f) a holder who prepares a facility for  
38 sale, transfer, or assignment or requires a borrower to prepare a

1 facility for sale, transfer, or assignment; (g) a holder who operates  
2 a facility primarily to protect a security interest, or requires a  
3 borrower to continue to operate, a facility primarily to protect a  
4 security interest; and (h) a prospective holder who, as a condition of  
5 becoming a holder, requires an owner or operator to conduct an  
6 environmental audit, conduct an environmental site assessment, come  
7 into compliance with any applicable laws or regulations, or conduct  
8 remedial actions prior to holding a security interest is not  
9 participating in the management of the facility.

10 (19) "Person" means an individual, firm, corporation, association,  
11 partnership, consortium, joint venture, commercial entity, state  
12 government agency, unit of local government, federal government agency,  
13 or Indian tribe.

14 (20) "Policing activities" means actions the holder takes to ensure  
15 that the borrower complies with the terms of the loan or security  
16 interest or actions the holder takes or requires the borrower to take  
17 to maintain the value of the security. Policing activities include:  
18 Requiring the borrower to conduct remedial actions at the facility  
19 during the term of the security interest; requiring the borrower to  
20 comply or come into compliance with applicable federal, state, and  
21 local environmental and other laws, regulations, and permits during the  
22 term of the security interest; securing or exercising authority to  
23 monitor or inspect the facility including on-site inspections, or to  
24 monitor or inspect the borrower's business or financial condition  
25 during the term of the security interest; or taking other actions  
26 necessary to adequately police the loan or security interest such as  
27 requiring a borrower to comply with any warranties, covenants,  
28 conditions, representations, or promises from the borrower.

29 (21) "Potentially liable person" means any person whom the  
30 department finds, based on credible evidence, to be liable under RCW  
31 70.105D.040. The department shall give notice to any such person and  
32 allow an opportunity for comment before making the finding, unless an  
33 emergency requires otherwise.

34 (22) "Prepare a facility for sale, transfer, or assignment" means  
35 to secure access to the facility; perform routine maintenance on the  
36 facility; remove inventory, equipment, or structures; properly maintain  
37 environmental compliance measures already in place at the facility;  
38 conduct remedial actions to clean up releases at the facility; or to

1 perform other similar activities intended to preserve the value of the  
2 facility where the borrower has defaulted on the loan or otherwise  
3 breached the security agreement or after foreclosure and its  
4 equivalents and in anticipation of a pending sale, transfer, or  
5 assignment, primarily to protect the holder's security interest in the  
6 facility. A holder can prepare a facility for sale, transfer, or  
7 assignment for up to one year prior to foreclosure and its equivalents  
8 and still stay within the security interest exemption in subsection  
9 (17)(b)(ii) of this section.

10 (23) "Primarily to protect a security interest" means the indicia  
11 of ownership is held primarily for the purpose of securing payment or  
12 performance of an obligation. The term does not include indicia of  
13 ownership held primarily for investment purposes nor indicia of  
14 ownership held primarily for purposes other than as protection for a  
15 security interest. A holder may have other, secondary reasons, for  
16 maintaining indicia of ownership, but the primary reason must be for  
17 protection of a security interest. Holding indicia of ownership after  
18 foreclosure or its equivalents for longer than five years shall be  
19 considered to be holding the indicia of ownership for purposes other  
20 than primarily to protect a security interest. For facilities that  
21 have been acquired through foreclosure or its equivalents prior to July  
22 23, 1995, this five-year period shall begin as of July 23, 1995.

23 (24) "Public notice" means, at a minimum, adequate notice mailed to  
24 all persons who have made timely request of the department and to  
25 persons residing in the potentially affected vicinity of the proposed  
26 action; mailed to appropriate news media; published in the newspaper of  
27 largest circulation in the city or county of the proposed action; and  
28 opportunity for interested persons to comment.

29 (25) "Release" means any intentional or unintentional entry of any  
30 hazardous substance into the environment, including but not limited to  
31 the abandonment or disposal of containers of hazardous substances.

32 (26) "Remedy" or "remedial action" means any action or expenditure  
33 consistent with the purposes of this chapter to identify, eliminate, or  
34 minimize any threat or potential threat posed by hazardous substances  
35 to human health or the environment including any investigative and  
36 monitoring activities with respect to any release or threatened release  
37 of a hazardous substance and any health assessments or health effects

1 studies conducted in order to determine the risk or potential risk to  
2 human health.

