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**SUBSTITUTE HOUSE BILL 1761**

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**State of Washington                      60th Legislature                      2007 Regular Session**

**By** House Committee on Capital Budget (originally sponsored by Representatives Linville, Hunter, Priest, Hunt, B. Sullivan, Upthegrove, Kessler, Sump, Hankins, Jarrett, Fromhold, Appleton, Rolfes, Darneille, Campbell, Conway, Green, O'Brien, Schual-Berke, Simpson, Ormsby and Chase)

READ FIRST TIME 3/5/07.

1            AN ACT Relating to expediting the cleanup of hazardous waste and  
2 creating incentives for Puget Sound cleanups; and amending RCW  
3 70.105D.010, 70.105D.030, and 70.105D.070.

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

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

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

12            (2) A healthful environment is now threatened by the irresponsible  
13 use and disposal of hazardous substances. There are hundreds of  
14 hazardous waste sites in this state, and more will be created if  
15 current waste practices continue. Hazardous waste sites threaten the  
16 state's water resources, including those used for public drinking  
17 water. Many of our municipal landfills are current or potential  
18 hazardous waste sites and present serious threats to human health and  
19 environment. The costs of eliminating these threats in many cases are

1 beyond the financial means of our local governments and ratepayers.  
2 The main purpose of chapter 2, Laws of 1989 is to raise sufficient  
3 funds to clean up all hazardous waste sites and to prevent the creation  
4 of future hazards due to improper disposal of toxic wastes into the  
5 state's land and waters.

6 (3) Many farmers and small business owners who have followed the  
7 law with respect to their uses of pesticides and other chemicals  
8 nonetheless may face devastating economic consequences because their  
9 uses have contaminated the environment or the water supplies of their  
10 neighbors. With a source of funds, the state may assist these farmers  
11 and business owners, as well as those persons who sustain damages, such  
12 as the loss of their drinking water supplies, as a result of the  
13 contamination.

14 (4) It is in the public's interest to efficiently use our finite  
15 land base, to integrate our land use planning policies with our clean-  
16 up policies, and to clean up and reuse contaminated industrial  
17 properties in order to minimize industrial development pressures on  
18 undeveloped land and to make clean land available for future social  
19 use.

20 (5) Because it is often difficult or impossible to allocate  
21 responsibility among persons liable for hazardous waste sites and  
22 because it is essential that sites be cleaned up well and  
23 expeditiously, each responsible person should be liable jointly and  
24 severally.

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

30 (7) To achieve and protect the state's long-term ecological health,  
31 the department shall prioritize sufficient funding to clean up  
32 hazardous waste sites and prevent the creation of future hazards due to  
33 improper disposal of toxic wastes on land or in water. The department  
34 shall accelerate clean-up efforts throughout Washington, and create  
35 financing tools to clean up large-scale hazardous waste sites requiring  
36 multiyear commitments. To effectively monitor toxic accounts  
37 expenditures, the department shall develop a comprehensive ten-year

1 financing report that identifies long-term remedial action project  
2 costs, tracks expenses, and projects future needs.

3 **Sec. 2.** RCW 70.105D.030 and 2002 c 288 s 3 are each amended to  
4 read as follows:

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

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

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

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

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

36 (e) Classify substances as hazardous substances for purposes of RCW

1 70.105D.020(7) and classify substances and products as hazardous  
2 substances for purposes of RCW 82.21.020(1);

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

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

17 (h) Require holders to conduct remedial actions necessary to abate  
18 an imminent or substantial endangerment pursuant to RCW  
19 70.105D.020(12)(b)(ii)(C);

