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**SECOND SUBSTITUTE SENATE BILL 6211**

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**State of Washington**

**62nd Legislature**

**2012 Regular Session**

**By** Senate Ways & Means (originally sponsored by Senators Ranker, Litzow, Fain, Hargrove, Kilmer, Hill, Nelson, Keiser, and Conway)

READ FIRST TIME 02/07/12.

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, and  
3 70.105D.050; reenacting and amending RCW 70.105D.070; adding new  
4 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 5 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 4 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) A city or county may designate a geographic area within its  
18 jurisdiction as a redevelopment opportunity zone if the zone meets the  
19 criteria in this subsection and the city or county adopts a resolution  
20 that includes the following determinations and commitments:

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

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

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

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

32 (2) A port district may designate a redevelopment opportunity zone  
33 when:

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

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

3 (c) The port district either:

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

5 (ii) Owns in fee at least fifty percent of the upland property in  
6 the zone, the owners of other parcels of property in the zone have  
7 provided consent in writing to have their property included in the  
8 zone, and the governing body of the city and county in which the zone  
9 lies approves of the designation by resolution.

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

12 (1) A city, county, or port district may establish by resolution a  
13 brownfield renewal authority for the purpose of guiding and  
14 implementing the cleanup and reuse of properties within a designated  
15 redevelopment opportunity zone. Any combination of cities, counties,  
16 and port districts may establish a brownfield renewal authority through  
17 an interlocal agreement under chapter 39.34 RCW, and the brownfield  
18 renewal authority may exercise those powers as are authorized under  
19 chapter 39.34 RCW and under this chapter.

20 (2) A brownfield renewal authority must be governed by a board of  
21 directors selected as determined by the resolution or interlocal  
22 agreement establishing the authority.

23 (3) A brownfield renewal authority must be a separate legal entity  
24 and be deemed a municipal corporation. It has the power to: Sue and  
25 be sued; receive, account for, and disburse funds; employ personnel;  
26 and acquire or dispose of any interest in real or personal property  
27 within a redevelopment opportunity zone in the furtherance of the  
28 authority purposes. A brownfield renewal authority has the power to  
29 contract indebtedness and to issue and sell general obligation bonds  
30 pursuant to and in the manner provided for general county bonds in  
31 chapters 36.67 and 39.46 RCW and other applicable statutes, and to  
32 issue revenue bonds pursuant to and in the manner provided for revenue  
33 bonds in chapter 36.67 RCW and other applicable statutes.

34 (4) If the department determines that substantial progress has not  
35 been made by the brownfield renewal authority within six years of a  
36 city, county, or port district establishing a brownfield renewal  
37 authority, the department may require dissolution of the brownfield

1 renewal authority. Upon dissolution of the brownfield renewal  
2 authority, except as provided in section 4 of this act, all assets and  
3 liabilities transfer to the city, town, or port district establishing  
4 the brownfield renewal authority.

5 **Sec. 6.** RCW 70.105D.030 and 2009 c 560 s 10 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  
19 attendance or testimony of witnesses and the production of documents or  
20 other information that the department deems necessary;

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

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

35 (d) Carry out all state programs authorized under the federal  
36 cleanup law and the federal resource, conservation, and recovery act,  
37 42 U.S.C. Sec. 6901 et seq., as amended;



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

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

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

18 (h) Require holders to conduct remedial actions necessary to abate  
19 an imminent or substantial endangerment pursuant to RCW  
20 70.105D.020(17)(b)(ii)(C);

21 (i) Provide informal advice and assistance to persons regarding the  
22 administrative and technical requirements of this chapter. This may  
23 include site-specific advice to persons who are conducting or otherwise  
24 interested in independent remedial actions. Any such advice or  
25 assistance shall be advisory only, and shall not be binding on the  
26 department. As a part of providing this advice and assistance for  
27 independent remedial actions, the department may prepare written  
28 opinions regarding whether the independent remedial actions or  
29 proposals for those actions meet the substantive requirements of this  
30 chapter or whether the department believes further remedial action is  
31 necessary at the facility. Nothing in this chapter may be construed to  
32 preclude the department from issuing a written opinion on whether  
33 further remedial action is necessary at any portion of the real  
34 property located within a facility, even if further remedial action is  
35 still necessary elsewhere at the same facility. Such a written opinion  
36 on a portion of a facility must also provide an opinion on the status  
37 of the facility as a whole. The department may collect, from persons  
38 requesting advice and assistance, the costs incurred by the department

