
ENGROSSED SECOND SUBSTITUTE SENATE BILL 5296

State of Washington

63rd Legislature

2013 Regular Session

By Senate Ways & Means (originally sponsored by Senators Ericksen, Baumgartner, Rivers, Bailey, Delvin, and Honeyford)

READ FIRST TIME 04/15/13.

1 AN ACT Relating to the model toxics control act; amending RCW
2 70.105D.020, 70.105D.030, 70.105D.040, 70.105D.050, and 70.105.280;
3 reenacting and amending RCW 70.105D.070, 43.84.092, and 43.84.092;
4 adding new sections to chapter 70.105D RCW; adding a new section to
5 chapter 70.105 RCW; creating new sections; providing an effective date;
6 providing a contingent effective date; providing a contingent
7 expiration date; and declaring an emergency.

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

9 NEW SECTION. **Sec. 1.** The legislature finds that there are a large
10 number of toxic waste sites that have been identified in the department
11 of ecology's priority list as ready for immediate cleanup. The
12 legislature further finds that addressing the cleanup of these toxic
13 waste sites will provide needed jobs to citizens of Washington state.
14 It is the intent of the legislature to prioritize the spending of
15 revenues under chapter 70.105D RCW, the model toxics control act, on
16 cleaning up the most toxic sites, while also providing jobs in
17 communities around the state.

1 **Sec. 2.** RCW 70.105D.020 and 2007 c 104 s 18 are each amended to
2 read as follows:

3 The definitions in this section apply throughout this chapter
4 unless the context clearly requires otherwise.

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

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

15 (3) "Director" means the director of ecology or the director's
16 designee.

17 (4) "Environmental covenant" has the same meaning as defined in RCW
18 64.70.020.

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

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

30 (7)(a) "Fiduciary" means a person acting for the benefit of another
31 party as a bona fide trustee; executor; administrator; custodian;
32 guardian of estates or guardian ad litem; receiver; conservator;
33 committee of estates of incapacitated persons; trustee in bankruptcy;
34 trustee, under an indenture agreement, trust agreement, lease, or
35 similar financing agreement, for debt securities, certificates of
36 interest or certificates of participation in debt securities, or other
37 forms of indebtedness as to which the trustee is not, in the capacity

1 of trustee, the lender. Except as provided in subsection (17)(b)(iii)
2 of this section, the liability of a fiduciary under this chapter shall
3 not exceed the assets held in the fiduciary capacity.

4 (b) "Fiduciary" does not mean:

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

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

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

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

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

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

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

33 (9) "Foreclosure and its equivalents" means purchase at a
34 foreclosure sale, acquisition, or assignment of title in lieu of
35 foreclosure, termination of a lease, or other repossession, acquisition
36 of a right to title or possession, an agreement in satisfaction of the
37 obligation, or any other comparable formal or informal manner, whether
38 pursuant to law or under warranties, covenants, conditions,

1 representations, or promises from the borrower, by which the holder
2 acquires title to or possession of a facility securing a loan or other
3 obligation.

4 (10) "Hazardous substance" means:

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

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

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

14 (d) Petroleum or petroleum products; and

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

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

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

37 (12) "Independent remedial actions" means remedial actions

1 conducted without department oversight or approval, and not under an
2 order, agreed order, or consent decree.

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

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

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

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

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

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

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

24 (32) "Local government" means any political subdivision of the
25 state, including a town, city, county, special purpose district, or
26 other municipal corporation, including brownfield renewal authority
27 created under section 5 of this act.

28 (33) "Model remedy" or "model remedial action" means a set of
29 technologies, procedures, and monitoring protocols identified by the
30 department for use in routine types of clean-up projects at facilities
31 that have common features and lower risk to human health and the
32 environment.

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

36 (35) "Redevelopment opportunity zone" means a geographic area
37 designated under section 4 of this act.

1 NEW SECTION. **Sec. 3.** A new section is added to chapter 70.105D
2 RCW to read as follows:

3 (1) The brownfield redevelopment trust fund account is created in
4 the state treasury. All receipts from the sources identified in
5 subsection (2) of this section must be deposited into the account.
6 Moneys in the account may be spent only after appropriation.
7 Expenditures from the account may be used only as identified in
8 subsection (4) of this section.

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

11 (a) Moneys appropriated by the legislature to the account for a
12 specific redevelopment opportunity zone established under section 4 of
13 this act or a specific brownfield renewal authority established under
14 section 5 of this act;

15 (b) Moneys voluntarily deposited in the account for a specific
16 redevelopment opportunity zone or a specific brownfield renewal
17 authority; and

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

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

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

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

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

34 (7) The local government designating the redevelopment opportunity
35 zone under section 4 of this act or the associated brownfield renewal
36 authority created under section 5 of this act must be the beneficiary
37 of the deposited moneys.

1 (8) All expenditures must be used to conduct remediation and
2 cleanup consistent with a plan for the remediation and cleanup of the
3 properties or facilities approved by the department under this chapter.
4 All expenditures must meet the eligibility requirements for the use by
5 local governments under the rules for remedial action grants adopted by
6 the department under this chapter, including requirements for the
7 expenditure of nonstate match funding.

8 (9) Beginning October 31, 2015, the department must provide a
9 biennial report to the office of financial management and the
10 legislature regarding the activity for each specific redevelopment
11 opportunity zone or specific brownfield renewal authority for which
12 specific legislative appropriation was provided in the previous two
13 fiscal years.

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

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

27 (12) The department is authorized to adopt rules to implement this
28 section.

29 NEW SECTION. **Sec. 4.** A new section is added to chapter 70.105D
30 RCW to read as follows:

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

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

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

5 (c) The cleanup of brownfield properties will be integrated with
6 planning for the future uses of the properties and is consistent with
7 the comprehensive land use plan for the zone; and

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

10 (2) A port district may designate a redevelopment opportunity zone
11 when:

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

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

17 (c) The port district either:

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

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

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

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

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

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

12 (4) If the department determines that substantial progress has not
13 been made on the plan approved under section 3 of this act by the
14 brownfield renewal authority within six years of a city, county, or
15 port district establishing a brownfield renewal authority, the
16 department may require dissolution of the brownfield renewal authority.
17 Upon dissolution of the brownfield renewal authority, except as
18 provided in section 3 of this act, all assets and liabilities transfer
19 to the city, town, or port district establishing the brownfield renewal
20 authority.