3 (27) "Security interest" means an interest in a facility created or  
4 established for the purpose of securing a loan or other obligation.  
5 Security interests include deeds of trusts, sellers interest in a real  
6 estate contract, liens, legal, or equitable title to a facility  
7 acquired incident to foreclosure and its equivalents, and title  
8 pursuant to lease financing transactions. Security interests may also  
9 arise from transactions such as sale and leasebacks, conditional sales,  
10 installment sales, trust receipt transactions, certain assignments,  
11 factoring agreements, accounts receivable financing arrangements,  
12 easements, and consignments, if the transaction creates or establishes  
13 an interest in a facility for the purpose of securing a loan or other  
14 obligation.

15 (28) "Workout activities" means those actions by which a holder, at  
16 any time prior to foreclosure and its equivalents, seeks to prevent,  
17 cure, or mitigate a default by the borrower or obligor; or to preserve,  
18 or prevent the diminution of, the value of the security. Workout  
19 activities include: Restructuring or renegotiating the terms of the  
20 security interest; requiring payment of additional rent or interest;  
21 exercising forbearance; requiring or exercising rights pursuant to an  
22 assignment of accounts or other amounts owed to an obligor; requiring  
23 or exercising rights pursuant to an escrow agreement pertaining to  
24 amounts owed to an obligor; providing specific or general financial or  
25 other advice, suggestions, counseling, or guidance; and exercising any  
26 right or remedy the holder is entitled to by law or under any  
27 warranties, covenants, conditions, representations, or promises from  
28 the borrower.

29 (29) "Areawide groundwater contamination" means groundwater  
30 contamination on multiple adjacent properties with different ownerships  
31 consisting of hazardous substances from multiple sources that have  
32 resulted in commingled plumes of contaminated groundwater that are not  
33 practicable to address separately.

34 (30) "Brownfield" means previously developed and currently  
35 abandoned or underutilized real property where environmental, economic,  
36 and community reuse objectives are hindered by actual or suspected  
37 release of a hazardous substance.

1       (31) "Brownfield renewal area" means an area of brownfield  
2 properties designated pursuant to section 6 of this act.

3       (32) "Local government" means any city, county, special purpose  
4 district, or other municipal corporation, including brownfield renewal  
5 authorities created pursuant to section 7 of this act.

6       NEW SECTION. Sec. 4. A new section is added to chapter 70.105D  
7 RCW to read as follows:

8       (1) In fulfilling the objectives of this chapter, the department  
9 shall allocate staffing and financial assistance in a manner that  
10 considers both the reduction of human and environmental hazards and the  
11 land reuse potential and planning for the sites or areas to be cleaned  
12 up.

13       (2) The department may provide financial assistance to local  
14 governments for the purpose of planning for the adaptive reuse of  
15 properties following remediation, and for integrating the remedial  
16 actions of brownfield properties or areas into land use, capital  
17 facilities, economic development, and other local government plans  
18 applicable to the property or area.

19       NEW SECTION. Sec. 5. A new section is added to chapter 70.105D  
20 RCW to read as follows:

21       (1) The department is authorized to disburse funds to a local  
22 government conducting a remedial action on a monthly or other periodic  
23 basis pursuant to a remedial action schedule established in the grant  
24 agreement.

25       (2) The department may extend a remedial action grant to a local  
26 government prior to acquisition of the site or obtaining necessary  
27 access to conduct remedial actions, provided that the grant agreement  
28 is conditioned upon compliance with a schedule to acquire the property  
29 or to obtain such access.

30       NEW SECTION. Sec. 6. A new section is added to chapter 70.105D  
31 RCW to read as follows:

32       (1) The department is authorized to establish trust funds for the  
33 provision of state funding to assist with remedial actions within  
34 designated brownfield renewal areas. A trust fund may only be created

1 when the legislature, through a biennial or supplemental budget  
2 appropriation, provides funding for a specific trust fund.

3 (2) The department or a third party selected by the department  
4 shall act as the trustee of the fund. A trustee may not be a  
5 potentially liable person or have any financial interest with respect  
6 to any property within the brownfield renewal area.

7 (3) The local government or governments designating the brownfield  
8 renewal area pursuant to section 7 of this act must be the  
9 beneficiaries of the trust.