1 in providing such advice and assistance; however, the department shall,  
2 where appropriate, waive collection of costs in order to provide an  
3 appropriate level of technical assistance in support of public  
4 participation. The state, the department, and officers and employees  
5 of the state are immune from all liability, and no cause of action of  
6 any nature may arise from any act or omission in providing, or failing  
7 to provide, informal advice and assistance. The department must track  
8 the number of requests for reviews of planned or completed independent  
9 remedial actions and establish performance measures to track how  
10 quickly the department is able to respond to those requests. By  
11 November 1, 2012, the department must submit to the governor and the  
12 appropriate legislative fiscal and policy committees a report on  
13 achieving the performance measures and provide recommendations for  
14 improving performance, including staffing needs; ((and))

15 (j) In fulfilling the objectives of this chapter, the department  
16 shall allocate staffing and financial assistance in a manner that  
17 considers both the reduction of human and environmental risks and the  
18 land reuse potential and planning for the facilities to be cleaned up.  
19 This does not preclude the department from allocating resources to a  
20 facility based solely on human or environmental risks; and

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

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

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

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

34 (c) Provide for requiring the reporting by an owner or operator of  
35 releases of hazardous substances to the environment that may be a  
36 threat to human health or the environment within ninety days of  
37 discovery, including such exemptions from reporting as the department

1 deems appropriate, however this requirement shall not modify any  
2 existing requirements provided for under other laws;

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

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

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

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

34 (4) Before December 20th of each even-numbered year, the department  
35 shall:

36 (a) Develop a comprehensive ten-year financing report in  
37 coordination with all local governments with clean-up responsibilities

1 that identifies the projected biennial hazardous waste site remedial  
2 action needs that are eligible for funding from the local toxics  
3 control account;

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

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

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

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

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

27 (6) For all facilities where an environmental covenant has been  
28 required under subsection (1)(f) of this section, including all  
29 facilities where the department has required an environmental covenant  
30 under an order, agreed order, or consent decree, or as a condition of  
31 a written opinion issued under the authority of subsection (1)(i) of  
32 this section, the department shall periodically review the  
33 environmental covenant for effectiveness. Except as otherwise provided  
34 in (c) of this subsection, the department shall conduct a review at  
35 least once every five years after an environmental covenant is  
36 recorded.

37 (a) The review shall consist of, at a minimum:

1 (i) A review of the title of the real property subject to the  
2 environmental covenant to determine whether the environmental covenant  
3 was properly recorded and, if applicable, amended or terminated;

4 (ii) A physical inspection of the real property subject to the  
5 environmental covenant to determine compliance with the environmental  
6 covenant, including whether any development or redevelopment of the  
7 real property has violated the terms of the environmental covenant; and

8 (iii) A review of the effectiveness of the environmental covenant  
9 in limiting or prohibiting activities that may interfere with the  
10 integrity of the remedial action or that may result in exposure to or  
11 migration of hazardous substances. This shall include a review of  
12 available monitoring data.

13 (b) If an environmental covenant has been amended or terminated  
14 without proper authority, or if the terms of an environmental covenant  
15 have been violated, or if the environmental covenant is no longer  
16 effective in limiting or prohibiting activities that may interfere with  
17 the integrity of the remedial action or that may result in exposure to  
18 or migration of hazardous substances, then the department shall take  
19 any and all appropriate actions necessary to ensure compliance with the  
20 environmental covenant and the policies and requirements of this  
21 chapter.

