

2SSB 5296 - S AMD 302

By Senators Ericksen, Honeyford

PULLED 04/22/2013

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** The legislature finds that there are a
4 large number of toxic waste sites that have been identified in the
5 department of ecology's priority list as ready for immediate cleanup.
6 The legislature further finds that addressing the cleanup of these
7 toxic waste sites will provide needed jobs to citizens of Washington
8 state. It is the intent of the legislature to prioritize the spending
9 of revenues under chapter 70.105D RCW, the model toxics control act, on
10 cleaning up the most toxic sites, while also providing jobs in
11 communities around the state.

12 **Sec. 2.** RCW 70.105D.020 and 2007 c 104 s 18 are each amended to
13 read as follows:

14 The definitions in this section apply throughout this chapter
15 unless the context clearly requires otherwise.

16 (1) "Agreed order" means an order issued by the department under
17 this chapter with which the potentially liable person or prospective
18 purchaser receiving the order agrees to comply. An agreed order may be
19 used to require or approve any cleanup or other remedial actions but it
20 is not a settlement under RCW 70.105D.040(4) and shall not contain a
21 covenant not to sue, or provide protection from claims for
22 contribution, or provide eligibility for public funding of remedial
23 actions under RCW 70.105D.070 (2)((~~d~~)(~~xi~~)) (a)(xv) and (b)(iii) and
24 (3)(b)(iii).

25 (2) "Department" means the department of ecology.

26 (3) "Director" means the director of ecology or the director's
27 designee.

28 (4) "Environmental covenant" has the same meaning as defined in RCW
29 64.70.020.

1 (5) "Facility" means (a) any building, structure, installation,
2 equipment, pipe or pipeline (including any pipe into a sewer or
3 publicly owned treatment works), well, pit, pond, lagoon, impoundment,
4 ditch, landfill, storage container, motor vehicle, rolling stock,
5 vessel, or aircraft, or (b) any site or area where a hazardous
6 substance, other than a consumer product in consumer use, has been
7 deposited, stored, disposed of, or placed, or otherwise come to be
8 located.

9 (6) "Federal cleanup law" means the federal comprehensive
10 environmental response, compensation, and liability act of 1980, 42
11 U.S.C. Sec. 9601 et seq., as amended by Public Law 99-499.

12 (7)(a) "Fiduciary" means a person acting for the benefit of another
13 party as a bona fide trustee; executor; administrator; custodian;
14 guardian of estates or guardian ad litem; receiver; conservator;
15 committee of estates of incapacitated persons; trustee in bankruptcy;
16 trustee, under an indenture agreement, trust agreement, lease, or
17 similar financing agreement, for debt securities, certificates of
18 interest or certificates of participation in debt securities, or other
19 forms of indebtedness as to which the trustee is not, in the capacity
20 of trustee, the lender. Except as provided in subsection (17)(b)(iii)
21 of this section, the liability of a fiduciary under this chapter shall
22 not exceed the assets held in the fiduciary capacity.

23 (b) "Fiduciary" does not mean:

24 (i) A person acting as a fiduciary with respect to a trust or other
25 fiduciary estate that was organized for the primary purpose of, or is
26 engaged in, actively carrying on a trade or business for profit, unless
27 the trust or other fiduciary estate was created as part of, or to
28 facilitate, one or more estate plans or because of the incapacity of a
29 natural person;

30 (ii) A person who acquires ownership or control of a facility with
31 the objective purpose of avoiding liability of the person or any other
32 person. It is prima facie evidence that the fiduciary acquired
33 ownership or control of the facility to avoid liability if the facility
34 is the only substantial asset in the fiduciary estate at the time the
35 facility became subject to the fiduciary estate;

36 (iii) A person who acts in a capacity other than that of a
37 fiduciary or in a beneficiary capacity and in that capacity directly or
38 indirectly benefits from a trust or fiduciary relationship;

1 (iv) A person who is a beneficiary and fiduciary with respect to
2 the same fiduciary estate, and who while acting as a fiduciary receives
3 benefits that exceed customary or reasonable compensation, and
4 incidental benefits permitted under applicable law;

5 (v) A person who is a fiduciary and receives benefits that
6 substantially exceed customary or reasonable compensation, and
7 incidental benefits permitted under applicable law; or

8 (vi) A person who acts in the capacity of trustee of state or
9 federal lands or resources.

10 (8) "Fiduciary capacity" means the capacity of a person holding
11 title to a facility, or otherwise having control of an interest in the
12 facility pursuant to the exercise of the responsibilities of the person
13 as a fiduciary.

