

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 1761

60th Legislature
2007 Regular Session

Passed by the House April 14, 2007
Yeas 93 Nays 0

Speaker of the House of Representatives

Passed by the Senate April 10, 2007
Yeas 48 Nays 0

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Richard Nafziger, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1761** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 1761

AS AMENDED BY THE SENATE

Passed Legislature - 2007 Regular Session

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.030 and 70.105D.070.

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

5 **Sec. 1.** RCW 70.105D.030 and 2002 c 288 s 3 are each amended to
6 read as follows:

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

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

1 attendance or testimony of witnesses and the production of documents or
2 other information that the department deems necessary;

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

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

17 (d) Carry out all state programs authorized under the federal
18 cleanup law and the federal resource, conservation, and recovery act,
19 42 U.S.C. Sec. 6901 et seq., as amended;

20 (e) Classify substances as hazardous substances for purposes of RCW
21 70.105D.020(7) and classify substances and products as hazardous
22 substances for purposes of RCW 82.21.020(1);

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

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

37 (h) Require holders to conduct remedial actions necessary to abate

1 an imminent or substantial endangerment pursuant to RCW
2 70.105D.020(12)(b)(ii)(C);

3 (i) Provide informal advice and assistance to persons regarding the
4 administrative and technical requirements of this chapter. This may
5 include site-specific advice to persons who are conducting or otherwise
6 interested in independent remedial actions. Any such advice or
7 assistance shall be advisory only, and shall not be binding on the
8 department. As a part of providing this advice and assistance for
9 independent remedial actions, the department may prepare written
10 opinions regarding whether the independent remedial actions or
11 proposals for those actions meet the substantive requirements of this
12 chapter or whether the department believes further remedial action is
13 necessary at the facility. The department may collect, from persons
14 requesting advice and assistance, the costs incurred by the department
15 in providing such advice and assistance; however, the department shall,
16 where appropriate, waive collection of costs in order to provide an
17 appropriate level of technical assistance in support of public
18 participation. The state, the department, and officers and employees
19 of the state are immune from all liability, and no cause of action of
20 any nature may arise from any act or omission in providing, or failing
21 to provide, informal advice and assistance; and

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

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

29 (a) Provide for public participation, including at least (i) public
30 notice of the development of investigative plans or remedial plans for
31 releases or threatened releases and (ii) concurrent public notice of
32 all compliance orders, agreed orders, enforcement orders, or notices of
33 violation;

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

35 (c) Provide for requiring the reporting by an owner or operator of
36 releases of hazardous substances to the environment that may be a
37 threat to human health or the environment within ninety days of

1 discovery, including such exemptions from reporting as the department
2 deems appropriate, however this requirement shall not modify any
3 existing requirements provided for under other laws;

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

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

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

26 (3) To achieve and protect the state's long-term ecological health,
27 the department shall prioritize sufficient funding to clean up
28 hazardous waste sites and prevent the creation of future hazards due to
29 improper disposal of toxic wastes, and create financing tools to clean
30 up large-scale hazardous waste sites requiring multiyear commitments.
31 To effectively monitor toxic accounts expenditures, the department
32 shall develop a comprehensive ten-year financing report that identifies
33 long-term remedial action project costs, tracks expenses, and projects
34 future needs.

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

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

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

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

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

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

28 ((+4)) (5) The department shall establish a scientific advisory
29 board to render advice to the department with respect to the hazard
30 ranking system, cleanup standards, remedial actions, deadlines for
31 remedial actions, monitoring, the classification of substances as
32 hazardous substances for purposes of RCW 70.105D.020(7) and the
33 classification of substances or products as hazardous substances for
34 purposes of RCW 82.21.020(1). The board shall consist of five
35 independent members to serve staggered three-year terms. No members
36 may be employees of the department. Members shall be reimbursed for
37 travel expenses as provided in RCW 43.03.050 and 43.03.060.

1 (~~(5)~~) (6) The department shall establish a program to identify
2 potential hazardous waste sites and to encourage persons to provide
3 information about hazardous waste sites.