10 (4) Funds may not be disbursed from the trust until the local  
11 government or governments have entered an agreement with the state  
12 establishing a plan for the remediation and reuse of properties within  
13 the brownfield renewal area. All expenditures from the trust fund must  
14 be for the purpose of the cleanup and reuse of properties within the  
15 brownfield renewal area, and must meet the eligibility requirements for  
16 the use by local governments under RCW 70.105D.070.

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

19 (1) A city or county may designate an area within its jurisdiction  
20 as a brownfield renewal area upon adoption of a resolution finding that  
21 the area contains one or more brownfield properties or sites and that  
22 the cleanup of these properties or sites should be integrated with  
23 planning for the future uses of the properties or sites and with  
24 comprehensive land use plans for the entire area. The resolution must  
25 include:

26 (a) A determination that the future uses of the properties within  
27 the area are consistent with applicable land use plans and are included  
28 within an integrated plan for remedial action and future site uses;

29 (b) Where the proposed site uses require urban level  
30 infrastructure, the area is served by a public water system and sewage  
31 collection and treatment system and lies within the incorporated area  
32 of a city or town or within an urban growth area designated under RCW  
33 36.70A.110; and

34 (c) A commitment to finance the infrastructure or other public  
35 improvements needed to implement the renewal plan.

36 (2) A port district may designate a brownfield renewal area  
37 pursuant to this section when either: (a) The port owns in fee all of

1 the properties within the area; or (b) the port owns in fee at least  
2 fifty percent of the property in the area designated and the governing  
3 body of the city and county in which the area lies approves by  
4 resolution of the designation. To designate a brownfield renewal area,  
5 the port district must adopt a resolution that includes the  
6 determinations and commitments required under subsection (1) of this  
7 section.

8 (3) The department shall place a priority upon the extension of  
9 integrated planning grants pursuant to section 4 of this act to assist  
10 in planning for and implementing cleanups within brownfield renewal  
11 areas.

12 (4) The employees and contractors of the local government may  
13 access at any reasonable time a property within the brownfield renewal  
14 area for the purpose of investigating or assessing the existence and  
15 extent of releases of hazardous substances on the property, including  
16 inspecting, sampling, and testing. The local government may order any  
17 potentially liable person to carry out such an investigation or to  
18 conduct a site assessment of the existence and extent of the release.

19 (5) The department and the attorney general shall place a priority  
20 upon allocating staff necessary to respond to and finalize a  
21 prospective purchaser consent decree with a local government proposing  
22 a plan for the cleanup and redevelopment of one or more properties  
23 within a brownfield renewal area. The local government must submit a  
24 proposed clean-up schedule and funding plan. The procedures and  
25 standards under RCW 70.105D.040 regarding entry of a consent decree  
26 also apply to resolve the local government's liability regarding  
27 releases of hazardous substances on the property.

28 (6) For the purposes of this section, a "local government" includes  
29 a city, county, port district, or brownfield renewal authority.

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

32 (1) A city, county, or port district may establish by resolution a  
33 brownfield renewal authority for the purpose of guiding and  
34 implementing the cleanup and reuse of properties within a designated  
35 brownfield renewal area. Any combination of cities, counties, and port  
36 districts may establish a brownfield renewal authority through an



1 interlocal agreement under chapter 39.34 RCW, and the brownfield  
2 renewal authority may exercise those powers as are authorized under  
3 chapter 39.34 RCW and under this chapter.

4 (2) A brownfield renewal authority must be governed by a board of  
5 directors selected as determined by the resolution or interlocal  
6 agreement establishing the authority.

7 (3) A brownfield renewal authority must be a separate legal entity  
8 and be deemed a municipal corporation. It has the power to: Sue and  
9 be sued; receive, account for, and disburse funds; employ personnel;  
10 and acquire or dispose of any interest in real or personal property  
11 within or outside a brownfield renewal area in the furtherance of the  
12 authority purposes. A brownfield renewal authority has the power to  
13 contract indebtedness and to issue and sell general obligation bonds  
14 pursuant to and in the manner provided for general county bonds in  
15 chapters 36.67 and 39.46 RCW and other applicable statutes, and to  
16 issue revenue bonds pursuant to and in the manner provided for revenue  
17 bonds in chapter 36.67 RCW and other applicable statutes.

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

20 (1) The department shall establish performance measures and  
21 allocation of staff resources to increase the number of independent  
22 remedial actions and interim independent remedial actions receiving  
23 review by the department.

