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**SUBSTITUTE SENATE BILL 5201**

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**State of Washington**

**63rd Legislature**

**2013 Regular Session**

**By** Senate Energy, Environment & Telecommunications (originally sponsored by Senators Ranker, Ericksen, Harper, Hobbs, Keiser, Kline, Eide, and Hasegawa)

READ FIRST TIME 02/14/13.

1       AN ACT Relating to accelerating cleanup of hazardous waste sites;  
2 amending RCW 70.105D.010, 70.105D.020, 70.105D.030, 70.105D.040, and  
3 70.105D.050; reenacting and amending RCW 70.105D.070, 43.84.092, and  
4 43.84.092; adding new sections to chapter 70.105D RCW; creating a new  
5 section; providing a contingent effective date; and providing a  
6 contingent expiration date.

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

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

1 uses of the property, and that integrating the cleanup with future site  
2 uses may provide a greater opportunity to bring substantial private  
3 resources into the cleanup.

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

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

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

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

32 (3) Many farmers and small business owners who have followed the  
33 law with respect to their uses of pesticides and other chemicals  
34 nonetheless may face devastating economic consequences because their  
35 uses have contaminated the environment or the water supplies of their  
36 neighbors. With a source of funds, the state may assist these farmers

1 and business owners, as well as those persons who sustain damages, such  
2 as the loss of their drinking water supplies, as a result of the  
3 contamination.

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

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

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

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

23 The definitions in this section apply throughout this chapter  
24 unless the context clearly requires otherwise.

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

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

34 (3) "Director" means the director of ecology or the director's  
35 designee.

36 (4) "Environmental covenant" has the same meaning as defined in RCW  
37 64.70.020.

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

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

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

23 (b) "Fiduciary" does not mean:

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

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

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

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

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

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

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

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

23 (10) "Hazardous substance" means:

24 (a) Any dangerous or extremely hazardous waste as defined in RCW  
25 70.105.010 (~~((+5) and (+6))~~) (1) and (7), or any dangerous or extremely  
26 dangerous waste designated by rule pursuant to chapter 70.105 RCW;

27 (b) Any hazardous substance as defined in RCW 70.105.010(~~((+14))~~)  
28 (10) or any hazardous substance as defined by rule pursuant to chapter  
29 70.105 RCW;

30 (c) Any substance that, on March 1, 1989, is a hazardous substance  
31 under section 101(14) of the federal cleanup law, 42 U.S.C. Sec.  
32 9601(14);

33 (d) Petroleum or petroleum products; and

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

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

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

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

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

35           (14) "Industrial properties" means properties that are or have been  
36 characterized by, or are to be committed to, traditional industrial  
37 uses such as processing or manufacturing of materials, marine terminal

1 and transportation areas and facilities, fabrication, assembly,  
2 treatment, or distribution of manufactured products, or storage of bulk  
3 materials, that are either:

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

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

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

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

23 (17) "Owner or operator" means:

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

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

29 The term does not include:

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

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

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

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

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

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

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

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

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



1 hazardous substances. This exemption applies provided that, to the  
2 extent of the fiduciary's powers granted by law or by the applicable  
3 governing instrument granting fiduciary powers, the fiduciary complies  
4 with all of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 of a hazardous substance and any health assessments or health effects  
2 studies conducted in order to determine the risk or potential risk to  
3 human health.

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

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

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

35 (30) "Brownfield property" means previously developed and currently  
36 abandoned or underutilized real property and adjacent surface waters  
37 and sediment where environmental, economic, or community reuse  
38 objectives are hindered by the release or threatened release of

1 hazardous substances that the department has determined requires  
2 remedial action under this chapter or that the United States  
3 environmental protection agency has determined requires remedial action  
4 under the federal cleanup law.

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

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

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

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

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

17 (1) The brownfield redevelopment trust fund account is created in  
18 the state treasury. All receipts from the sources identified in  
19 subsection (2) of this section must be deposited into the account.  
20 Moneys in the account may be spent only after appropriation.  
21 Expenditures from the account may be used only as identified in  
22 subsection (4) of this section.

