

E2SSB 6211 - H COMM AMD

By Committee on Capital Budget

1 Strike everything after the enacting clause and insert the
2 following:

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

17 Therefore, it is the intent of this act to authorize a greater
18 emphasis in the allocation of state resources toward the cleanup and
19 reuse of brownfield properties, to provide more flexible funding and
20 oversight authority for local governments guiding the cleanup of
21 brownfield properties, and to modify the state's cleanup program in
22 ways that will accelerate cleanups throughout the state, thus providing
23 near-term job benefits in the cleanup, as well as ongoing economic and
24 environmental benefits through reuse of the cleaned up properties.

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

27 (1) Each person has a fundamental and inalienable right to a
28 healthful environment, and each person has a responsibility to preserve

1 and enhance that right. The beneficial stewardship of the land, air,
2 and waters of the state is a solemn obligation of the present
3 generation for the benefit of future generations.

4 (2) A healthful environment is now threatened by the irresponsible
5 use and disposal of hazardous substances. There are hundreds of
6 hazardous waste sites in this state, and more will be created if
7 current waste practices continue. Hazardous waste sites threaten the
8 state's water resources, including those used for public drinking
9 water. Many of our municipal landfills are current or potential
10 hazardous waste sites and present serious threats to human health and
11 environment. The costs of eliminating these threats in many cases are
12 beyond the financial means of our local governments and ratepayers.
13 The main purpose of chapter 2, Laws of 1989 is to raise sufficient
14 funds to clean up all hazardous waste sites and to prevent the creation
15 of future hazards due to improper disposal of toxic wastes into the
16 state's land and waters.

17 (3) Many farmers and small business owners who have followed the
18 law with respect to their uses of pesticides and other chemicals
19 nonetheless may face devastating economic consequences because their
20 uses have contaminated the environment or the water supplies of their
21 neighbors. With a source of funds, the state may assist these farmers
22 and business owners, as well as those persons who sustain damages, such
23 as the loss of their drinking water supplies, as a result of the
24 contamination.

25 (4) It is in the public's interest to efficiently use our finite
26 land base, to integrate our land use planning policies with our clean-
27 up policies, and to clean up and reuse contaminated industrial and
28 other brownfield properties in order to minimize ((~~industrial~~))
29 development pressures on undeveloped land and to make clean land
30 available for ((~~future~~)) economic, environmental, and social ((~~use~~))
31 reuses.

32 (5) Because it is often difficult or impossible to allocate
33 responsibility among persons liable for hazardous waste sites and
34 because it is essential that sites be cleaned up well and
35 expeditiously, each responsible person should be liable jointly and
36 severally.

37 (6) Because releases of hazardous substances can adversely affect
38 the health and welfare of the public, the environment, and property

1 values, it is in the public interest that affected communities be
2 notified of where releases of hazardous substances have occurred and
3 what is being done to clean them up.

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

6 The definitions in this section apply throughout this chapter
7 unless the context clearly requires otherwise.

8 (1) "Agreed order" means an order issued by the department under
9 this chapter with which the potentially liable person or prospective
10 purchaser receiving the order agrees to comply. An agreed order may be
11 used to require or approve any cleanup or other remedial actions but it
12 is not a settlement under RCW 70.105D.040(4) and shall not contain a
13 covenant not to sue, or provide protection from claims for
14 contribution, or provide eligibility for public funding of remedial
15 actions under RCW 70.105D.070(2)((~~d~~)) (b) (xi) and (xii).

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

17 (3) "Director" means the director of ecology or the director's
18 designee.

19 (4) "Environmental covenant" has the same meaning as defined in RCW
20 64.70.020.

21 (5) "Facility" means (a) any building, structure, installation,
22 equipment, pipe or pipeline (including any pipe into a sewer or
23 publicly owned treatment works), well, pit, pond, lagoon, impoundment,
24 ditch, landfill, storage container, motor vehicle, rolling stock,
25 vessel, or aircraft, or (b) any site or area where a hazardous
26 substance, other than a consumer product in consumer use, has been
27 deposited, stored, disposed of, or placed, or otherwise come to be
28 located.

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

32 (7)(a) "Fiduciary" means a person acting for the benefit of another
33 party as a bona fide trustee; executor; administrator; custodian;
34 guardian of estates or guardian ad litem; receiver; conservator;
35 committee of estates of incapacitated persons; trustee in bankruptcy;
36 trustee, under an indenture agreement, trust agreement, lease, or
37 similar financing agreement, for debt securities, certificates of

1 interest or certificates of participation in debt securities, or other
2 forms of indebtedness as to which the trustee is not, in the capacity
3 of trustee, the lender. Except as provided in subsection (17)(b)(iii)
4 of this section, the liability of a fiduciary under this chapter shall
5 not exceed the assets held in the fiduciary capacity.

6 (b) "Fiduciary" does not mean:

7 (i) A person acting as a fiduciary with respect to a trust or other
8 fiduciary estate that was organized for the primary purpose of, or is
9 engaged in, actively carrying on a trade or business for profit, unless
10 the trust or other fiduciary estate was created as part of, or to
11 facilitate, one or more estate plans or because of the incapacity of a
12 natural person;

13 (ii) A person who acquires ownership or control of a facility with
14 the objective purpose of avoiding liability of the person or any other
15 person. It is prima facie evidence that the fiduciary acquired
16 ownership or control of the facility to avoid liability if the facility
17 is the only substantial asset in the fiduciary estate at the time the
18 facility became subject to the fiduciary estate;

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

22 (iv) A person who is a beneficiary and fiduciary with respect to
23 the same fiduciary estate, and who while acting as a fiduciary receives
24 benefits that exceed customary or reasonable compensation, and
25 incidental benefits permitted under applicable law;

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

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

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

35 (9) "Foreclosure and its equivalents" means purchase at a
36 foreclosure sale, acquisition, or assignment of title in lieu of
37 foreclosure, termination of a lease, or other repossession, acquisition
38 of a right to title or possession, an agreement in satisfaction of the

1 obligation, or any other comparable formal or informal manner, whether
2 pursuant to law or under warranties, covenants, conditions,
3 representations, or promises from the borrower, by which the holder
4 acquires title to or possession of a facility securing a loan or other
5 obligation.

6 (10) "Hazardous substance" means:

7 (a) Any dangerous or extremely hazardous waste as defined in RCW
8 70.105.010 (~~((+5) and (+6))~~) (1) and (7), or any dangerous or extremely
9 dangerous waste designated by rule pursuant to chapter 70.105 RCW;

10 (b) Any hazardous substance as defined in RCW 70.105.010(~~((+14))~~)
11 (10) or any hazardous substance as defined by rule pursuant to chapter
12 70.105 RCW;

13 (c) Any substance that, on March 1, 1989, is a hazardous substance
14 under section 101(14) of the federal cleanup law, 42 U.S.C. Sec.
15 9601(14);

16 (d) Petroleum or petroleum products; and

17 (e) Any substance or category of substances, including solid waste
18 decomposition products, determined by the director by rule to present
19 a threat to human health or the environment if released into the
20 environment.