21 **Sec. 6.** RCW 70.105D.030 and 2009 c 560 s 10 are each amended to
22 read as follows:

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

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

1 (b) Conduct, provide for conducting, or require potentially liable
2 persons to conduct remedial actions (including investigations under (a)
3 of this subsection) to remedy releases or threatened releases of
4 hazardous substances. In carrying out such powers, the department's
5 authorized employees, agents, or contractors may enter upon property.
6 The department shall give reasonable notice before entering property
7 unless an emergency prevents such notice. In conducting, providing
8 for, or requiring remedial action, the department shall give preference
9 to permanent solutions to the maximum extent practicable and shall
10 provide for or require adequate monitoring to ensure the effectiveness
11 of the remedial action;

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

15 (d) Carry out all state programs authorized under the federal
16 cleanup law and the federal resource, conservation, and recovery act,
17 42 U.S.C. Sec. 6901 et seq., as amended;

18 (e) Classify substances as hazardous substances for purposes of RCW
19 70.105D.020 and classify substances and products as hazardous
20 substances for purposes of RCW 82.21.020(1);

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

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

35 (h) Require holders to conduct remedial actions necessary to abate
36 an imminent or substantial endangerment pursuant to RCW
37 70.105D.020(17)(b)(ii)(C);

1 (i) Provide informal advice and assistance to persons regarding the
2 administrative and technical requirements of this chapter. This may
3 include site-specific advice to persons who are conducting or otherwise
4 interested in independent remedial actions. Any such advice or
5 assistance shall be advisory only, and shall not be binding on the
6 department. As a part of providing this advice and assistance for
7 independent remedial actions, the department may prepare written
8 opinions regarding whether the independent remedial actions or
9 proposals for those actions meet the substantive requirements of this
10 chapter or whether the department believes further remedial action is
11 necessary at the facility. Nothing in this chapter may be construed to
12 preclude the department from issuing a written opinion on whether
13 further remedial action is necessary at any portion of the real
14 property located within a facility, even if further remedial action is
15 still necessary elsewhere at the same facility. Such a written opinion
16 on a portion of a facility must also provide an opinion on the status
17 of the facility as a whole. The department may collect, from persons
18 requesting advice and assistance, the costs incurred by the department
19 in providing such advice and assistance; however, the department shall,
20 where appropriate, waive collection of costs in order to provide an
21 appropriate level of technical assistance in support of public
22 participation. The state, the department, and officers and employees
23 of the state are immune from all liability, and no cause of action of
24 any nature may arise from any act or omission in providing, or failing
25 to provide, informal advice and assistance. The department must track
26 the number of requests for reviews of planned or completed independent
27 remedial actions and establish performance measures to track how
28 quickly the department is able to respond to those requests. By
29 November 1, 2015, the department must submit to the governor and the
30 appropriate legislative fiscal and policy committees a report on
31 achieving the performance measures and provide recommendations for
32 improving performance, including staffing needs; ((and))

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

1 (k) Establish model remedies for common categories of facilities,
2 types of hazardous substances, types of media, or geographic areas to
3 streamline and accelerate the selection of remedies for routine types
4 of cleanups at facilities;

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

6 (A) Identify the requirements for characterizing a facility to
7 select a model remedy, the applicability of the model remedy for use at
8 a facility, and monitoring requirements;

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

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

15 (ii) When developing model remedies, the department shall solicit
16 and consider proposals from qualified persons. The proposals must, in
17 addition to describing the model remedy, provide the information
18 required under (k)(i)(A) and (B) of this subsection;

19 (iii) If a facility meets the requirements for use of a model
20 remedy, an analysis of the feasibility of alternative remedies is not
21 required under this chapter. For department-conducted and department-
22 supervised remedial actions, the department must provide public notice
23 and consider public comments on the proposed use of a model remedy at
24 a facility. The department shall waive collection of its costs for
25 providing a written opinion under (i) of this subsection on a cleanup
26 that qualifies for and appropriately uses a model remedy; and

27 (1) Take any other actions necessary to carry out the provisions of
28 this chapter, including the power to adopt rules under chapter 34.05
29 RCW.

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

34 (a) Provide for public participation, including at least (i) public
35 notice of the development of investigative plans or remedial plans for
36 releases or threatened releases and (ii) concurrent public notice of
37 all compliance orders, agreed orders, enforcement orders, or notices of
38 violation;

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

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

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

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

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

30 (3) To achieve and protect the state's long-term ecological health,
31 the department shall (~~prioritize sufficient funding~~) plan to clean up
32 hazardous waste sites and prevent the creation of future hazards due to
33 improper disposal of toxic wastes(~~(, and create financing tools to~~
34 ~~clean up large scale hazardous waste sites requiring multiyear~~
35 ~~commitments~~)) at a pace that matches the estimated cash resources in
36 the state and local toxics control accounts and the environmental
37 legacy stewardship account created in section 10 of this act.
38 Estimated cash resources must consider the annual cash flow

1 requirements of major projects that receive appropriations expected to
2 cross multiple biennia. To effectively monitor toxic accounts
3 expenditures, the department shall develop a comprehensive ten-year
4 financing report that identifies long-term remedial action project
5 costs, tracks expenses, and projects future needs.

6 (4) By November 1, 2016, the department must submit to the governor
7 and the appropriate legislative committees a report on the status of
8 developing model remedies and their use under this chapter. The report
9 must include: The number and types of model remedies identified by the
10 department under subsection (1)(k) of this section; the number and
11 types of model remedy proposals prepared by qualified private sector
12 engineers, consultants, or contractors that were accepted or rejected
13 under subsection (1)(k) of this section and the reasons for rejection;
14 and the success of model remedies in accelerating the cleanup as
15 measured by the number of jobs created by the cleanup, where this
16 information is available to the department, acres of land restored, and
17 the number and types of hazardous waste sites successfully remediated
18 using model remedies.