24 (2) Beginning July 1, 2012, the department shall allocate staff  
25 resources needed to increase the number of independent remedial actions  
26 receiving review or technical assistance to three hundred sites or a  
27 lesser number if fewer sites seek review.

28 (3) By November 1, 2012, the department shall submit to the  
29 governor and the appropriate fiscal and policy committees in the senate  
30 and house of representatives a recommendation for appropriations  
31 necessary to accomplish the increased review of independent remedial  
32 actions required by this section.

33 **Sec. 10.** RCW 70.105D.040 and 1997 c 406 s 4 are each amended to  
34 read as follows:

35 (1) Except as provided in subsection (3) of this section, the  
36 following persons are liable with respect to a facility:

1 (a) The owner or operator of the facility;

2 (b) Any person who owned or operated the facility at the time of  
3 disposal or release of the hazardous substances;

4 (c) Any person who owned or possessed a hazardous substance and who  
5 by contract, agreement, or otherwise arranged for disposal or treatment  
6 of the hazardous substance at the facility, or arranged with a  
7 transporter for transport for disposal or treatment of the hazardous  
8 substances at the facility, or otherwise generated hazardous wastes  
9 disposed of or treated at the facility;

10 (d) Any person (i) who accepts or accepted any hazardous substance  
11 for transport to a disposal, treatment, or other facility selected by  
12 such person from which there is a release or a threatened release for  
13 which remedial action is required, unless such facility, at the time of  
14 disposal or treatment, could legally receive such substance; or (ii)  
15 who accepts a hazardous substance for transport to such a facility and  
16 has reasonable grounds to believe that such facility is not operated in  
17 accordance with chapter 70.105 RCW; and

18 (e) Any person who both sells a hazardous substance and is  
19 responsible for written instructions for its use if (i) the substance  
20 is used according to the instructions and (ii) the use constitutes a  
21 release for which remedial action is required at the facility.

22 (2) Each person who is liable under this section is strictly  
23 liable, jointly and severally, for all remedial action costs and for  
24 all natural resource damages resulting from the releases or threatened  
25 releases of hazardous substances. The attorney general, at the request  
26 of the department, is empowered to recover all costs and damages from  
27 persons liable therefor.

28 (3) The following persons are not liable under this section:

29 (a) Any person who can establish that the release or threatened  
30 release of a hazardous substance for which the person would be  
31 otherwise responsible was caused solely by:

32 (i) An act of God;

33 (ii) An act of war; or

34 (iii) An act or omission of a third party (including but not  
35 limited to a trespasser) other than (A) an employee or agent of the  
36 person asserting the defense, or (B) any person whose act or omission  
37 occurs in connection with a contractual relationship existing, directly  
38 or indirectly, with the person asserting this defense to liability.

1 This defense only applies where the person asserting the defense has  
2 exercised the utmost care with respect to the hazardous substance, the  
3 foreseeable acts or omissions of the third party, and the foreseeable  
4 consequences of those acts or omissions;

5 (b) Any person who is an owner, past owner, or purchaser of a  
6 facility and who can establish by a preponderance of the evidence that  
7 at the time the facility was acquired by the person, the person had no  
8 knowledge or reason to know that any hazardous substance, the release  
9 or threatened release of which has resulted in or contributed to the  
10 need for the remedial action, was released or disposed of on, in, or at  
11 the facility. This subsection (b) is limited as follows:

12 (i) To establish that a person had no reason to know, the person  
13 must have undertaken, at the time of acquisition, all appropriate  
14 inquiry into the previous ownership and uses of the property,  
15 consistent with good commercial or customary practice in an effort to  
16 minimize liability. Any court interpreting this subsection (b) shall  
17 take into account any specialized knowledge or experience on the part  
18 of the person, the relationship of the purchase price to the value of  
19 the property if uncontaminated, commonly known or reasonably  
20 ascertainable information about the property, the obviousness of the  
21 presence or likely presence of contamination at the property, and the  
22 ability to detect such contamination by appropriate inspection;

23 (ii) The defense contained in this subsection (b) is not available  
24 to any person who had actual knowledge of the release or threatened  
25 release of a hazardous substance when the person owned the real  
26 property and who subsequently transferred ownership of the property  
27 without first disclosing such knowledge to the transferee;

28 (iii) The defense contained in this subsection (b) is not available  
29 to any person who, by any act or omission, caused or contributed to the  
30 release or threatened release of a hazardous substance at the facility;

31 (c) Any natural person who uses a hazardous substance lawfully and  
32 without negligence for any personal or domestic purpose in or near a  
33 dwelling or accessory structure when that person is: (i) A resident of  
34 the dwelling; (ii) a person who, without compensation, assists the  
35 resident in the use of the substance; or (iii) a person who is employed  
36 by the resident, but who is not an independent contractor;

37 (d) Any person who, for the purpose of growing food crops, applies

1 pesticides or fertilizers without negligence and in accordance with all  
2 applicable laws and regulations.

