

2SSB 5296 - S AMD 300
By Senator Ranker

NOT ADOPTED 04/22/2013

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

3 "NEW SECTION. **Sec. 1.** The legislature finds that there are a
4 large number of toxic waste sites that have been identified in the
5 department of ecology's priority list as ready for immediate cleanup.
6 The legislature further finds that addressing the cleanup of these
7 toxic waste sites will provide needed jobs to citizens of Washington
8 state, will improve public health, will restore ecological functions,
9 and will protect future generations from being exposed to toxic waste
10 and hazardous substances. It is the intent of the legislature to
11 prioritize the spending of revenues under chapter 70.105D RCW, the
12 model toxics control act, on cleaning up the most toxic sites, while
13 also providing jobs in communities around the state, and also upon
14 funding activities that prevent the creation of toxic sites in the
15 future.

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

18 The definitions in this section apply throughout this chapter
19 unless the context clearly requires otherwise.

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

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

1 (3) "Director" means the director of ecology or the director's
2 designee.

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

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

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

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

27 (b) "Fiduciary" does not mean:

28 (i) A person acting as a fiduciary with respect to a trust or other
29 fiduciary estate that was organized for the primary purpose of, or is
30 engaged in, actively carrying on a trade or business for profit, unless
31 the trust or other fiduciary estate was created as part of, or to
32 facilitate, one or more estate plans or because of the incapacity of a
33 natural person;

34 (ii) A person who acquires ownership or control of a facility with
35 the objective purpose of avoiding liability of the person or any other
36 person. It is prima facie evidence that the fiduciary acquired
37 ownership or control of the facility to avoid liability if the facility

1 is the only substantial asset in the fiduciary estate at the time the
2 facility became subject to the fiduciary estate;

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

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

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

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

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

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

28 (10) "Hazardous substance" means:

29 (a) Any dangerous or extremely hazardous waste as defined in RCW
30 70.105.010 (~~((+5) and (+6))~~) (1) and (7), or any dangerous or extremely
31 dangerous waste designated by rule pursuant to chapter 70.105 RCW;

32 (b) Any hazardous substance as defined in RCW 70.105.010(~~((+14))~~)
33 (10) or any hazardous substance as defined by rule pursuant to chapter
34 70.105 RCW;

35 (c) Any substance that, on March 1, 1989, is a hazardous substance
36 under section 101(14) of the federal cleanup law, 42 U.S.C. Sec.
37 9601(14);

38 (d) Petroleum or petroleum products; and

1 (e) Any substance or category of substances, including solid waste
2 decomposition products, determined by the director by rule to present
3 a threat to human health or the environment if released into the
4 environment.

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

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

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

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

1 (14) "Industrial properties" means properties that are or have been
2 characterized by, or are to be committed to, traditional industrial
3 uses such as processing or manufacturing of materials, marine terminal
4 and transportation areas and facilities, fabrication, assembly,
5 treatment, or distribution of manufactured products, or storage of bulk
6 materials, that are either:

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

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

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

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

26 (17) "Owner or operator" means:

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

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

32 The term does not include:

33 (i) An agency of the state or unit of local government which
34 acquired ownership or control through a drug forfeiture action under
35 RCW 69.50.505, or involuntarily through bankruptcy, tax delinquency,
36 abandonment, or other circumstances in which the government
37 involuntarily acquires title. This exclusion does not apply to an

1 agency of the state or unit of local government which has caused or
2 contributed to the release or threatened release of a hazardous
3 substance from the facility;

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

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

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

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

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

20 (E) Any remedial actions conducted by the holder are in compliance
21 with any preexisting requirements identified by the department, or, if
22 the department has not identified such requirements for the facility,
23 the remedial actions are conducted consistent with the rules adopted
24 under this chapter; and

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

34 (iii) A fiduciary in his, her, or its personal or individual
35 capacity. This exemption does not preclude a claim against the assets
36 of the estate or trust administered by the fiduciary or against a
37 nonemployee agent or independent contractor retained by a fiduciary.
38 This exemption also does not apply to the extent that a person is

1 liable under this chapter independently of the person's ownership as a
2 fiduciary or for actions taken in a fiduciary capacity which cause or
3 contribute to a new release or exacerbate an existing release of
4 hazardous substances. This exemption applies provided that, to the
5 extent of the fiduciary's powers granted by law or by the applicable
6 governing instrument granting fiduciary powers, the fiduciary complies
7 with all of the following:

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

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

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

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

18 (E) Any remedial actions conducted by the fiduciary are in
19 compliance with any preexisting requirements identified by the
20 department, or, if the department has not identified such requirements
21 for the facility, the remedial actions are conducted consistent with
22 the rules adopted under this chapter; and

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

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

37 (iv) Any person who has any ownership interest in, operates, or
38 exercises control over real property where a hazardous substance has

1 come to be located solely as a result of migration of the hazardous
2 substance to the real property through the groundwater from a source
3 off the property, if:

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

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

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

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

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

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

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

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

14 (19) "Person" means an individual, firm, corporation, association,
15 partnership, consortium, joint venture, commercial entity, state
16 government agency, unit of local government, federal government agency,
17 or Indian tribe.

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

33 (21) "Potentially liable person" means any person whom the
34 department finds, based on credible evidence, to be liable under RCW
35 70.105D.040. The department shall give notice to any such person and
36 allow an opportunity for comment before making the finding, unless an
37 emergency requires otherwise.