19 (5) Before ((December)) September 20th of each even-numbered year,
20 the department shall:

21 (a) Develop a comprehensive ten-year financing report in
22 coordination with all local governments with clean-up responsibilities
23 that identifies the projected biennial hazardous waste site remedial
24 action needs that are eligible for funding from the state and local
25 toxics control account and the environmental legacy stewardship
26 account;

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

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

32 (d) Project the remedial action need, cost, revenue, and any
33 recommended working capital reserve estimate to the next biennium's
34 long-term remedial action needs from both the local ((~~toxics control~~
35 ~~account~~)) and ((~~the~~)) state toxics control account and the
36 environmental legacy stewardship account, and submit this information
37 to the appropriate standing fiscal and environmental committees of the

1 senate and house of representatives. This submittal must also include
2 a ranked list of such remedial action projects for both accounts(~~(i~~ and
3 ~~(e)~~)). The submittal must also identify separate budget estimates
4 for large, multibiennia clean-up projects that exceed ten million
5 dollars. The department shall prepare its ten-year capital budget plan
6 that is submitted to the office of financial management to reflect the
7 separate budget estimates for these large clean-up projects and include
8 information on the anticipated private and public funding obligations
9 for completion of the relevant projects.

10 (6) By December 1st of each odd-numbered year, the department must
11 provide the legislature and the public ((each year with an accounting))
12 a report of the department's activities supported by appropriations
13 from the state and local toxics control accounts(~~(, including a list of~~
14 known hazardous waste sites and their hazard rankings, actions taken
15 and planned at each site, how the department is meeting its waste
16 management priorities under RCW 70.105.150, and all funds expended
17 under this chapter)) and the environmental legacy stewardship account.
18 The report must be prepared and displayed in a manner that allows the
19 legislature and the public to easily determine the statewide and local
20 progress made in cleaning up hazardous waste sites under this chapter.
21 The report must include, at a minimum:

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

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

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

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

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

35 (B) Remedial investigation;

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

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

1 (E) Operation and maintenance or monitoring of the constructed
2 remedy; and

3 (F) The final completion date.

4 ~~((+5+))~~ (7) The department shall establish a program to identify
5 potential hazardous waste sites and to encourage persons to provide
6 information about hazardous waste sites.

7 ~~((+6+))~~ (8) For all facilities where an environmental covenant has
8 been required under subsection (1)(f) of this section, including all
9 facilities where the department has required an environmental covenant
10 under an order, agreed order, or consent decree, or as a condition of
11 a written opinion issued under the authority of subsection (1)(i) of
12 this section, the department shall periodically review the
13 environmental covenant for effectiveness. Except as otherwise provided
14 in (c) of this subsection, the department shall conduct a review at
15 least once every five years after an environmental covenant is
16 recorded.

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

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

21 (ii) A physical inspection of the real property subject to the
22 environmental covenant to determine compliance with the environmental
23 covenant, including whether any development or redevelopment of the
24 real property has violated the terms of the environmental covenant; and

25 (iii) A review of the effectiveness of the environmental covenant
26 in limiting or prohibiting activities that may interfere with the
27 integrity of the remedial action or that may result in exposure to or
28 migration of hazardous substances. This shall include a review of
29 available monitoring data.

30 (b) If an environmental covenant has been amended or terminated
31 without proper authority, or if the terms of an environmental covenant
32 have been violated, or if the environmental covenant is no longer
33 effective in limiting or prohibiting activities that may interfere with
34 the integrity of the remedial action or that may result in exposure to
35 or migration of hazardous substances, then the department shall take
36 any and all appropriate actions necessary to ensure compliance with the
37 environmental covenant and the policies and requirements of this
38 chapter.

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

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

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

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

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

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

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

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

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

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

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

22 (c) Any person who owned or possessed a hazardous substance and who
23 by contract, agreement, or otherwise arranged for disposal or treatment
24 of the hazardous substance at the facility, or arranged with a
25 transporter for transport for disposal or treatment of the hazardous
26 substances at the facility, or otherwise generated hazardous wastes
27 disposed of or treated at the facility;

28 (d) Any person (i) who accepts or accepted any hazardous substance
29 for transport to a disposal, treatment, or other facility selected by
30 such person from which there is a release or a threatened release for
31 which remedial action is required, unless such facility, at the time of
32 disposal or treatment, could legally receive such substance; or (ii)
33 who accepts a hazardous substance for transport to such a facility and
34 has reasonable grounds to believe that such facility is not operated in
35 accordance with chapter 70.105 RCW; and

36 (e) Any person who both sells a hazardous substance and is

1 responsible for written instructions for its use if (i) the substance
2 is used according to the instructions and (ii) the use constitutes a
3 release for which remedial action is required at the facility.

4 (2) Each person who is liable under this section is strictly
5 liable, jointly and severally, for all remedial action costs and for
6 all natural resource damages resulting from the releases or threatened
7 releases of hazardous substances. The attorney general, at the request
8 of the department, is empowered to recover all costs and damages from
9 persons liable therefor.

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

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

14 (i) An act of God;

15 (ii) An act of war; or

16 (iii) An act or omission of a third party (including but not
17 limited to a trespasser) other than (A) an employee or agent of the
18 person asserting the defense, or (B) any person whose act or omission
19 occurs in connection with a contractual relationship existing, directly
20 or indirectly, with the person asserting this defense to liability.
21 This defense only applies where the person asserting the defense has
22 exercised the utmost care with respect to the hazardous substance, the
23 foreseeable acts or omissions of the third party, and the foreseeable
24 consequences of those acts or omissions;

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

32 (i) To establish that a person had no reason to know, the person
33 must have undertaken, at the time of acquisition, all appropriate
34 inquiry into the previous ownership and uses of the property,
35 consistent with good commercial or customary practice in an effort to
36 minimize liability. Any court interpreting this subsection (3)(b)
37 shall take into account any specialized knowledge or experience on the
38 part of the person, the relationship of the purchase price to the value

1 of the property if uncontaminated, commonly known or reasonably
2 ascertainable information about the property, the obviousness of the
3 presence or likely presence of contamination at the property, and the
4 ability to detect such contamination by appropriate inspection;

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

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

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

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

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

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

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

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

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

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

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

22 (ii) The stay of enforcement under this subsection does not apply
23 if the consent decree was based on circumstances unique to the settling
24 party that do not exist with regard to the successor in interest, such
25 as financial hardship. For consent decrees entered into before July
26 27, 1997, at the request of a settling party or a potential successor
27 owner or operator, the attorney general shall issue a written opinion
28 on whether a consent decree contains such unique circumstances. For
29 all other consent decrees, such unique circumstances shall be specified
30 in the consent decree.