22 (c) For facilities where an environmental covenant required by the  
23 department under subsection (1)(f) of this section was required before  
24 July 1, 2007, the department shall:

25 (i) Enter all required information about the environmental covenant  
26 into the registry established under RCW 64.70.120 by June 30, 2008;

27 (ii) For those facilities where more than five years has elapsed  
28 since the environmental covenant was required and the department has  
29 yet to conduct a review, conduct an initial review according to the  
30 following schedule:

31 (A) By December 30, 2008, fifty facilities;

32 (B) By June 30, 2009, fifty additional facilities; and

33 (C) By June 30, 2010, the remainder of the facilities;

34 (iii) Once this initial review has been completed, conduct  
35 subsequent reviews at least once every five years.

36 **Sec. 7.** RCW 70.105D.040 and 1997 c 406 s 4 are each amended to  
37 read as follows:

1 (1) Except as provided in subsection (3) of this section, the  
2 following persons are liable with respect to a facility:

3 (a) The owner or operator of the facility;

4 (b) Any person who owned or operated the facility at the time of  
5 disposal or release of the hazardous substances;

6 (c) Any person who owned or possessed a hazardous substance and who  
7 by contract, agreement, or otherwise arranged for disposal or treatment  
8 of the hazardous substance at the facility, or arranged with a  
9 transporter for transport for disposal or treatment of the hazardous  
10 substances at the facility, or otherwise generated hazardous wastes  
11 disposed of or treated at the facility;

12 (d) Any person (i) who accepts or accepted any hazardous substance  
13 for transport to a disposal, treatment, or other facility selected by  
14 such person from which there is a release or a threatened release for  
15 which remedial action is required, unless such facility, at the time of  
16 disposal or treatment, could legally receive such substance; or (ii)  
17 who accepts a hazardous substance for transport to such a facility and  
18 has reasonable grounds to believe that such facility is not operated in  
19 accordance with chapter 70.105 RCW; and

20 (e) Any person who both sells a hazardous substance and is  
21 responsible for written instructions for its use if (i) the substance  
22 is used according to the instructions and (ii) the use constitutes a  
23 release for which remedial action is required at the facility.

24 (2) Each person who is liable under this section is strictly  
25 liable, jointly and severally, for all remedial action costs and for  
26 all natural resource damages resulting from the releases or threatened  
27 releases of hazardous substances. The attorney general, at the request  
28 of the department, is empowered to recover all costs and damages from  
29 persons liable therefor.

30 (3) The following persons are not liable under this section:

31 (a) Any person who can establish that the release or threatened  
32 release of a hazardous substance for which the person would be  
33 otherwise responsible was caused solely by:

34 (i) An act of God;

35 (ii) An act of war; or

36 (iii) An act or omission of a third party (including but not  
37 limited to a trespasser) other than (A) an employee or agent of the  
38 person asserting the defense, or (B) any person whose act or omission

1 occurs in connection with a contractual relationship existing, directly  
2 or indirectly, with the person asserting this defense to liability.  
3 This defense only applies where the person asserting the defense has  
4 exercised the utmost care with respect to the hazardous substance, the  
5 foreseeable acts or omissions of the third party, and the foreseeable  
6 consequences of those acts or omissions;

7 (b) Any person who is an owner, past owner, or purchaser of a  
8 facility and who can establish by a preponderance of the evidence that  
9 at the time the facility was acquired by the person, the person had no  
10 knowledge or reason to know that any hazardous substance, the release  
11 or threatened release of which has resulted in or contributed to the  
12 need for the remedial action, was released or disposed of on, in, or at  
13 the facility. This subsection (3)(b) is limited as follows:

14 (i) To establish that a person had no reason to know, the person  
15 must have undertaken, at the time of acquisition, all appropriate  
16 inquiry into the previous ownership and uses of the property,  
17 consistent with good commercial or customary practice in an effort to  
18 minimize liability. Any court interpreting this subsection (3)(b)  
19 shall take into account any specialized knowledge or experience on the  
20 part of the person, the relationship of the purchase price to the value  
21 of the property if uncontaminated, commonly known or reasonably  
22 ascertainable information about the property, the obviousness of the  
23 presence or likely presence of contamination at the property, and the  
24 ability to detect such contamination by appropriate inspection;

25 (ii) The defense contained in this subsection (3)(b) is not  
26 available to any person who had actual knowledge of the release or  
27 threatened release of a hazardous substance when the person owned the  
28 real property and who subsequently transferred ownership of the  
29 property without first disclosing such knowledge to the transferee;