21 The term hazardous substance does not include any of the following
22 when contained in an underground storage tank from which there is not
23 a release: Crude oil or any fraction thereof or petroleum, if the tank
24 is in compliance with all applicable federal, state, and local law.

25 (11) "Holder" means a person who holds indicia of ownership
26 primarily to protect a security interest. A holder includes the
27 initial holder such as the loan originator, any subsequent holder such
28 as a successor-in-interest or subsequent purchaser of the security
29 interest on the secondary market, a guarantor of an obligation, surety,
30 or any other person who holds indicia of ownership primarily to protect
31 a security interest, or a receiver, court-appointed trustee, or other
32 person who acts on behalf or for the benefit of a holder. A holder can
33 be a public or privately owned financial institution, receiver,
34 conservator, loan guarantor, or other similar persons that loan money
35 or guarantee repayment of a loan. Holders typically are banks or
36 savings and loan institutions but may also include others such as
37 insurance companies, pension funds, or private individuals that engage
38 in loaning of money or credit.

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

4 (13) "Indicia of ownership" means evidence of a security interest,
5 evidence of an interest in a security interest, or evidence of an
6 interest in a facility securing a loan or other obligation, including
7 any legal or equitable title to a facility acquired incident to
8 foreclosure and its equivalents. Evidence of such interests includes,
9 mortgages, deeds of trust, sellers interest in a real estate contract,
10 liens, surety bonds, and guarantees of obligations, title held pursuant
11 to a lease financing transaction in which the lessor does not select
12 initially the leased facility, or legal or equitable title obtained
13 pursuant to foreclosure and their equivalents. Evidence of such
14 interests also includes assignments, pledges, or other rights to or
15 other forms of encumbrance against the facility that are held primarily
16 to protect a security interest.

17 (14) "Industrial properties" means properties that are or have been
18 characterized by, or are to be committed to, traditional industrial
19 uses such as processing or manufacturing of materials, marine terminal
20 and transportation areas and facilities, fabrication, assembly,
21 treatment, or distribution of manufactured products, or storage of bulk
22 materials, that are either:

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

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

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

32 (16) "Operating a facility primarily to protect a security
33 interest" occurs when all of the following are met: (a) Operating the
34 facility where the borrower has defaulted on the loan or otherwise
35 breached the security agreement; (b) operating the facility to preserve
36 the value of the facility as an ongoing business; (c) the operation is
37 being done in anticipation of a sale, transfer, or assignment of the
38 facility; and (d) the operation is being done primarily to protect a

1 security interest. Operating a facility for longer than one year prior
2 to foreclosure or its equivalents shall be presumed to be operating the
3 facility for other than to protect a security interest.

4 (17) "Owner or operator" means:

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

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

10 The term does not include:

11 (i) An agency of the state or unit of local government which
12 acquired ownership or control through a drug forfeiture action under
13 RCW 69.50.505, or involuntarily through bankruptcy, tax delinquency,
14 abandonment, or other circumstances in which the government
15 involuntarily acquires title. This exclusion does not apply to an
16 agency of the state or unit of local government which has caused or
17 contributed to the release or threatened release of a hazardous
18 substance from the facility;

19 (ii) A person who, without participating in the management of a
20 facility, holds indicia of ownership primarily to protect the person's
21 security interest in the facility. Holders after foreclosure and its
22 equivalent and holders who engage in any of the activities identified
23 in subsection (18)(e) through (g) of this section shall not lose this
24 exemption provided the holder complies with all of the following:

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

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

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

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

35 (E) Any remedial actions conducted by the holder are in compliance
36 with any preexisting requirements identified by the department, or, if
37 the department has not identified such requirements for the facility,

1 the remedial actions are conducted consistent with the rules adopted
2 under this chapter; and

3 (F) The holder does not exacerbate an existing release. The
4 exemption in this subsection (17)(b)(ii) does not apply to holders who
5 cause or contribute to a new release or threatened release or who are
6 otherwise liable under RCW 70.105D.040(1) (b), (c), (d), and (e);
7 provided, however, that a holder shall not lose this exemption if it
8 establishes that any such new release has been remediated according to
9 the requirements of this chapter and that any hazardous substances
10 remaining at the facility after remediation of the new release are
11 divisible from such new release;

12 (iii) A fiduciary in his, her, or its personal or individual
13 capacity. This exemption does not preclude a claim against the assets
14 of the estate or trust administered by the fiduciary or against a
15 nonemployee agent or independent contractor retained by a fiduciary.
16 This exemption also does not apply to the extent that a person is
17 liable under this chapter independently of the person's ownership as a
18 fiduciary or for actions taken in a fiduciary capacity which cause or
19 contribute to a new release or exacerbate an existing release of
20 hazardous substances. This exemption applies provided that, to the
21 extent of the fiduciary's powers granted by law or by the applicable
22 governing instrument granting fiduciary powers, the fiduciary complies
23 with all of the following:

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

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

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

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

34 (E) Any remedial actions conducted by the fiduciary are in
35 compliance with any preexisting requirements identified by the
36 department, or, if the department has not identified such requirements
37 for the facility, the remedial actions are conducted consistent with
38 the rules adopted under this chapter; and

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

2 The exemption in this subsection (17)(b)(iii) does not apply to
3 fiduciaries who cause or contribute to a new release or threatened
4 release or who are otherwise liable under RCW 70.105D.040(1) (b), (c),
5 (d), and (e); provided however, that a fiduciary shall not lose this
6 exemption if it establishes that any such new release has been
7 remediated according to the requirements of this chapter and that any
8 hazardous substances remaining at the facility after remediation of the
9 new release are divisible from such new release. The exemption in this
10 subsection (17)(b)(iii) also does not apply where the fiduciary's
11 powers to comply with this subsection (17)(b)(iii) are limited by a
12 governing instrument created with the objective purpose of avoiding
13 liability under this chapter or of avoiding compliance with this
14 chapter; or

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

20 (A) The person can demonstrate that the hazardous substance has not
21 been used, placed, managed, or otherwise handled on the property in a
22 manner likely to cause or contribute to a release of the hazardous
23 substance that has migrated onto the property;

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

26 (C) The person does not engage in activities that damage or
27 interfere with the operation of remedial actions installed on the
28 person's property or engage in activities that result in exposure of
29 humans or the environment to the contaminated groundwater that has
30 migrated onto the property;

31 (D) If requested, the person allows the department, potentially
32 liable persons who are subject to an order, agreed order, or consent
33 decree, and the authorized employees, agents, or contractors of each,
34 access to the property to conduct remedial actions required by the
35 department. The person may attempt to negotiate an access agreement
36 before allowing access; and

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

1 (18) "Participation in management" means exercising decision-making
2 control over the borrower's operation of the facility, environmental
3 compliance, or assuming or manifesting responsibility for the overall
4 management of the enterprise encompassing the day-to-day decision
5 making of the enterprise.