1 (22) "Prepare a facility for sale, transfer, or assignment" means
2 to secure access to the facility; perform routine maintenance on the
3 facility; remove inventory, equipment, or structures; properly maintain
4 environmental compliance measures already in place at the facility;
5 conduct remedial actions to cleanup releases at the facility; or to
6 perform other similar activities intended to preserve the value of the
7 facility where the borrower has defaulted on the loan or otherwise
8 breached the security agreement or after foreclosure and its
9 equivalents and in anticipation of a pending sale, transfer, or
10 assignment, primarily to protect the holder's security interest in the
11 facility. A holder can prepare a facility for sale, transfer, or
12 assignment for up to one year prior to foreclosure and its equivalents
13 and still stay within the security interest exemption in subsection
14 (17)(b)(ii) of this section.

15 (23) "Primarily to protect a security interest" means the indicia
16 of ownership is held primarily for the purpose of securing payment or
17 performance of an obligation. The term does not include indicia of
18 ownership held primarily for investment purposes nor indicia of
19 ownership held primarily for purposes other than as protection for a
20 security interest. A holder may have other, secondary reasons, for
21 maintaining indicia of ownership, but the primary reason must be for
22 protection of a security interest. Holding indicia of ownership after
23 foreclosure or its equivalents for longer than five years shall be
24 considered to be holding the indicia of ownership for purposes other
25 than primarily to protect a security interest. For facilities that
26 have been acquired through foreclosure or its equivalents prior to July
27 23, 1995, this five-year period shall begin as of July 23, 1995.

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

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

37 (26) "Remedy" or "remedial action" means any action or expenditure
38 consistent with the purposes of this chapter to identify, eliminate, or

1 minimize any threat or potential threat posed by hazardous substances
2 to human health or the environment including any investigative and
3 monitoring activities with respect to any release or threatened release
4 of a hazardous substance and any health assessments or health effects
5 studies conducted in order to determine the risk or potential risk to
6 human health.

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

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

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

1 (30) "Brownfield property" means previously developed and currently
2 abandoned or underutilized real property and adjacent surface waters
3 and sediment where environmental, economic, or community reuse
4 objectives are hindered by the release or threatened release of
5 hazardous substances that the department has determined requires
6 remedial action under this chapter or that the United States
7 environmental protection agency has determined requires remedial action
8 under the federal cleanup law.

9 (31) "Local government" means any political subdivision of the
10 state, including a town, city, county, special purpose district, or
11 other municipal corporation, including brownfield renewal authority
12 created under section 5 of this act.

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

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

21 (34) "Redevelopment opportunity zone" means a geographic area
22 designated under section 4 of this act.

23 NEW SECTION. Sec. 3. A new section is added to chapter 70.105D
24 RCW to read as follows:

25 (1) The brownfield redevelopment trust fund account is created in
26 the state treasury. All receipts from the sources identified in
27 subsection (2) of this section must be deposited into the account.
28 Moneys in the account may be spent only after appropriation.
29 Expenditures from the account may be used only as identified in
30 subsection (4) of this section.

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

33 (a) Moneys appropriated by the legislature to the account for a
34 specific redevelopment opportunity zone established under section 4 of
35 this act or a specific brownfield renewal authority established under
36 section 5 of this act;

1 (b) Moneys voluntarily deposited in the account for a specific
2 redevelopment opportunity zone or a specific brownfield renewal
3 authority; and

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

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

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

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

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

20 (7) The local government designating the redevelopment opportunity
21 zone under section 4 of this act or the associated brownfield renewal
22 authority created under section 5 of this act must be the beneficiary
23 of the deposited moneys.

24 (8) All expenditures must be used to conduct remediation and
25 cleanup consistent with a plan for the remediation and cleanup of the
26 properties or facilities approved by the department under this chapter.
27 All expenditures must meet the eligibility requirements for the use by
28 local governments under the rules for remedial action grants adopted by
29 the department under this chapter, including requirements for the
30 expenditure of nonstate match funding.

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

37 (10) After the department determines that all remedial actions
38 within the redevelopment opportunity zone identified in the plan

1 approved under subsection (8) of this section are completed, including
2 payment of all cost reasonably attributable to the remedial actions and
3 cleanup, any remaining moneys must be transferred to the state toxics
4 control account established under RCW 70.105D.070.

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

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

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

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

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

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

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

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

31 (2) A port district may designate a redevelopment opportunity zone
32 when:

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

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

1 (c) The port district either:

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

3 (ii) Owns in fee at least fifty percent of the upland property in
4 the zone, the owners of other parcels of upland property in the zone
5 have provided consent in writing to have their property included in the
6 zone, and the governing body of the city and county in which the zone
7 lies approves of the designation by resolution.

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

10 (1) A city, county, or port district may establish by resolution a
11 brownfield renewal authority for the purpose of guiding and
12 implementing the cleanup and reuse of properties within a designated
13 redevelopment opportunity zone. Any combination of cities, counties,
14 and port districts may establish a brownfield renewal authority through
15 an interlocal agreement under chapter 39.34 RCW, and the brownfield
16 renewal authority may exercise those powers as are authorized under
17 chapter 39.34 RCW and under this chapter.

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

21 (3) A brownfield renewal authority must be a separate legal entity
22 and be deemed a municipal corporation. It has the power to: Sue and
23 be sued; receive, account for, and disburse funds; employ personnel;
24 and acquire or dispose of any interest in real or personal property
25 within a redevelopment opportunity zone in the furtherance of the
26 authority purposes. A brownfield renewal authority has the power to
27 contract indebtedness and to issue and sell general obligation bonds
28 pursuant to and in the manner provided for general county bonds in
29 chapters 36.67 and 39.46 RCW and other applicable statutes, and to
30 issue revenue bonds pursuant to and in the manner provided for revenue
31 bonds in chapter 36.67 RCW and other applicable statutes.