3 (4) There may be no settlement by the state with any person  
4 potentially liable under this chapter except in accordance with this  
5 section.

6 (a) The attorney general may agree to a settlement with any  
7 potentially liable person only if the department finds, after public  
8 notice and any required hearing, that the proposed settlement would  
9 lead to a more expeditious cleanup of hazardous substances in  
10 compliance with clean-up standards under RCW 70.105D.030(2)(e) and with  
11 any remedial orders issued by the department. Whenever practicable and  
12 in the public interest, the attorney general may expedite such a  
13 settlement with persons whose contribution is insignificant in amount  
14 and toxicity. A hearing shall be required only if at least ten persons  
15 request one or if the department determines a hearing is necessary.

16 (b) A settlement agreement under this section shall be entered as  
17 a consent decree issued by a court of competent jurisdiction.

18 (c) A settlement agreement may contain a covenant not to sue only  
19 of a scope commensurate with the settlement agreement in favor of any  
20 person with whom the attorney general has settled under this section.  
21 Any covenant not to sue shall contain a reopener clause which requires  
22 the court to amend the covenant not to sue if factors not known at the  
23 time of entry of the settlement agreement are discovered and present a  
24 previously unknown threat to human health or the environment.

25 (d) A party who has resolved its liability to the state under this  
26 section shall not be liable for claims for contribution regarding  
27 matters addressed in the settlement. The settlement does not discharge  
28 any of the other liable parties but it reduces the total potential  
29 liability of the others to the state by the amount of the settlement.

30 (e) If the state has entered into a consent decree with an owner or  
31 operator under this section, the state shall not enforce this chapter  
32 against any owner or operator who is a successor in interest to the  
33 settling party unless under the terms of the consent decree the state  
34 could enforce against the settling party, if:

35 (i) The successor owner or operator is liable with respect to the  
36 facility solely due to that person's ownership interest or operator  
37 status acquired as a successor in interest to the owner or operator  
38 with whom the state has entered into a consent decree; and

1 (ii) The stay of enforcement under this subsection does not apply  
2 if the consent decree was based on circumstances unique to the settling  
3 party that do not exist with regard to the successor in interest, such  
4 as financial hardship. For consent decrees entered into before July  
5 27, 1997, at the request of a settling party or a potential successor  
6 owner or operator, the attorney general shall issue a written opinion  
7 on whether a consent decree contains such unique circumstances. For  
8 all other consent decrees, such unique circumstances shall be specified  
9 in the consent decree.

10 (f) Any person who is not subject to enforcement by the state under  
11 (e) of this subsection is not liable for claims for contribution  
12 regarding matters addressed in the settlement.

13 (5)(a) In addition to the settlement authority provided under  
14 subsection (4) of this section, the attorney general may agree to a  
15 settlement with a ~~((person not currently liable for remedial action at  
16 a facility who proposes to purchase, redevelop, or reuse the facility))~~  
17 prospective purchaser, provided that:

18 (i) The settlement will yield substantial new resources ~~((to  
19 facilitate))~~ for cleanup and without these resources the cleanup is not  
20 likely to be accomplished;

21 (ii) The settlement will expedite remedial action consistent with  
22 the rules adopted under this chapter; and

23 (iii) Based on available information, the department determines  
24 that the redevelopment or reuse of the facility is not likely to  
25 contribute to the existing release or threatened release, interfere  
26 with remedial actions that may be needed at the site, or increase  
27 health risks to persons at or in the vicinity of the site.