6 The term does not include any of the following: (a) A holder with
7 the mere capacity or ability to influence, or the unexercised right to
8 control facility operations; (b) a holder who conducts or requires a
9 borrower to conduct an environmental audit or an environmental site
10 assessment at the facility for which indicia of ownership is held; (c)
11 a holder who requires a borrower to come into compliance with any
12 applicable laws or regulations at the facility for which indicia of
13 ownership is held; (d) a holder who requires a borrower to conduct
14 remedial actions including setting minimum requirements, but does not
15 otherwise control or manage the borrower's remedial actions or the
16 scope of the borrower's remedial actions except to prepare a facility
17 for sale, transfer, or assignment; (e) a holder who engages in workout
18 or policing activities primarily to protect the holder's security
19 interest in the facility; (f) a holder who prepares a facility for
20 sale, transfer, or assignment or requires a borrower to prepare a
21 facility for sale, transfer, or assignment; (g) a holder who operates
22 a facility primarily to protect a security interest, or requires a
23 borrower to continue to operate, a facility primarily to protect a
24 security interest; and (h) a prospective holder who, as a condition of
25 becoming a holder, requires an owner or operator to conduct an
26 environmental audit, conduct an environmental site assessment, come
27 into compliance with any applicable laws or regulations, or conduct
28 remedial actions prior to holding a security interest is not
29 participating in the management of the facility.

30 (19) "Person" means an individual, firm, corporation, association,
31 partnership, consortium, joint venture, commercial entity, state
32 government agency, unit of local government, federal government agency,
33 or Indian tribe.

34 (20) "Policing activities" means actions the holder takes to ensure
35 that the borrower complies with the terms of the loan or security
36 interest or actions the holder takes or requires the borrower to take
37 to maintain the value of the security. Policing activities include:
38 Requiring the borrower to conduct remedial actions at the facility

1 during the term of the security interest; requiring the borrower to
2 comply or come into compliance with applicable federal, state, and
3 local environmental and other laws, regulations, and permits during the
4 term of the security interest; securing or exercising authority to
5 monitor or inspect the facility including on-site inspections, or to
6 monitor or inspect the borrower's business or financial condition
7 during the term of the security interest; or taking other actions
8 necessary to adequately police the loan or security interest such as
9 requiring a borrower to comply with any warranties, covenants,
10 conditions, representations, or promises from the borrower.

11 (21) "Potentially liable person" means any person whom the
12 department finds, based on credible evidence, to be liable under RCW
13 70.105D.040. The department shall give notice to any such person and
14 allow an opportunity for comment before making the finding, unless an
15 emergency requires otherwise.

16 (22) "Prepare a facility for sale, transfer, or assignment" means
17 to secure access to the facility; perform routine maintenance on the
18 facility; remove inventory, equipment, or structures; properly maintain
19 environmental compliance measures already in place at the facility;
20 conduct remedial actions to clean up releases at the facility; or to
21 perform other similar activities intended to preserve the value of the
22 facility where the borrower has defaulted on the loan or otherwise
23 breached the security agreement or after foreclosure and its
24 equivalents and in anticipation of a pending sale, transfer, or
25 assignment, primarily to protect the holder's security interest in the
26 facility. A holder can prepare a facility for sale, transfer, or
27 assignment for up to one year prior to foreclosure and its equivalents
28 and still stay within the security interest exemption in subsection
29 (17)(b)(ii) of this section.

30 (23) "Primarily to protect a security interest" means the indicia
31 of ownership is held primarily for the purpose of securing payment or
32 performance of an obligation. The term does not include indicia of
33 ownership held primarily for investment purposes nor indicia of
34 ownership held primarily for purposes other than as protection for a
35 security interest. A holder may have other, secondary reasons, for
36 maintaining indicia of ownership, but the primary reason must be for
37 protection of a security interest. Holding indicia of ownership after
38 foreclosure or its equivalents for longer than five years shall be

1 considered to be holding the indicia of ownership for purposes other
2 than primarily to protect a security interest. For facilities that
3 have been acquired through foreclosure or its equivalents prior to July
4 23, 1995, this five-year period shall begin as of July 23, 1995.

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

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

14 (26) "Remedy" or "remedial action" means any action or expenditure
15 consistent with the purposes of this chapter to identify, eliminate, or
16 minimize any threat or potential threat posed by hazardous substances
17 to human health or the environment including any investigative and
18 monitoring activities with respect to any release or threatened release
19 of a hazardous substance and any health assessments or health effects
20 studies conducted in order to determine the risk or potential risk to
21 human health.

22 (27) "Security interest" means an interest in a facility created or
23 established for the purpose of securing a loan or other obligation.
24 Security interests include deeds of trusts, sellers interest in a real
25 estate contract, liens, legal, or equitable title to a facility
26 acquired incident to foreclosure and its equivalents, and title
27 pursuant to lease financing transactions. Security interests may also
28 arise from transactions such as sale and leasebacks, conditional sales,
29 installment sales, trust receipt transactions, certain assignments,
30 factoring agreements, accounts receivable financing arrangements,
31 easements, and consignments, if the transaction creates or establishes
32 an interest in a facility for the purpose of securing a loan or other
33 obligation.

34 (28) "Workout activities" means those actions by which a holder, at
35 any time prior to foreclosure and its equivalents, seeks to prevent,
36 cure, or mitigate a default by the borrower or obligor; or to preserve,
37 or prevent the diminution of, the value of the security. Workout
38 activities include: Restructuring or renegotiating the terms of the

1 security interest; requiring payment of additional rent or interest;
2 exercising forbearance; requiring or exercising rights pursuant to an
3 assignment of accounts or other amounts owed to an obligor; requiring
4 or exercising rights pursuant to an escrow agreement pertaining to
5 amounts owed to an obligor; providing specific or general financial or
6 other advice, suggestions, counseling, or guidance; and exercising any
7 right or remedy the holder is entitled to by law or under any
8 warranties, covenants, conditions, representations, or promises from
9 the borrower.

10 (29) "Areawide groundwater contamination" means groundwater
11 contamination on multiple adjacent properties with different ownerships
12 consisting of hazardous substances from multiple sources that have
13 resulted in commingled plumes of contaminated groundwater that are not
14 practicable to address separately.

15 (30) "Brownfield property" means previously developed and currently
16 abandoned or underutilized real property and adjacent surface waters
17 and sediment where environmental, economic, or community reuse
18 objectives are hindered by the release or threatened release of
19 hazardous substances that the department has determined requires
20 remedial action under this chapter or that the United States
21 environmental protection agency has determined requires remedial action
22 under the comprehensive environmental response, compensation, and
23 liability act.

24 (31) "City" means a city or town.

25 (32) "Local government" means any political subdivision of the
26 state, including a town, city, county, special purpose district, or
27 other municipal corporation, including brownfield renewal authority
28 created under section 6 of this act.

29 (33) "Prospective purchaser" means a person who is not currently
30 liable for remedial action at a facility and who proposes to purchase,
31 redevelop, or reuse the facility.

32 (34) "Redevelopment opportunity zone" means a geographic area
33 designated under section 5 of this act.

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

36 (1) The brownfield redevelopment trust fund account is created in
37 the state treasury. All receipts from the sources identified in

1 subsection (2) of this section may be deposited into the account.
2 Moneys in the account may be spent only after appropriation.
3 Expenditures from the account may be used only as identified in
4 subsection (4) of this section.