32 (4) If the department determines that substantial progress has not
33 been made on the plan approved under section 3 of this act by the
34 brownfield renewal authority within six years of a city, county, or
35 port district establishing a brownfield renewal authority, the
36 department may require dissolution of the brownfield renewal authority.
37 Upon dissolution of the brownfield renewal authority, except as

1 provided in section 3 of this act, all assets and liabilities transfer
2 to the city, town, or port district establishing the brownfield renewal
3 authority.

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

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

8 (a) Investigate, provide for investigating, or require potentially
9 liable persons to investigate any releases or threatened releases of
10 hazardous substances, including but not limited to inspecting,
11 sampling, or testing to determine the nature or extent of any release
12 or threatened release. If there is a reasonable basis to believe that
13 a release or threatened release of a hazardous substance may exist, the
14 department's authorized employees, agents, or contractors may enter
15 upon any property and conduct investigations. The department shall
16 give reasonable notice before entering property unless an emergency
17 prevents such notice. The department may by subpoena require the
18 attendance or testimony of witnesses and the production of documents or
19 other information that the department deems necessary;

20 (b) Conduct, provide for conducting, or require potentially liable
21 persons to conduct remedial actions (including investigations under (a)
22 of this subsection) to remedy releases or threatened releases of
23 hazardous substances. In carrying out such powers, the department's
24 authorized employees, agents, or contractors may enter upon property.
25 The department shall give reasonable notice before entering property
26 unless an emergency prevents such notice. In conducting, providing
27 for, or requiring remedial action, the department shall give preference
28 to permanent solutions to the maximum extent practicable and shall
29 provide for or require adequate monitoring to ensure the effectiveness
30 of the remedial action;

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

34 (d) Carry out all state programs authorized under the federal
35 cleanup law and the federal resource, conservation, and recovery act,
36 42 U.S.C. Sec. 6901 et seq., as amended;

1 (e) Classify substances as hazardous substances for purposes of RCW
2 70.105D.020 and classify substances and products as hazardous
3 substances for purposes of RCW 82.21.020(1);

4 (f) Issue orders or enter into consent decrees or agreed orders
5 that include, or issue written opinions under (i) of this subsection
6 that may be conditioned upon, environmental covenants where necessary
7 to protect human health and the environment from a release or
8 threatened release of a hazardous substance from a facility. Prior to
9 establishing an environmental covenant under this subsection, the
10 department shall consult with and seek comment from a city or county
11 department with land use planning authority for real property subject
12 to the environmental covenant;

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

18 (h) Require holders to conduct remedial actions necessary to abate
19 an imminent or substantial endangerment pursuant to RCW
20 70.105D.020(17)(b)(ii)(C);

21 (i) Provide informal advice and assistance to persons regarding the
22 administrative and technical requirements of this chapter. This may
23 include site-specific advice to persons who are conducting or otherwise
24 interested in independent remedial actions. Any such advice or
25 assistance shall be advisory only, and shall not be binding on the
26 department. As a part of providing this advice and assistance for
27 independent remedial actions, the department may prepare written
28 opinions regarding whether the independent remedial actions or
29 proposals for those actions meet the substantive requirements of this
30 chapter or whether the department believes further remedial action is
31 necessary at the facility. Nothing in this chapter may be construed to
32 preclude the department from issuing a written opinion on whether
33 further remedial action is necessary at any portion of the real
34 property located within a facility, even if further remedial action is
35 still necessary elsewhere at the same facility. Such a written opinion
36 on a portion of a facility must also provide an opinion on the status
37 of the facility as a whole. The department may collect, from persons
38 requesting advice and assistance, the costs incurred by the department

1 in providing such advice and assistance; however, the department shall,
2 where appropriate, waive collection of costs in order to provide an
3 appropriate level of technical assistance in support of public
4 participation. The state, the department, and officers and employees
5 of the state are immune from all liability, and no cause of action of
6 any nature may arise from any act or omission in providing, or failing
7 to provide, informal advice and assistance. The department must track
8 the number of requests for reviews of planned or completed independent
9 remedial actions and establish performance measures to track how
10 quickly the department is able to respond to those requests. By
11 November 1, 2015, the department must submit to the governor and the
12 appropriate legislative fiscal and policy committees a report on
13 achieving the performance measures and provide recommendations for
14 improving performance, including staffing needs; ((and))

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

21 (k) Establish model remedies for common categories of facilities,
22 types of hazardous substances, types of media, or geographic areas to
23 streamline and accelerate the selection of remedies for routine types
24 of cleanups at facilities.

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

26 (A) Identify the requirements for characterizing a facility to
27 select a model remedy, the applicability of the model remedy for use at
28 a facility, and monitoring requirements;

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

32 (C) Provide public notice and an opportunity to comment on the
33 proposed model remedy and the conditions under which it may be used at
34 a facility.