28 (b) The legislature recognizes that the state does not have  
29 adequate resources to participate in all property transactions  
30 involving contaminated property. The primary purpose of this  
31 subsection (5) is to promote the cleanup and reuse of ~~((vacant or  
32 abandoned commercial or industrial contaminated))~~ brownfield property.  
33 The attorney general and the department may give priority to  
34 settlements that will provide a substantial public benefit, including,  
35 but not limited to:

36 (i) The reuse of ((a vacant or abandoned manufacturing or  
37 industrial facility, or)) brownfield property;

1        (ii) The development of a facility by a governmental entity to  
2 address an important public purpose;

3        (iii) The cleanup and reuse of a property would provide public  
4 access to an area not otherwise accessible to the public, provide for  
5 new or improved public recreational opportunities, preserve a historic  
6 property listed pursuant to chapter 84.26 RCW, or otherwise create new  
7 publicly accessible facilities.

8        (c) A settlement entered under this subsection is governed by the  
9 procedures and include the liability protections and limitations  
10 provided in subsection (4) of this section.

11        (6) As an alternative to a settlement under subsection (5) of this  
12 section, the department may issue an agreed order to a prospective  
13 purchaser of a property within a designated brownfield renewal area.  
14 The order is subject to the limitations of an agreed order included in  
15 RCW 70.105D.020, but stays enforcement by the state regarding remedial  
16 action as long as the prospective purchaser complies with the  
17 requirements of the order. The department shall place a priority upon  
18 processing requests for an agreed order under this subsection when the  
19 prospective purchaser is a city, county, port district, or brownfield  
20 renewal authority.

21        (7) Nothing in this chapter affects or modifies in any way any  
22 person's right to seek or obtain relief under other statutes or under  
23 common law, including but not limited to damages for injury or loss  
24 resulting from a release or threatened release of a hazardous  
25 substance. No settlement by the department or remedial action ordered  
26 by a court or the department affects any person's right to obtain a  
27 remedy under common law or other statutes.

28        **Sec. 11.** RCW 70.105D.070 and 2011 1st sp.s. c 50 s 964 are each  
29 reenacted and amended to read as follows:

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

32        (2) The following moneys shall be deposited into the state toxics  
33 control account: (a) Those revenues which are raised by the tax  
34 imposed under RCW 82.21.030 and which are attributable to that portion  
35 of the rate equal to thirty-three one-hundredths of one percent; (b)  
36 the costs of remedial actions recovered under this chapter or chapter  
37 70.105A RCW; (c) penalties collected or recovered under this chapter;

1 and (d) any other money appropriated or transferred to the account by  
2 the legislature. Moneys in the account may be used only to carry out  
3 the purposes of this chapter, including but not limited to the  
4 following activities:

5 (i) The state's responsibility for hazardous waste planning,  
6 management, regulation, enforcement, technical assistance, and public  
7 education required under chapter 70.105 RCW;

8 (ii) The state's responsibility for solid waste planning,  
9 management, regulation, enforcement, technical assistance, and public  
10 education required under chapter 70.95 RCW;

11 (iii) The hazardous waste cleanup program required under this  
12 chapter;

13 (iv) State matching funds required under the federal cleanup law;

14 (v) Financial assistance for local programs in accordance with  
15 chapters 70.95, 70.95C, 70.95I, and 70.105 RCW;

16 (vi) State government programs for the safe reduction, recycling,  
17 or disposal of hazardous wastes from households, small businesses, and  
18 agriculture;

19 (vii) Hazardous materials emergency response training;

20 (viii) Water and environmental health protection and monitoring  
21 programs;

22 (ix) Programs authorized under chapter 70.146 RCW;

23 (x) A public participation program, including regional citizen  
24 advisory committees;

25 (xi) Public funding to assist potentially liable persons to pay for  
26 the costs of remedial action in compliance with clean-up standards  
27 under RCW 70.105D.030(2)(e) but only when:

28 (A) The amount and terms of such funding are established under a  
29 settlement agreement under RCW 70.105D.040(4) and when the director has  
30 found that the funding will achieve both (~~(A)~~) (I) a substantially  
31 more expeditious or enhanced cleanup than would otherwise occur, and  
32 (~~(B)~~) (II) the prevention or mitigation of unfair economic hardship;  
33 or

34 (B) The clean-up area is within a designated brownfield renewal  
35 area, the public funding will provide for substantial new economic  
36 development that would not otherwise occur, and the public funding will  
37 provide one or more of the following public benefits commensurate with  
38 the scope of funding:

1        (I) Provide public access to an area not otherwise accessible to  
2 the public;

3        (II) Provide for new or improved public recreational activities;

4        (III) Provide for restoration of habitat that would otherwise not  
5 occur; or

6        (IV) Preserve a historic property listed pursuant to chapter 84.26  
7 RCW;

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

11        (xiii) During the 2009-2011 and 2011-2013 fiscal biennia, shoreline  
12 update technical assistance;

13        (xiv) During the 2009-2011 fiscal biennium, multijurisdictional  
14 permitting teams; and

15        (xv) During the 2011-2013 fiscal biennium, actions for reducing  
16 public exposure to toxic air pollution.