30 (iii) The defense contained in this subsection (3)(b) is not  
31 available to any person who, by any act or omission, caused or  
32 contributed to the release or threatened release of a hazardous  
33 substance at the facility;

34 (c) Any natural person who uses a hazardous substance lawfully and  
35 without negligence for any personal or domestic purpose in or near a  
36 dwelling or accessory structure when that person is: (i) A resident of  
37 the dwelling; (ii) a person who, without compensation, assists the

1 resident in the use of the substance; or (iii) a person who is employed  
2 by the resident, but who is not an independent contractor;

3 (d) Any person who, for the purpose of growing food crops, applies  
4 pesticides or fertilizers without negligence and in accordance with all  
5 applicable laws and regulations.

6 (4) There may be no settlement by the state with any person  
7 potentially liable under this chapter except in accordance with this  
8 section.

9 (a) The attorney general may agree to a settlement with any  
10 potentially liable person only if the department finds, after public  
11 notice and any required hearing, that the proposed settlement would  
12 lead to a more expeditious cleanup of hazardous substances in  
13 compliance with clean-up standards under RCW 70.105D.030(2)(e) and with  
14 any remedial orders issued by the department. Whenever practicable and  
15 in the public interest, the attorney general may expedite such a  
16 settlement with persons whose contribution is insignificant in amount  
17 and toxicity. A hearing shall be required only if at least ten persons  
18 request one or if the department determines a hearing is necessary.

19 (b) A settlement agreement under this section shall be entered as  
20 a consent decree issued by a court of competent jurisdiction.

21 (c) A settlement agreement may contain a covenant not to sue only  
22 of a scope commensurate with the settlement agreement in favor of any  
23 person with whom the attorney general has settled under this section.  
24 Any covenant not to sue shall contain a reopener clause which requires  
25 the court to amend the covenant not to sue if factors not known at the  
26 time of entry of the settlement agreement are discovered and present a  
27 previously unknown threat to human health or the environment.

28 (d) A party who has resolved its liability to the state under this  
29 section shall not be liable for claims for contribution regarding  
30 matters addressed in the settlement. The settlement does not discharge  
31 any of the other liable parties but it reduces the total potential  
32 liability of the others to the state by the amount of the settlement.

33 (e) If the state has entered into a consent decree with an owner or  
34 operator under this section, the state shall not enforce this chapter  
35 against any owner or operator who is a successor in interest to the  
36 settling party unless under the terms of the consent decree the state  
37 could enforce against the settling party, if:



1 (i) The successor owner or operator is liable with respect to the  
2 facility solely due to that person's ownership interest or operator  
3 status acquired as a successor in interest to the owner or operator  
4 with whom the state has entered into a consent decree; and

5 (ii) The stay of enforcement under this subsection does not apply  
6 if the consent decree was based on circumstances unique to the settling  
7 party that do not exist with regard to the successor in interest, such  
8 as financial hardship. For consent decrees entered into before July  
9 27, 1997, at the request of a settling party or a potential successor  
10 owner or operator, the attorney general shall issue a written opinion  
11 on whether a consent decree contains such unique circumstances. For  
12 all other consent decrees, such unique circumstances shall be specified  
13 in the consent decree.

14 (f) Any person who is not subject to enforcement by the state under  
15 (e) of this subsection is not liable for claims for contribution  
16 regarding matters addressed in the settlement.

17 (5)(a) In addition to the settlement authority provided under  
18 subsection (4) of this section, the attorney general may agree to a  
19 settlement with a (~~person not currently liable for remedial action at~~  
20 ~~a facility who proposes to purchase, redevelop, or reuse the facility~~)  
21 prospective purchaser, provided that:

22 (i) The settlement will yield substantial new resources to  
23 facilitate cleanup;

24 (ii) The settlement will expedite remedial action at the facility  
25 consistent with the rules adopted under this chapter; and

26 (iii) Based on available information, the department determines  
27 that the redevelopment or reuse of the facility is not likely to  
28 contribute to the existing release or threatened release, interfere  
29 with remedial actions that may be needed at the ((site)) facility, or  
30 increase health risks to persons at or in the vicinity of the ((site))  
31 facility.