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

1 (iii) If a facility meets the requirements for use of a model
2 remedy, an analysis of the feasibility of alternative remedies is not
3 required under this chapter. For department-conducted and department-
4 supervised remedial actions, the department must provide public notice
5 and consider public comments on the proposed use of a model remedy at
6 a facility. The department shall waive collection of its costs for
7 providing a written opinion under (i) of this subsection on a cleanup
8 that qualifies for and appropriately uses a model remedy; and

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

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

16 (a) Provide for public participation, including at least (i) public
17 notice of the development of investigative plans or remedial plans for
18 releases or threatened releases and (ii) concurrent public notice of
19 all compliance orders, agreed orders, enforcement orders, or notices of
20 violation;

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

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

28 (d) Establish reasonable deadlines not to exceed ninety days for
29 initiating an investigation of a hazardous waste site after the
30 department receives notice or otherwise receives information that the
31 site may pose a threat to human health or the environment and other
32 reasonable deadlines for remedying releases or threatened releases at
33 the site;

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

1 (f) Apply industrial clean-up standards at industrial properties.
2 Rules adopted under this subsection shall ensure that industrial
3 properties cleaned up to industrial standards cannot be converted to
4 nonindustrial uses without approval from the department. The
5 department may require that a property cleaned up to industrial
6 standards is cleaned up to a more stringent applicable standard as a
7 condition of conversion to a nonindustrial use. Industrial clean-up
8 standards may not be applied to industrial properties where hazardous
9 substances remaining at the property after remedial action pose a
10 threat to human health or the environment in adjacent nonindustrial
11 areas.

12 (3) To achieve and protect the state's long-term ecological health,
13 the department shall (~~prioritize sufficient funding~~) plan to clean up
14 hazardous waste sites and prevent the creation of future hazards due to
15 improper disposal of toxic wastes(~~, and create financing tools to~~
16 ~~clean up large scale hazardous waste sites requiring multiyear~~
17 ~~commitments~~) at a pace that matches the estimated cash resources in
18 the state and local toxics control accounts. Estimated cash resources
19 must consider the annual cash flow requirements of major projects that
20 receive appropriations expected to cross multiple biennia. To
21 effectively monitor toxic accounts expenditures, the department shall
22 develop a comprehensive ten-year financing report that identifies long-
23 term remedial action project costs, tracks expenses, and projects
24 future needs.

25 (4) By November 1, 2016, the department must submit to the governor
26 and the appropriate legislative committees a report on the status of
27 developing model remedies and their use under this chapter. The report
28 must include: The number and types of model remedies identified by the
29 department under subsection (1)(k) of this section; the number and
30 types of model remedy proposals prepared by qualified private sector
31 engineers, consultants, or contractors that were accepted or rejected
32 under subsection (1)(k) of this section and the reasons for rejection;
33 and the success of model remedies in accelerating the cleanup as
34 measured by the number of jobs created by the cleanup, where such
35 information is available to the department, acres of land restored, and
36 the number and types of hazardous waste sites successfully remediated
37 using model remedies.

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

3 (a) Develop a comprehensive ten-year financing report in
4 coordination with all local governments with clean-up responsibilities
5 that identifies the projected biennial hazardous waste site remedial
6 action needs that are eligible for funding from the state and local
7 toxics control accounts;

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

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

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

21 ~~(e))~~). The submittal must also identify separate budget estimates
22 for large, multibiennia clean-up projects that exceed ten million
23 dollars. The department shall prepare its ten-year capital budget plan
24 that is submitted to the office of financial management to reflect the
25 separate budget estimates for these large clean-up projects and include
26 information on the projected private and public funding obligations for
27 completion of the projects.

28 (6) By December 1st of each odd-numbered year, the department must
29 provide the legislature and the public ((each year with an accounting))
30 a report of the department's activities supported by appropriations
31 from the state and local toxics control accounts(~~(, including a list of~~
32 ~~known hazardous waste sites and their hazard rankings, actions taken~~
33 ~~and planned at each site, how the department is meeting its waste~~
34 ~~management priorities under RCW 70.105.150, and all funds expended~~
35 ~~under this chapter)). The report must be prepared and displayed in a
36 manner that allows the legislature and the public to easily determine
37 the statewide and local progress made in cleaning up hazardous waste
38 sites under this chapter. The report must include, at a minimum:~~

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

4 (b) For hazardous waste sites with a grant, loan, or direct
5 investment in remedial actions by the state:

6 (i) The amount of money from the state and local toxics control
7 accounts used to conduct remedial actions at the site and the amount of
8 that money recovered from potentially liable persons;

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

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

13 (B) Remedial investigation;

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

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

16 (E) Operation and maintenance or monitoring of the constructed
17 remedy; and

18 (F) The final completion date.

19 ~~((+5))~~ (7) The department shall establish a program to identify
20 potential hazardous waste sites and to encourage persons to provide
21 information about hazardous waste sites.

22 ~~((+6))~~ (8) For all facilities where an environmental covenant has
23 been required under subsection (1)(f) of this section, including all
24 facilities where the department has required an environmental covenant
25 under an order, agreed order, or consent decree, or as a condition of
26 a written opinion issued under the authority of subsection (1)(i) of
27 this section, the department shall periodically review the
28 environmental covenant for effectiveness. Except as otherwise provided
29 in (c) of this subsection, the department shall conduct a review at
30 least once every five years after an environmental covenant is
31 recorded.

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

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

36 (ii) A physical inspection of the real property subject to the
37 environmental covenant to determine compliance with the environmental

1 covenant, including whether any development or redevelopment of the
2 real property has violated the terms of the environmental covenant; and

3 (iii) A review of the effectiveness of the environmental covenant
4 in limiting or prohibiting activities that may interfere with the
5 integrity of the remedial action or that may result in exposure to or
6 migration of hazardous substances. This shall include a review of
7 available monitoring data.