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

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

1 (i) The settlement will yield substantial new resources to
2 facilitate cleanup;

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

5 (iii) Based on available information, the department determines
6 that the redevelopment or reuse of the facility is not likely to
7 contribute to the existing release or threatened release, interfere
8 with remedial actions that may be needed at the ~~((site))~~ facility, or
9 increase health risks to persons at or in the vicinity of the ~~((site))~~
10 facility.

11 (b) The legislature recognizes that the state does not have
12 adequate resources to participate in all property transactions
13 involving contaminated property. The primary purpose of this
14 subsection (5) is to promote the cleanup and reuse of ~~((vacant-or~~
15 ~~abandoned-commercial-or-industrial-contaminated))~~ brownfield property.
16 The attorney general and the department may give priority to
17 settlements that will provide a substantial public benefit~~((~~
18 ~~including,-but-not-limited-to-the-reuse-of-a-vacant-or-abandoned~~
19 ~~manufacturing-or-industrial-facility,-or-the-development-of-a-facility~~
20 ~~by-a-governmental-entity-to-address-an-important-public-purpose))~~ in
21 addition to cleanup.

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

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

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

1 **Sec. 8.** 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. 9.** RCW 70.105D.070 and 2012 2nd sp.s. c 7 s 920 and 2012 2nd
29 sp.s. c 2 s 6005 are each reenacted and amended to read as follows:

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

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

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

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

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

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

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

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

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

19 ~~(vii) Hazardous materials emergency response training;~~

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

22 ~~(ix) Programs authorized under chapter 70.146 RCW;~~

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

25 ~~(xi) Public funding to assist potentially liable persons to pay for~~
26 ~~the costs of remedial action in compliance with cleanup standards under~~
27 ~~RCW 70.105D.030(2)(e) but only when the amount and terms of such~~
28 ~~funding are established under a settlement agreement under RCW~~
29 ~~70.105D.040(4) and when the director has found that the funding will~~
30 ~~achieve both (A) a substantially more expeditious or enhanced cleanup~~
31 ~~than would otherwise occur, and (B) the prevention or mitigation of~~
32 ~~unfair economic hardship;~~

33 ~~(xii) Development and demonstration of alternative management~~
34 ~~technologies designed to carry out the hazardous waste management~~
35 ~~priorities of RCW 70.105.150;~~

36 ~~(xiii) During the 2009-2011 and 2011-2013 fiscal biennia, shoreline~~
37 ~~update technical assistance;~~

1 ~~(xiv) During the 2009-2011 fiscal biennium, multijurisdictional~~
2 ~~permitting teams;~~

3 ~~(xv) During the 2011-2013 fiscal biennium, actions for reducing~~
4 ~~public exposure to toxic air pollution, and actions taken through the~~
5 ~~family forest fish passage program to correct barriers to fish passage~~
6 ~~on privately owned small forest lands; and~~

7 ~~(xvi) During the 2011-2013 fiscal biennium, the department of~~
8 ~~ecology's water quality, shorelands and environmental assessment,~~
9 ~~hazardous waste, waste to resources, nuclear waste, and air quality~~
10 ~~programs.~~

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

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

18 ~~(i) Remedial actions;~~

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

20 ~~(iii) Solid waste plans and programs under chapters 70.95, 70.95C,~~
21 ~~70.95I, and 70.105 RCW;~~

22 ~~(iv) Funds for a program to assist in the assessment and cleanup of~~
23 ~~sites of methamphetamine production, but not to be used for the initial~~
24 ~~containment of such sites, consistent with the responsibilities and~~
25 ~~intent of RCW 69.50.511; and~~

26 ~~(v) Cleanup and disposal of hazardous substances from abandoned or~~
27 ~~derelict vessels, defined for the purposes of this section as vessels~~
28 ~~that have little or no value and either have no identified owner or~~
29 ~~have an identified owner lacking financial resources to clean up and~~
30 ~~dispose of the vessel, that pose a threat to human health or the~~
31 ~~environment.~~

32 ~~(b) Funds for plans and programs shall be allocated consistent with~~
33 ~~the priorities and matching requirements established in chapters~~
34 ~~70.105, 70.95C, 70.95I, and 70.95 RCW, except that any applicant that~~
35 ~~is a Puget Sound partner, as defined in RCW 90.71.010, along with any~~
36 ~~project that is referenced in the action agenda developed by the Puget~~
37 ~~Sound partnership under RCW 90.71.310, shall, except as conditioned by~~
38 ~~RCW 70.105D.120, receive priority for any available funding for any~~

1 ~~grant or funding programs or sources that use a competitive bidding~~
2 ~~process. During the 2007-2009 fiscal biennium, moneys in the account~~
3 ~~may also be used for grants to local governments to retrofit public~~
4 ~~sector diesel equipment and for storm water planning and implementation~~
5 ~~activities.~~

6 ~~(c) To expedite cleanups throughout the state, the department shall~~
7 ~~partner with local communities and liable parties for cleanups. The~~
8 ~~department is authorized to use the following additional strategies in~~
9 ~~order to ensure a healthful environment for future generations:~~

10 ~~(i) The director may alter grant matching requirements to create~~
11 ~~incentives for local governments to expedite cleanups when one of the~~
12 ~~following conditions exists:~~

13 ~~(A) Funding would prevent or mitigate unfair economic hardship~~
14 ~~imposed by the clean up liability;~~

15 ~~(B) Funding would create new substantial economic development,~~
16 ~~public recreational, or habitat restoration opportunities that would~~
17 ~~not otherwise occur; or~~

18 ~~(C) Funding would create an opportunity for acquisition and~~
19 ~~redevelopment of vacant, orphaned, or abandoned property under RCW~~
20 ~~70.105D.040(5) that would not otherwise occur;~~

21 ~~(ii) The use of outside contracts to conduct necessary studies;~~

22 ~~(iii) The purchase of remedial action cost cap insurance, when~~
23 ~~necessary to expedite multiparty clean up efforts.~~

24 ~~(d) To facilitate and expedite cleanups using funds from the local~~
25 ~~toxics control account, during the 2009-2011 fiscal biennium the~~
26 ~~director may establish grant funded accounts to hold and disperse local~~
27 ~~toxics control account funds and funds from local governments to be~~
28 ~~used for remedial actions.~~

29 ~~(4) Except for unanticipated receipts under RCW 43.79.260 through~~
30 ~~43.79.282, moneys in the state and local toxics control accounts may be~~
31 ~~spent only after appropriation by statute.~~

32 ~~(5) Except during the 2011-2013 fiscal biennium, one percent of the~~
33 ~~moneys deposited into the state and local toxics control accounts shall~~
34 ~~be allocated only for public participation grants to persons who may be~~
35 ~~adversely affected by a release or threatened release of a hazardous~~
36 ~~substance and to not-for-profit public interest organizations. The~~
37 ~~primary purpose of these grants is to facilitate the participation by~~
38 ~~persons and organizations in the investigation and remedying of~~

1 releases — or — threatened — releases — of — hazardous — substances — and — to
2 implement the state's solid and hazardous waste management priorities.
3 No grant may exceed sixty thousand dollars. Grants may be renewed
4 annually. Moneys appropriated for public participation from either
5 account which are not expended at the close of any biennium shall
6 revert to the state toxics control account.