32 (b) The legislature recognizes that the state does not have  
33 adequate resources to participate in all property transactions  
34 involving contaminated property. The primary purpose of this  
35 subsection (5) is to promote the cleanup and reuse of (~~vacant or~~  
36 ~~abandoned commercial or industrial contaminated~~) brownfield property.  
37 The attorney general and the department may give priority to  
38 settlements that will provide a substantial public benefit((7

1 ~~including, but not limited to the reuse of a vacant or abandoned~~  
2 ~~manufacturing or industrial facility, or the development of a facility~~  
3 ~~by a governmental entity to address an important public purpose)) in~~  
4 addition to cleanup such as:

5 (i) Public access to an area not otherwise accessible to the  
6 public;

7 (ii) New or improved public recreational activities;

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

10 (iv) Preservation of a historic property listed pursuant to chapter  
11 84.26 RCW.

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

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

22 (7) Nothing in this chapter affects or modifies in any way any  
23 person's right to seek or obtain relief under other statutes or under  
24 common law, including but not limited to damages for injury or loss  
25 resulting from a release or threatened release of a hazardous  
26 substance. No settlement by the department or remedial action ordered  
27 by a court or the department affects any person's right to obtain a  
28 remedy under common law or other statutes.

29 **Sec. 8.** RCW 70.105D.050 and 2005 c 211 s 2 are each amended to  
30 read as follows:

31 (1) With respect to any release, or threatened release, for which  
32 the department does not conduct or contract for conducting remedial  
33 action and for which the department believes remedial action is in the  
34 public interest, the director shall issue orders or agreed orders  
35 requiring potentially liable persons to provide the remedial action.  
36 Any liable person, or prospective purchaser who has entered into an

1 agreed order under RCW 70.105D.040(6), who refuses, without sufficient  
2 cause, to comply with an order or agreed order of the director is  
3 liable in an action brought by the attorney general for:

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

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

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

10 (2) Any person who incurs costs complying with an order issued  
11 under subsection (1) of this section may petition the department for  
12 reimbursement of those costs. If the department refuses to grant  
13 reimbursement, the person may within thirty days thereafter file suit  
14 and recover costs by proving that he or she was not a liable person  
15 under RCW 70.105D.040 and that the costs incurred were reasonable.

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

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

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

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

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

37 (7) Any person who owns real property or lender holding a mortgage  
38 on real property that is subject to a lien filed under RCW 70.105D.055

1 may petition the department to have the lien removed or the amount of  
2 the lien reduced. If, after consideration of the petition and the  
3 information supporting the petition, the department decides to deny the  
4 request, the person may, within ninety days after receipt of the  
5 department's denial, file suit for removal or reduction of the lien.  
6 The person is entitled to removal of a lien filed under RCW  
7 70.105D.055(2)(a) if they can prove by a preponderance of the evidence  
8 that the person is not a liable party under RCW 70.105D.040. The  
9 person is entitled to a reduction of the amount of the lien if they can  
10 prove by a preponderance of the evidence:

11 (a) For liens filed under RCW 70.105D.055(2)(a), the amount of the  
12 lien exceeds the remedial action costs the department incurred related  
13 to cleanup of the real property; and

14 (b) For liens filed under RCW 70.105D.055(2)(c), the amount of the  
15 lien exceeds the remedial action costs the department incurred related  
16 to cleanup of the real property or exceeds the increase of the fair  
17 market value of the real property solely attributable to the remedial  
18 action conducted by the department.

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

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

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

25 (~~(a)~~) (i) Those revenues which are raised by the tax imposed  
26 under RCW 82.21.030 and which are attributable to that portion of the  
27 rate equal to thirty-three one-hundredths of one percent;

28 (~~(b)~~) (ii) The costs of remedial actions recovered under this  
29 chapter or chapter 70.105A RCW;

30 (~~(c)~~) (iii) Penalties collected or recovered under this chapter;  
31 and

32 (~~(d)~~) (iv) Any other money appropriated or transferred to the  
33 account by the legislature.