8 (b) If an environmental covenant has been amended or terminated
9 without proper authority, or if the terms of an environmental covenant
10 have been violated, or if the environmental covenant is no longer
11 effective in limiting or prohibiting activities that may interfere with
12 the integrity of the remedial action or that may result in exposure to
13 or migration of hazardous substances, then the department shall take
14 any and all appropriate actions necessary to ensure compliance with the
15 environmental covenant and the policies and requirements of this
16 chapter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 (i) An act of God;

30 (ii) An act of war; or

31 (iii) An act or omission of a third party (including but not
32 limited to a trespasser) other than (A) an employee or agent of the
33 person asserting the defense, or (B) any person whose act or omission
34 occurs in connection with a contractual relationship existing, directly
35 or indirectly, with the person asserting this defense to liability.
36 This defense only applies where the person asserting the defense has
37 exercised the utmost care with respect to the hazardous substance, the

1 foreseeable acts or omissions of the third party, and the foreseeable
2 consequences of those acts or omissions;

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

10 (i) To establish that a person had no reason to know, the person
11 must have undertaken, at the time of acquisition, all appropriate
12 inquiry into the previous ownership and uses of the property,
13 consistent with good commercial or customary practice in an effort to
14 minimize liability. Any court interpreting this subsection (3)(b)
15 shall take into account any specialized knowledge or experience on the
16 part of the person, the relationship of the purchase price to the value
17 of the property if uncontaminated, commonly known or reasonably
18 ascertainable information about the property, the obviousness of the
19 presence or likely presence of contamination at the property, and the
20 ability to detect such contamination by appropriate inspection;

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

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

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

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

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

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

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

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

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

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

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

37 (ii) The stay of enforcement under this subsection does not apply
38 if the consent decree was based on circumstances unique to the settling

1 party that do not exist with regard to the successor in interest, such
2 as financial hardship. For consent decrees entered into before July
3 27, 1997, at the request of a settling party or a potential successor
4 owner or operator, the attorney general shall issue a written opinion
5 on whether a consent decree contains such unique circumstances. For
6 all other consent decrees, such unique circumstances shall be specified
7 in the consent decree.

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

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

16 (i) The settlement will yield substantial new resources to
17 facilitate cleanup;

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

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

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

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

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

9 (7) Nothing in this chapter affects or modifies in any way any
10 person's right to seek or obtain relief under other statutes or under
11 common law, including but not limited to damages for injury or loss
12 resulting from a release or threatened release of a hazardous
13 substance. No settlement by the department or remedial action ordered
14 by a court or the department affects any person's right to obtain a
15 remedy under common law or other statutes.

16 **Sec. 8.** RCW 70.105D.050 and 2005 c 211 s 2 are each amended to
17 read as follows:

18 (1) With respect to any release, or threatened release, for which
19 the department does not conduct or contract for conducting remedial
20 action and for which the department believes remedial action is in the
21 public interest, the director shall issue orders or agreed orders
22 requiring potentially liable persons to provide the remedial action.
23 Any liable person, or prospective purchaser who has entered into an
24 agreed order under RCW 70.105D.040(6), who refuses, without sufficient
25 cause, to comply with an order or agreed order of the director is
26 liable in an action brought by the attorney general for:

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

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

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

33 (2) Any person who incurs costs complying with an order issued
34 under subsection (1) of this section may petition the department for
35 reimbursement of those costs. If the department refuses to grant
36 reimbursement, the person may within thirty days thereafter file suit

1 and recover costs by proving that he or she was not a liable person
2 under RCW 70.105D.040 and that the costs incurred were reasonable.

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

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

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

16 (b) Civil actions under this section and RCW 70.105D.060 may be
17 brought in the superior court of Thurston county or of the county in
18 which the release or threatened release exists.

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

24 (7) Any person who owns real property or lender holding a mortgage
25 on real property that is subject to a lien filed under RCW 70.105D.055
26 may petition the department to have the lien removed or the amount of
27 the lien reduced. If, after consideration of the petition and the
28 information supporting the petition, the department decides to deny the
29 request, the person may, within ninety days after receipt of the
30 department's denial, file suit for removal or reduction of the lien.
31 The person is entitled to removal of a lien filed under RCW
32 70.105D.055(2)(a) if they can prove by a preponderance of the evidence
33 that the person is not a liable party under RCW 70.105D.040. The
34 person is entitled to a reduction of the amount of the lien if they can
35 prove by a preponderance of the evidence:

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

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

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

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

10 (2)(a) The following moneys shall be deposited into the state
11 toxics control account: ~~((a))~~ (i) Those revenues which are raised by
12 the tax imposed under RCW 82.21.030 and which are attributable to that
13 portion of the rate equal to thirty-three one-hundredths of one
14 percent; ~~((b))~~ (ii) the costs of remedial actions recovered under
15 this chapter or chapter 70.105A RCW; ~~((c))~~ (iii) penalties collected
16 or recovered under this chapter; and ~~((d))~~ (iv) any other money
17 appropriated or transferred to the account by the legislature.