7 (6) No moneys deposited into either the state or local toxics
8 control account may be used for solid waste incinerator feasibility
9 studies, construction, maintenance, or operation, or, after January 1,
10 2010, for projects designed to address the restoration of Puget Sound,
11 funded in a competitive grant process, that are in conflict with the
12 action agenda developed by the Puget Sound partnership under RCW
13 90.71.310.

14 (7) The department shall adopt rules for grant or loan issuance and
15 performance.

16 (8) During the 2011-2013 fiscal biennium, the legislature may
17 transfer from the local toxics control account to the state toxics
18 control account such amounts as reflect excess fund balance in the
19 account.

20 (9) During the 2011-2013 fiscal biennium, the local toxics control
21 account may also be used for local government shoreline update grants
22 and actions for reducing public exposure to toxic air pollution;
23 funding to local governments for flood levee improvements; and grants
24 to local governments for brownfield redevelopment.) (a) Moneys
25 collected under RCW 82.21.030 must be deposited as follows: Fifty-six
26 percent to the state toxics control account under subsection (2) of
27 this section and forty-four percent to the local toxics control account
28 under subsection (3) of this section. When the cumulative amount of
29 deposits made to the state and local toxics control accounts under this
30 section reaches the limit during a fiscal year as established in (b) of
31 this subsection, the remainder of the moneys collected under RCW
32 82.21.030 during that fiscal year must be deposited into the
33 environmental legacy stewardship account created in section 10 of this
34 act.

35 (b) The limit on distributions of moneys collected under RCW
36 82.21.030 to the state and local toxics control accounts for the fiscal
37 year beginning July 1, 2013, is one hundred fifteen million dollars.

1 This limit for each succeeding fiscal year must be increased by a
2 percentage rate that equals the fiscal growth factor as defined in RCW
3 43.135.025.

4 (c) In addition to the funds required under (a) of this subsection,
5 the following moneys must be deposited into the state toxics control
6 account: (i) The costs of remedial actions recovered under this
7 chapter or chapter 70.105A RCW; (ii) penalties collected or recovered
8 under this chapter; and (iii) any other money appropriated or
9 transferred to the account by the legislature.

10 (2) Moneys in the state toxics control account must be used only to
11 carry out the purposes of this chapter and must be expended for the
12 following:

13 (a)(i) The state's responsibility for hazardous waste planning,
14 management, regulation, enforcement, technical assistance, and public
15 education required under chapter 70.105 RCW;

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

19 (iii) The hazardous waste clean-up program required under this
20 chapter;

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

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

24 (vi) State government programs for the safe reduction, recycling,
25 or disposal of paint and hazardous wastes from households, small
26 businesses, and agriculture;

27 (vii) Oil and hazardous materials spill prevention, preparedness,
28 training, and response activities;

29 (viii) Water and environmental health protection and monitoring
30 programs;

31 (ix) Programs authorized under chapter 70.146 RCW;

32 (x) Development and demonstration of alternative management
33 technologies designed to carry out the hazardous waste management
34 priorities of RCW 70.105.150;

35 (xi) State agriculture and health programs for the safe use,
36 reduction, recycling, or disposal of pesticides;

37 (xii) Storm water pollution control projects and activities that

1 protect or preserve existing remedial actions or prevent hazardous
2 clean-up sites;

3 (xiii) Funding requirements to maintain receipt of federal funds
4 under the federal solid waste disposal act (42 U.S.C. Sec. 6901 et
5 seq.);

6 (xiv) Air quality programs and actions for reducing public exposure
7 to toxic air pollution;

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

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

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

15 (C) The director has found the funding meets any additional
16 criteria established in rule by the department, will achieve a
17 substantially more expeditious or enhanced cleanup than would otherwise
18 occur, and will provide a public benefit in addition to cleanup
19 commensurate with the scope of the public funding; and

20 (xvi) Public funding to assist potentially liable persons to pay
21 for the costs of remedial action in compliance with clean-up standards
22 under RCW 70.105D.030(2)(e) but only when the amount and terms of such
23 funding are established under a settlement agreement under RCW
24 70.105D.040(4) and when the director has found that the funding will
25 achieve both: (A) A substantially more expeditious or enhanced cleanup
26 than would otherwise occur; and (B) the prevention or mitigation of
27 unfair economic hardship.

28 (b) Priority for use of the funds is given to:

29 (i) Cleanup of high priority sites on the department's hazardous
30 sites list that have a draft or preliminary remedial investigation or
31 feasibility study on file with the department, a completed remedial
32 investigation or feasibility study, or a finalized clean-up action
33 plan, and are prepared to begin the clean-up action;

34 (ii) Cleanup of brownfield properties to make land available for
35 economic and job development opportunities that would not otherwise
36 occur; and

37 (iii) Cleanup of hazardous waste sites where public funding to
38 assist potentially liable persons is authorized under (a)(xvi) of this

1 subsection and when the potentially liable persons have a draft or
2 preliminary remedial investigation or feasibility study on file with
3 the department, a completed remedial investigation or feasibility
4 study, or a finalized clean-up action plan, and are prepared to begin
5 the clean-up action.

