

SENATE BILL REPORT

SB 6211

As of February 7, 2012

Title: An act relating to accelerating cleanup of hazardous waste sites.

Brief Description: Accelerating cleanup of hazardous waste sites.

Sponsors: Senators Ranker, Litzow, Fain, Hargrove, Kilmer, Hill, Nelson, Keiser and Conway.

Brief History:

Committee Activity: Environment: 1/25/12, 2/03/12 [DPS-WM, w/oRec].
Ways & Means: 2/06/12.

SENATE COMMITTEE ON ENVIRONMENT

Majority Report: That Substitute Senate Bill No. 6211 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Nelson, Chair; Rolfes, Vice Chair; Ericksen, Ranking Minority Member; Chase, Fraser, Morton, Pridemore and Sheldon.

Minority Report: That it be referred without recommendation.

Signed by Senator Honeyford.

Staff: Jan Odano (786-7486)

SENATE COMMITTEE ON WAYS & MEANS

Staff: Michael Bezanson (786-7449)

Background: The state Model Toxics Control Act (MTCA) is carried out by the Department of Ecology (DOE) to ensure that the vast majority of sites at which hazardous substances have been released are cleaned up.

MTCA requires liable parties to cleanup sites contaminated with hazardous materials. The Attorney General may agree to a settlement with a potentially liable person when a proposed settlement would lead to a more expeditious cleanup. In addition, to promote cleanup or site reuse, the Attorney General may agree to a settlement with a person who is not liable for cleanup but proposes to cleanup, redevelop, or reuse the site when the settlement will bring new resources to facilitate the cleanup. Priority must be given to settlements that will

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provide a substantial public benefit that include vacant or abandoned manufacturing or industrial facilities.

The state and local toxics control accounts provide funding for activities such as state programs for hazardous and solid waste planning, management and enforcement; financial assistance for local hazardous and solid waste programs; and assistance for potentially liable persons to pay for remedial actions under certain circumstances. DOE must use local toxic control account funds for grants and loans to local governments with a priority for remedial actions.

When partnering with local communities and liable parties for cleanup, DOE may alter grant-matching requirements to incentivize local governments to expedite cleanups when funding would mitigate unfair economic hardship imposed by the cleanup liability; create new substantial economic development, public recreational or habitat restoration opportunities; or create an opportunity for acquisition and redevelopment of vacant, orphaned, or abandoned property that would not otherwise occur.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (Recommended Substitute): DOE is authorized to establish trust funds for state funding of remedial activities within designated redevelopment opportunity zone. The trust fund may receive legislative appropriations, voluntary contributions made to specific zones or brownfield redevelopment authorities, and receipts from settlements or court orders that direct payment to the fund for specific zones. The trust fund must be credited with all investment income earned by the fund. DOE may establish separate subaccounts for specific redevelopment opportunity zones. The local government establishing the redevelopment opportunity zone must be the beneficiary of the subaccount. The account is not appropriated or allotted.

DOE must approve expenditures from the fund. All expenditures must meet eligibility requirements for remedial action grants. DOE must provide a biennial report on each subaccount activity. All expenditures from the trust fund must be used on remediation activities within the redevelopment opportunity zone.

DOE may inactivate subaccounts after it determines that all remedial actions have been completed and payments made. Any remaining monies must be transferred to the state Toxics Control Account. If DOE determines substantial progress has not been made or the brownfield authority is not a viable entity, then DOE may inactivate the subaccount, after payment of outstanding debts, and transfer the remaining funds to the state Toxics Control Account.

A city, county, or port district may designate a redevelopment opportunity zone when it adopts a resolution to implement the renewal plan and determining:

- at least 50 percent of the upland properties in the area are brownfields, cleanup will be integrated and consistent with comprehensive land use plans for future uses, and the brownfield properties do not need to be contiguous;
- properties requiring urban infrastructure is served by public water system and sewage collection and treatment systems.

Port districts must additionally own all of the upland properties within the area or at least 50 percent of the upland property or property owners have provided consent to be included in the zone. The city or county must approve the brownfield renewal designation.

A city, county, or port district may establish a brownfield renewal authority (authority) for implementing cleanup and reuse of properties within a redevelopment opportunity zone. The authority must be governed by a board of directors who are determined by resolution or interlocal agreement establishing the authority. The authority must be a municipal corporation. DOE may dissolve an authority if DOE determines that substantial progress for remedial actions has not been made within six years of establishment of the authority. All assets, except remaining funds, which transfer to state Toxics Control Account, and liabilities transfer to the city, town, or port district establishing the authority.

In addition to existing authority and duties, DOE must provide staffing and financial assistance as needed to address the reduction of human and environmental hazards and land reuse potential and planning. DOE must track requests for reviews of planned and completed independent remedial actions; set performance measures for timely response to the requests; and submit a report to the Legislature and Governor on meeting the performance measures and recommendations for improving performance and staffing needs.

The primary purpose of a settlement agreement is to promote the cleanup and reuse of brownfield property. The Attorney General and DOE may give priority to the settlement that provides:

- a substantial public benefit to the reuse of brownfield properties; and
- cleanup and reuse of property provides access to the public, new or improved public recreational opportunities, and preservation of historic properties.

Alternatively, DOE may issue an agreed order to a prospective purchaser of a property within a redevelopment opportunity zone that stays enforcement of remedial actions as long as the prospective purchaser complies with the order.