14 (9) "Foreclosure and its equivalents" means purchase at a
15 foreclosure sale, acquisition, or assignment of title in lieu of
16 foreclosure, termination of a lease, or other repossession, acquisition
17 of a right to title or possession, an agreement in satisfaction of the
18 obligation, or any other comparable formal or informal manner, whether
19 pursuant to law or under warranties, covenants, conditions,
20 representations, or promises from the borrower, by which the holder
21 acquires title to or possession of a facility securing a loan or other
22 obligation.

23 (10) "Hazardous substance" means:

24 (a) Any dangerous or extremely hazardous waste as defined in RCW
25 70.105.010 (~~((+5) and (+6))~~) (1) and (7), or any dangerous or extremely
26 dangerous waste designated by rule pursuant to chapter 70.105 RCW;

27 (b) Any hazardous substance as defined in RCW 70.105.010(~~((+14))~~)
28 (10) or any hazardous substance as defined by rule pursuant to chapter
29 70.105 RCW;

30 (c) Any substance that, on March 1, 1989, is a hazardous substance
31 under section 101(14) of the federal cleanup law, 42 U.S.C. Sec.
32 9601(14);

33 (d) Petroleum or petroleum products; and

34 (e) Any substance or category of substances, including solid waste
35 decomposition products, determined by the director by rule to present
36 a threat to human health or the environment if released into the
37 environment.

1 The term hazardous substance does not include any of the following
2 when contained in an underground storage tank from which there is not
3 a release: Crude oil or any fraction thereof or petroleum, if the tank
4 is in compliance with all applicable federal, state, and local law.

5 (11) "Holder" means a person who holds indicia of ownership
6 primarily to protect a security interest. A holder includes the
7 initial holder such as the loan originator, any subsequent holder such
8 as a successor-in-interest or subsequent purchaser of the security
9 interest on the secondary market, a guarantor of an obligation, surety,
10 or any other person who holds indicia of ownership primarily to protect
11 a security interest, or a receiver, court-appointed trustee, or other
12 person who acts on behalf or for the benefit of a holder. A holder can
13 be a public or privately owned financial institution, receiver,
14 conservator, loan guarantor, or other similar persons that loan money
15 or guarantee repayment of a loan. Holders typically are banks or
16 savings and loan institutions but may also include others such as
17 insurance companies, pension funds, or private individuals that engage
18 in loaning of money or credit.

19 (12) "Independent remedial actions" means remedial actions
20 conducted without department oversight or approval, and not under an
21 order, agreed order, or consent decree.

22 (13) "Indicia of ownership" means evidence of a security interest,
23 evidence of an interest in a security interest, or evidence of an
24 interest in a facility securing a loan or other obligation, including
25 any legal or equitable title to a facility acquired incident to
26 foreclosure and its equivalents. Evidence of such interests includes,
27 mortgages, deeds of trust, sellers interest in a real estate contract,
28 liens, surety bonds, and guarantees of obligations, title held pursuant
29 to a lease financing transaction in which the lessor does not select
30 initially the leased facility, or legal or equitable title obtained
31 pursuant to foreclosure and their equivalents. Evidence of such
32 interests also includes assignments, pledges, or other rights to or
33 other forms of encumbrance against the facility that are held primarily
34 to protect a security interest.

35 (14) "Industrial properties" means properties that are or have been
36 characterized by, or are to be committed to, traditional industrial
37 uses such as processing or manufacturing of materials, marine terminal

1 and transportation areas and facilities, fabrication, assembly,
2 treatment, or distribution of manufactured products, or storage of bulk
3 materials, that are either:

4 (a) Zoned for industrial use by a city or county conducting land
5 use planning under chapter 36.70A RCW; or

6 (b) For counties not planning under chapter 36.70A RCW and the
7 cities within them, zoned for industrial use and adjacent to properties
8 currently used or designated for industrial purposes.

9 (15) "Institutional controls" means measures undertaken to limit or
10 prohibit activities that may interfere with the integrity of a remedial
11 action or result in exposure to or migration of hazardous substances at
12 a site. "Institutional controls" include environmental covenants.

13 (16) "Operating a facility primarily to protect a security
14 interest" occurs when all of the following are met: (a) Operating the
15 facility where the borrower has defaulted on the loan or otherwise
16 breached the security agreement; (b) operating the facility to preserve
17 the value of the facility as an ongoing business; (c) the operation is
18 being done in anticipation of a sale, transfer, or assignment of the
19 facility; and (d) the operation is being done primarily to protect a
20 security interest. Operating a facility for longer than one year prior
21 to foreclosure or its equivalents shall be presumed to be operating the
22 facility for other than to protect a security interest.