6 (3)(a) The department shall use moneys deposited in the local
7 toxics control account for grants to local governments for the
8 following purposes:

9 (i) Remedial actions, including planning for adaptive reuse of
10 properties as provided for under (c)(iv) of this subsection;

11 (ii) Extended grant agreements entered into under (c)(i) of this
12 subsection;

13 (iii) Storm water pollution source projects that: (A) Work in
14 conjunction with a remedial action; (B) protect completed remedial
15 actions against recontamination; or (C) prevent hazardous clean-up
16 sites;

17 (iv) Hazardous waste plans and programs under chapter 70.105 RCW;

18 (v) Solid waste plans and programs under chapters 70.95, 70.95C,
19 70.95I, and 70.105 RCW; and

20 (vi) Public funding to assist potentially liable persons to pay for
21 the costs of remedial action in compliance with clean-up standards
22 under RCW 70.105D.030(2)(e) but only when the amount and terms of such
23 funding are established under a settlement agreement under RCW
24 70.105D.040(4) and when the director has found that the funding will
25 achieve both: (A) A substantially more expeditious or enhanced cleanup
26 than would otherwise occur; and (B) the prevention or mitigation of
27 unfair economic hardship.

28 (b) To expedite clean-up projects throughout the state, funding is
29 prioritized for:

30 (i) High priority sites identified on the department's hazardous
31 site list, that have a draft or preliminary remedial investigation or
32 feasibility study on file with the department, a completed remedial
33 investigation or feasibility study, or a finalized clean-up action
34 plan, and are prepared to begin the clean-up action;

35 (ii) Brownfield properties that are available for economic and job
36 development opportunities that would not otherwise occur; and

37 (iii) Public funding to assist potentially liable persons meeting
38 the requirements under (a)(vi) of this subsection when the potentially

1 liable persons have a draft or preliminary remedial investigation or
2 feasibility study on file with the department, a completed remedial
3 investigation or feasibility study, or a finalized clean-up action
4 plan.

5 (c) To expedite cleanups throughout the state, the department may
6 use the following strategies when providing grants to local governments
7 under this subsection:

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

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

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

19 (C) The department may not allocate future funding to an extended
20 grant agreement unless the local government has demonstrated to the
21 department that funds awarded under the agreement during the previous
22 biennium have been substantially expended or contracts have been
23 entered into to substantially expend the funds;

24 (ii) Enter into a grant agreement with a local government
25 conducting a remedial action that provides for periodic reimbursement
26 of remedial action costs as they are incurred as established in the
27 agreement;

28 (iii) Enter into a grant agreement with a local government prior to
29 it acquiring a property or obtaining necessary access to conduct
30 remedial actions, provided the agreement is conditioned upon the local
31 government acquiring the property or obtaining the access in accordance
32 with a schedule specified in the agreement;

33 (iv) Provide integrated planning grants to local governments to
34 fund studies necessary to facilitate remedial actions at brownfield
35 properties and adaptive reuse of properties following remediation.
36 Eligible activities include, but are not limited to: Environmental
37 site assessments; remedial investigations; health assessments;
38 feasibility studies; site planning; community involvement; land use and

1 regulatory analyses; building and infrastructure assessments; economic
2 and fiscal analyses; and any environmental analyses under chapter
3 43.21C RCW;

4 (v) Provide grants to local governments for remedial actions
5 related to areawide groundwater contamination. To receive the funding,
6 the local government does not need to be a potentially liable person or
7 be required to seek reimbursement of grant funds from a potentially
8 liable person;

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

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

14 (B) Funding would create new substantial economic development,
15 public recreational opportunities, or habitat restoration opportunities
16 that would not otherwise occur; or

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

20 (vii) When pending grant applications under (c)(iv) and (v) of this
21 subsection (3) exceed the amount of funds available, designated
22 redevelopment opportunity zones must receive priority for distribution
23 of available funds.

24 (d) To expedite multiparty clean-up efforts, the department may
25 purchase remedial action cost-cap insurance.

26 (4) Funds for plans and programs must be allocated consistent with
27 matching requirements established in chapters 70.95, 70.95C, 70.95I,
28 and 70.105 RCW.

29 (5) Except for unanticipated receipts under RCW 43.79.260 through
30 43.79.282, moneys in the state and local toxics control accounts may be
31 spent only after appropriation by statute.

32 (6) No moneys deposited into either the state or local toxics
33 control account may be used for: Natural disasters where there is no
34 hazardous substance contamination; high performance buildings; solid
35 waste incinerator and organic composting facility feasibility studies,
36 construction, maintenance, or operation; or after January 1, 2010, for
37 projects designed to address the restoration of Puget Sound, funded in
38 a competitive grant process, that are in conflict with the action

1 agenda developed by the Puget Sound partnership under RCW 90.71.310.
2 However, this subsection does not prevent an appropriation from the
3 state toxics control account to the department of revenue to enforce
4 compliance with the hazardous substance tax imposed in chapter 82.21
5 RCW.

6 (7) Except during the 2011-2013 fiscal biennium, one percent of the
7 moneys deposited into the state and local toxics control accounts shall
8 be allocated only for public participation grants to persons who may be
9 adversely affected by a release or threatened release of a hazardous
10 substance and to not-for-profit public interest organizations. The
11 primary purpose of these grants is to facilitate the participation by
12 persons and organizations in the investigation and remedying of
13 releases or threatened releases of hazardous substances and to
14 implement the state's solid and hazardous waste management priorities.
15 No grant may exceed sixty thousand dollars. Grants may be renewed
16 annually. Moneys appropriated for public participation from either
17 account that are not expended at the close of any biennium revert to
18 the state toxics control account.

19 (8) The department shall adopt rules for grant issuance and
20 performance. To accelerate both remedial action and economic recovery,
21 the department may expedite the adoption of rules necessary to
22 implement this act using the expedited procedures in RCW 34.05.353.
23 The department shall initiate the award of financial assistance by
24 August 1, 2013. To ensure the adoption of rules will not delay
25 financial assistance, the department may administer the award of
26 financial assistance through interpretive guidance pending the adoption
27 of rules through July 1, 2014.

28 NEW SECTION. Sec. 10. A new section is added to chapter 70.105D
29 RCW to read as follows:

30 (1) The environmental legacy stewardship account is created in the
31 state treasury. Beginning July 1, 2013, and every fiscal year
32 thereafter, the annual amount received from the tax imposed by RCW
33 82.21.030 that exceeds one hundred fifteen million dollars, plus the
34 fiscal growth factor under chapter 43.135 RCW, must be deposited into
35 the environmental legacy stewardship account. The state treasurer may
36 make periodic deposits into the environmental legacy stewardship

1 account based on forecasted revenue. Moneys in the account may only be
2 spent after appropriation.