4 **Sec. 2.** RCW 70.105D.070 and 2005 c 488 s 926 are each amended to
5 read as follows:

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

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

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

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

24 (iii) The hazardous waste cleanup program required under this
25 chapter;

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

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

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

32 (vii) Hazardous materials emergency response training;

33 (viii) Water and environmental health protection and monitoring
34 programs;

35 (ix) Programs authorized under chapter 70.146 RCW;

36 (x) A public participation program, including regional citizen
37 advisory committees;

1 (xi) Public funding to assist potentially liable persons to pay for
2 the costs of remedial action in compliance with cleanup standards under
3 RCW 70.105D.030(2)(e) but only when the amount and terms of such
4 funding are established under a settlement agreement under RCW
5 70.105D.040(4) and when the director has found that the funding will
6 achieve both (A) a substantially more expeditious or enhanced cleanup
7 than would otherwise occur, and (B) the prevention or mitigation of
8 unfair economic hardship; and

9 (xii) Development and demonstration of alternative management
10 technologies designed to carry out the (~~top two~~) hazardous waste
11 management priorities of RCW 70.105.150.

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

16 (a) Moneys deposited in the local toxics control account shall be
17 used by the department for grants or loans to local governments for the
18 following purposes in descending order of priority: (i) Remedial
19 actions; (ii) hazardous waste plans and programs under chapter 70.105
20 RCW; (iii) solid waste plans and programs under chapters 70.95, 70.95C,
21 70.95I, and 70.105 RCW; (iv) funds for a program to assist in the
22 assessment and cleanup of sites of methamphetamine production, but not
23 to be used for the initial containment of such sites, consistent with
24 the responsibilities and intent of RCW 69.50.511; and (v) cleanup and
25 disposal of hazardous substances from abandoned or derelict vessels
26 that pose a threat to human health or the environment. For purposes of
27 this subsection (3)(a)(v), "abandoned or derelict vessels" means
28 vessels that have little or no value and either have no identified
29 owner or have an identified owner lacking financial resources to clean
30 up and dispose of the vessel. Funds for plans and programs shall be
31 allocated consistent with the priorities and matching requirements
32 established in chapters 70.105, 70.95C, 70.95I, and 70.95 RCW. During
33 the 1999-2001 fiscal biennium, moneys in the account may also be used
34 for the following activities: Conducting a study of whether dioxins
35 occur in fertilizers, soil amendments, and soils; reviewing
36 applications for registration of fertilizers; and conducting a study of
37 plant uptake of metals. During the 2005-2007 fiscal biennium, the
38 legislature may transfer from the local toxics control account to the

1 state toxics control account such amounts as specified in the omnibus
2 capital budget bill. During the 2005-2007 fiscal biennium, moneys in
3 the account may also be used for grants to local governments to
4 retrofit public sector diesel equipment and for storm water planning
5 and implementation activities.

6 (b) Funds may also be appropriated to the department of health to
7 implement programs to reduce testing requirements under the federal
8 safe drinking water act for public water systems. The department of
9 health shall reimburse the account from fees assessed under RCW
10 70.119A.115 by June 30, 1995.

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

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

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

20 (B) Funding would create new substantial economic development,
21 public recreational, or habitat restoration opportunities that would
22 not otherwise occur; or

23 (C) Funding would create an opportunity for acquisition and
24 redevelopment of vacant, orphaned, or abandoned property under RCW
25 70.105D.040(5) that would not otherwise occur;

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

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

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

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

1 of hazardous substances and to implement the state's solid and
2 hazardous waste management priorities. However, during the 1999-2001
3 fiscal biennium, funding may not be granted to entities engaged in
4 lobbying activities, and applicants may not be awarded grants if their
5 cumulative grant awards under this section exceed two hundred thousand
6 dollars. No grant may exceed sixty thousand dollars. Grants may be
7 renewed annually. Moneys appropriated for public participation from
8 either account which are not expended at the close of any biennium
9 shall revert to the state toxics control account.

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

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

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

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