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

- 1 (i) The state's responsibility for hazardous waste planning,  
2 management, regulation, enforcement, technical assistance, and public  
3 education required under chapter 70.105 RCW;
- 4 (ii) The state's responsibility for solid waste planning,  
5 management, regulation, enforcement, technical assistance, and public  
6 education required under chapter 70.95 RCW;
- 7 (iii) The hazardous waste cleanup program required under this  
8 chapter;
- 9 (iv) State matching funds required under the federal cleanup law;
- 10 (v) Financial assistance for local programs in accordance with  
11 chapters 70.95, 70.95C, 70.95I, and 70.105 RCW;
- 12 (vi) State government programs for the safe reduction, recycling,  
13 or disposal of hazardous wastes from households, small businesses, and  
14 agriculture;
- 15 (vii) Hazardous materials emergency response training;
- 16 (viii) Water and environmental health protection and monitoring  
17 programs;
- 18 (ix) Programs authorized under chapter 70.146 RCW;
- 19 (x) A public participation program, including regional citizen  
20 advisory committees;
- 21 (xi) Public funding to assist potentially liable persons to pay for  
22 the costs of remedial action in compliance with clean-up standards  
23 under RCW 70.105D.030(2)(e) but only when:  
24 (A) The amount and terms of such funding are established under a  
25 settlement agreement under RCW 70.105D.040(4); and ((when))  
26 (B) The director has found that the funding will achieve both  
27 ((A)) (I) a substantially more expeditious or enhanced cleanup than  
28 would otherwise occur((τ)); and ((B)) (II) the prevention or  
29 mitigation of unfair economic hardship;
- 30 (xii) Public funding to assist prospective purchasers to pay for  
31 the costs of remedial action in compliance with clean-up standards  
32 under RCW 70.105D.030(2)(e) if:  
33 (A) The facility is located within a redevelopment opportunity zone  
34 designated under section 4 of this act;  
35 (B) The amount and terms of the funding are established under a  
36 settlement agreement under RCW 70.105D.040(5); and  
37 (C) The director has found the funding meets any additional  
38 criteria established in rule by the department, will achieve a

1 substantially more expeditious or enhanced cleanup than would otherwise  
2 occur, and will provide a public benefit in addition to cleanup  
3 commensurate with the scope of the public funding such as:

4 (I) Public access to an area not otherwise accessible to the  
5 public;

6 (II) New or improved public recreational activities;

7 (III) Enhancement of a natural resource habitat that would not  
8 otherwise occur;

9 (IV) Preservation of a historic property listed pursuant to chapter  
10 84.26 RCW; or

11 (V) Economic and job development opportunities that would not  
12 otherwise occur;

13 (xiii) Development and demonstration of alternative management  
14 technologies designed to carry out the hazardous waste management  
15 priorities of RCW 70.105.150;

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

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

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

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

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

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

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

32 (iii) Solid waste plans and programs under chapters 70.95, 70.95C,  
33 70.95I, and 70.105 RCW;

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

1 (v) Cleanup and disposal of hazardous substances from abandoned or  
2 derelict vessels, defined for the purposes of this section as vessels  
3 that have little or no value and either have no identified owner or  
4 have an identified owner lacking financial resources to clean up and  
5 dispose of the vessel, that pose a threat to human health or the  
6 environment.

7 (b) Funds for plans and programs shall be allocated consistent with  
8 the priorities and matching requirements established in chapters  
9 70.105, 70.95C, 70.95I, and 70.95 RCW, except that any applicant that  
10 is a Puget Sound partner, as defined in RCW 90.71.010, along with any  
11 project that is referenced in the action agenda developed by the Puget  
12 Sound partnership under RCW 90.71.310, shall, except as conditioned by  
13 RCW 70.105D.120, receive priority for any available funding for any  
14 grant or funding programs or sources that use a competitive bidding  
15 process. During the 2007-2009 fiscal biennium, moneys in the account  
16 may also be used for grants to local governments to retrofit public  
17 sector diesel equipment and for storm water planning and implementation  
18 activities.

