
SUBSTITUTE SENATE BILL 6211

State of Washington

62nd Legislature

2012 Regular Session

By Senate Environment (originally sponsored by Senators Ranker, Litzow, Fain, Hargrove, Kilmer, Hill, Nelson, Keiser, and Conway)

READ FIRST TIME 02/03/12.

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,
3 70.105D.050, and 43.79A.040; reenacting and amending RCW 70.105D.070;
4 adding new sections to chapter 70.105D RCW; and creating a new section.

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

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

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

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

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

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

29 (3) Many farmers and small business owners who have followed the
30 law with respect to their uses of pesticides and other chemicals
31 nonetheless may face devastating economic consequences because their
32 uses have contaminated the environment or the water supplies of their
33 neighbors. With a source of funds, the state may assist these farmers
34 and business owners, as well as those persons who sustain damages, such
35 as the loss of their drinking water supplies, as a result of the
36 contamination.

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

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

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

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

20 The definitions in this section apply throughout this chapter
21 unless the context clearly requires otherwise.

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

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

31 (3) "Director" means the director of ecology or the director's
32 designee.

33 (4) "Environmental covenant" has the same meaning as defined in RCW
34 64.70.020.

35 (5) "Facility" means (a) any building, structure, installation,
36 equipment, pipe or pipeline (including any pipe into a sewer or
37 publicly owned treatment works), well, pit, pond, lagoon, impoundment,

1 ditch, landfill, storage container, motor vehicle, rolling stock,
2 vessel, or aircraft, or (b) any site or area where a hazardous
3 substance, other than a consumer product in consumer use, has been
4 deposited, stored, disposed of, or placed, or otherwise come to be
5 located.

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

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

20 (b) "Fiduciary" does not mean:

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

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

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

36 (iv) A person who is a beneficiary and fiduciary with respect to
37 the same fiduciary estate, and who while acting as a fiduciary receives

1 benefits that exceed customary or reasonable compensation, and
2 incidental benefits permitted under applicable law;

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

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

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

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

21 (10) "Hazardous substance" means:

22 (a) Any dangerous or extremely hazardous waste as defined in RCW
23 70.105.010 (~~((+5) and (+6))~~) (1) and (7), or any dangerous or extremely
24 dangerous waste designated by rule pursuant to chapter 70.105 RCW;

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

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

31 (d) Petroleum or petroleum products; and

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

36 The term hazardous substance does not include any of the following
37 when contained in an underground storage tank from which there is not

1 a release: Crude oil or any fraction thereof or petroleum, if the tank
2 is in compliance with all applicable federal, state, and local law.

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

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

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

33 (14) "Industrial properties" means properties that are or have been
34 characterized by, or are to be committed to, traditional industrial
35 uses such as processing or manufacturing of materials, marine terminal
36 and transportation areas and facilities, fabrication, assembly,
37 treatment, or distribution of manufactured products, or storage of bulk
38 materials, that are either:

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

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

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

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

20 (17) "Owner or operator" means:

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

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

26 The term does not include:

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

35 (ii) A person who, without participating in the management of a
36 facility, holds indicia of ownership primarily to protect the person's
37 security interest in the facility. Holders after foreclosure and its

1 equivalent and holders who engage in any of the activities identified
2 in subsection (18)(e) through (g) of this section shall not lose this
3 exemption provided the holder complies with all of the following:

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

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

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

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

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

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

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

1 governing instrument granting fiduciary powers, the fiduciary complies
2 with all of the following:

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

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

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

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

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

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

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

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

37 (A) The person can demonstrate that the hazardous substance has not

1 been used, placed, managed, or otherwise handled on the property in a
2 manner likely to cause or contribute to a release of the hazardous
3 substance that has migrated onto the property;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 studies conducted in order to determine the risk or potential risk to
2 human health.

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

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

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

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

1 remedial action under this chapter or that the United States
2 environmental protection agency has determined requires remedial action
3 under the comprehensive environmental response, compensation, and
4 liability act.

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 is created in the
18 custody of the state treasurer. Expenditures from the trust fund may
19 be used only for the purposes of remediation and cleanup of facilities
20 within redevelopment opportunity zones established under this act
21 except for expenses of the state investment board and the state
22 treasurer as specified in subsection (2) of this section. Only the
23 department may authorize expenditures from the trust fund.
24 Disbursements from the trust fund are exempt from appropriations and
25 the allotment provisions of chapter 43.88 RCW. Within the trust fund
26 the department may establish separate subaccounts for specific
27 redevelopment opportunity zones established under section 5 of this act
28 or specific brownfield renewal authorities established under section 6
29 of this act.

30 (2) With the exception of investment and operating costs associated
31 with the investment of money by the investment board paid under RCW
32 43.33A.160 and 43.84.160 and the expenses and operating costs of the
33 state treasurer paid under RCW 43.08.190 and 43.79A.040, the trust fund
34 must be credited with all investment income earned by the trust fund.
35 The trust fund must retain its interest earnings in accordance with RCW
36 43.79A.040.