17        (3) The following moneys shall be deposited into the local toxics  
18 control account: Those revenues which are raised by the tax imposed  
19 under RCW 82.21.030 and which are attributable to that portion of the  
20 rate equal to thirty-seven one-hundredths of one percent.

21        (a) Moneys deposited in the local toxics control account shall be  
22 used by the department for grants or loans to local governments for the  
23 following purposes in descending order of priority:

24        (i) Remedial actions, including funding provided to local  
25 governments under section 4 of this act;

26        (ii) Hazardous waste plans and programs under chapter 70.105 RCW;

27        (iii) Solid waste plans and programs under chapters 70.95, 70.95C,  
28 70.95I, and 70.105 RCW;

29        (iv) Funds for a program to assist in the assessment and cleanup of  
30 sites of methamphetamine production, but not to be used for the initial  
31 containment of such sites, consistent with the responsibilities and  
32 intent of RCW 69.50.511; and

33        (v) Cleanup and disposal of hazardous substances from abandoned or  
34 derelict vessels, defined for the purposes of this section as vessels  
35 that have little or no value and either have no identified owner or  
36 have an identified owner lacking financial resources to clean up and  
37 dispose of the vessel, that pose a threat to human health or the  
38 environment.



1 (b) Funds for plans and programs shall be allocated consistent with  
2 the priorities and matching requirements established in chapters  
3 70.105, 70.95C, 70.95I, and 70.95 RCW, except that any applicant that  
4 is a Puget Sound partner, as defined in RCW 90.71.010, along with any  
5 project that is referenced in the action agenda developed by the Puget  
6 Sound partnership under RCW 90.71.310, shall, except as conditioned by  
7 RCW 70.105D.120, receive priority for any available funding for any  
8 grant or funding programs or sources that use a competitive bidding  
9 process. During the 2007-2009 fiscal biennium, moneys in the account  
10 may also be used for grants to local governments to retrofit public  
11 sector diesel equipment and for storm water planning and implementation  
12 activities.

13 (c) To expedite cleanups throughout the state, the department shall  
14 partner with local communities and liable (~~(parties for cleanups. The~~  
15 ~~department is authorized to use)~~) persons conducting remedial actions,  
16 using the following additional strategies in order to facilitate  
17 economic development and ensure a healthful environment for future  
18 generations:

19 (i) The director may alter (~~(grant matching)~~) grant or loan  
20 matching requirements to create incentives for local governments to  
21 expedite cleanups when one of the following conditions exists:

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

24 (B) Funding would create new substantial economic development,  
25 public recreational, or habitat restoration opportunities that would  
26 not otherwise occur; or

27 (C) Funding would create an opportunity for acquisition and  
28 redevelopment of (~~(vacant, orphaned, or)~~) abandoned property under RCW  
29 70.105D.040(5) that would not otherwise occur;

30 (ii) (~~(The use of outside contracts to conduct necessary studies)~~)  
31 To provide integrated planning grants or loans to local governments to  
32 fund studies necessary to facilitate renewal of brownfields including  
33 but not limited to environmental site assessments, remedial  
34 investigations, health assessments, remedial action feasibility  
35 studies, site planning, community involvement, land use and regulatory  
36 analyses, building and infrastructure assessments, economic and fiscal  
37 analyses, and general environmental analyses pursuant to chapter 43.21C  
38 RCW;

1 (iii) The purchase of remedial action cost-cap insurance, when  
2 necessary to expedite multiparty clean-up efforts;

3 (iv) Provide grants or loans to local governments for remedial  
4 actions related to areawide groundwater contamination. The local  
5 government need not be a potentially liable person under this chapter,  
6 or be required to seek reimbursement of funds from potentially liable  
7 persons, to be eligible to receive funds under this subsection  
8 (3)(c)(iv).