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

25 (a) Moneys appropriated by the legislature to the account for a  
26 specific redevelopment opportunity zone established under section 5 of  
27 this act or a specific brownfield renewal authority established under  
28 section 6 of this act;

29 (b) Moneys voluntarily deposited in the account for a specific  
30 redevelopment opportunity zone or a specific brownfield renewal  
31 authority; and

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

35 (3) If a settlement or court order does not direct payment of  
36 receipts described in subsection (2)(c) of this section into the

1 brownfield redevelopment trust fund account, then the receipts from any  
2 payment to the state must be deposited into the state toxics control  
3 account established under RCW 70.105D.070.

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

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

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

12 (7) The local government designating the redevelopment opportunity  
13 zone under section 5 of this act or the associated brownfield renewal  
14 authority created under section 6 of this act must be the beneficiary  
15 of the deposited moneys.

16 (8) All expenditures must be used to conduct remediation and  
17 cleanup consistent with a plan for the remediation and cleanup of the  
18 properties or facilities approved by the department under this chapter.  
19 All expenditures must meet the eligibility requirements for the use by  
20 local governments under the rules for remedial action grants adopted by  
21 the department under this chapter, including requirements for the  
22 expenditure of nonstate match funding.

23 (9) Beginning October 31, 2013, the department must provide a  
24 biennial report to the office of financial management and the  
25 legislature regarding the activity for each specific redevelopment  
26 opportunity zone or specific brownfield renewal authority for which  
27 specific legislative appropriation was provided in the previous two  
28 fiscal years.

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

35 (11) If the department determines that substantial progress has not  
36 been made on the plan approved under subsection (8) of this section for  
37 a redevelopment opportunity zone or specific brownfield renewal  
38 authority for which moneys were deposited in the account within six

1 years, or that the brownfield renewal authority is no longer a viable  
2 entity, then all remaining moneys must be transferred to the state  
3 toxics control account established under RCW 70.105D.070.

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

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

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

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

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

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

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

23 (2) A port district may designate a redevelopment opportunity zone  
24 when:

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

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

30 (c) The port district either:

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

32 (ii) Owns in fee at least fifty percent of the upland property in  
33 the zone, the owners of other parcels of upland property in the zone  
34 have provided consent in writing to have their property included in the  
35 zone, and the governing body of the city and county in which the zone  
36 lies approves of the designation by resolution.



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

3        (1) A city, county, or port district may establish by resolution a  
4    brownfield renewal authority for the purpose of guiding and  
5    implementing the cleanup and reuse of properties within a designated  
6    redevelopment opportunity zone. Any combination of cities, counties,  
7    and port districts may establish a brownfield renewal authority through  
8    an interlocal agreement under chapter 39.34 RCW, and the brownfield  
9    renewal authority may exercise those powers as are authorized under  
10   chapter 39.34 RCW and under this chapter.

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

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

25       (4) If the department determines that substantial progress has not  
26   been made on the plan approved under section 4 of this act by the  
27   brownfield renewal authority within six years of a city, county, or  
28   port district establishing a brownfield renewal authority, the  
29   department may require dissolution of the brownfield renewal authority.  
30   Upon dissolution of the brownfield renewal authority, except as  
31   provided in section 4 of this act, all assets and liabilities transfer  
32   to the city, town, or port district establishing the brownfield renewal  
33   authority.

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

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

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

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

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

27 (d) Carry out all state programs authorized under the federal  
28 cleanup law and the federal resource, conservation, and recovery act,  
29 42 U.S.C. Sec. 6901 et seq., as amended;

30 (e) Classify substances as hazardous substances for purposes of RCW  
31 70.105D.020 and classify substances and products as hazardous  
32 substances for purposes of RCW 82.21.020(1);

33 (f) Issue orders or enter into consent decrees or agreed orders  
34 that include, or issue written opinions under (i) of this subsection  
35 that may be conditioned upon, environmental covenants where necessary  
36 to protect human health and the environment from a release or  
37 threatened release of a hazardous substance from a facility. Prior to  
38 establishing an environmental covenant under this subsection, the

1 department shall consult with and seek comment from a city or county  
2 department with land use planning authority for real property subject  
3 to the environmental covenant;