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

7 (a) Moneys appropriated by the legislature to the account for a
8 specific redevelopment opportunity zone established under section 5 of
9 this act or a specific brownfield renewal authority established under
10 section 6 of this act;

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

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

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

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

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

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

30 (7) The local government designating the redevelopment opportunity
31 zone under section 5 of this act or the associated brownfield renewal
32 authority created under section 6 of this act must be the beneficiary
33 of the deposited moneys.

34 (8) All expenditures must be used to conduct remediation and
35 cleanup consistent with a plan for the remediation and cleanup of the
36 properties or facilities approved by the department under this chapter.
37 All expenditures must meet the eligibility requirements for the use by

1 local governments under the rules for remedial action grants adopted by
2 the department under this chapter, including requirements for the
3 expenditure of nonstate match funding.

4 (9) Beginning October 31, 2012, the department must provide a
5 biennial report to the office of financial management and the
6 legislature regarding the activity for each specific redevelopment
7 opportunity zone or specific brownfield renewal authority for which
8 specific legislative appropriation was provided in the previous two
9 fiscal years.

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

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

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

25 NEW SECTION. **Sec. 5.** A new section is added to chapter 70.105D
26 RCW to read as follows:

27 (1) A city or county may designate a geographic area within its
28 jurisdiction as a redevelopment opportunity zone if the zone meets the
29 criteria in this subsection and the city or county adopts a resolution
30 that includes the following determinations and commitments:

31 (a) At least fifty percent of the upland properties in the zone are
32 brownfield properties whether or not the properties are contiguous;

33 (b) The upland portions of the zone are comprised entirely of
34 parcels of property either owned by the city or county or whose owner
35 has provided consent in writing to have their property included within
36 the zone;

1 (c) The cleanup of those properties will be integrated with
2 planning for the future uses of the properties and is consistent with
3 the comprehensive land use plan for the zone; and

4 (d) The proposed properties lie within the incorporated area of a
5 city or within an urban growth area designated under RCW 36.70A.110.

6 (2) A port district may designate a redevelopment opportunity zone
7 when:

8 (a) The port district adopts a resolution that includes the
9 determinations and commitments required under subsection (1)(a), (c),
10 and (d) of this section;

11 (b) The zone meets the criteria in subsection (1)(a), (c), and (d)
12 of this section; and

13 (c) The port district either:

14 (i) Owns in fee all of the upland properties within the zone; or

15 (ii) Owns in fee at least fifty percent of the upland property in
16 the zone, the owners of other parcels of property in the zone have
17 provided consent in writing to have their property included in the
18 zone, and the governing body of the city and county in which the zone
19 lies approves of the designation by resolution.

20 NEW SECTION. **Sec. 6.** A new section is added to chapter 70.105D
21 RCW to read as follows:

22 (1) A city, county, or port district may establish by resolution a
23 brownfield renewal authority for the purpose of guiding and
24 implementing the cleanup and reuse of properties within a designated
25 redevelopment opportunity zone. Any combination of cities, counties,
26 and port districts may establish a brownfield renewal authority through
27 an interlocal agreement under chapter 39.34 RCW, and the brownfield
28 renewal authority may exercise those powers as are authorized under
29 chapter 39.34 RCW and under this chapter.

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

33 (3) A brownfield renewal authority must be a separate legal entity
34 and be deemed a municipal corporation. It has the power to: Sue and
35 be sued; receive, account for, and disburse funds; employ personnel;
36 and acquire or dispose of any interest in real or personal property
37 within a redevelopment opportunity zone in the furtherance of the

1 authority purposes. A brownfield renewal authority has the power to
2 contract indebtedness and to issue and sell general obligation bonds
3 pursuant to and in the manner provided for general county bonds in
4 chapters 36.67 and 39.46 RCW and other applicable statutes, and to
5 issue revenue bonds pursuant to and in the manner provided for revenue
6 bonds in chapter 36.67 RCW and other applicable statutes.

7 (4) If the department determines that substantial progress has not
8 been made on the plan approved under section 4 of this act by the
9 brownfield renewal authority within six years of a city, county, or
10 port district establishing a brownfield renewal authority, the
11 department may require dissolution of the brownfield renewal authority.
12 Upon dissolution of the brownfield renewal authority, except as
13 provided in section 5 of this act, all assets and liabilities transfer
14 to the city, town, or port district establishing the brownfield renewal
15 authority.

16 **Sec. 7.** RCW 70.105D.030 and 2009 c 560 s 10 are each amended to
17 read as follows:

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

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

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

1 unless an emergency prevents such notice. In conducting, providing
2 for, or requiring remedial action, the department shall give preference
3 to permanent solutions to the maximum extent practicable and shall
4 provide for or require adequate monitoring to ensure the effectiveness
5 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 RCW
13 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 subsection
17 that may be conditioned upon, environmental covenants where necessary
18 to protect human health and the environment from a release or
19 threatened release of a hazardous substance from a facility. Prior to
20 establishing an environmental covenant under this subsection, the
21 department shall consult with and seek comment from a city or county
22 department with land use planning authority for real property subject
23 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 abate
30 an imminent or substantial endangerment pursuant to RCW
31 70.105D.020(17)(b)(ii)(C);

32 (i) Provide informal advice and assistance to persons regarding the
33 administrative and technical requirements of this chapter. This may
34 include site-specific advice to persons who are conducting or otherwise
35 interested in independent remedial actions. Any such advice or
36 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

1 opinions regarding whether the independent remedial actions or
2 proposals for those actions meet the substantive requirements of this
3 chapter or whether the department believes further remedial action is
4 necessary at the facility. Nothing in this chapter may be construed to
5 preclude the department from issuing a written opinion on whether
6 further remedial action is necessary at any portion of the real
7 property located within a facility, even if further remedial action is
8 still necessary elsewhere at the same facility. Such a written opinion
9 on a portion of a facility must also provide an opinion on the status
10 of the facility as a whole. The department may collect, from persons
11 requesting advice and assistance, the costs incurred by the department
12 in providing such advice and assistance; however, the department shall,
13 where appropriate, waive collection of costs in order to provide an
14 appropriate level of technical assistance in support of public
15 participation. The state, the department, and officers and employees
16 of the state are immune from all liability, and no cause of action of
17 any nature may arise from any act or omission in providing, or failing
18 to provide, informal advice and assistance. The department must track
19 the number of requests for reviews of planned or completed independent
20 remedial actions and establish performance measures to track how
21 quickly the department is able to respond to those requests. By
22 November 1, 2012, the department must submit to the governor and the
23 appropriate legislative fiscal and policy committees a report on
24 achieving the performance measures and provide recommendations for
25 improving performance, including staffing needs; ((and))

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

32 (k) Take any other actions necessary to carry out the provisions of
33 this chapter, including the power to adopt rules under chapter 34.05
34 RCW.