9 (d) When there are insufficient funds to fill all the requests for  
10 funding under (c) of this subsection, designated brownfield renewal  
11 areas must receive priority for distribution of available funds.

12 (e) To facilitate and expedite cleanups using funds from the local  
13 toxics control account, during the 2009-2011 fiscal biennium the  
14 director may establish grant-funded accounts to hold and disperse local  
15 toxics control account funds and funds from local governments to be  
16 used for remedial actions.

17 (4) Except for unanticipated receipts under RCW 43.79.260 through  
18 43.79.282, moneys in the state and local toxics control accounts may be  
19 spent only after appropriation by statute.

20 (5) Except during the 2009-2011 fiscal biennium, one percent of the  
21 moneys deposited into the state and local toxics control accounts shall  
22 be allocated only for public participation grants to persons who may be  
23 adversely affected by a release or threatened release of a hazardous  
24 substance and to not-for-profit public interest organizations. The  
25 primary purpose of these grants is to facilitate the participation by  
26 persons and organizations in the investigation and remedying of  
27 releases or threatened releases of hazardous substances and to  
28 implement the state's solid and hazardous waste management priorities.  
29 No grant may exceed sixty thousand dollars. Grants may be renewed  
30 annually. Moneys appropriated for public participation from either  
31 account which are not expended at the close of any biennium shall  
32 revert to the state toxics control account.

33 (6) No moneys deposited into either the state or local toxics  
34 control account may be used for solid waste incinerator feasibility  
35 studies, construction, maintenance, or operation, or, after January 1,  
36 2010, for projects designed to address the restoration of Puget Sound,  
37 funded in a competitive grant process, that are in conflict with the

1 action agenda developed by the Puget Sound partnership under RCW  
2 90.71.310.

3 (7) The department shall adopt rules for grant or loan issuance and  
4 performance. To accelerate both remedial action and economic recovery,  
5 the department may expedite the necessary adoption of rules to  
6 implement this act using the expedited procedures in RCW 34.05.353.  
7 The department shall initiate the award of financial assistance by July  
8 1, 2012, and to ensure that the adoption of rules will not delay the  
9 awards, the department may administer the award of financial assistance  
10 through interpretive guidance pending the adoption of rules not later  
11 than January 1, 2013.

12 (8) During the 2007-2009 and 2009-2011 fiscal biennia, the  
13 legislature may transfer from the local toxics control account to  
14 either the state general fund or the oil spill prevention account, or  
15 both such amounts as reflect excess fund balance in the account.

16 (9) During the 2009-2011 fiscal biennium, the local toxics control  
17 account may also be used for a standby rescue tug at Neah Bay, local  
18 government shoreline update grants, private and public sector diesel  
19 equipment retrofit, and oil spill prevention, preparedness, and  
20 response activities.

21 (10) During the 2009-2011 fiscal biennium, the legislature may  
22 transfer from the state toxics control account to the state general  
23 fund such amounts as reflect the excess fund balance in the account.

24 (11) During the 2011-2013 fiscal biennium, the local toxics control  
25 account may also be used for local government shoreline update grants  
26 and actions for reducing public exposure to toxic air pollution.

27 NEW SECTION. Sec. 12. (1) By December 20, 2012, the department  
28 shall report to the fiscal and hazardous waste cleanup committees in  
29 the senate and house of representatives on additional legislative and  
30 administrative actions that would accelerate the pace of cleanup and  
31 reuse of brownfield properties. The report may be combined with the  
32 report required by RCW 70.105D.030(4). The report must include but is  
33 not limited to an analysis and recommendations on:

34 (a) Alternatives for state licensing or other recognition of site  
35 remediation professionals that design and oversee remediation action  
36 work on behalf of potentially liable parties. The objective is to

1 streamline state oversight while ensuring that remedial action meets  
2 all applicable state and federal standards;

3 (b) Methods to provide greater liability protections for persons  
4 completing independent remedial actions that meet all applicable state  
5 and federal clean-up standards; and

6 (c) Clarifying the standards applicable for liability protection  
7 for innocent purchasers, and streamlining the procedures and standards  
8 for prospective purchasers to receive liability protection.

9 (2) The definitions in RCW 70.105D.020 apply throughout this  
10 section.

11 NEW SECTION. **Sec. 13.** If any provision of this act or its  
12 application to any person or circumstance is held invalid, the  
13 remainder of the act or the application of the provision to other  
14 persons or circumstances is not affected.

--- END ---