20 (i) Provide informal advice and assistance to persons regarding the  
21 administrative and technical requirements of this chapter. This may  
22 include site-specific advice to persons who are conducting or otherwise  
23 interested in independent remedial actions. Any such advice or  
24 assistance shall be advisory only, and shall not be binding on the  
25 department. As a part of providing this advice and assistance for  
26 independent remedial actions, the department may prepare written  
27 opinions regarding whether the independent remedial actions or  
28 proposals for those actions meet the substantive requirements of this  
29 chapter or whether the department believes further remedial action is  
30 necessary at the facility. The department may collect, from persons  
31 requesting advice and assistance, the costs incurred by the department  
32 in providing such advice and assistance; however, the department shall,  
33 where appropriate, waive collection of costs in order to provide an  
34 appropriate level of technical assistance in support of public  
35 participation. The state, the department, and officers and employees  
36 of the state are immune from all liability, and no cause of action of  
37 any nature may arise from any act or omission in providing, or failing  
38 to provide, informal advice and assistance; and

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

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

8 (a) Provide for public participation, including at least (i) public  
9 notice of the development of investigative plans or remedial plans for  
10 releases or threatened releases and (ii) concurrent public notice of  
11 all compliance orders, agreed orders, enforcement orders, or notices of  
12 violation;

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

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

20 (d) Establish reasonable deadlines not to exceed ninety days for  
21 initiating an investigation of a hazardous waste site after the  
22 department receives notice or otherwise receives information that the  
23 site may pose a threat to human health or the environment and other  
24 reasonable deadlines for remedying releases or threatened releases at  
25 the site;

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

31 (f) Apply industrial clean-up standards at industrial properties.  
32 Rules adopted under this subsection shall ensure that industrial  
33 properties cleaned up to industrial standards cannot be converted to  
34 nonindustrial uses without approval from the department. The  
35 department may require that a property cleaned up to industrial  
36 standards is cleaned up to a more stringent applicable standard as a  
37 condition of conversion to a nonindustrial use. Industrial clean-up  
38 standards may not be applied to industrial properties where hazardous

1 substances remaining at the property after remedial action pose a  
2 threat to human health or the environment in adjacent nonindustrial  
3 areas.

4 (3) Before (~~November 1st~~) December 20th of each even-numbered  
5 year, the department shall (~~develop, with public notice and hearing,~~  
6 ~~and submit to~~):

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

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

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

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

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

33 (4) The department shall establish a scientific advisory board to  
34 render advice to the department with respect to the hazard ranking  
35 system, cleanup standards, remedial actions, deadlines for remedial  
36 actions, monitoring, the classification of substances as hazardous  
37 substances for purposes of RCW 70.105D.020(7) and the classification of  
38 substances or products as hazardous substances for purposes of RCW

1 82.21.020(1). The board shall consist of five independent members to  
2 serve staggered three-year terms. No members may be employees of the  
3 department. Members shall be reimbursed for travel expenses as  
4 provided in RCW 43.03.050 and 43.03.060.

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

8 **Sec. 3.** RCW 70.105D.070 and 2005 c 488 s 926 are each amended to  
9 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) The following moneys shall be deposited into the state toxics  
13 control account: (a) Those revenues which are raised by the tax  
14 imposed under RCW 82.21.030 and which are attributable to that portion  
15 of the rate equal to thirty-three one-hundredths of one percent; (b)  
16 the costs of remedial actions recovered under this chapter or chapter  
17 70.105A RCW; (c) penalties collected or recovered under this chapter;  
18 and (d) any other money appropriated or transferred to the account by  
19 the legislature. Moneys in the account may be used only to carry out  
20 the purposes of this chapter, including but not limited to the  
21 following activities:

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

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

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

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

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

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

36 (vii) Hazardous materials emergency response training;

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

3 (ix) Programs authorized under chapter 70.146 RCW;

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

6 (xi) Public funding to assist potentially liable persons to pay for  
7 the costs of remedial action in compliance with cleanup standards under  
8 RCW 70.105D.030(2)(e) but only when the amount and terms of such  
9 funding are established under a settlement agreement under RCW  
10 70.105D.040(4) and when the director has found that the funding will  
11 achieve both (A) a substantially more expeditious or enhanced cleanup  
12 than would otherwise occur, and (B) the prevention or mitigation of  
13 unfair economic hardship; and

14 (xii) Development and demonstration of alternative management  
15 technologies designed to carry out the top two hazardous waste  
16 management priorities of RCW 70.105.150.