3 (2) Moneys in the environmental legacy stewardship account may be
4 spent on:

5 (a) Performance and outcome based projects, activities, programs,
6 and services that support the clean-up, monitoring, and prevention of
7 releases of hazardous substances, water protection and monitoring,
8 water pollution prevention, monitoring and cleanup, and environmental
9 health protection and monitoring;

10 (b) Clean-up projects using model remedies, technologies,
11 procedures, contracts, and project management and oversight that result
12 in significant reductions in the time to complete clean-up projects
13 compared to baseline averages for comparable clean-up projects;

14 (c) Storm water projects;

15 (d) Remedial action grants;

16 (e) Cleanup and disposal of hazardous substances from abandoned or
17 derelict vessels, defined for the purposes of this section as vessels
18 that have little or no value and either have no identified owner or
19 have an identified owner lacking financial resources to clean up and
20 dispose of the vessel, that pose a threat to human health or the
21 environment;

22 (f) Appropriations to the state and local toxics control accounts
23 created in RCW 70.105D.070 if the legislature determines that
24 priorities for spending exceed available funds in those accounts.

25 NEW SECTION. **Sec. 11.** (1) For the biennium ending June 30, 2015,
26 the state treasurer must transfer forty-five million dollars from the
27 state toxics control account to the environmental legacy stewardship
28 account created in section 10 of this act.

29 (2) For the biennium ending June 30, 2015, the state treasurer must
30 transfer forty-five million dollars from the local toxics control
31 account to the environmental legacy stewardship account.

32 NEW SECTION. **Sec. 12.** A new section is added to chapter 70.105
33 RCW to read as follows:

34 The radioactive mixed waste account is created within the state
35 treasury. All receipts received from facilities assessed service
36 charges established under RCW 70.105.280 must be deposited into the

1 account. Moneys in the account may be spent only after appropriation.
2 Expenditures from the account may only be used for carrying out the
3 department's powers and duties under this chapter related to the
4 regulation of facilities that treat, store, or dispose of mixed waste
5 or mixed waste facilities that are undergoing closure.

6 NEW SECTION. **Sec. 13.** By October 1, 2013, the state treasurer
7 must transfer the fund balance of the mixed waste fees within the state
8 toxics control account to the radioactive mixed waste account created
9 in section 12 of this act. The department of ecology shall report the
10 fund balance amount to the state treasurer for transfer into the
11 radioactive mixed waste account.

12 **Sec. 14.** RCW 70.105.280 and 1989 c 376 s 2 are each amended to
13 read as follows:

14 (1) The department may assess reasonable service charges against
15 those facilities that store, treat, incinerate, or dispose of dangerous
16 or extremely hazardous waste that contains both a nonradioactive
17 hazardous component and a radioactive component or which are undergoing
18 closure under this chapter in those instances where closure entails the
19 physical characterization of remaining wastes which contain both a
20 nonradioactive hazardous component and a radioactive component or the
21 management of such wastes through treatment or removal, except any
22 commercial low-level radioactive waste facility. Service charges may
23 not exceed the costs to the department in carrying out the duties of
24 this section.

25 (2) Program elements or activities for which service charges may be
26 assessed include:

27 (a) Office, staff, and staff support for the purposes of facility
28 or unit permit development, review, and issuance; and

29 (b) Actions taken to determine and ensure compliance with the
30 state's hazardous waste management act.

31 (3) Moneys collected through the imposition of such service charges
32 shall be deposited in the (~~state toxics control~~) radioactive mixed
33 waste account created in section 12 of this act.

34 (4) The department shall adopt rules necessary to implement this
35 section. Facilities that store, treat, incinerate, or dispose of
36 dangerous or extremely hazardous waste that contains both a

1 nonradioactive hazardous component and a radioactive component shall
2 not be subject to service charges prior to such rule making.
3 Facilities undergoing closure under this chapter in those instances
4 where closure entails the physical characterization of remaining wastes
5 which contain both a nonradioactive hazardous component and a
6 radioactive component or the management of such wastes through
7 treatment or removal shall not be subject to service charges prior to
8 such rule making.

9 **Sec. 15.** RCW 43.84.092 and 2012 c 198 s 2, 2012 c 196 s 7, 2012 c
10 187 s 14, and 2012 c 83 s 4 are each reenacted and amended to read as
11 follows:

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

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

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

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

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

1 account, the hospital safety net assessment fund, the industrial
2 insurance premium refund account, the judges' retirement account, the
3 judicial retirement administrative account, the judicial retirement
4 principal account, the local leasehold excise tax account, the local
5 real estate excise tax account, the local sales and use tax account,
6 the marine resources stewardship trust account, the medical aid
7 account, the mobile home park relocation fund, the motor vehicle fund,
8 the motorcycle safety education account, the multimodal transportation
9 account, the municipal criminal justice assistance account, the natural
10 resources deposit account, the oyster reserve land account, the pension
11 funding stabilization account, the perpetual surveillance and
12 maintenance account, the public employees' retirement system plan 1
13 account, the public employees' retirement system combined plan 2 and
14 plan 3 account, the public facilities construction loan revolving
15 account beginning July 1, 2004, the public health supplemental account,
16 the public transportation systems account, the public works assistance
17 account, the Puget Sound capital construction account, the Puget Sound
18 ferry operations account, the Puyallup tribal settlement account, the
19 real estate appraiser commission account, the recreational vehicle
20 account, the regional mobility grant program account, the resource
21 management cost account, the rural arterial trust account, the rural
22 mobility grant program account, the rural Washington loan fund, the
23 site closure account, the skilled nursing facility safety net trust
24 fund, the small city pavement and sidewalk account, the special
25 category C account, the special wildlife account, the state employees'
26 insurance account, the state employees' insurance reserve account, the
27 state investment board expense account, the state investment board
28 commingled trust fund accounts, the state patrol highway account, the
29 state route number 520 civil penalties account, the state route number
30 520 corridor account, the state wildlife account, the supplemental
31 pension account, the Tacoma Narrows toll bridge account, the teachers'
32 retirement system plan 1 account, the teachers' retirement system
33 combined plan 2 and plan 3 account, the tobacco prevention and control
34 account, the tobacco settlement account, the toll facility bond
35 retirement account, the transportation 2003 account (nickel account),
36 the transportation equipment fund, the transportation fund, the
37 transportation improvement account, the transportation improvement
38 board bond retirement account, the transportation infrastructure