19 (c) To expedite cleanups throughout the state, the department shall  
20 partner with local communities and liable (~~parties for cleanups. The~~  
21 ~~department is authorized to use~~) persons conducting remedial actions,  
22 and may use the following additional strategies in order to facilitate  
23 economic development and ensure a healthful environment for future  
24 generations:

25 (i) Enter into a grant or loan agreement with a local government  
26 conducting a remedial action that provides for periodic reimbursement  
27 of remedial action costs as they are incurred as established in the  
28 agreement;

29 (ii) Enter into a grant or loan agreement with a local government  
30 prior to it acquiring a property or obtaining necessary access to  
31 conduct remedial actions, provided the agreement is conditioned upon  
32 the local government acquiring the property or obtaining the access in  
33 accordance with a schedule specified in the agreement;

34 (iii) Provide integrated planning grants or loans to local  
35 governments to fund studies necessary to facilitate remedial actions at  
36 brownfield properties and adaptive reuse of properties following  
37 remediation. Eligible activities include, but are not limited to:  
38 Environmental site assessments; remedial investigations; health

1 assessments; feasibility studies; site planning; community involvement;  
2 land use and regulatory analyses; building and infrastructure  
3 assessments; economic and fiscal analyses; and any environmental  
4 analyses under chapter 43.21C RCW;

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

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

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

15 (B) Funding would create new substantial economic development,  
16 public recreational, or habitat restoration opportunities that would  
17 not otherwise occur; or

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

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

28 (~~(To facilitate and expedite cleanups using funds from the~~  
29 ~~local toxics control account, during the 2009-2011 fiscal biennium the~~  
30 ~~director may establish grant-funded accounts to hold and disperse local~~  
31 ~~toxics control account funds and funds from local governments to be~~  
32 ~~used for remedial actions.)) To expedite multiparty clean-up efforts,  
33 the department may purchase remedial action cost-cap insurance.~~

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) Except during the 2009-2011 fiscal biennium, one percent of the  
38 moneys deposited into the state and local toxics control accounts shall



1 be allocated only for public participation grants to persons who may be  
2 adversely affected by a release or threatened release of a hazardous  
3 substance and to not-for-profit public interest organizations. The  
4 primary purpose of these grants is to facilitate the participation by  
5 persons and organizations in the investigation and remedying of  
6 releases or threatened releases of hazardous substances and to  
7 implement the state's solid and hazardous waste management priorities.  
8 No grant may exceed sixty thousand dollars. Grants may be renewed  
9 annually. Moneys appropriated for public participation from either  
10 account which are not expended at the close of any biennium shall  
11 revert to the state toxics control account.

12 (6) No moneys deposited into either the state or local toxics  
13 control account may be used for solid waste incinerator feasibility  
14 studies, construction, maintenance, or operation, or, after January 1,  
15 2010, for projects designed to address the restoration of Puget Sound,  
16 funded in a competitive grant process, that are in conflict with the  
17 action agenda developed by the Puget Sound partnership under RCW  
18 90.71.310.

19 (7) The department shall adopt rules for grant or loan issuance and  
20 performance. To accelerate both remedial action and economic recovery,  
21 the department may expedite the adoption of rules necessary to  
22 implement this act using the expedited procedures in RCW 34.05.353.  
23 The department shall initiate the award of financial assistance by July  
24 1, 2012. To ensure the adoption of rules will not delay financial  
25 assistance, the department may administer the award of financial  
26 assistance through interpretive guidance pending the adoption of rules  
27 through July 1, 2013.

28 ~~(8) ((During the 2007-2009 and 2009-2011 fiscal biennia, the~~  
29 ~~legislature may transfer from the local toxics control account to~~  
30 ~~either the state general fund or the oil spill prevention account, or~~  
31 ~~both such amounts as reflect excess fund balance in the account.~~

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

37 ~~(10) During the 2009-2011 fiscal biennium, the legislature may~~

1 ~~transfer from the state toxics control account to the state general~~  
2 ~~fund such amounts as reflect the excess fund balance in the account.~~

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

6 NEW SECTION. **Sec. 10.** If any provision of this act or its  
7 application to any person or circumstance is held invalid, the  
8 remainder of the act or the application of the provision to other  
9 persons or circumstances is not affected.

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