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

21 (a) Moneys deposited in the local toxics control account shall be  
22 used by the department for grants or loans to local governments for the  
23 following purposes in descending order of priority: (i) Remedial  
24 actions; (ii) hazardous waste plans and programs under chapter 70.105  
25 RCW; (iii) solid waste plans and programs under chapters 70.95, 70.95C,  
26 70.95I, and 70.105 RCW; (iv) funds for a program to assist in the  
27 assessment and cleanup of sites of methamphetamine production, but not  
28 to be used for the initial containment of such sites, consistent with  
29 the responsibilities and intent of RCW 69.50.511; and (v) cleanup and  
30 disposal of hazardous substances from abandoned or derelict vessels  
31 that pose a threat to human health or the environment. For purposes of  
32 this subsection (3)(a)(v), "abandoned or derelict vessels" means  
33 vessels that have little or no value and either have no identified  
34 owner or have an identified owner lacking financial resources to clean  
35 up and dispose of the vessel. Funds for plans and programs shall be  
36 allocated consistent with the priorities and matching requirements  
37 established in chapters 70.105, 70.95C, 70.95I, and 70.95 RCW. During  
38 the 1999-2001 fiscal biennium, moneys in the account may also be used



1 for the following activities: Conducting a study of whether dioxins  
2 occur in fertilizers, soil amendments, and soils; reviewing  
3 applications for registration of fertilizers; and conducting a study of  
4 plant uptake of metals. During the 2005-2007 fiscal biennium, the  
5 legislature may transfer from the local toxics control account to the  
6 state toxics control account such amounts as specified in the omnibus  
7 capital budget bill. During the 2005-2007 fiscal biennium, moneys in  
8 the account may also be used for grants to local governments to  
9 retrofit public sector diesel equipment and for storm water planning  
10 and implementation activities.

11 (b) Funds may also be appropriated to the department of health to  
12 implement programs to reduce testing requirements under the federal  
13 safe drinking water act for public water systems. The department of  
14 health shall reimburse the account from fees assessed under RCW  
15 70.119A.115 by June 30, 1995.

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

20 (i) The director may alter grant-matching requirements to create  
21 incentives for local governments to expedite cleanups when one of the  
22 following conditions exists:

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

25 (B) Funding would create new substantial economic development,  
26 public recreational, or habitat restoration opportunities that would  
27 not otherwise occur; or

28 (C) Funding would create an opportunity for acquisition and  
29 redevelopment of vacant, orphaned, or abandoned property under RCW  
30 70.105D.040(5) that would not otherwise occur;

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

32 (iii) The purchase of remedial action cost-cap insurance, when  
33 necessary to expedite multiparty clean-up efforts.

34 (4) Except for unanticipated receipts under RCW 43.79.260 through  
35 43.79.282, moneys in the state and local toxics control accounts may be  
36 spent only after appropriation by statute.

37 (5) One percent of the moneys deposited into the state and local  
38 toxics control accounts shall be allocated only for public

1 participation grants to persons who may be adversely affected by a  
2 release or threatened release of a hazardous substance and to not-for-  
3 profit public interest organizations. The primary purpose of these  
4 grants is to facilitate the participation by persons and organizations  
5 in the investigation and remedying of releases or threatened releases  
6 of hazardous substances and to implement the state's solid and  
7 hazardous waste management priorities. However, during the 1999-2001  
8 fiscal biennium, funding may not be granted to entities engaged in  
9 lobbying activities, and applicants may not be awarded grants if their  
10 cumulative grant awards under this section exceed two hundred thousand  
11 dollars. No grant may exceed sixty thousand dollars. Grants may be  
12 renewed annually. Moneys appropriated for public participation from  
13 either account which are not expended at the close of any biennium  
14 shall revert to the state toxics control account.

15 (6) No moneys deposited into either the state or local toxics  
16 control account may be used for solid waste incinerator feasibility  
17 studies, construction, maintenance, or operation.

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

20 (8) During the 2005-2007 fiscal biennium, the legislature may  
21 transfer from the state toxics control account to the water quality  
22 account such amounts as reflect the excess fund balance of the fund.

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