35 (2) The department shall immediately implement all provisions of
36 this chapter to the maximum extent practicable, including investigative
37 and remedial actions where appropriate. The department shall adopt,
38 and thereafter enforce, rules under chapter 34.05 RCW to:

1 (a) Provide for public participation, including at least (i) public
2 notice of the development of investigative plans or remedial plans for
3 releases or threatened releases and (ii) concurrent public notice of
4 all compliance orders, agreed orders, enforcement orders, or notices of
5 violation;

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

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

13 (d) Establish reasonable deadlines not to exceed ninety days for
14 initiating an investigation of a hazardous waste site after the
15 department receives notice or otherwise receives information that the
16 site may pose a threat to human health or the environment and other
17 reasonable deadlines for remedying releases or threatened releases at
18 the site;

19 (e) Publish and periodically update minimum cleanup standards for
20 remedial actions at least as stringent as the cleanup standards under
21 section 121 of the federal cleanup law, 42 U.S.C. Sec. 9621, and at
22 least as stringent as all applicable state and federal laws, including
23 health-based standards under state and federal law; and

24 (f) Apply industrial clean-up standards at industrial properties.
25 Rules adopted under this subsection shall ensure that industrial
26 properties cleaned up to industrial standards cannot be converted to
27 nonindustrial uses without approval from the department. The
28 department may require that a property cleaned up to industrial
29 standards is cleaned up to a more stringent applicable standard as a
30 condition of conversion to a nonindustrial use. Industrial clean-up
31 standards may not be applied to industrial properties where hazardous
32 substances remaining at the property after remedial action pose a
33 threat to human health or the environment in adjacent nonindustrial
34 areas.

35 (3) To achieve and protect the state's long-term ecological health,
36 the department shall prioritize sufficient funding to clean up
37 hazardous waste sites and prevent the creation of future hazards due to
38 improper disposal of toxic wastes, and create financing tools to clean

1 up large-scale hazardous waste sites requiring multiyear commitments.
2 To effectively monitor toxic accounts expenditures, the department
3 shall develop a comprehensive ten-year financing report that identifies
4 long-term remedial action project costs, tracks expenses, and projects
5 future needs.

6 (4) Before December 20th of each even-numbered year, the department
7 shall:

8 (a) Develop a comprehensive ten-year financing report in
9 coordination with all local governments with clean-up responsibilities
10 that identifies the projected biennial hazardous waste site remedial
11 action needs that are eligible for funding from the local toxics
12 control account;

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

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

18 (d) Project the remedial action need, cost, revenue, and any
19 recommended working capital reserve estimate to the next biennium's
20 long-term remedial action needs from both the local toxics control
21 account and the state toxics control account, and submit this
22 information to the appropriate standing fiscal and environmental
23 committees of the senate and house of representatives. This submittal
24 must also include a ranked list of such remedial action projects for
25 both accounts; and

26 (e) Provide the legislature and the public each year with an
27 accounting of the department's activities supported by appropriations
28 from the state and local toxics control accounts, including a list of
29 known hazardous waste sites and their hazard rankings, actions taken
30 and planned at each site, how the department is meeting its waste
31 management priorities under RCW 70.105.150, and all funds expended
32 under this chapter.

33 (5) The department shall establish a program to identify potential
34 hazardous waste sites and to encourage persons to provide information
35 about hazardous waste sites.

36 (6) For all facilities where an environmental covenant has been
37 required under subsection (1)(f) of this section, including all
38 facilities where the department has required an environmental covenant

1 under an order, agreed order, or consent decree, or as a condition of
2 a written opinion issued under the authority of subsection (1)(i) of
3 this section, the department shall periodically review the
4 environmental covenant for effectiveness. Except as otherwise provided
5 in (c) of this subsection, the department shall conduct a review at
6 least once every five years after an environmental covenant is
7 recorded.

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

9 (i) A review of the title of the real property subject to the
10 environmental covenant to determine whether the environmental covenant
11 was properly recorded and, if applicable, amended or terminated;

12 (ii) A physical inspection of the real property subject to the
13 environmental covenant to determine compliance with the environmental
14 covenant, including whether any development or redevelopment of the
15 real property has violated the terms of the environmental covenant; and

16 (iii) A review of the effectiveness of the environmental covenant
17 in limiting or prohibiting activities that may interfere with the
18 integrity of the remedial action or that may result in exposure to or
19 migration of hazardous substances. This shall include a review of
20 available monitoring data.

21 (b) If an environmental covenant has been amended or terminated
22 without proper authority, or if the terms of an environmental covenant
23 have been violated, or if the environmental covenant is no longer
24 effective in limiting or prohibiting activities that may interfere with
25 the integrity of the remedial action or that may result in exposure to
26 or migration of hazardous substances, then the department shall take
27 any and all appropriate actions necessary to ensure compliance with the
28 environmental covenant and the policies and requirements of this
29 chapter.

30 (c) For facilities where an environmental covenant required by the
31 department under subsection (1)(f) of this section was required before
32 July 1, 2007, the department shall:

33 (i) Enter all required information about the environmental covenant
34 into the registry established under RCW 64.70.120 by June 30, 2008;

35 (ii) For those facilities where more than five years has elapsed
36 since the environmental covenant was required and the department has
37 yet to conduct a review, conduct an initial review according to the
38 following schedule:

- 1 (A) By December 30, 2008, fifty facilities;
2 (B) By June 30, 2009, fifty additional facilities; and
3 (C) By June 30, 2010, the remainder of the facilities;
4 (iii) Once this initial review has been completed, conduct
5 subsequent reviews at least once every five years.

6 **Sec. 8.** RCW 70.105D.040 and 1997 c 406 s 4 are each amended to
7 read as follows:

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

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

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

13 (c) Any person who owned or possessed a hazardous substance and who
14 by contract, agreement, or otherwise arranged for disposal or treatment
15 of the hazardous substance at the facility, or arranged with a
16 transporter for transport for disposal or treatment of the hazardous
17 substances at the facility, or otherwise generated hazardous wastes
18 disposed of or treated at the facility;

19 (d) Any person (i) who accepts or accepted any hazardous substance
20 for transport to a disposal, treatment, or other facility selected by
21 such person from which there is a release or a threatened release for
22 which remedial action is required, unless such facility, at the time of
23 disposal or treatment, could legally receive such substance; or (ii)
24 who accepts a hazardous substance for transport to such a facility and
25 has reasonable grounds to believe that such facility is not operated in
26 accordance with chapter 70.105 RCW; and

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

31 (2) Each person who is liable under this section is strictly
32 liable, jointly and severally, for all remedial action costs and for
33 all natural resource damages resulting from the releases or threatened
34 releases of hazardous substances. The attorney general, at the request
35 of the department, is empowered to recover all costs and damages from
36 persons liable therefor.