Funds from the state Toxics Control Account may be used to assist prospective purchasers to pay for remediation at sites within a redevelopment opportunity zone, when the amount and terms are established in a settlement agreement, and when DOE finds the funding provides for a substantially more expeditious or enhanced cleanup with public benefits such as access to an area not otherwise available to the public, public recreational activities, enhanced natural resource habitat, or preservation of a historical property.

Uses of funds from the local Toxic Control Account are prioritized to include planning for adaptive reuse of properties after remediation of brownfields into land use, capital facilities, economic development, and other applicable local government plans. DOE may enter into grant or loan agreements with local governments to facilitate economic development and ensure a healthy environment. The agreements may provide periodic reimbursement to the local government as the costs are incurred and may be used to address area wide groundwater contamination. DOE and local government may enter into an agreement prior to the local government acquiring a property as long as there is a schedule for acquiring or obtaining access to the property specified in the agreement. In addition, DOE may provide integrated

planning grants or loans to local governments to fund studies for remedial actions at brownfield properties and adaptive reuse after remediation. Designated redevelopment opportunity zones have priority for available grant or loan funds when the demand exceeds the amount of available funding.

Certain terms such as brownfield, prospective purchaser, and brownfield renewal area are defined.

EFFECT OF CHANGES MADE BY ENVIRONMENT COMMITTEE (Recommended Substitute): Renames brownfield renewal area to redevelopment opportunity zone and provides that the brownfield properties within a redevelopment opportunity zone do not need to be contiguous.

- Requires that the property within a zone is either entirely owned by the city or county or property owners have provided consent to be included in the zone.
- Removes the provisions authorizing employees or local government contractors to access to all property within the zone.
- Revises and clarifies provisions of the brownfield redevelopment trust fund.
- Provides for the dissolution of a brownfield renewal authority.
- Provides examples of the public benefits necessary to obtain public funding or priority to settlement agreements instead of specific benefits.
- Deletes study provisions.
- Makes technical changes.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony as Heard in Committee (Environment): PRO: Cleanup provides great benefits to local communities. Accelerating cleanup is good for economic, environmental health, and for communities. Cleanup fundamentally reshapes communities beyond cleaning up the environment, but by also creating jobs, economic opportunities and smart growth. This is a jobs bill not just for cleanup but for getting businesses back up and running and for continued economic development that will occur after the cleanup. This gives DOE better tools to take on more projects and achieve cleanup. Providing tools that will advance the cleanup in a more predictable way, expedite the cleanup process, and spur and incentivize strong and early effective cleanups help economic development. Trust funds would alleviate some of the risk and provide certainty especially for very complicated projects. We support the attention of brownfields but aquatic sites should also be addressed, which are not defined within the bill. Redevelopment areas allow smaller projects to go forward when they would otherwise not be eligible for funding. Cleaning up the property helps cities to meet environmental cleanup objectives, getting businesses running and increasing tax rolls to the city and state.

OTHER: Economic interests often drive cleanup of properties. With help and support by government and private parties, this will lead to cleanup of brownfield areas. This bill creates new priorities for government. Cleanup of brownfields should be a subset of remedial actions. There needs to be a balance within the program for remediation. Cleanup trusts would lock up state funds and reduce flexibility of state funding. There are many questions and concerns about the criteria for trust funds. The bill is based on a flawed concept that there is a bottleneck at DOE. There are complexities of cleanup that don't lend to quick solutions. This would allow the use of public funds by non-governmental entities that would result in private gains. It would siphon public funds to the private sector with questionable public benefit. Release of liability gives the public no recourse and lets polluters off the hook. The use of a licensed site professional is a shift in policy. The government should be in the role of determining what is clean. The investments and work should equally emphasize the environment as well as economic development. There is concern with access to property within a brownfield development area that may not be contaminated. The report required by DOE could send the work in the wrong direction and should be deleted.

Persons Testifying (Environment): PRO: Johan Hellman, WA Public Ports Assn.; Susan Saffery, City of Seattle; Brandon Housekeeper, Assn. of WA Business; Carl Schroeder, Assn. of WA Cities; Jerry Smedes, NW Environment Business Council; Mo McBroom, WA Environmental Council.

OTHER: Jim Pendowski, DOE; Kerry Graber, Dolores Mitchell, WA Federation of State Employees.

Staff Summary of Public Testimony on Substitute as Passed by Environment (Ways & Means): PRO: This is not a perfect bill. This bill is designed to promote the development and redevelopment of land for better purposes. This is a wise use of resources. This will promote public and private partnerships for redevelopment. This version of the bill adds language that keeps the funds in the custody of the state treasurer but retains the funds in a lockbox. This is a tool that will promote development.

OTHER: Besides the management of numerous subaccounts, we have concerns with committing cleanup dollars in an account where the money cannot be shifted or utilized for other clean-up projects. We hope you carefully consider the trusts and whether to bind future budgets. We feel that there should be a sunset date and performance measures in the law to see if the program works. There may be duplication between this legislature and other programs.

Persons Testifying (Ways & Means): PRO: Jerry Smedes, NW Environmental Business Council; Bruce Housekeeper, Assn. of WA Business; Johan Hellman, WA Public Ports Assn.

OTHER: Jim Pendowski, DOE; Kerry Graber, WA Federation of State Employees.