37 (3) The following receipts may be deposited into the trust fund:

1 (a) Moneys appropriated by the legislature for the brownfield
2 redevelopment trust fund;

3 (b) Moneys voluntarily deposited in the trust fund for a specific
4 redevelopment opportunity zone or a specific brownfield renewal
5 authority; and

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

9 (4) The local government designating the redevelopment opportunity
10 zone under section 5 of this act or the associated brownfield renewal
11 authority created under section 6 of this act must be the beneficiary
12 of the subaccount.

13 (5) Money may not be disbursed from the trust fund until the
14 department has approved the expenditure. All expenditures must be used
15 to conduct remedial actions on properties within the redevelopment
16 opportunity zone consistent with a plan for the remediation of the
17 properties approved by the department under this chapter. All
18 expenditures must meet the eligibility requirements for the use by
19 local governments under the rules for remedial action grants adopted by
20 the department under this chapter, including requirements for the
21 expenditure of nonstate match funding.

22 (6) The department must track moneys received, interest earned, and
23 moneys expended separately for each subaccount.

24 (7) Beginning October 31, 2012, the department must provide a
25 biennial report to the office of financial management and the
26 legislature regarding the activity within each subaccount during the
27 previous two fiscal years.

28 (8) After the department determines that all remedial actions
29 within the redevelopment opportunity zone identified in the plan
30 approved under subsection (5) of this section are completed, including
31 payment of all cost reasonably attributable to the remedial actions,
32 the department must dissolve the subaccount. Upon dissolution of the
33 subaccount, any remaining moneys must be transferred to the state
34 toxics control account established under RCW 70.105D.070.

35 (9) If the department determines that substantial progress has not
36 been made on the plan approved under subsection (5) of this section
37 within six years of creation of the subaccount or that the brownfield
38 renewal authority is no longer a viable entity, the department may

1 inactivate the subaccount within the trust fund. Upon inactivation of
2 a subaccount under this provision, after payment of outstanding
3 obligations, all remaining funds must be transferred to the state
4 toxics control account established under RCW 70.105D.070.

5 (10) The department is authorized to adopt rules to implement this
6 section.

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

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

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

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

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

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

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

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

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

31 (c) The port district either:

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

33 (ii) Owns in fee at least fifty percent of the upland property in
34 the zone, the owners of other parcels of property in the zone have
35 provided consent in writing to have their property included in the
36 zone, and the governing body of the city and county in which the zone
37 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(5) of this act within
27 six years of a city, county, or port district establishing a brownfield
28 renewal authority, the department may require dissolution of the
29 brownfield renewal authority. Upon dissolution of the brownfield
30 renewal authority, except as provided in section 5 of this act, all
31 assets and liabilities transfer to the city, town, or port district
32 establishing the brownfield renewal authority.

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

35 (1) The department may exercise the following powers in addition to
36 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, 2012, 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 such as:

32 (i) Public access to an area not otherwise accessible to the
33 public;

34 (ii) New or improved public recreational activities;

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

37 (iv) Preservation of a historic property listed pursuant to chapter
38 84.26 RCW.

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

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

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

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

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

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

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

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

35 (2) Any person who incurs costs complying with an order issued
36 under subsection (1) of this section may petition the department for
37 reimbursement of those costs. If the department refuses to grant

1 reimbursement, the person may within thirty days thereafter file suit
2 and recover costs by proving that he or she was not a liable person
3 under RCW 70.105D.040 and that the costs incurred were reasonable.

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

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

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

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

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

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

37 (a) For liens filed under RCW 70.105D.055(2)(a), the amount of the

1 lien exceeds the remedial action costs the department incurred related
2 to cleanup of the real property; and

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

8 **Sec. 10.** RCW 70.105D.070 and 2011 1st sp.s. c 50 s 964 are each
9 reenacted and amended to read as follows:

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

12 (2)(a) The following moneys shall be deposited into the state
13 toxics control account:

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

17 ((+b)) (ii) The costs of remedial actions recovered under this
18 chapter or chapter 70.105A RCW;

19 ((+c)) (iii) Penalties collected or recovered under this chapter;
20 and

21 ((+d)) (iv) Any other money appropriated or transferred to the
22 account by the legislature.

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

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

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

32 (iii) The hazardous waste cleanup program required under this
33 chapter;

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

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

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

4 (vii) Hazardous materials emergency response training;

5 (viii) Water and environmental health protection and monitoring
6 programs;

7 (ix) Programs authorized under chapter 70.146 RCW;

8 (x) A public participation program, including regional citizen
9 advisory committees;

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

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

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

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

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

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

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

31 (I) Public access to an area not otherwise accessible to the
32 public;

33 (II) New or improved public recreational activities;

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

36 (IV) Preservation of an historic property listed pursuant to
37 chapter 84.26 RCW;

1 (xiii) Development and demonstration of alternative management
2 technologies designed to carry out the hazardous waste management
3 priorities of RCW 70.105.150;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 (5) Except during the 2009-2011 fiscal biennium, one percent of the
26 moneys deposited into the state and local toxics control accounts shall
27 be allocated only for public participation grants to persons who may be
28 adversely affected by a release or threatened release of a hazardous
29 substance and to not-for-profit public interest organizations. The
30 primary purpose of these grants is to facilitate the participation by
31 persons and organizations in the investigation and remedying of
32 releases or threatened releases of hazardous substances and to
33 implement the state's solid and hazardous waste management priorities.
34 No grant may exceed sixty thousand dollars. Grants may be renewed
35 annually. Moneys appropriated for public participation from either
36 account which are not expended at the close of any biennium shall
37 revert to the state toxics control account.