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

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

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

32 **Sec. 16.** RCW 43.84.092 and 2012 c 198 s 2, 2012 c 196 s 7, 2012 c
33 187 s 14, 2012 c 83 s 4, and 2012 c 36 s 5 are each reenacted and
34 amended to read as follows:

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

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

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

24 (4) Monthly, the state treasurer shall distribute the earnings
25 credited to the treasury income account. The state treasurer shall
26 credit the general fund with all the earnings credited to the treasury
27 income account except:

28 (a) The following accounts and funds shall receive their
29 proportionate share of earnings based upon each account's and fund's
30 average daily balance for the period: The aeronautics account, the
31 aircraft search and rescue account, the Alaskan Way viaduct replacement
32 project account, the brownfield redevelopment trust fund account, the
33 budget stabilization account, the capital vessel replacement account,
34 the capitol building construction account, the Cedar River channel
35 construction and operation account, the Central Washington University
36 capital projects account, the charitable, educational, penal and
37 reformatory institutions account, the cleanup settlement account, the
38 Columbia river basin water supply development account, the Columbia

1 river basin taxable bond water supply development account, the Columbia
2 river basin water supply revenue recovery account, the Columbia river
3 crossing project account, the common school construction fund, the
4 county arterial preservation account, the county criminal justice
5 assistance account, the deferred compensation administrative account,
6 the deferred compensation principal account, the department of
7 licensing services account, the department of retirement systems
8 expense account, the developmental disabilities community trust
9 account, the drinking water assistance account, the drinking water
10 assistance administrative account, the drinking water assistance
11 repayment account, the Eastern Washington University capital projects
12 account, the Interstate 405 express toll lanes operations account, the
13 education construction fund, the education legacy trust account, the
14 election account, the energy freedom account, the energy recovery act
15 account, the essential rail assistance account, The Evergreen State
16 College capital projects account, the federal forest revolving account,
17 the ferry bond retirement fund, the freight congestion relief account,
18 the freight mobility investment account, the freight mobility
19 multimodal account, the grade crossing protective fund, the public
20 health services account, the high capacity transportation account, the
21 state higher education construction account, the higher education
22 construction account, the highway bond retirement fund, the highway
23 infrastructure account, the highway safety (~~(account-[fund])~~) fund, the
24 high occupancy toll lanes operations account, the hospital safety net
25 assessment fund, the industrial insurance premium refund account, the
26 judges' retirement account, the judicial retirement administrative
27 account, the judicial retirement principal account, the local leasehold
28 excise tax account, the local real estate excise tax account, the local
29 sales and use tax account, the marine resources stewardship trust
30 account, the medical aid account, the mobile home park relocation fund,
31 the motor vehicle fund, the motorcycle safety education account, the
32 multimodal transportation account, the municipal criminal justice
33 assistance account, the natural resources deposit account, the oyster
34 reserve land account, the pension funding stabilization account, the
35 perpetual surveillance and maintenance account, the public employees'
36 retirement system plan 1 account, the public employees' retirement
37 system combined plan 2 and plan 3 account, the public facilities
38 construction loan revolving account beginning July 1, 2004, the public

1 health supplemental account, the public transportation systems account,
2 the public works assistance account, the Puget Sound capital
3 construction account, the Puget Sound ferry operations account, the
4 Puyallup tribal settlement account, the real estate appraiser
5 commission account, the recreational vehicle account, the regional
6 mobility grant program account, the resource management cost account,
7 the rural arterial trust account, the rural mobility grant program
8 account, the rural Washington loan fund, the site closure account, the
9 skilled nursing facility safety net trust fund, the small city pavement
10 and sidewalk account, the special category C account, the special
11 wildlife account, the state employees' insurance account, the state
12 employees' insurance reserve account, the state investment board
13 expense account, the state investment board commingled trust fund
14 accounts, the state patrol highway account, the state route number 520
15 civil penalties account, the state route number 520 corridor account,
16 the state wildlife account, the supplemental pension account, the
17 Tacoma Narrows toll bridge account, the teachers' retirement system
18 plan 1 account, the teachers' retirement system combined plan 2 and
19 plan 3 account, the tobacco prevention and control account, the tobacco
20 settlement account, the toll facility bond retirement account, the
21 transportation 2003 account (nickel account), the transportation
22 equipment fund, the transportation fund, the transportation improvement
23 account, the transportation improvement board bond retirement account,
24 the transportation infrastructure account, the transportation
25 partnership account, the traumatic brain injury account, the tuition
26 recovery trust fund, the University of Washington bond retirement fund,
27 the University of Washington building account, the volunteer
28 firefighters' and reserve officers' relief and pension principal fund,
29 the volunteer firefighters' and reserve officers' administrative fund,
30 the Washington judicial retirement system account, the Washington law
31 enforcement officers' and firefighters' system plan 1 retirement
32 account, the Washington law enforcement officers' and firefighters'
33 system plan 2 retirement account, the Washington public safety
34 employees' plan 2 retirement account, the Washington school employees'
35 retirement system combined plan 2 and 3 account, the Washington state
36 economic development commission account, the Washington state health
37 insurance pool account, the Washington state patrol retirement account,
38 the Washington State University building account, the Washington State

1 University bond retirement fund, the water pollution control revolving
2 fund, and the Western Washington University capital projects account.
3 Earnings derived from investing balances of the agricultural permanent
4 fund, the normal school permanent fund, the permanent common school
5 fund, the scientific permanent fund, the state university permanent
6 fund, and the state reclamation revolving account shall be allocated to
7 their respective beneficiary accounts.

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

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

17 NEW SECTION. **Sec. 17.** Section 15 of this act expires on the date
18 the requirements set out in section 7, chapter 36, Laws of 2012 are
19 met.

20 NEW SECTION. **Sec. 18.** Section 16 of this act takes effect on the
21 date the requirements set out in section 7, chapter 36, Laws of 2012
22 are met.

23 NEW SECTION. **Sec. 19.** If any provision of this act or its
24 application to any person or circumstance is held invalid, the
25 remainder of the act or the application of the provision to other
26 persons or circumstances is not affected.

27 NEW SECTION. **Sec. 20.** This act is necessary for the immediate
28 preservation of the public peace, health, or safety, or support of the
29 state government and its existing public institutions, and takes effect
30 July 1, 2013.

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