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

21 (i) The state's responsibility for hazardous waste planning,
22 management, regulation, enforcement, technical assistance, and public
23 education required under chapters 70.105 and 70.95M RCW;

24 (ii) The state's responsibility for solid waste planning,
25 management, regulation, enforcement, technical assistance, and public
26 education required under chapters 70.95, 70.95D, 70.95M, 70.138, and
27 70.280 RCW;

28 (iii) The hazardous waste cleanup program required under this
29 chapter;

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

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

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

36 (vii) Hazardous materials emergency response ~~((training))~~
37 activities;

1 (viii) Water and environmental health protection and monitoring
2 programs;

3 (ix) Programs authorized under chapter 70.146 RCW;

4 (x) A public participation program(~~(, including regional citizen~~
5 ~~advisory committees))~~);

6 (xi) Public funding to assist potentially liable persons to pay for
7 the costs of remedial action in compliance with cleanup standards under
8 RCW 70.105D.030(2)(e) but only when:

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

11 (B) The director has found that the funding will achieve both
12 ~~((A))~~ (I) a substantially more expeditious or enhanced cleanup than
13 would otherwise occur(~~(,)~~); and ~~((B))~~ (II) the prevention or
14 mitigation of unfair economic hardship;

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

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

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

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

27 (xiii) Development and demonstration of alternative management
28 technologies designed to carry out the hazardous waste management
29 priorities of RCW 70.105.150;

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

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

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

1 ~~(xvi) During the 2011-2013 fiscal biennium, the department of~~
2 ~~ecology's water quality, shorelands and environmental assessment,~~
3 ~~hazardous waste, waste to resources, nuclear waste, and air quality~~
4 ~~programs)) State agriculture and health programs for the safe use,~~
5 ~~reduction, recycling, or disposal of pesticides;~~

6 (xv) Storm water pollution control programs and projects. This
7 includes, but is not limited to, projects that:

8 (A) Work in conjunction with remedial actions;

9 (B) Protect completed remedial actions against recontamination; or

10 (C) Prevent the creation of hazardous waste sites;

11 (xvi) Funding requirements to maintain receipt of federal funds
12 under the federal solid waste disposal act (42 U.S.C. Sec. 6901 et
13 seq.);

14 (xvii) Air quality programs and actions for reducing public
15 exposure to toxic air pollution;

16 (xviii) Programs regulating the use of hazardous substances in
17 products or other high priority chemicals, as defined in RCW
18 70.240.010; and

19 (xix) Public information and education programs related to
20 hazardous substances and materials under chapter 70.102 RCW.

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

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

28 (i) Extended grant agreements entered into under (c)(i) of this
29 subsection;

30 (ii) Remedial actions, including planning for adaptive reuse of
31 properties as provided for under (c)(iv) of this subsection (3);

32 ~~((+ii))~~ (iii) Storm water pollution control programs and projects
33 where the purpose of the project is limited exclusively to the
34 treatment, detention, prevention, or monitoring of storm water
35 pollution and no portion of the funding is provided for enhancing other
36 uses of project properties. These projects may include competitive
37 grants to local governments that apply criteria to identify the best

1 green infrastructure retrofits and other projects with high water
2 quality and environmental benefits;

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

4 ~~((+iii+))~~ (v) Solid waste plans and programs under chapters 70.95,
5 70.95C, 70.95I, and 70.105 RCW;

6 ~~((+iv+))~~ (vi) Funds for a program to assist in the assessment and
7 cleanup of sites of methamphetamine production, but not to be used for
8 the initial containment of such sites, consistent with the
9 responsibilities and intent of RCW 69.50.511; and

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

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

28 (c) To expedite cleanups throughout the state, the department
29 ~~((shall partner with local communities and liable parties for cleanups.
30 The department is authorized to use the following additional strategies
31 in order to ensure a healthful environment for future generations))~~ may
32 use the following strategies when providing grants and loans to local
33 governments under this subsection:

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

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

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

7 (C) The department may not allocate future funding to an extended
8 grant agreement unless the local government has demonstrated to the
9 department that funds awarded under the agreement during the previous
10 biennium have been substantially expended or contracts have been
11 entered into to substantially expend the funds;

12 (ii) Enter into a grant or loan agreement with a local government
13 conducting a remedial action that provides for periodic reimbursement
14 of remedial action costs as they are incurred as established in the
15 agreement;

16 (iii) Enter into a grant or loan agreement with a local government
17 prior to it acquiring a property or obtaining necessary access to
18 conduct remedial actions, provided the agreement is conditioned upon
19 the local government acquiring the property or obtaining the access in
20 accordance with a schedule specified in the agreement;

21 (iv) Provide integrated planning grants or loans to local
22 governments to fund studies necessary to facilitate remedial actions at
23 brownfield properties and adaptive reuse of properties following
24 remediation. Eligible activities include, but are not limited to:
25 Environmental site assessments; remedial investigations; health
26 assessments; feasibility studies; site planning; community involvement;
27 land use and regulatory analyses; building and infrastructure
28 assessments; economic and fiscal analyses; and any environmental
29 analyses under chapter 43.21C RCW;

30 (v) Provide grants or loans to local governments for remedial
31 actions related to areawide groundwater contamination. To receive the
32 funding, the local government does not need to be a potentially liable
33 person or be required to seek reimbursement of grant funds from a
34 potentially liable person;

35 (vi) The director may alter ((grant-matching)) grant or loan
36 matching requirements to create incentives for local governments to
37 expedite cleanups when one of the following conditions exists:

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

3 (B) Funding would create new substantial economic development,
4 public recreational, or habitat restoration opportunities that would
5 not otherwise occur; or

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

9 (~~(ii) The use of outside contracts to conduct necessary studies;~~
10 ~~(iii) The purchase of remedial action cost cap insurance, when~~
11 ~~necessary to expedite multiparty clean-up efforts~~) (vii) When pending
12 grant and loan applications under (c)(iv) and (v) of this subsection
13 (3) exceed the amount of funds available, designated redevelopment
14 opportunity zones must receive priority for distribution of available
15 funds.