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

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

4 (i) An act of God;

5 (ii) An act of war; or

6 (iii) An act or omission of a third party (including but not
7 limited to a trespasser) other than (A) an employee or agent of the
8 person asserting the defense, or (B) any person whose act or omission
9 occurs in connection with a contractual relationship existing, directly
10 or indirectly, with the person asserting this defense to liability.
11 This defense only applies where the person asserting the defense has
12 exercised the utmost care with respect to the hazardous substance, the
13 foreseeable acts or omissions of the third party, and the foreseeable
14 consequences of those acts or omissions;

15 (b) Any person who is an owner, past owner, or purchaser of a
16 facility and who can establish by a preponderance of the evidence that
17 at the time the facility was acquired by the person, the person had no
18 knowledge or reason to know that any hazardous substance, the release
19 or threatened release of which has resulted in or contributed to the
20 need for the remedial action, was released or disposed of on, in, or at
21 the facility. This subsection (3)(b) is limited as follows:

22 (i) To establish that a person had no reason to know, the person
23 must have undertaken, at the time of acquisition, all appropriate
24 inquiry into the previous ownership and uses of the property,
25 consistent with good commercial or customary practice in an effort to
26 minimize liability. Any court interpreting this subsection (3)(b)
27 shall take into account any specialized knowledge or experience on the
28 part of the person, the relationship of the purchase price to the value
29 of the property if uncontaminated, commonly known or reasonably
30 ascertainable information about the property, the obviousness of the
31 presence or likely presence of contamination at the property, and the
32 ability to detect such contamination by appropriate inspection;

33 (ii) The defense contained in this subsection (3)(b) is not
34 available to any person who had actual knowledge of the release or
35 threatened release of a hazardous substance when the person owned the
36 real property and who subsequently transferred ownership of the
37 property without first disclosing such knowledge to the transferee;

1 (iii) The defense contained in this subsection (3)(b) is not
2 available to any person who, by any act or omission, caused or
3 contributed to the release or threatened release of a hazardous
4 substance at the facility;

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

11 (d) Any person who, for the purpose of growing food crops, applies
12 pesticides or fertilizers without negligence and in accordance with all
13 applicable laws and regulations.

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

17 (a) The attorney general may agree to a settlement with any
18 potentially liable person only if the department finds, after public
19 notice and any required hearing, that the proposed settlement would
20 lead to a more expeditious cleanup of hazardous substances in
21 compliance with clean-up standards under RCW 70.105D.030(2)(e) and with
22 any remedial orders issued by the department. Whenever practicable and
23 in the public interest, the attorney general may expedite such a
24 settlement with persons whose contribution is insignificant in amount
25 and toxicity. A hearing shall be required only if at least ten persons
26 request one or if the department determines a hearing is necessary.

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

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

36 (d) A party who has resolved its liability to the state under this
37 section shall not be liable for claims for contribution regarding

1 matters addressed in the settlement. The settlement does not discharge
2 any of the other liable parties but it reduces the total potential
3 liability of the others to the state by the amount of the settlement.

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

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

13 (ii) The stay of enforcement under this subsection does not apply
14 if the consent decree was based on circumstances unique to the settling
15 party that do not exist with regard to the successor in interest, such
16 as financial hardship. For consent decrees entered into before July
17 27, 1997, at the request of a settling party or a potential successor
18 owner or operator, the attorney general shall issue a written opinion
19 on whether a consent decree contains such unique circumstances. For
20 all other consent decrees, such unique circumstances shall be specified
21 in the consent decree.

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

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

30 (i) The settlement will yield substantial new resources to
31 facilitate cleanup;

32 (ii) The settlement will expedite remedial action at the facility
33 consistent with the rules adopted under this chapter; and

34 (iii) Based on available information, the department determines
35 that the redevelopment or reuse of the facility is not likely to
36 contribute to the existing release or threatened release, interfere
37 with remedial actions that may be needed at the ((~~site~~)) facility, or

1 increase health risks to persons at or in the vicinity of the ((site))
2 facility.

3 (b) The legislature recognizes that the state does not have
4 adequate resources to participate in all property transactions
5 involving contaminated property. The primary purpose of this
6 subsection (5) is to promote the cleanup and reuse of (~~vacant or~~
7 ~~abandoned commercial or industrial contaminated~~) brownfield property.
8 The attorney general and the department may give priority to
9 settlements that will provide a substantial public benefit(~~(~~
10 ~~including, but not limited to the reuse of a vacant or abandoned~~
11 ~~manufacturing or industrial facility, or the development of a facility~~
12 ~~by a governmental entity to address an important public purpose)~~) in
13 addition to cleanup such as:

14 (i) Public access to an area not otherwise accessible to the
15 public;

16 (ii) New or improved public recreational activities;

17 (iii) Enhancement of a natural resource habitat that would not
18 otherwise occur; or

19 (iv) Preservation of a historic property listed pursuant to chapter
20 84.26 RCW.

21 (c) A settlement entered under this subsection is governed by
22 subsection (4) of this section.

23 (6) As an alternative to a settlement under subsection (5) of this
24 section, the department may enter into an agreed order with a
25 prospective purchaser of a property within a designated redevelopment
26 opportunity zone. The agreed order is subject to the limitations in
27 RCW 70.105D.020(1), but stays enforcement by the department under this
28 chapter regarding remedial actions required by the agreed order as long
29 as the prospective purchaser complies with the requirements of the
30 agreed order.

31 (7) Nothing in this chapter affects or modifies in any way any
32 person's right to seek or obtain relief under other statutes or under
33 common law, including but not limited to damages for injury or loss
34 resulting from a release or threatened release of a hazardous
35 substance. No settlement by the department or remedial action ordered
36 by a court or the department affects any person's right to obtain a
37 remedy under common law or other statutes.

1 **Sec. 9.** RCW 70.105D.050 and 2005 c 211 s 2 are each amended to
2 read as follows:

3 (1) With respect to any release, or threatened release, for which
4 the department does not conduct or contract for conducting remedial
5 action and for which the department believes remedial action is in the
6 public interest, the director shall issue orders or agreed orders
7 requiring potentially liable persons to provide the remedial action.
8 Any liable person, or prospective purchaser who has entered into an
9 agreed order under RCW 70.105D.040(6), who refuses, without sufficient
10 cause, to comply with an order or agreed order of the director is
11 liable in an action brought by the attorney general for:

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

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

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

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

24 (3) The attorney general shall seek, by filing an action if
25 necessary, to recover the amounts spent by the department for
26 investigative and remedial actions and orders, and agreed orders,
27 including amounts spent prior to March 1, 1989.

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

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

37 (b) Civil actions under this section and RCW 70.105D.060 may be

1 brought in the superior court of Thurston county or of the county in
2 which the release or threatened release exists.

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

8 (7) Any person who owns real property or lender holding a mortgage
9 on real property that is subject to a lien filed under RCW 70.105D.055
10 may petition the department to have the lien removed or the amount of
11 the lien reduced. If, after consideration of the petition and the
12 information supporting the petition, the department decides to deny the
13 request, the person may, within ninety days after receipt of the
14 department's denial, file suit for removal or reduction of the lien.
15 The person is entitled to removal of a lien filed under RCW
16 70.105D.055(2)(a) if they can prove by a preponderance of the evidence
17 that the person is not a liable party under RCW 70.105D.040. The
18 person is entitled to a reduction of the amount of the lien if they can
19 prove by a preponderance of the evidence:

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

23 (b) For liens filed under RCW 70.105D.055(2)(c), the amount of the
24 lien exceeds the remedial action costs the department incurred related
25 to cleanup of the real property or exceeds the increase of the fair
26 market value of the real property solely attributable to the remedial
27 action conducted by the department.