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

9 (h) Require holders to conduct remedial actions necessary to abate  
10 an imminent or substantial endangerment pursuant to RCW  
11 70.105D.020(17)(b)(ii)(C);

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

1 quickly the department is able to respond to those requests. By  
2 November 1, 2013, the department must submit to the governor and the  
3 appropriate legislative fiscal and policy committees a report on  
4 achieving the performance measures and provide recommendations for  
5 improving performance, including staffing needs; (~~and~~)

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

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

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

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

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

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

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

37 (e) Publish and periodically update minimum cleanup standards for  
38 remedial actions at least as stringent as the cleanup standards under

1 section 121 of the federal cleanup law, 42 U.S.C. Sec. 9621, and at  
2 least as stringent as all applicable state and federal laws, including  
3 health-based standards under state and federal law; and

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

15 (3) To achieve and protect the state's long-term ecological health,  
16 the department shall prioritize sufficient funding to clean up  
17 hazardous waste sites and prevent the creation of future hazards due to  
18 improper disposal of toxic wastes, and create financing tools to clean  
19 up large-scale hazardous waste sites requiring multiyear commitments.  
20 To effectively monitor toxic accounts expenditures, the department  
21 shall develop a comprehensive ten-year financing report that identifies  
22 long-term remedial action project costs, tracks expenses, and projects  
23 future needs.

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

26 (a) Develop a comprehensive ten-year financing report in  
27 coordination with all local governments with clean-up responsibilities  
28 that identifies the projected biennial hazardous waste site remedial  
29 action needs that are eligible for funding from the local toxics  
30 control account;

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

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

36 (d) Project the remedial action need, cost, revenue, and any  
37 recommended working capital reserve estimate to the next biennium's  
38 long-term remedial action needs from both the local toxics control

1 account and the state toxics control account, and submit this  
2 information to the appropriate standing fiscal and environmental  
3 committees of the senate and house of representatives. This submittal  
4 must also include a ranked list of such remedial action projects for  
5 both accounts; and

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

13 (5) The department shall establish a program to identify potential  
14 hazardous waste sites and to encourage persons to provide information  
15 about hazardous waste sites.

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

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

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

30 (ii) A physical inspection of the real property subject to the  
31 environmental covenant to determine compliance with the environmental  
32 covenant, including whether any development or redevelopment of the  
33 real property has violated the terms of the environmental covenant; and

34 (iii) A review of the effectiveness of the environmental covenant  
35 in limiting or prohibiting activities that may interfere with the  
36 integrity of the remedial action or that may result in exposure to or  
37 migration of hazardous substances. This shall include a review of  
38 available monitoring data.

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

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

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

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

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

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

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

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

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

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

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

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

31 (c) Any person who owned or possessed a hazardous substance and who  
32 by contract, agreement, or otherwise arranged for disposal or treatment  
33 of the hazardous substance at the facility, or arranged with a  
34 transporter for transport for disposal or treatment of the hazardous  
35 substances at the facility, or otherwise generated hazardous wastes  
36 disposed of or treated at the facility;

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

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

13 (2) Each person who is liable under this section is strictly  
14 liable, jointly and severally, for all remedial action costs and for  
15 all natural resource damages resulting from the releases or threatened  
16 releases of hazardous substances. The attorney general, at the request  
17 of the department, is empowered to recover all costs and damages from  
18 persons liable therefor.

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

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

23 (i) An act of God;

24 (ii) An act of war; or

25 (iii) An act or omission of a third party (including but not  
26 limited to a trespasser) other than (A) an employee or agent of the  
27 person asserting the defense, or (B) any person whose act or omission  
28 occurs in connection with a contractual relationship existing, directly  
29 or indirectly, with the person asserting this defense to liability.  
30 This defense only applies where the person asserting the defense has  
31 exercised the utmost care with respect to the hazardous substance, the  
32 foreseeable acts or omissions of the third party, and the foreseeable  
33 consequences of those acts or omissions;

34 (b) Any person who is an owner, past owner, or purchaser of a  
35 facility and who can establish by a preponderance of the evidence that  
36 at the time the facility was acquired by the person, the person had no  
37 knowledge or reason to know that any hazardous substance, the release