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

22 (4) Except for unanticipated receipts under RCW 43.79.260 through
23 43.79.282, moneys in the state and local toxics control accounts may be
24 spent only after appropriation by statute.

25 (5) Except during the 2011-2013 fiscal biennium, one percent of the
26 moneys deposited into the state and local toxics control accounts shall
27 be allocated only for public participation grants to persons who may be
28 adversely affected by a release or threatened release of a hazardous
29 substance and to not-for-profit public interest organizations. The
30 primary purpose of these grants is to facilitate the participation by
31 persons and organizations in the investigation and remedying of
32 releases or threatened releases of hazardous substances and to
33 implement the state's solid and hazardous waste management priorities.
34 No grant may exceed sixty thousand dollars. Grants may be renewed
35 annually. Moneys appropriated for public participation from either
36 account which are not expended at the close of any biennium shall
37 revert to the state toxics control account.

1 (6) No moneys deposited into either the state or local toxics
2 control account may be used for solid waste incinerator feasibility
3 studies, construction, maintenance, or operation, or, after January 1,
4 2010, for projects designed to address the restoration of Puget Sound,
5 funded in a competitive grant process, that are in conflict with the
6 action agenda developed by the Puget Sound partnership under RCW
7 90.71.310.

8 (7) The department shall adopt rules for grant or loan issuance and
9 performance. To accelerate both remedial action and economic recovery,
10 the department may expedite the adoption of rules necessary to
11 implement this act using the expedited procedures in RCW 34.05.353.
12 The department shall initiate the award of financial assistance by
13 August 1, 2013. To ensure the adoption of rules will not delay
14 financial assistance, the department may administer the award of
15 financial assistance through interpretive guidance pending the adoption
16 of rules through July 1, 2014.

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

21 (9) During the 2011-2013 fiscal biennium, the local toxics control
22 account may also be used for local government shoreline update grants
23 and actions for reducing public exposure to toxic air pollution;
24 funding to local governments for flood levee improvements; and grants
25 to local governments for brownfield redevelopment.

26 **Sec. 10.** RCW 43.84.092 and 2012 c 198 s 2, 2012 c 196 s 7, 2012 c
27 187 s 14, and 2012 c 83 s 4 are each reenacted and amended to read as
28 follows:

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

32 (2) The treasury income account shall be utilized to pay or receive
33 funds associated with federal programs as required by the federal cash
34 management improvement act of 1990. The treasury income account is
35 subject in all respects to chapter 43.88 RCW, but no appropriation is
36 required for refunds or allocations of interest earnings required by
37 the cash management improvement act. Refunds of interest to the

1 federal treasury required under the cash management improvement act
2 fall under RCW 43.88.180 and shall not require appropriation. The
3 office of financial management shall determine the amounts due to or
4 from the federal government pursuant to the cash management improvement
5 act. The office of financial management may direct transfers of funds
6 between accounts as deemed necessary to implement the provisions of the
7 cash management improvement act, and this subsection. Refunds or
8 allocations shall occur prior to the distributions of earnings set
9 forth in subsection (4) of this section.

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

18 (4) Monthly, the state treasurer shall distribute the earnings
19 credited to the treasury income account. The state treasurer shall
20 credit the general fund with all the earnings credited to the treasury
21 income account except:

22 (a) The following accounts and funds shall receive their
23 proportionate share of earnings based upon each account's and fund's
24 average daily balance for the period: The aeronautics account, the
25 aircraft search and rescue account, the Alaskan Way viaduct replacement
26 project account, the brownfield redevelopment trust fund account, the
27 budget stabilization account, the capital vessel replacement account,
28 the capitol building construction account, the Cedar River channel
29 construction and operation account, the Central Washington University
30 capital projects account, the charitable, educational, penal and
31 reformatory institutions account, the cleanup settlement account, the
32 Columbia river basin water supply development account, the Columbia
33 river basin taxable bond water supply development account, the Columbia
34 river basin water supply revenue recovery account, the common school
35 construction fund, the county arterial preservation account, the county
36 criminal justice assistance account, the deferred compensation
37 administrative account, the deferred compensation principal account,
38 the department of licensing services account, the department of

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

1 mobility grant program account, the rural Washington loan fund, the
2 site closure account, the skilled nursing facility safety net trust
3 fund, the small city pavement and sidewalk account, the special
4 category C account, the special wildlife account, the state employees'
5 insurance account, the state employees' insurance reserve account, the
6 state investment board expense account, the state investment board
7 commingled trust fund accounts, the state patrol highway account, the
8 state route number 520 civil penalties account, the state route number
9 520 corridor account, the state wildlife account, the supplemental
10 pension account, the Tacoma Narrows toll bridge account, the teachers'
11 retirement system plan 1 account, the teachers' retirement system
12 combined plan 2 and plan 3 account, the tobacco prevention and control
13 account, the tobacco settlement account, the toll facility bond
14 retirement account, the transportation 2003 account (nickel account),
15 the transportation equipment fund, the transportation fund, the
16 transportation improvement account, the transportation improvement
17 board bond retirement account, the transportation infrastructure
18 account, the transportation partnership account, the traumatic brain
19 injury account, the tuition recovery trust fund, the University of
20 Washington bond retirement fund, the University of Washington building
21 account, the volunteer firefighters' and reserve officers' relief and
22 pension principal fund, the volunteer firefighters' and reserve
23 officers' administrative fund, the Washington judicial retirement
24 system account, the Washington law enforcement officers' and
25 firefighters' system plan 1 retirement account, the Washington law
26 enforcement officers' and firefighters' system plan 2 retirement
27 account, the Washington public safety employees' plan 2 retirement
28 account, the Washington school employees' retirement system combined
29 plan 2 and 3 account, the Washington state economic development
30 commission account, the Washington state health insurance pool account,
31 the Washington state patrol retirement account, the Washington State
32 University building account, the Washington State University bond
33 retirement fund, the water pollution control revolving fund, and the
34 Western Washington University capital projects account. Earnings
35 derived from investing balances of the agricultural permanent fund, the
36 normal school permanent fund, the permanent common school fund, the
37 scientific permanent fund, the state university permanent fund, and the

1 state reclamation revolving account shall be allocated to their
2 respective beneficiary accounts.