23 (17) "Owner or operator" means:

24 (a) Any person with any ownership interest in the facility or who
25 exercises any control over the facility; or

26 (b) In the case of an abandoned facility, any person who had owned,
27 or operated, or exercised control over the facility any time before its
28 abandonment;

29 The term does not include:

30 (i) An agency of the state or unit of local government which
31 acquired ownership or control through a drug forfeiture action under
32 RCW 69.50.505, or involuntarily through bankruptcy, tax delinquency,
33 abandonment, or other circumstances in which the government
34 involuntarily acquires title. This exclusion does not apply to an
35 agency of the state or unit of local government which has caused or
36 contributed to the release or threatened release of a hazardous
37 substance from the facility;

1 (ii) A person who, without participating in the management of a
2 facility, holds indicia of ownership primarily to protect the person's
3 security interest in the facility. Holders after foreclosure and its
4 equivalent and holders who engage in any of the activities identified
5 in subsection (18)(e) through (g) of this section shall not lose this
6 exemption provided the holder complies with all of the following:

7 (A) The holder properly maintains the environmental compliance
8 measures already in place at the facility;

9 (B) The holder complies with the reporting requirements in the
10 rules adopted under this chapter;

11 (C) The holder complies with any order issued to the holder by the
12 department to abate an imminent or substantial endangerment;

13 (D) The holder allows the department or potentially liable persons
14 under an order, agreed order, or settlement agreement under this
15 chapter access to the facility to conduct remedial actions and does not
16 impede the conduct of such remedial actions;

17 (E) Any remedial actions conducted by the holder are in compliance
18 with any preexisting requirements identified by the department, or, if
19 the department has not identified such requirements for the facility,
20 the remedial actions are conducted consistent with the rules adopted
21 under this chapter; and

22 (F) The holder does not exacerbate an existing release. The
23 exemption in this subsection (17)(b)(ii) does not apply to holders who
24 cause or contribute to a new release or threatened release or who are
25 otherwise liable under RCW 70.105D.040(1) (b), (c), (d), and (e);
26 provided, however, that a holder shall not lose this exemption if it
27 establishes that any such new release has been remediated according to
28 the requirements of this chapter and that any hazardous substances
29 remaining at the facility after remediation of the new release are
30 divisible from such new release;

31 (iii) A fiduciary in his, her, or its personal or individual
32 capacity. This exemption does not preclude a claim against the assets
33 of the estate or trust administered by the fiduciary or against a
34 nonemployee agent or independent contractor retained by a fiduciary.
35 This exemption also does not apply to the extent that a person is
36 liable under this chapter independently of the person's ownership as a
37 fiduciary or for actions taken in a fiduciary capacity which cause or
38 contribute to a new release or exacerbate an existing release of

1 hazardous substances. This exemption applies provided that, to the
2 extent of the fiduciary's powers granted by law or by the applicable
3 governing instrument granting fiduciary powers, the fiduciary complies
4 with all of the following:

5 (A) The fiduciary properly maintains the environmental compliance
6 measures already in place at the facility;

7 (B) The fiduciary complies with the reporting requirements in the
8 rules adopted under this chapter;

9 (C) The fiduciary complies with any order issued to the fiduciary
10 by the department to abate an imminent or substantial endangerment;

11 (D) The fiduciary allows the department or potentially liable
12 persons under an order, agreed order, or settlement agreement under
13 this chapter access to the facility to conduct remedial actions and
14 does not impede the conduct of such remedial actions;

15 (E) Any remedial actions conducted by the fiduciary are in
16 compliance with any preexisting requirements identified by the
17 department, or, if the department has not identified such requirements
18 for the facility, the remedial actions are conducted consistent with
19 the rules adopted under this chapter; and

20 (F) The fiduciary does not exacerbate an existing release.

21 The exemption in this subsection (17)(b)(iii) does not apply to
22 fiduciaries who cause or contribute to a new release or threatened
23 release or who are otherwise liable under RCW 70.105D.040(1) (b), (c),
24 (d), and (e); provided however, that a fiduciary shall not lose this
25 exemption if it establishes that any such new release has been
26 remediated according to the requirements of this chapter and that any
27 hazardous substances remaining at the facility after remediation of the
28 new release are divisible from such new release. The exemption in this
29 subsection (17)(b)(iii) also does not apply where the fiduciary's
30 powers to comply with this subsection (17)(b)(iii) are limited by a
31 governing instrument created with the objective purpose of avoiding
32 liability under this chapter or of avoiding compliance with this
33 chapter; or

