

HOUSE BILL REPORT

E2SSB 6211

As Reported by House Committee On:

Environment
Capital Budget

Title: An act relating to accelerating cleanup of hazardous waste sites.

Brief Description: Accelerating cleanup of hazardous waste sites.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Ranker, Litzow, Fain, Hargrove, Kilmer, Hill, Nelson, Keiser and Conway).

Brief History:

Committee Activity:

Environment: 2/21/12 [DPA];

Capital Budget: 2/23/12, 2/24/12, 2/27/12 [DPA(CB w/o ENVI)].

Brief Summary of Engrossed Second Substitute Bill (As Amended by Committee)

- Creates the Brownfield Redevelopment Trust Fund Account in the custody of the State Treasurer.
- Authorizes a city, county, and port district to designate redevelopment opportunity zones and to establish a brownfield renewal authority when certain conditions are met.
- Authorizes the Attorney General and the Department of Ecology (DOE) to agree to a settlement with a prospective purchaser of a brownfield property, provided certain conditions are met.
- Authorizes funds from the state Toxics Control Account to be used to assist a prospective purchaser of a brownfield property in paying for the costs of remedial action if certain conditions are met.
- Changes the prioritization of activities funded by the local Toxics Control Account, and authorizes the DOE to provide integrated planning grants or loans to local governments to fund studies for remedial actions and adaptive reuse.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

HOUSE COMMITTEE ON ENVIRONMENT

Majority Report: Do pass as amended. Signed by 15 members: Representatives Upthegrove, Chair; Tharinger, Vice Chair; Short, Ranking Minority Member; Harris, Assistant Ranking Minority Member; Crouse, Fitzgibbon, Hansen, Jinkins, Morris, Moscoso, Nealey, Pearson, Pollet, Takko and Wylie.

Minority Report: Do not pass. Signed by 2 members: Representatives Shea and Taylor.

Staff: Anna Jackson (786-7194).

Background:

Model Toxics Control Act.

In 1989 following voter approval of Initiative 97, the Washington Legislature passed the Model Toxics Control Act (MTCA). The MTCA defines and supports hazardous waste site cleanup activities and toxics control programs. Specifically, the MTCA's stated purpose is three-fold: (1) raise sufficient funds to clean up all hazardous waste sites in the state; (2) prevent the creation of future hazards that result from improper disposal of toxic substances into the state's land and waters; and (3) clean up and reuse contaminated industrial properties, and make clean land available for future use.

The MTCA is administered and enforced by the Department of Ecology (DOE). The MTCA requires liable parties to clean up sites contaminated with hazardous materials. Due to the inherent difficulty in identifying a specific party responsible for the contamination of a hazardous site, liability under the MTCA is joint and severable, meaning that any "owner or operator" of a facility – terms that are carefully defined in the MTCA – may be found liable for all remedial action costs and natural resource damages resulting from the releases or threatened releases of hazardous substances. The Attorney General may agree to a settlement with a potentially liable person when a proposed settlement would lead to a more expeditious cleanup. In addition, to promote cleanup or reuse of a site, the Attorney General may agree to a settlement with a person who is not liable for cleanup but who proposes to clean up, redevelop, or reuse the site when the settlement will bring new resources to facilitate the cleanup. Priority must be given to settlements that will provide a substantial public benefit, which includes the cleanup, redevelopment, or reuse of vacant or abandoned manufacturing or industrial facilities.

State and Local Toxics Control Accounts.

The state and local Toxics Control Accounts were created at the same time as the MTCA to provide funding for activities such as state programs for hazardous and solid waste planning, management, and enforcement; financial assistance for local hazardous and solid waste programs; and assistance for potentially liable persons to pay for remedial actions under certain circumstances. The primary source of revenue into the state toxics control account is payments of the hazardous substance tax, which applies to the first in-state possession of petroleum products, pesticides, and certain other toxic chemicals. The DOE must use monies

in the local toxic control account to fund grants and loans to local governments, with priority given for funding remedial actions.

To expedite cleanups throughout the state, the DOE must partner with local communities and liable parties for cleanup. In order to create incentives for local governments to expedite cleanups, the DOE may alter grant-matching requirements when funding would: (1) mitigate unfair economic hardship imposed by the cleanup liability; (2) create new substantial economic development, public recreational, or habitat restoration opportunities that would not otherwise occur; or (3) create an opportunity for acquisition and redevelopment of vacant, orphaned, or abandoned property that would not otherwise occur.

Brownfield Sites.

Brownfield sites are abandoned or underused properties where there may be environmental contamination.

Summary of Amended Bill:

Brownfield Redevelopment Trust Fund Account.

