

SENATE BILL REPORT

SB 6211

As of January 26, 2012

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

Brief Description: Accelerating cleanup of hazardous waste sites.

Sponsors: Senators Ranker, Litzow, Fain, Hargrove, Kilmer, Hill, Nelson, Keiser and Conway.

Brief History:

Committee Activity: Environment: 1/25/12.

SENATE COMMITTEE ON ENVIRONMENT

Staff: Jan Odano (786-7486)

Background: The state Model Toxics Control Act (MTCA) is carried out by the Department of Ecology (DOE) to ensure the clean up of sites where hazardous substances have been released.

MTCA requires liable parties to cleanup sites contaminated with hazardous materials. The Attorney General (AG) may agree to a settlement with a potentially liable person only when a proposed settlement would lead to a more expeditious cleanup. In addition, to promote cleanup or site reuse, the AG may agree to a settlement with a person who is not liable for cleanup but proposes to cleanup, redevelop, or reuse the site when the settlement will bring new resources to facilitate the cleanup. Priority may be given to settlements that will provide a substantial public benefit that include vacant or abandoned manufacturing or industrial facilities.

The state and local toxics control accounts 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. DOE must use local toxic control account funds for grants and loans to local governments with a priority for remedial actions.

When partnering with local communities and liable parties for cleanup, DOE may alter grant-matching requirements to incentivize local governments to expedite cleanups when funding would mitigate unfair economic hardship imposed by the cleanup liability; create new

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substantial economic development, public recreational or habitat restoration opportunities; or create an opportunity for acquisition and redevelopment of vacant, orphaned, or abandoned property that would not otherwise occur.

Summary of Bill: The bill as referred to committee not considered.

Summary of Bill (Proposed Substitute): The cleanup and reuse of former commercial, industrial and other sites contaminated with hazardous substances has economic and public health benefits. There is a need to integrate brownfield cleanup with community plans for redevelopment and reuse.

A city, county, or port district may designate a brownfield renewal area when it adopts a resolution committing to finance infrastructure needed to implement the renewal plan and determining:

- at least 50 percent of the properties in the area are brownfields, cleanup will be integrated and consistent with comprehensive land use plans for future uses; and
- for properties requiring urban infrastructure, the area served by public water system and sewage collection and treatment systems is within an incorporated area of the city or town or within an urban growth area.

Port districts must additionally own all of the properties within the area or at least 50 percent of the property and the city or county must approve the brownfield renewal designation.

A city, county, or port district may establish a brownfield renewal authority (authority) for implementing cleanup and reuse of properties within a brownfield renewal area. The authority must be governed by a board of directors who are determined by resolution or interlocal agreement establishing the authority. The authority must be a municipal corporation.

DOE is authorized to establish trust funds for state funding of remedial activities within designated brownfield renewal areas. The Legislature must provide an appropriation to fund a specific trust fund. DOE designates the trustee, who may not be a potentially liable person or have a financial interest in the property. The local government must have an agreement with the state that establishes the reuse plan before funds can be dispersed from the trust fund. All expenditures from the trust fund must be used on remediation activities within the brownfield renewal area.

The primary purpose of a settlement agreement is to promote the cleanup and reuse of brownfield property. The AG and DOE may give priority to the settlement that provides a substantial public benefit to the reuse of brownfield properties; cleanup and reuse of properties that provide access to the public, new or improved public recreational opportunities, or preservation of historic properties. Alternatively, DOE may issue an agreed order to a prospective purchaser of a property within a brownfield renewal area that stays enforcement of remedial actions as long as the prospective purchaser complies with the order.

Funds from the state Toxics Control Account may be used to assist prospective purchasers to pay for remediation at sites within a brownfield renewal area. The amount and terms must be established in a settlement agreement, and DOE must find the funding provides for a

substantially more expeditious or enhanced cleanup with public benefits such as: access to an area not otherwise available to the public, public recreational activities, enhanced natural resource habitat, or preservation of a historical property.

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. DOE may enter into grant or loan agreements with local governments to provide periodic reimbursement to the local government as the costs are incurred and may be used to address area wide groundwater contamination. 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, 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 brownfield renewal areas have priority for available grant or loan funds when the demand exceeds the amount of available funding.

In addition to existing authority and duties, DOE must provide staffing and financial assistance as needed to address the reduction of human and environmental hazards and land reuse potential and planning.

DOE must track requests for reviews of planned and completed independent remedial actions; set performance measures for timely responses to the requests; and submit a report to the Legislature and Governor on meeting the performance measures and recommendations for improving performance and staffing needs.

DOE may use the expedited rulemaking procedures to implement the act. It must initiate financial assistance awards by July 1, 2012, and may use interpretive guidance through July 1, 2013, pending rule adoption. DOE must provide a report to the Legislature on legislative actions to accelerate the pace of cleanup and the reuse of brownfield properties.

Certain terms such as brownfield property, prospective purchaser, and brownfield renewal area are defined.

Appropriation: None.

Fiscal Note: Requested on January 20, 2012.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: Cleanup provides great benefits to local communities. Accelerating cleanup is good for economic, environmental health, and for communities. Cleanup fundamentally reshapes communities beyond cleaning up the environment, but by also creating jobs, economic opportunities and smart growth. This is a jobs bill not just for cleanup but for getting businesses back up and running and for continued economic development that will occur after the cleanup. This gives DOE better tools to take

on more projects and achieve cleanup. Providing tools that will advance the cleanup in a more predictable way, expedite the cleanup process, and spur and incentivize strong and early effective cleanups help economic development. Trust funds would alleviate some of the risk and provide certainty especially for very complicated projects. We support the attention of brownfields but aquatic sites should also be addressed, which are not defined within the bill. Redevelopment areas allow smaller projects to go forward when they would otherwise not be eligible for funding. Cleaning up the property helps cities to meet environmental cleanup objectives, getting businesses running and increasing tax rolls to the city and state.

OTHER: Economic interests often drive cleanup of properties. With help and support by government and private parties, this will lead to cleanup of brownfield areas. This bill creates new priorities for government. Cleanup of brownfields should be a subset of remedial actions. There needs to be a balance within the program for remediation. Cleanup trusts would lock up state funds and reduce flexibility of state funding. There are many questions and concerns about the criteria for trust funds. The bill is based on a flawed concept that there is a bottleneck at DOE. There are complexities of cleanup that don't lend to quick solutions. This would allow the use of public funds by non-governmental entities that would result in private gains. It would siphon public funds to the private sector with questionable public benefit. Release of liability gives the public no recourse and lets polluters off the hook. The use of a licensed site professional is a shift in policy. The government should be in the role of determining what is clean. The investments and work should equally emphasize the environment as well as economic development. There is concern with access to property within a brownfield development area that may not be contaminated. The report required by DOE could send the work in the wrong direction and should be deleted.

Persons Testifying: PRO: Johan Hellman, WA Public Ports Assn.; Susan Saffery, City of Seattle; Brandon Housekeeper, Assn. of WA Business; Carl Schroeder, Assn. of WA Cities; Jerry Smedes, NW Environment Business Council; Mo McBroom, WA Environmental Council.

OTHER: Jim Pendowski, DOE; Kerry Graber, Dolores Mitchell, WA Federation of State Employees.