28 **Sec. 10.** 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)(a) The following moneys shall be deposited into the state
33 toxics control account:

34 ((+a)) (i) Those revenues which are raised by the tax imposed
35 under RCW 82.21.030 and which are attributable to that portion of the
36 rate equal to thirty-three one-hundredths of one percent;

1 ~~((b))~~ (ii) The costs of remedial actions recovered under this
2 chapter or chapter 70.105A RCW;

3 ~~((c))~~ (iii) Penalties collected or recovered under this chapter;
4 and

5 ~~((d))~~ (iv) Any other money appropriated or transferred to the
6 account by the legislature.

7 (b) Moneys in the account may be used only to carry out the
8 purposes of this chapter, including but not limited to the following
9 activities:

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

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

16 (iii) The hazardous waste cleanup program required under this
17 chapter;

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

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

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

24 (vii) Hazardous materials emergency response training;

25 (viii) Water and environmental health protection and monitoring
26 programs;

27 (ix) Programs authorized under chapter 70.146 RCW;

28 (x) A public participation program, including regional citizen
29 advisory committees;

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

33 (A) The amount and terms of such funding are established under a
34 settlement agreement under RCW 70.105D.040(4); and ~~((when))~~

35 (B) The director has found that the funding will achieve both
36 ~~((A))~~ (I) a substantially more expeditious or enhanced cleanup than
37 would otherwise occur~~((r))~~; and ~~((B))~~ (II) the prevention or
38 mitigation of unfair economic hardship;

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

4 (A) The facility is located within a redevelopment opportunity zone
5 designated under section 5 of this act;

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

8 (C) The director has found the funding meets any additional
9 criteria established in rule by the department, will achieve a
10 substantially more expeditious or enhanced cleanup than would otherwise
11 occur, and will provide a public benefit in addition to cleanup
12 commensurate with the scope of the public funding such as:

13 (I) Public access to an area not otherwise accessible to the
14 public;

15 (II) New or improved public recreational activities;

16 (III) Enhancement of a natural resource habitat that would not
17 otherwise occur; or

18 (IV) Preservation of a historic property listed pursuant to chapter
19 84.26 RCW;

20 (xiii) Development and demonstration of alternative management
21 technologies designed to carry out the hazardous waste management
22 priorities of RCW 70.105.150;

23 ~~((xiii))~~ (xiv) During the 2009-2011 and 2011-2013 fiscal biennia,
24 shoreline update technical assistance;

25 ~~((xiv) During the 2009-2011 fiscal biennium, multijurisdictional~~
26 ~~permitting teams;))~~ and

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

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

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

36 (i) Remedial actions, including planning for adaptive reuse of
37 properties as provided for under (c)(iii) of this subsection (3);

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

1 (iii) Solid waste plans and programs under chapters 70.95, 70.95C,
2 70.95I, and 70.105 RCW;

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

7 (v) Cleanup and disposal of hazardous substances from abandoned or
8 derelict vessels, defined for the purposes of this section as vessels
9 that have little or no value and either have no identified owner or
10 have an identified owner lacking financial resources to clean up and
11 dispose of the vessel, that pose a threat to human health or the
12 environment.

13 (b) Funds for plans and programs shall be allocated consistent with
14 the priorities and matching requirements established in chapters
15 70.105, 70.95C, 70.95I, and 70.95 RCW, except that any applicant that
16 is a Puget Sound partner, as defined in RCW 90.71.010, along with any
17 project that is referenced in the action agenda developed by the Puget
18 Sound partnership under RCW 90.71.310, shall, except as conditioned by
19 RCW 70.105D.120, receive priority for any available funding for any
20 grant or funding programs or sources that use a competitive bidding
21 process. During the 2007-2009 fiscal biennium, moneys in the account
22 may also be used for grants to local governments to retrofit public
23 sector diesel equipment and for storm water planning and implementation
24 activities.

25 (c) To expedite cleanups throughout the state, the department shall
26 partner with local communities and liable (~~parties for cleanups. The~~
27 ~~department is authorized to use~~) persons conducting remedial actions,
28 and may use the following additional strategies in order to facilitate
29 economic development and ensure a healthful environment for future
30 generations:

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

35 (ii) Enter into a grant or loan agreement with a local government
36 prior to it acquiring a property or obtaining necessary access to
37 conduct remedial actions, provided the agreement is conditioned upon

1 the local government acquiring the property or obtaining the access in
2 accordance with a schedule specified in the agreement;

3 (iii) Provide integrated planning grants or loans to local
4 governments to fund studies necessary to facilitate remedial actions at
5 brownfield properties and adaptive reuse of properties following
6 remediation. Eligible activities include: Environmental site
7 assessments; remedial investigations; health assessments; feasibility
8 studies; community involvement; and any environmental analyses under
9 chapter 43.21C RCW;

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

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

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

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

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

26 ~~((ii) The use of outside contracts to conduct necessary studies;~~
27 ~~((iii) The purchase of remedial action cost-cap insurance, when~~
28 ~~necessary to expedite multiparty clean-up efforts)) (vi) When pending
29 grant and loan applications under (c)(iii) and (iv) of this subsection
30 (3) exceed the amount of funds available, designated redevelopment
31 opportunity zones must receive priority for distribution of available
32 funds.~~

33 ~~(d) ((To facilitate and expedite cleanups using funds from the~~
34 ~~local toxics control account, during the 2009-2011 fiscal biennium the~~
35 ~~director may establish grant-funded accounts to hold and disperse local~~
36 ~~toxics control account funds and funds from local governments to be~~
37 ~~used for remedial actions.)) To expedite multiparty clean-up efforts,
38 the department may purchase remedial action cost-cap insurance.~~

1 (4) Except for unanticipated receipts under RCW 43.79.260 through
2 43.79.282, moneys in the state and local toxics control accounts may be
3 spent only after appropriation by statute.

4 (5) Except during the 2009-2011 fiscal biennium, one percent of the
5 moneys deposited into the state and local toxics control accounts shall
6 be allocated only for public participation grants to persons who may be
7 adversely affected by a release or threatened release of a hazardous
8 substance and to not-for-profit public interest organizations. The
9 primary purpose of these grants is to facilitate the participation by
10 persons and organizations in the investigation and remedying of
11 releases or threatened releases of hazardous substances and to
12 implement the state's solid and hazardous waste management priorities.
13 No grant may exceed sixty thousand dollars. Grants may be renewed
14 annually. Moneys appropriated for public participation from either
15 account which are not expended at the close of any biennium shall
16 revert to the state toxics control account.

17 (6) No moneys deposited into either the state or local toxics
18 control account may be used for solid waste incinerator feasibility
19 studies, construction, maintenance, or operation, or, after January 1,
20 2010, for projects designed to address the restoration of Puget Sound,
21 funded in a competitive grant process, that are in conflict with the
22 action agenda developed by the Puget Sound partnership under RCW
23 90.71.310.

24 (7) The department shall adopt rules for grant or loan issuance and
25 performance. To accelerate both remedial action and economic recovery,
26 the department may expedite the adoption of rules necessary to
27 implement this act using the expedited procedures in RCW 34.05.353.
28 The department shall initiate the award of financial assistance by July
29 1, 2012. To ensure the adoption of rules will not delay financial
30 assistance, the department may administer the award of financial
31 assistance through interpretive guidance pending the adoption of rules
32 through July 1, 2013.