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

8 (7) The department shall adopt rules for grant or loan issuance and
9 performance. To accelerate both remedial action and economic recovery,
10 the department may expedite the adoption of rules necessary to
11 implement this act using the expedited procedures in RCW 34.05.353.
12 The department shall initiate the award of financial assistance by July
13 1, 2012. To ensure the adoption of rules will not delay financial
14 assistance, the department may administer the award of financial
15 assistance through interpretive guidance pending the adoption of rules
16 through July 1, 2013.

17 ~~((During the 2007-2009 and 2009-2011 fiscal biennia, the~~
18 ~~legislature may transfer from the local toxics control account to~~
19 ~~either the state general fund or the oil spill prevention account, or~~
20 ~~both such amounts as reflect excess fund balance in the account.~~

21 ~~(9) During the 2009-2011 fiscal biennium, the local toxics control~~
22 ~~account may also be used for a standby rescue tug at Neah Bay, local~~
23 ~~government shoreline update grants, private and public sector diesel~~
24 ~~equipment retrofit, and oil spill prevention, preparedness, and~~
25 ~~response activities.~~

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

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

32 **Sec. 11.** RCW 43.79A.040 and 2011 1st sp.s. c 37 s 603 are each
33 amended to read as follows:

34 (1) Money in the treasurer's trust fund may be deposited, invested,
35 and reinvested by the state treasurer in accordance with RCW 43.84.080
36 in the same manner and to the same extent as if the money were in the

1 state treasury, and may be commingled with moneys in the state treasury
2 for cash management and cash balance purposes.

3 (2) All income received from investment of the treasurer's trust
4 fund must be set aside in an account in the treasury trust fund to be
5 known as the investment income account.

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

14 (4)(a) Monthly, the state treasurer must distribute the earnings
15 credited to the investment income account to the state general fund
16 except under (b), (c), and (d) of this subsection.

17 (b) The following accounts and funds must receive their
18 proportionate share of earnings based upon each account's or fund's
19 average daily balance for the period: The Washington promise
20 scholarship account, the college savings program account, the
21 Washington advanced college tuition payment program account, the
22 accessible communities account, the community and technical college
23 innovation account, the agricultural local fund, the American Indian
24 scholarship endowment fund, the foster care scholarship endowment fund,
25 the foster care endowed scholarship trust fund, the students with
26 dependents grant account, the basic health plan self-insurance reserve
27 account, the contract harvesting revolving account, the Washington
28 state combined fund drive account, the commemorative works account, the
29 county enhanced 911 excise tax account, the Washington international
30 exchange scholarship endowment fund, the toll collection account, the
31 developmental disabilities endowment trust fund, the energy account,
32 the fair fund, the family leave insurance account, the food animal
33 veterinarian conditional scholarship account, the fruit and vegetable
34 inspection account, the future teachers conditional scholarship
35 account, the game farm alternative account, the GET ready for math and
36 science scholarship account, the Washington global health technologies
37 and product development account, the grain inspection revolving fund,
38 the industrial insurance rainy day fund, the juvenile accountability

1 incentive account, the law enforcement officers' and firefighters' plan
2 expense fund, the local tourism promotion account, the pilotage
3 account, the produce railcar pool account, the regional transportation
4 investment district account, the rural rehabilitation account, the
5 stadium and exhibition center account, the youth athletic facility
6 account, the self-insurance revolving fund, the sulfur dioxide
7 abatement account, the children's trust fund, the Washington horse
8 racing commission Washington bred owners' bonus fund and breeder awards
9 account, the Washington horse racing commission class C purse fund
10 account, the individual development account program account, the
11 Washington horse racing commission operating account (earnings from the
12 Washington horse racing commission operating account must be credited
13 to the Washington horse racing commission class C purse fund account),
14 the life sciences discovery fund, the Washington state heritage center
15 account, the reduced cigarette ignition propensity account, the
16 brownfield redevelopment trust fund, and the reading achievement
17 account.

18 (c) The following accounts and funds must receive eighty percent of
19 their proportionate share of earnings based upon each account's or
20 fund's average daily balance for the period: The advanced right-of-way
21 revolving fund, the advanced environmental mitigation revolving
22 account, the federal narcotics asset forfeitures account, the high
23 occupancy vehicle account, the local rail service assistance account,
24 and the miscellaneous transportation programs account.

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

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

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

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

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