34 (iv) Any person who has any ownership interest in, operates, or
35 exercises control over real property where a hazardous substance has
36 come to be located solely as a result of migration of the hazardous
37 substance to the real property through the groundwater from a source
38 off the property, if:

1 (A) The person can demonstrate that the hazardous substance has not
2 been used, placed, managed, or otherwise handled on the property in a
3 manner likely to cause or contribute to a release of the hazardous
4 substance that has migrated onto the property;

5 (B) The person has not caused or contributed to the release of the
6 hazardous substance;

7 (C) The person does not engage in activities that damage or
8 interfere with the operation of remedial actions installed on the
9 person's property or engage in activities that result in exposure of
10 humans or the environment to the contaminated groundwater that has
11 migrated onto the property;

12 (D) If requested, the person allows the department, potentially
13 liable persons who are subject to an order, agreed order, or consent
14 decree, and the authorized employees, agents, or contractors of each,
15 access to the property to conduct remedial actions required by the
16 department. The person may attempt to negotiate an access agreement
17 before allowing access; and

18 (E) Legal withdrawal of groundwater does not disqualify a person
19 from the exemption in this subsection (17)(b)(iv).

20 (18) "Participation in management" means exercising decision-making
21 control over the borrower's operation of the facility, environmental
22 compliance, or assuming or manifesting responsibility for the overall
23 management of the enterprise encompassing the day-to-day decision
24 making of the enterprise.

25 The term does not include any of the following: (a) A holder with
26 the mere capacity or ability to influence, or the unexercised right to
27 control facility operations; (b) a holder who conducts or requires a
28 borrower to conduct an environmental audit or an environmental site
29 assessment at the facility for which indicia of ownership is held; (c)
30 a holder who requires a borrower to come into compliance with any
31 applicable laws or regulations at the facility for which indicia of
32 ownership is held; (d) a holder who requires a borrower to conduct
33 remedial actions including setting minimum requirements, but does not
34 otherwise control or manage the borrower's remedial actions or the
35 scope of the borrower's remedial actions except to prepare a facility
36 for sale, transfer, or assignment; (e) a holder who engages in workout
37 or policing activities primarily to protect the holder's security
38 interest in the facility; (f) a holder who prepares a facility for

1 sale, transfer, or assignment or requires a borrower to prepare a
2 facility for sale, transfer, or assignment; (g) a holder who operates
3 a facility primarily to protect a security interest, or requires a
4 borrower to continue to operate, a facility primarily to protect a
5 security interest; and (h) a prospective holder who, as a condition of
6 becoming a holder, requires an owner or operator to conduct an
7 environmental audit, conduct an environmental site assessment, come
8 into compliance with any applicable laws or regulations, or conduct
9 remedial actions prior to holding a security interest is not
10 participating in the management of the facility.

11 (19) "Person" means an individual, firm, corporation, association,
12 partnership, consortium, joint venture, commercial entity, state
13 government agency, unit of local government, federal government agency,
14 or Indian tribe.

15 (20) "Policing activities" means actions the holder takes to ensure
16 that the borrower complies with the terms of the loan or security
17 interest or actions the holder takes or requires the borrower to take
18 to maintain the value of the security. Policing activities include:
19 Requiring the borrower to conduct remedial actions at the facility
20 during the term of the security interest; requiring the borrower to
21 comply or come into compliance with applicable federal, state, and
22 local environmental and other laws, regulations, and permits during the
23 term of the security interest; securing or exercising authority to
24 monitor or inspect the facility including on-site inspections, or to
25 monitor or inspect the borrower's business or financial condition
26 during the term of the security interest; or taking other actions
27 necessary to adequately police the loan or security interest such as
28 requiring a borrower to comply with any warranties, covenants,
29 conditions, representations, or promises from the borrower.

30 (21) "Potentially liable person" means any person whom the
31 department finds, based on credible evidence, to be liable under RCW
32 70.105D.040. The department shall give notice to any such person and
33 allow an opportunity for comment before making the finding, unless an
34 emergency requires otherwise.

35 (22) "Prepare a facility for sale, transfer, or assignment" means
36 to secure access to the facility; perform routine maintenance on the
37 facility; remove inventory, equipment, or structures; properly maintain
38 environmental compliance measures already in place at the facility;

1 conduct remedial actions to cleanup releases at the facility; or to
2 perform other similar activities intended to preserve the value of the
3 facility where the borrower has defaulted on the loan or otherwise
4 breached the security agreement or after foreclosure and its
5 equivalents and in anticipation of a pending sale, transfer, or
6 assignment, primarily to protect the holder's security interest in the
7 facility. A holder can prepare a facility for sale, transfer, or
8 assignment for up to one year prior to foreclosure and its equivalents
9 and still stay within the security interest exemption in subsection
10 (17)(b)(ii) of this section.