1 or threatened release of which has resulted in or contributed to the  
2 need for the remedial action, was released or disposed of on, in, or at  
3 the facility. This subsection (3)(b) is limited as follows:

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

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

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

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

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

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

36 (a) The attorney general may agree to a settlement with any  
37 potentially liable person only if the department finds, after public  
38 notice and any required hearing, that the proposed settlement would

1 lead to a more expeditious cleanup of hazardous substances in  
2 compliance with clean-up standards under RCW 70.105D.030(2)(e) and with  
3 any remedial orders issued by the department. Whenever practicable and  
4 in the public interest, the attorney general may expedite such a  
5 settlement with persons whose contribution is insignificant in amount  
6 and toxicity. A hearing shall be required only if at least ten persons  
7 request one or if the department determines a hearing is necessary.

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

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

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

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

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

31 (ii) The stay of enforcement under this subsection does not apply  
32 if the consent decree was based on circumstances unique to the settling  
33 party that do not exist with regard to the successor in interest, such  
34 as financial hardship. For consent decrees entered into before July  
35 27, 1997, at the request of a settling party or a potential successor  
36 owner or operator, the attorney general shall issue a written opinion  
37 on whether a consent decree contains such unique circumstances. For

1 all other consent decrees, such unique circumstances shall be specified  
2 in the consent decree.

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

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

11 (i) The settlement will yield substantial new resources to  
12 facilitate cleanup;

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

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

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

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

34 (6) As an alternative to a settlement under subsection (5) of this  
35 section, the department may enter into an agreed order with a  
36 prospective purchaser of a property within a designated redevelopment  
37 opportunity zone. The agreed order is subject to the limitations in  
38 RCW 70.105D.020(1), but stays enforcement by the department under this

1 chapter regarding remedial actions required by the agreed order as long  
2 as the prospective purchaser complies with the requirements of the  
3 agreed order.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1       **Sec. 10.** RCW 70.105D.070 and 2012 2nd sp.s. c 7 s 920 and 2012 2nd  
2 sp.s. c 2 s 6005 are each reenacted and amended to read as follows:

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

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

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

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

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

22       (iii) The hazardous waste cleanup program required under this  
23 chapter;

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

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

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

30       (vii) Hazardous materials emergency response training;

31       (viii) Water and environmental health protection and monitoring  
32 programs;

33       (ix) Programs authorized under chapter 70.146 RCW;

34       (x) A public participation program, including regional citizen  
35 advisory committees;

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

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

3        (B) The director has found that the funding will achieve both  
4 (~~(A)~~) (I) a substantially more expeditious or enhanced cleanup than  
5 would otherwise occur(~~(τ)~~); and (~~(B)~~) (II) the prevention or  
6 mitigation of unfair economic hardship;

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

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

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

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

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

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

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

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

30       (xvi) During the 2011-2013 fiscal biennium, the department of  
31 ecology's water quality, shorelands and environmental assessment,  
32 hazardous waste, waste to resources, nuclear waste, and air quality  
33 programs.

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

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

4 (i) Extended grant agreements entered into under (c)(i) of this  
5 subsection;

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

8 ~~((+ii))~~ (iii) Hazardous waste plans and programs under chapter  
9 70.105 RCW;

10 ~~((+iii))~~ (iv) Solid waste plans and programs under chapters 70.95,  
11 70.95C, 70.95I, and 70.105 RCW;

12 ~~((+iv))~~ (v) Funds for a program to assist in the assessment and  
13 cleanup of sites of methamphetamine production, but not to be used for  
14 the initial containment of such sites, consistent with the  
15 responsibilities and intent of RCW 69.50.511; and

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

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

34 (c) To expedite cleanups throughout the state, the department  
35 ~~((shall partner with local communities and liable parties for cleanups.~~  
36 ~~The department is authorized to use the following additional strategies~~  
37 ~~in order to ensure a healthful environment for future generations))~~ may



1 use the following strategies when providing grants and loans to local  
2 governments under this subsection:

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

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

12 (B) Extended grant agreements may not exceed, on a net present  
13 value basis, fifty percent of the total eligible remedial action costs  
14 at the facility; and

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

20 (ii) Enter into a grant or loan agreement with a local government  
21 conducting a remedial action that provides for periodic reimbursement  
22 of remedial action costs as they are incurred as established in the  
23 agreement;

24 (iii) Enter into a grant or loan agreement with a local government  
25 prior to it acquiring a property or obtaining necessary access to  
26 conduct remedial actions, provided the agreement is conditioned upon  
27 the local government acquiring the property or obtaining the access in  
28 accordance with a schedule specified in the agreement;

29 (iv) Provide integrated planning grants or loans to local  
30 governments to fund studies necessary to facilitate remedial actions at  
31 brownfield properties and adaptive reuse of properties following  
32 remediation. Eligible activities include, but are not limited to:  
33 Environmental site assessments; remedial investigations; health  
34 assessments; feasibility studies; site planning; community involvement;  
35 land use and regulatory analyses; building and infrastructure  
36 assessments; economic and fiscal analyses; and any environmental  
37 analyses under chapter 43.21C RCW;

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

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

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

11 (B) Funding would create new substantial economic development,  
12 public recreational, or habitat restoration opportunities that would  
13 not otherwise occur; or

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

17 ((~~(ii) The use of outside contracts to conduct necessary studies;~~  
18 ~~(iii) The purchase of remedial action cost cap insurance, when~~  
19 ~~necessary to expedite multiparty clean-up efforts~~)) and

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

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

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

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

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

8 (6) No moneys deposited into either the state or local toxics  
9 control account may be used for solid waste incinerator feasibility  
10 studies, construction, maintenance, or operation, or, after January 1,  
11 2010, for projects designed to address the restoration of Puget Sound,  
12 funded in a competitive grant process, that are in conflict with the  
13 action agenda developed by the Puget Sound partnership under RCW  
14 90.71.310.

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

24 (8) During the 2011-2013 fiscal biennium, the legislature may  
25 transfer from the local toxics control account to the state toxics  
26 control account such amounts as reflect excess fund balance in the  
27 account.

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

33 **Sec. 11.** RCW 43.84.092 and 2012 c 198 s 2, 2012 c 196 s 7, 2012 c  
34 187 s 14, and 2012 c 83 s 4 are each reenacted and amended to read as  
35 follows:

36 (1) All earnings of investments of surplus balances in the state

1 treasury shall be deposited to the treasury income account, which  
2 account is hereby established in the state treasury.

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

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

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

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

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

1 plan 3 account, the public facilities construction loan revolving  
2 account beginning July 1, 2004, the public health supplemental account,  
3 the public transportation systems account, the public works assistance  
4 account, the Puget Sound capital construction account, the Puget Sound  
5 ferry operations account, the Puyallup tribal settlement account, the  
6 real estate appraiser commission account, the recreational vehicle  
7 account, the regional mobility grant program account, the resource  
8 management cost account, the rural arterial trust account, the rural  
9 mobility grant program account, the rural Washington loan fund, the  
10 site closure account, the skilled nursing facility safety net trust  
11 fund, the small city pavement and sidewalk account, the special  
12 category C account, the special wildlife account, the state employees'  
13 insurance account, the state employees' insurance reserve account, the  
14 state investment board expense account, the state investment board  
15 commingled trust fund accounts, the state patrol highway account, the  
16 state route number 520 civil penalties account, the state route number  
17 520 corridor account, the state wildlife account, the supplemental  
18 pension account, the Tacoma Narrows toll bridge account, the teachers'  
19 retirement system plan 1 account, the teachers' retirement system  
20 combined plan 2 and plan 3 account, the tobacco prevention and control  
21 account, the tobacco settlement account, the toll facility bond  
22 retirement account, the transportation 2003 account (nickel account),  
23 the transportation equipment fund, the transportation fund, the  
24 transportation improvement account, the transportation improvement  
25 board bond retirement account, the transportation infrastructure  
26 account, the transportation partnership account, the traumatic brain  
27 injury account, the tuition recovery trust fund, the University of  
28 Washington bond retirement fund, the University of Washington building  
29 account, the volunteer firefighters' and reserve officers' relief and  
30 pension principal fund, the volunteer firefighters' and reserve  
31 officers' administrative fund, the Washington judicial retirement  
32 system account, the Washington law enforcement officers' and  
33 firefighters' system plan 1 retirement account, the Washington law  
34 enforcement officers' and firefighters' system plan 2 retirement  
35 account, the Washington public safety employees' plan 2 retirement  
36 account, the Washington school employees' retirement system combined  
37 plan 2 and 3 account, the Washington state economic development  
38 commission account, the Washington state health insurance pool account,