The Brownfield Redevelopment Trust Fund Account (Account) is created and may be used only for remediation and cleanup within a redevelopment opportunity zone or by a brownfield renewal authority (Authority) for which funds were deposited into the Account. The Account may receive legislative appropriations; voluntary deposits for specific brownfield redevelopment zones or Authorities; and settlements or court ordered payments to resolve liability. The Account retains its interest earnings. The beneficiary of the Account is the local government designating the redevelopment opportunity zone or the Authority.

Expenditures from the Account may be used only for activities consistent with a DOE-approved remediation and cleanup plan. All expenditures must meet remedial action grant and non-state match funding eligibility requirements.

After the DOE determines that all remedial actions within the redevelopment opportunity zone have been completed, including payment of costs for remediation, any remaining money in the Account must be transferred to the state Toxics Control Account. If the DOE determines, within six years from when money was deposited into the Account, that substantial progress has not been made in the remediation or cleanup plan, or that the brownfield authority is no longer a viable entity, all remaining money must be transferred to the state Toxics Control Account.

Settlement or court ordered payments that are not directed to the Account must be deposited into the state Toxics Control Account.

Beginning October 31, 2012, the DOE must submit a biennial report to the Office of Financial Management and the Legislature regarding the activity for each specific

redevelopment zone or Authority that received an appropriation in the previous two fiscal years.

Redevelopment Opportunity Zone.

A city or county may designate a redevelopment opportunity zone when it adopts a resolution to implement the renewal plan and determines: (1) at least 50 percent of the upland properties in the zone are brownfield properties, whether or not they are contiguous; (2) the upland portions of the zone are comprised entirely of parcels of property either owned by the city or county or whose owner has provided consent in writing to have their property included within the zone; (3) cleanup will be integrated and consistent with comprehensive land use plans for future uses; and (4) the proposed properties lie within the incorporated area of a city or within an urban growth area.

A port district may designate a redevelopment opportunity zone if it meets the criteria above, excluding criterion number two. Port districts must additionally own all of the upland properties within the area or at least 50 percent of the upland property, the property owners have provided consent to be included in the zone, and the governing body of the city and county in which the zone lies approves of the designation by resolution.

Brownfield Renewal Authority.

A city, county, or port district may establish an Authority for implementing cleanup and reuse of properties within a redevelopment opportunity zone. The Authority must be governed by a board of directors selected as determined by the resolution or interlocal agreement establishing the Authority. The Authority must be a municipal corporation. The DOE may dissolve an Authority if it determines that substantial progress for remedial action has not been made within six years of establishment of the Authority.

Department of Ecology Tracking and Reporting Requirements.

In addition to its existing authority and duties under the MTCA, the DOE must track the number of requests for reviews of planned or completed independent remedial actions and establish performance measures to track how quickly it is able to respond to those requests. By November 1, 2012, the DOE must submit to the Governor and the appropriate legislative fiscal and policy committees of the Legislature a report on achieving the performance measures, and provide recommendations for improving performance, including staffing needs.

In fulfilling the objectives under the MTCA, the DOE is directed to allocate staffing and financial assistance in a manner that considers both the reduction of human and environmental risks and the land reuse potential and planning for the facilities to be cleaned up. This does not preclude the DOE from allocating resources to a facility based solely on human or environmental risks.

Attorney General Settlements and Settlement Prioritization.

The Attorney General may agree to a settlement with a prospective purchaser (defined as a person who is not currently liable for remedial action at a facility and who proposes to purchase, redevelop, or reuse the facility), provided that certain conditions are met. Alternatively, the DOE may enter into an agreed order with a prospective purchaser of a property within a redevelopment opportunity zone that stays enforcement of remedial actions by the DOE as long as the prospective purchaser complies with the order.

The Attorney General and the DOE may give priority to settlements that will provide a substantial public benefit, in addition to clean up such as public access to an area not otherwise accessible to the public; new or improved recreational activities; enhancement of a natural resource habitat that would not otherwise occur; or preservation of a historic property.

State Toxics Control Account.

Funds from the state Toxics Control Account may be used to assist prospective purchasers to pay for the costs of remedial action if: (1) the facility is located within a redevelopment opportunity zone; (2) the amount and terms are established in a settlement agreement; and (3) the Director of the DOE has found the funding meets any additional criteria established in rule by the DOE, will achieve a substantially more expeditious or enhanced cleanup than would otherwise occur, and will provide a public benefit in addition to cleanup commensurate with the scope of the public funding. Public benefit includes access to an area not otherwise available to the public; new or improved public recreational activities; enhanced natural resource habitat; or preservation of a historical property.

Local Toxics Control Account.

Uses of funds from the local Toxic Control Account are prioritized to include planning for adaptive reuse of properties after remediation of brownfields into land use, capital facilities, economic development, and other applicable local government plans. The DOE may enter into grant or loan agreements with local governments to facilitate economic development and ensure a healthy environment. The agreements may provide periodic reimbursement to the local government as the costs are incurred, and may be used to address area-wide groundwater contamination.