11 (23) "Primarily to protect a security interest" means the indicia
12 of ownership is held primarily for the purpose of securing payment or
13 performance of an obligation. The term does not include indicia of
14 ownership held primarily for investment purposes nor indicia of
15 ownership held primarily for purposes other than as protection for a
16 security interest. A holder may have other, secondary reasons, for
17 maintaining indicia of ownership, but the primary reason must be for
18 protection of a security interest. Holding indicia of ownership after
19 foreclosure or its equivalents for longer than five years shall be
20 considered to be holding the indicia of ownership for purposes other
21 than primarily to protect a security interest. For facilities that
22 have been acquired through foreclosure or its equivalents prior to July
23 23, 1995, this five-year period shall begin as of July 23, 1995.

24 (24) "Public notice" means, at a minimum, adequate notice mailed to
25 all persons who have made timely request of the department and to
26 persons residing in the potentially affected vicinity of the proposed
27 action; mailed to appropriate news media; published in the newspaper of
28 largest circulation in the city or county of the proposed action; and
29 opportunity for interested persons to comment.

30 (25) "Release" means any intentional or unintentional entry of any
31 hazardous substance into the environment, including but not limited to
32 the abandonment or disposal of containers of hazardous substances.

33 (26) "Remedy" or "remedial action" means any action or expenditure
34 consistent with the purposes of this chapter to identify, eliminate, or
35 minimize any threat or potential threat posed by hazardous substances
36 to human health or the environment including any investigative and
37 monitoring activities with respect to any release or threatened release

1 of a hazardous substance and any health assessments or health effects
2 studies conducted in order to determine the risk or potential risk to
3 human health.

4 (27) "Security interest" means an interest in a facility created or
5 established for the purpose of securing a loan or other obligation.
6 Security interests include deeds of trusts, sellers interest in a real
7 estate contract, liens, legal, or equitable title to a facility
8 acquired incident to foreclosure and its equivalents, and title
9 pursuant to lease financing transactions. Security interests may also
10 arise from transactions such as sale and leasebacks, conditional sales,
11 installment sales, trust receipt transactions, certain assignments,
12 factoring agreements, accounts receivable financing arrangements,
13 easements, and consignments, if the transaction creates or establishes
14 an interest in a facility for the purpose of securing a loan or other
15 obligation.

16 (28) "Workout activities" means those actions by which a holder, at
17 any time prior to foreclosure and its equivalents, seeks to prevent,
18 cure, or mitigate a default by the borrower or obligor; or to preserve,
19 or prevent the diminution of, the value of the security. Workout
20 activities include: Restructuring or renegotiating the terms of the
21 security interest; requiring payment of additional rent or interest;
22 exercising forbearance; requiring or exercising rights pursuant to an
23 assignment of accounts or other amounts owed to an obligor; requiring
24 or exercising rights pursuant to an escrow agreement pertaining to
25 amounts owed to an obligor; providing specific or general financial or
26 other advice, suggestions, counseling, or guidance; and exercising any
27 right or remedy the holder is entitled to by law or under any
28 warranties, covenants, conditions, representations, or promises from
29 the borrower.

30 (29) "Areawide groundwater contamination" means groundwater
31 contamination on multiple adjacent properties with different ownerships
32 consisting of hazardous substances from multiple sources that have
33 resulted in commingled plumes of contaminated groundwater that are not
34 practicable to address separately.

35 (30) "Brownfield property" means previously developed and currently
36 abandoned or underutilized real property and adjacent surface waters
37 and sediment where environmental, economic, or community reuse
38 objectives are hindered by the release or threatened release of

1 hazardous substances that the department has determined requires
2 remedial action under this chapter or that the United States
3 environmental protection agency has determined requires remedial action
4 under the federal cleanup law.

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) "Model remedy" or "model remedial action" means a set of
11 technologies, procedures, and monitoring protocols identified by the
12 department for use in routine types of clean-up projects at facilities
13 that have common features and lower risk to human health and the
14 environment.

15 (34) "Prospective purchaser" means a person who is not currently
16 liable for remedial action at a facility and who proposes to purchase,
17 redevelop, or reuse the facility.

18 (35) "Redevelopment opportunity zone" means a geographic area
19 designated under section 4 of this act.

20 NEW SECTION. Sec. 3. A new section is added to chapter 70.105D
21 RCW to read as follows:

22 (1) The brownfield redevelopment trust fund account is created in
23 the state treasury. All receipts from the sources identified in
24 subsection (2) of this section must be deposited into the account.
25 Moneys in the account may be spent only after appropriation.
26 Expenditures from the account may be used only as identified in
27 subsection (4) of this section.