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

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

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

19 **Sec. 12.** RCW 43.84.092 and 2012 c 198 s 2, 2012 c 196 s 7, 2012 c  
20 187 s 14, 2012 c 83 s 4, and 2012 c 36 s 5 are each reenacted and  
21 amended to read as follows:

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

25 (2) The treasury income account shall be utilized to pay or receive  
26 funds associated with federal programs as required by the federal cash  
27 management improvement act of 1990. The treasury income account is  
28 subject in all respects to chapter 43.88 RCW, but no appropriation is  
29 required for refunds or allocations of interest earnings required by  
30 the cash management improvement act. Refunds of interest to the  
31 federal treasury required under the cash management improvement act  
32 fall under RCW 43.88.180 and shall not require appropriation. The  
33 office of financial management shall determine the amounts due to or  
34 from the federal government pursuant to the cash management improvement  
35 act. The office of financial management may direct transfers of funds  
36 between accounts as deemed necessary to implement the provisions of the

1 cash management improvement act, and this subsection. Refunds or  
2 allocations shall occur prior to the distributions of earnings set  
3 forth in subsection (4) of this section.

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

12 (4) Monthly, the state treasurer shall distribute the earnings  
13 credited to the treasury income account. The state treasurer shall  
14 credit the general fund with all the earnings credited to the treasury  
15 income account except:

16 (a) The following accounts and funds shall receive their  
17 proportionate share of earnings based upon each account's and fund's  
18 average daily balance for the period: The aeronautics account, the  
19 aircraft search and rescue account, the Alaskan Way viaduct replacement  
20 project account, the brownfield redevelopment trust fund account, the  
21 budget stabilization account, the capital vessel replacement account,  
22 the capitol building construction account, the Cedar River channel  
23 construction and operation account, the Central Washington University  
24 capital projects account, the charitable, educational, penal and  
25 reformatory institutions account, the cleanup settlement account, the  
26 Columbia river basin water supply development account, the Columbia  
27 river basin taxable bond water supply development account, the Columbia  
28 river basin water supply revenue recovery account, the Columbia river  
29 crossing project account, the common school construction fund, the  
30 county arterial preservation account, the county criminal justice  
31 assistance account, the deferred compensation administrative account,  
32 the deferred compensation principal account, the department of  
33 licensing services account, the department of retirement systems  
34 expense account, the developmental disabilities community trust  
35 account, the drinking water assistance account, the drinking water  
36 assistance administrative account, the drinking water assistance  
37 repayment account, the Eastern Washington University capital projects  
38 account, the Interstate 405 express toll lanes operations account, the



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

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

34 (b) Any state agency that has independent authority over accounts  
35 or funds not statutorily required to be held in the state treasury that  
36 deposits funds into a fund or account in the state treasury pursuant to  
37 an agreement with the office of the state treasurer shall receive its

1 proportionate share of earnings based upon each account's or fund's  
2 average daily balance for the period.

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

6 NEW SECTION. **Sec. 13.** Section 11 of this act expires on the date  
7 the requirements set out in section 7, chapter 36, Laws of 2012 are  
8 met.

9 NEW SECTION. **Sec. 14.** Section 12 of this act takes effect on the  
10 date the requirements set out in section 7, chapter 36, Laws of 2012  
11 are met.

12 NEW SECTION. **Sec. 15.** If any provision of this act or its  
13 application to any person or circumstance is held invalid, the  
14 remainder of the act or the application of the provision to other  
15 persons or circumstances is not affected.

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