The DOE and local government may enter into an agreement prior to the local government acquiring a property, as long as there is a schedule for acquiring or obtaining access to the property specified in the agreement. In addition, the DOE may provide integrated planning grants or loans to local governments to fund studies for remedial actions at brownfield properties and adaptive reuse after remediation. Designated redevelopment opportunity zones have priority for available grant or loan funds when the demand exceeds the amount of available funding.

To expedite multiparty cleanup efforts, the DOE may purchase remedial action cost-cap insurance.

Expedited Rulemaking.

To accelerate both remedial action and economic recovery, the DOE may expedite the adoption of rules necessary to implement this act. The DOE must initiate the award of financial assistance by July 1, 2012. To ensure the adoption of rules will not delay financial assistance, the DOE may administer the award of financial assistance through interpretive guidance pending the adoption of rules through July 1, 2013.

New Terms Defined.

New definitions are added for the following terms in the MTCA: area-wide groundwater contamination; brownfield property; city; local government; prospective purchaser; and redevelopment opportunity zone.

Amended Bill Compared to Engrossed Second Substitute Bill:

The amended bill removes economic and job development opportunities that would not otherwise occur from the list of criteria for funding from the state Toxics Control Account that will provide a public benefit.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This bill was considered last session, upon learning that six MTCA sites under development were all taking over six years to clean up. There seems to be a history of "raiding" the MTCA account for uses other than remedial action and cleanup of hazardous sites. After talking with the DOE, this bill was developed to ensure that MTCA funds are used only for cleanup activities. The DOE said 56 sites around the state could be cleaned up right now, using only current funds in the account, if it were not being used to fund other activities. This would also serve to create jobs.

It has been at least 10 years since the last effort to look at ways to improve how the MTCA operates, and this bill will improve a number of issues around cleanup of hazardous sites, as well as create more economic development opportunities and jobs.

Environmental cleanup projects provide communities around the state with tremendous benefits: cleanup of environment, job creation, and economic opportunity. Redevelopment opportunity zones, the environmental trust, and integrated planning grants and loans are all features in the bill that will help ports accomplish these goals. The bill represents a compromise between many parties, but the bottom line is that the creation of the trust will provide additional certainty needed for local governments and ports to pursue cleanup actions.

The creation of the trust will provide some certainty for local governments and the business community at large that these projects will be funded moving forward. Another key provision relates to when brownfield areas are cited – private property owners will not be included in these areas unless they expressly want to be included. Finally, incentives to encourage public-private partnerships in the bill are valuable. The amendment being offered today would do away with one of these provisions; the committee needs to consider if they want this to bill to represent good public works policy.

The Senate amendment regarding economic and job development opportunities is crucial – without this language, private investors will not want to invest in these sites.

This is an important bill in that it provides additional tools that are useful to cities. Redevelopment opportunity zones could make sites more attractive in the funding process by lumping sites together; on their own, some of these sites may not qualify for funding. The grant-funded trust is valuable as well, because liability is so high right now for cleanup actions; more certainty will help. This bill will also help with growth management activities for cities.

(With concerns) The DOE appreciates the opportunity over the past few months to work with Senator Ranker on this bill. The DOE supports many of the policy objectives in the bill, but have a budget concern. Economic development often drives cleanup of hazardous sites around the state, and this has a statewide impact, not specific to any particular area. Now is an opportune time to amend the cleanup law to make cleanups happen more efficiently. Some sites may never be cleaned up sufficiently due to the severity of degradation, whereas other, less contaminated sites will be cleaned up through the normal process of redevelopment. There is a class in the middle – brownfield sites – that need some help, and this bill addresses this class of sites. Our budget policy concern is in section 4 of the bill, related to creating the trust. Monies would be committed to the trust, and would limit the Legislature's ability to appropriate funds for other purposes. Also, the bill is outside the scope of the Governor's current budget, which is problematic for us.

(Opposed) While originally supportive of this bill, the Washington Environmental Council (WEC) is currently in opposition to this bill because of the amendment added in Senate Ways and Means. The entire MTCA program, both the law and the accounts, was passed by citizen initiative 20 years ago. It makes sense to revisit it now, but the law was enacted based on a "polluter pays" approach – public tax payer dollars should be reserved for instances where no private party is available to pay. The Senate Ways and Means amendment borders on a gift of public funds, and will dramatically change the nature of priority of cleanups away from those with the highest environmental priority to those of the most economic importance to industry. This might not be such a challenging policy if we had more money available, but given the present situation, we need to think about where we want to invest tax payer dollars. The WEC does not think taxpayers want to subsidize industries that already have the financial means to clean up certain sites. The WEC urges you to amend this bill to strip the Senate Ways and Means amendment so that we will be supportive again.