28 (2) The following receipts must be deposited into the brownfield
29 redevelopment trust fund account:

30 (a) Moneys appropriated by the legislature to the account for a
31 specific redevelopment opportunity zone established under section 4 of
32 this act or a specific brownfield renewal authority established under
33 section 5 of this act;

34 (b) Moneys voluntarily deposited in the account for a specific
35 redevelopment opportunity zone or a specific brownfield renewal
36 authority; and

1 (c) Receipts from settlements or court orders that direct payment
2 to the account for a specific redevelopment opportunity zone to resolve
3 a person's liability or potential liability under this chapter.

4 (3) If a settlement or court order does not direct payment of
5 receipts described in subsection (2)(c) of this section into the
6 brownfield redevelopment trust fund account, then the receipts from any
7 payment to the state must be deposited into the state toxics control
8 account established under RCW 70.105D.070.

9 (4) Expenditures from the brownfield redevelopment trust fund
10 account may only be used for the purposes of remediation and cleanup at
11 the specific redevelopment opportunity zone or specific brownfield
12 renewal authority for which the moneys were deposited in the account.

13 (5) The department shall track moneys received, interest earned,
14 and moneys expended separately for each facility.

15 (6) The account must retain its interest earnings in accordance
16 with RCW 43.84.092.

17 (7) The local government designating the redevelopment opportunity
18 zone under section 4 of this act or the associated brownfield renewal
19 authority created under section 5 of this act must be the beneficiary
20 of the deposited moneys.

21 (8) All expenditures must be used to conduct remediation and
22 cleanup consistent with a plan for the remediation and cleanup of the
23 properties or facilities approved by the department under this chapter.
24 All expenditures must meet the eligibility requirements for the use by
25 local governments under the rules for remedial action grants adopted by
26 the department under this chapter, including requirements for the
27 expenditure of nonstate match funding.

28 (9) Beginning October 31, 2015, the department must provide a
29 biennial report to the office of financial management and the
30 legislature regarding the activity for each specific redevelopment
31 opportunity zone or specific brownfield renewal authority for which
32 specific legislative appropriation was provided in the previous two
33 fiscal years.

34 (10) After the department determines that all remedial actions
35 within the redevelopment opportunity zone identified in the plan
36 approved under subsection (8) of this section are completed, including
37 payment of all cost reasonably attributable to the remedial actions and

1 cleanup, any remaining moneys must be transferred to the state toxics
2 control account established under RCW 70.105D.070.

3 (11) If the department determines that substantial progress has not
4 been made on the plan approved under subsection (8) of this section for
5 a redevelopment opportunity zone or specific brownfield renewal
6 authority for which moneys were deposited in the account within six
7 years, or that the brownfield renewal authority is no longer a viable
8 entity, then all remaining moneys must be transferred to the state
9 toxics control account established under RCW 70.105D.070.

10 (12) The department is authorized to adopt rules to implement this
11 section.

12 NEW SECTION. **Sec. 4.** A new section is added to chapter 70.105D
13 RCW to read as follows:

14 (1) A city or county may designate a geographic area within its
15 jurisdiction as a redevelopment opportunity zone if the zone meets the
16 criteria in this subsection and the city or county adopts a resolution
17 that includes the following determinations and commitments:

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

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

24 (c) The cleanup of brownfield properties will be integrated with
25 planning for the future uses of the properties and is consistent with
26 the comprehensive land use plan for the zone; and

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

29 (2) A port district may designate a redevelopment opportunity zone
30 when:

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

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

36 (c) The port district either:

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

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

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

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

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

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

30 (4) If the department determines that substantial progress has not
31 been made on the plan approved under section 3 of this act by the
32 brownfield renewal authority within six years of a city, county, or
33 port district establishing a brownfield renewal authority, the
34 department may require dissolution of the brownfield renewal authority.
35 Upon dissolution of the brownfield renewal authority, except as
36 provided in section 3 of this act, all assets and liabilities transfer

1 to the city, town, or port district establishing the brownfield renewal
2 authority.