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

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

12 **Sec. 11.** RCW 43.84.092 and 2012 c 198 s 2, 2012 c 196 s 7, 2012 c
13 187 s 14, 2012 c 83 s 4, and 2012 c 36 s 5 are each reenacted and
14 amended to read as follows:

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

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

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

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

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

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

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

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

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

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

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

37 The radioactive mixed waste account is created within the state

1 treasury. All receipts received from facilities assessed service
2 charges established under RCW 70.105.280 must be deposited into the
3 account. Moneys in the account may be spent only after appropriation.
4 Expenditures from the account may only be used for carrying out the
5 department's powers and duties under this chapter related to the
6 regulation of facilities that treat, store, or dispose of mixed waste
7 or mixed waste facilities that are undergoing closure.

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

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

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

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

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

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

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

1 (4) The department shall adopt rules necessary to implement this
2 section. Facilities that store, treat, incinerate, or dispose of
3 dangerous or extremely hazardous waste that contains both a
4 nonradioactive hazardous component and a radioactive component shall
5 not be subject to service charges prior to such rule making.
6 Facilities undergoing closure under this chapter in those instances
7 where closure entails the physical characterization of remaining wastes
8 which contain both a nonradioactive hazardous component and a
9 radioactive component or the management of such wastes through
10 treatment or removal shall not be subject to service charges prior to
11 such rule making.

12 NEW SECTION. **Sec. 15.** (1) The department of ecology shall convene
13 a model toxics control act investment work group. The work group
14 shall:

15 (a) Review past and current use of moneys in the state and local
16 toxics control accounts;

17 (b) Determine what investments are needed to accomplish the goals
18 and objectives of chapter 70.105D RCW, including pollution prevention,
19 waste management, and cleanup;

20 (c) Determine the extent to which state and local toxics control
21 accounts funds should be used for storm water remediation and
22 prevention and oil spill prevention, preparedness, training, and
23 response activities; and

24 (d) Develop a long-term investment strategy for funds allocated
25 from the state and local toxics control accounts.

26 (2) The members of the work group include:

27 (a) One member from each of the two major caucuses in the senate
28 appointed by the president of the senate and one member from each of
29 the two major caucuses in the house of representatives, appointed by
30 the speaker of the house of representatives;

31 (b) Local government representatives, including port directors,
32 environmental health directors, and solid waste managers;

33 (c) Business representatives, including large and small businesses
34 with interests in implementation of chapter 70.105D RCW;

35 (d) Representatives of environmental and community groups;

36 (e) Representatives from state agencies that currently use money
37 from the state and local toxics control accounts; and

1 (f) A representative of the office of financial management.

2 (3) Except as otherwise provided in subsection (2)(a) of this
3 section, the director of the department of ecology shall select the
4 work group members.

5 (4) The director of the department of ecology shall chair the work
6 group.

7 (5) The work group must report its findings and recommendations to
8 the governor and appropriate policy and fiscal committees of the house
9 of representatives and senate by December 1, 2014.

10 NEW SECTION. **Sec. 16.** Section 10 of this act expires on the date
11 the requirements set out in section 7, chapter 36, Laws of 2012 are
12 met.

13 NEW SECTION. **Sec. 17.** Section 11 of this act takes effect on the
14 date the requirements set out in section 7, chapter 36, Laws of 2012
15 are met.

16 NEW SECTION. **Sec. 18.** If any provision of this act or its
17 application to any person or circumstance is held invalid, the
18 remainder of the act or the application of the provision to other
19 persons or circumstances is not affected."

2SSB 5296 - S AMD
By Senator Ranker

NOT ADOPTED 04/22/2013

20 On page 1, beginning on line 1 of the title, after "act;" strike
21 the remainder of the title and insert "amending RCW 70.105D.020,
22 70.105D.030, 70.105D.040, 70.105D.050, and 70.105.280; reenacting and
23 amending RCW 70.105D.070, 43.84.092, and 43.84.092; adding new sections
24 to chapter 70.105D RCW; adding a new section to chapter 70.105 RCW;
25 creating new sections; providing a contingent effective date; and
26 providing a contingent expiration date."

EFFECT: Incorporates SSB 5201, accelerating cleanup of hazardous waste sites.

Allows cities, counties, and port districts to establish brownfield renewal authority for the purposes of designating and remediating redevelopment opportunity zones.

Allows the use of the state and local toxics control account funds for remediation and cleanup of brownfield properties.

Creates the brownfield redevelopment trust fund.

Adds extended grant agreements with local governments as an option for large, multiyear cleanups.

Restores state and local toxics control account uses.

Removes the environmental legacy stewardship account, related references, and associated fund transfers.

Adds a task force to review and make recommendations on the priorities for the use of the hazardous substance tax.

--- END ---