People for Puget Sound has concerns similar to those of the WEC. A great deal of thought went into how public funds would be utilized in cleanup activities, especially for sites where

no liable party has been identified. Public funds need to be reserved for these cases, in addition to sites where there would be great public benefit in the form of environmental restoration. People for Puget Sound support all of the provisions in the bill related to creation of brownfield authorities and designation of redevelopment opportunity zones, but the key question is how to prioritize and spend limited public funds. People for Puget Sound are supportive of encouraging brownfield cleanup, which most of the bill does. The Senate Ways and Means amendment was not one of the recommendations made in the recent study conducted by the DOE on brownfields.

Persons Testifying: (In support) Senator Ranker, prime sponsor; Jerry Smedes, Northwest Environmental Business Council; Johan Hellman, Washington Public Ports Association; Brandon Housekeeper, Association of Washington Business; Greg Hanon, National Association of Industrial and Office Properties and Washington Construction Industry Council; and Carl Shroeder, Association of Washington Cities.

(With concerns) Jim Penpowski, Department of Ecology.

(Opposed) Maurin McBroom, Washington Environmental Council; and Bruce Wishart, People for Puget Sound.

Persons Signed In To Testify But Not Testifying: None.

HOUSE COMMITTEE ON CAPITAL BUDGET

Majority Report: Do pass as amended by Committee on Capital Budget and without amendment by Committee on Environment. Signed by 6 members: Representatives Dunshee, Chair; Ormsby, Vice Chair; Jenkins, Lytton, Tharinger and Wylie.

Minority Report: Do not pass. Signed by 5 members: Representatives Warnick, Ranking Minority Member; Zeiger, Assistant Ranking Minority Member; Asay, Pearson and Smith.

Staff: Meg Van Schoorl (786-7105).

Summary of Recommendation of Committee On Capital Budget Compared to Recommendation of Committee On Environment:

The amended bill limits the Department of Ecology (DOE) to funding the following list of eligible activities when making integrated planning grants or loans to local governments to facilitate remedial actions and adaptive reuse of brownfield properties: environmental site assessments, remedial investigations, health assessments, feasibility studies, community involvement, and any environmental analyses under the State Environmental Policy Act. The amended bill removes the following activities from eligibility: site planning, land use and regulatory analyses, building and infrastructure assessments, and economic and fiscal analyses.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 27, 2012.

Effective Date of Amended Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) To get approval for clean-up of one Port of Bellingham brownfield site has taken nearly six years. Expediting toxic site clean-up will result in healthier communities and immediate employment of hundreds of people. With this bill passed and money available, 56 sites could be cleaned up, employing 620 people in direct jobs and 1,137 people in indirect jobs. The \$20 million included in the fiscal note for the Brownfields Redevelopment Trust Fund is a hypothetical assumption by the DOE. No specific sites are in mind for these dollars. Allowing cities to create zones into which multiple parcels can be collected and put back to productive use is more attractive than single parcels. Creating the Brownfields Redevelopment Trust (Trust) offers financial certainty for local governments, even if projects are funded on a long-term, phased basis by the state. Since the funding for the Trust would come from the Local Toxics Control Account, it would not have a dramatic fiscal impact. We support the bill as it came out of the House Environment Committee, without the jobs and opportunity language, because subsidizing projects for developers that in many cases can afford them will siphon money away from hardship sites, orphaned and abandoned sites, and sites that provide great environmental benefits.

(In support with amendment) We supported the bill as it came over from the Senate. In its current form, without the jobs and economic opportunity language, we are concerned it will not incentivize local business investment. The *Washington State Brownfield Policy Recommendations (Brownfields report)* shows that every clean up grant dollar is estimated to drive \$6 in local tax revenue, \$7 in payroll revenue, and \$32 in business revenue, as well as one job per \$15,000 to \$59,000 in remediation costs.

(In support with concerns) The *Brownfields* report did not have adequate vetting and contains errors in data and presumptions. This bill changes the "polluter pays" concept. Allowing liable parties that are responsible for contamination to apply for grants is a concern, as is prioritizing brownfields projects over other hazardous sites for funding rather than requiring them to compete on an equal basis. The bill should contain more accountability, including the tracking of data points. It is important to have the jobs and economic opportunity language to encourage prospective purchasers with private dollars to participate rather than the private sector having to wait on the sidelines for the state to fund the clean-up.

(Opposed) None.

Persons Testifying: (In support) Senator Ranker, prime sponsor; Ashley Probart, Association of Washington Cities; Johan Hellman, Washington Public Ports Association; Bruce Wishart, People for Puget Sound; and Mo McBroom, Washington Environmental Council.

(In support with amendment) Greg Hanon, National Association of Industrial and Office Properties.

(In support with concerns) Kerry Graber, Washington Federation of State Employees; and
Brandon Housekeeper, Association of Washington Business.

Persons Signed In To Testify But Not Testifying: None.