3 **Sec. 6.** RCW 70.105D.030 and 2009 c 560 s 10 are each amended to
4 read as follows:

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

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

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

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

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

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

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

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

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

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

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

1 where appropriate, waive collection of costs in order to provide an
2 appropriate level of technical assistance in support of public
3 participation. The state, the department, and officers and employees
4 of the state are immune from all liability, and no cause of action of
5 any nature may arise from any act or omission in providing, or failing
6 to provide, informal advice and assistance. The department must track
7 the number of requests for reviews of planned or completed independent
8 remedial actions and establish performance measures to track how
9 quickly the department is able to respond to those requests. By
10 November 1, 2015, the department must submit to the governor and the
11 appropriate legislative fiscal and policy committees a report on
12 achieving the performance measures and provide recommendations for
13 improving performance, including staffing needs; ((and))

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

20 (k) Establish model remedies for common categories of facilities,
21 types of hazardous substances, types of media, or geographic areas to
22 streamline and accelerate the selection of remedies for routine types
23 of cleanups at facilities;

24 (i) When establishing a model remedy, the department shall:

25 (A) Identify the requirements for characterizing a facility to
26 select a model remedy, the applicability of the model remedy for use at
27 a facility, and monitoring requirements;

28 (B) Describe how the model remedy meets clean-up standards and the
29 requirements for selecting a remedy established by the department under
30 this chapter; and

31 (C) Provide public notice and an opportunity to comment on the
32 proposed model remedy and the conditions under which it may be used at
33 a facility;

34 (ii) When developing model remedies, the department shall solicit
35 and consider proposals from qualified persons. The proposals must, in
36 addition to describing the model remedy, provide the information
37 required under (k)(i)(A) and (B) of this subsection;

1 (iii) If a facility meets the requirements for use of a model
2 remedy, an analysis of the feasibility of alternative remedies is not
3 required under this chapter. For department-conducted and department-
4 supervised remedial actions, the department must provide public notice
5 and consider public comments on the proposed use of a model remedy at
6 a facility. The department shall waive collection of its costs for
7 providing a written opinion under (i) of this subsection on a cleanup
8 that qualifies for and appropriately uses a model remedy; and

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

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

16 (a) Provide for public participation, including at least (i) public
17 notice of the development of investigative plans or remedial plans for
18 releases or threatened releases and (ii) concurrent public notice of
19 all compliance orders, agreed orders, enforcement orders, or notices of
20 violation;

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

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

28 (d) Establish reasonable deadlines not to exceed ninety days for
29 initiating an investigation of a hazardous waste site after the
30 department receives notice or otherwise receives information that the
31 site may pose a threat to human health or the environment and other
32 reasonable deadlines for remedying releases or threatened releases at
33 the site;

34 (e) Publish and periodically update minimum clean-up standards for
35 remedial actions at least as stringent as the clean-up standards under
36 section 121 of the federal cleanup law, 42 U.S.C. Sec. 9621, and at
37 least as stringent as all applicable state and federal laws, including
38 health-based standards under state and federal law; and

1 (f) Apply industrial clean-up standards at industrial properties.
2 Rules adopted under this subsection shall ensure that industrial
3 properties cleaned up to industrial standards cannot be converted to
4 nonindustrial uses without approval from the department. The
5 department may require that a property cleaned up to industrial
6 standards is cleaned up to a more stringent applicable standard as a
7 condition of conversion to a nonindustrial use. Industrial clean-up
8 standards may not be applied to industrial properties where hazardous
9 substances remaining at the property after remedial action pose a
10 threat to human health or the environment in adjacent nonindustrial
11 areas.

12 (3) To achieve and protect the state's long-term ecological health,
13 the department shall (~~prioritize sufficient funding~~) plan to clean up
14 hazardous waste sites and prevent the creation of future hazards due to
15 improper disposal of toxic wastes(~~(, and create financing tools to~~
16 ~~clean up large scale hazardous waste sites requiring multiyear~~
17 ~~commitments~~)) at a pace that matches the estimated cash resources in
18 the state and local toxics control accounts and the environmental
19 legacy stewardship account created in section 10 of this act.
20 Estimated cash resources must consider the annual cash flow
21 requirements of major projects that receive appropriations expected to
22 cross multiple biennia. To effectively monitor toxic accounts
23 expenditures, the department shall develop a comprehensive ten-year
24 financing report that identifies long-term remedial action project
25 costs, tracks expenses, and projects future needs.

26 (4) By November 1, 2016, the department must submit to the governor
27 and the appropriate legislative committees a report on the status of
28 developing model remedies and their use under this chapter. The report
29 must include: The number and types of model remedies identified by the
30 department under subsection (1)(k) of this section; the number and
31 types of model remedy proposals prepared by qualified private sector
32 engineers, consultants, or contractors that were accepted or rejected
33 under subsection (1)(k) of this section and the reasons for rejection;
34 and the success of model remedies in accelerating the cleanup as
35 measured by the number of jobs created by the cleanup, where this
36 information is available to the department, acres of land restored, and
37 the number and types of hazardous waste sites successfully remediated
38 using model remedies.