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

37 ~~(9) During the 2009-2011 fiscal biennium, the local toxics control~~
38 ~~account may also be used for a standby rescue tug at Neah Bay, local~~

1 ~~government shoreline update grants, private and public sector diesel~~
2 ~~equipment retrofit, and oil spill prevention, preparedness, and~~
3 ~~response activities.~~

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

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

10 **Sec. 11.** RCW 43.84.092 and 2011 1st sp.s. c 16 s 6, 2011 1st sp.s.
11 c 7 s 22, 2011 c 369 s 6, 2011 c 339 s 1, 2011 c 311 s 9, 2011 c 272 s
12 3, 2011 c 120 s 3, and 2011 c 83 s 7 are each reenacted and amended to
13 read as follows:

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

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

32 (3) Except for the provisions of RCW 43.84.160, the treasury income
33 account may be utilized for the payment of purchased banking services
34 on behalf of treasury funds including, but not limited to, depository,
35 safekeeping, and disbursement functions for the state treasury and
36 affected state agencies. The treasury income account is subject in all

1 respects to chapter 43.88 RCW, but no appropriation is required for
2 payments to financial institutions. Payments shall occur prior to
3 distribution of earnings set forth in subsection (4) of this section.

4 (4) Monthly, the state treasurer shall distribute the earnings
5 credited to the treasury income account. The state treasurer shall
6 credit the general fund with all the earnings credited to the treasury
7 income account except:

8 (a) The following accounts and funds shall receive their
9 proportionate share of earnings based upon each account's and fund's
10 average daily balance for the period: The aeronautics account, the
11 aircraft search and rescue account, the brownfield redevelopment trust
12 fund account, the budget stabilization account, the capital vessel
13 replacement account, the capitol building construction account, the
14 Cedar River channel construction and operation account, the Central
15 Washington University capital projects account, the charitable,
16 educational, penal and reformatory institutions account, the cleanup
17 settlement account, the Columbia river basin water supply development
18 account, the Columbia river basin taxable bond water supply development
19 account, the Columbia river basin water supply revenue recovery
20 account, the common school construction fund, the county arterial
21 preservation account, the county criminal justice assistance account,
22 the county sales and use tax equalization account, the deferred
23 compensation administrative account, the deferred compensation
24 principal account, the department of licensing services account, the
25 department of retirement systems expense account, the developmental
26 disabilities community trust account, the drinking water assistance
27 account, the drinking water assistance administrative account, the
28 drinking water assistance repayment account, the Eastern Washington
29 University capital projects account, the Interstate 405 express toll
30 lanes operations account, the education construction fund, the
31 education legacy trust account, the election account, the energy
32 freedom account, the energy recovery act account, the essential rail
33 assistance account, The Evergreen State College capital projects
34 account, the federal forest revolving account, the ferry bond
35 retirement fund, the freight congestion relief account, the freight
36 mobility investment account, the freight mobility multimodal account,
37 the grade crossing protective fund, the public health services account,
38 the health system capacity account, the high capacity transportation

1 account, the state higher education construction account, the higher
2 education construction account, the highway bond retirement fund, the
3 highway infrastructure account, the highway safety account, the high
4 occupancy toll lanes operations account, the hospital safety net
5 assessment fund, the industrial insurance premium refund account, the
6 judges' retirement account, the judicial retirement administrative
7 account, the judicial retirement principal account, the local leasehold
8 excise tax account, the local real estate excise tax account, the local
9 sales and use tax account, the marine resources stewardship trust
10 account, the medical aid account, the mobile home park relocation fund,
11 the motor vehicle fund, the motorcycle safety education account, the
12 multiagency permitting team account, the multimodal transportation
13 account, the municipal criminal justice assistance account, the
14 municipal sales and use tax equalization account, the natural resources
15 deposit account, the oyster reserve land account, the pension funding
16 stabilization account, the perpetual surveillance and maintenance
17 account, the public employees' retirement system plan 1 account, the
18 public employees' retirement system combined plan 2 and plan 3 account,
19 the public facilities construction loan revolving account beginning
20 July 1, 2004, the public health supplemental account, the public
21 transportation systems account, the public works assistance account,
22 the Puget Sound capital construction account, the Puget Sound ferry
23 operations account, the Puyallup tribal settlement account, the real
24 estate appraiser commission account, the recreational vehicle account,
25 the regional mobility grant program account, the resource management
26 cost account, the rural arterial trust account, the rural mobility
27 grant program account, the rural Washington loan fund, the site closure
28 account, the skilled nursing facility safety net trust fund, the small
29 city pavement and sidewalk account, the special category C account, the
30 special wildlife account, the state employees' insurance account, the
31 state employees' insurance reserve account, the state investment board
32 expense account, the state investment board commingled trust fund
33 accounts, the state patrol highway account, the state route number 520
34 civil penalties account, the state route number 520 corridor account,
35 the state wildlife account, the supplemental pension account, the
36 Tacoma Narrows toll bridge account, the teachers' retirement system
37 plan 1 account, the teachers' retirement system combined plan 2 and
38 plan 3 account, the tobacco prevention and control account, the tobacco

1 settlement account, the transportation 2003 account (nickel account),
2 the transportation equipment fund, the transportation fund, the
3 transportation improvement account, the transportation improvement
4 board bond retirement account, the transportation infrastructure
5 account, the transportation partnership account, the traumatic brain
6 injury account, the tuition recovery trust fund, the University of
7 Washington bond retirement fund, the University of Washington building
8 account, the volunteer firefighters' and reserve officers' relief and
9 pension principal fund, the volunteer firefighters' and reserve
10 officers' administrative fund, the Washington judicial retirement
11 system account, the Washington law enforcement officers' and
12 firefighters' system plan 1 retirement account, the Washington law
13 enforcement officers' and firefighters' system plan 2 retirement
14 account, the Washington public safety employees' plan 2 retirement
15 account, the Washington school employees' retirement system combined
16 plan 2 and 3 account, the Washington state economic development
17 commission account, the Washington state health insurance pool account,
18 the Washington state patrol retirement account, the Washington State
19 University building account, the Washington State University bond
20 retirement fund, the water pollution control revolving fund, and the
21 Western Washington University capital projects account. Earnings
22 derived from investing balances of the agricultural permanent fund, the
23 normal school permanent fund, the permanent common school fund, the
24 scientific permanent fund, and the state university permanent fund
25 shall be allocated to their respective beneficiary accounts.

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

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

35 NEW SECTION. **Sec. 12.** If any provision of this act or its
36 application to any person or circumstance is held invalid, the

1 remainder of the act or the application of the provision to other
2 persons or circumstances is not affected."

3 Correct the title.

EFFECT: Removes economic and job development opportunities that would not otherwise occur from the list of criteria for funding that will provide a public benefit in addition to cleanup commensurate with the scope of the public funding.

Limits the department of ecology to funding the following list of eligible activities when making integrated planning grants or loans to local governments to facilitate remedial actions and adaptive reuse of brownfield properties: Environmental site assessments, remedial investigations, health assessments, feasibility studies, community involvement, and any environmental analyses under the state environmental policy act.

Removes the following activities from eligibility: Site planning, land use and regulatory analyses, building and infrastructure assessments, and economic and fiscal analyses.

--- END ---