1 ~~(5) Before ((December))~~ September 20th of each even-numbered year,
2 the department shall:

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

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

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

14 (d) Project the remedial action need, cost, revenue, and any
15 recommended working capital reserve estimate to the next biennium's
16 long-term remedial action needs from both the local (~~toxics control~~
17 ~~account~~) and (~~the~~) state toxics control account and the
18 environmental legacy stewardship account, and submit this information
19 to the appropriate standing fiscal and environmental committees of the
20 senate and house of representatives. This submittal must also include
21 a ranked list of such remedial action projects for both accounts(~~(+and~~
22 ~~+e))~~). The submittal must also identify separate budget estimates
23 for large, multibiennia clean-up projects that exceed ten million
24 dollars. The department shall prepare its ten-year capital budget plan
25 that is submitted to the office of financial management to reflect the
26 separate budget estimates for these large clean-up projects and include
27 information on the anticipated private and public funding obligations
28 for completion of the relevant projects.

29 (6) By December 1st of each odd-numbered year, the department must
30 provide the legislature and the public ((each year with an accounting))
31 a report of the department's activities supported by appropriations
32 from the state and local toxics control accounts(~~(, including a list of~~
33 ~~known hazardous waste sites and their hazard rankings, actions taken~~
34 ~~and planned at each site, how the department is meeting its waste~~
35 ~~management priorities under RCW 70.105.150, and all funds expended~~
36 ~~under this chapter)) and the environmental legacy stewardship account.
37 The report must be prepared and displayed in a manner that allows the~~

1 legislature and the public to easily determine the statewide and local
2 progress made in cleaning up hazardous waste sites under this chapter.
3 The report must include, at a minimum:

4 (a) The name, location, hazardous waste ranking, and a short
5 description of each site on the hazardous sites list, and the date the
6 site was placed on the hazardous waste sites list; and

7 (b) For sites where there are state contracts, grants, loans, or
8 direct investments by the state:

9 (i) The amount of money from the state and local toxics control
10 accounts and the environmental legacy stewardship account used to
11 conduct remedial actions at the site and the amount of that money
12 recovered from potentially liable persons;

13 (ii) The actual or estimated start and end dates and the actual or
14 estimated expenditures of funds authorized under this chapter for the
15 following project phases:

16 (A) Emergency or interim actions, if needed;

17 (B) Remedial investigation;

18 (C) Feasibility study and selection of a remedy;

19 (D) Engineering design and construction of the selected remedy;

20 (E) Operation and maintenance or monitoring of the constructed
21 remedy; and

22 (F) The final completion date.

23 ~~((+5+))~~ (7) The department shall establish a program to identify
24 potential hazardous waste sites and to encourage persons to provide
25 information about hazardous waste sites.

26 ~~((+6+))~~ (8) For all facilities where an environmental covenant has
27 been required under subsection (1)(f) of this section, including all
28 facilities where the department has required an environmental covenant
29 under an order, agreed order, or consent decree, or as a condition of
30 a written opinion issued under the authority of subsection (1)(i) of
31 this section, the department shall periodically review the
32 environmental covenant for effectiveness. Except as otherwise provided
33 in (c) of this subsection, the department shall conduct a review at
34 least once every five years after an environmental covenant is
35 recorded.

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

37 (i) A review of the title of the real property subject to the

1 environmental covenant to determine whether the environmental covenant
2 was properly recorded and, if applicable, amended or terminated;

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

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

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

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

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

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

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

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

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

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

35 **Sec. 7.** RCW 70.105D.040 and 1997 c 406 s 4 are each amended to
36 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((~~-~~

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.~~

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

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

15 (7) Nothing in this chapter affects or modifies in any way any
16 person's right to seek or obtain relief under other statutes or under
17 common law, including but not limited to damages for injury or loss
18 resulting from a release or threatened release of a hazardous
19 substance. No settlement by the department or remedial action ordered
20 by a court or the department affects any person's right to obtain a
21 remedy under common law or other statutes.

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

24 (1) With respect to any release, or threatened release, for which
25 the department does not conduct or contract for conducting remedial
26 action and for which the department believes remedial action is in the
27 public interest, the director shall issue orders or agreed orders
28 requiring potentially liable persons to provide the remedial action.
29 Any liable person, or prospective purchaser who has entered into an
30 agreed order under RCW 70.105D.040(6), who refuses, without sufficient
31 cause, to comply with an order or agreed order of the director is
32 liable in an action brought by the attorney general for:

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

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

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

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

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

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

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

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

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

30 (7) Any person who owns real property or lender holding a mortgage
31 on real property that is subject to a lien filed under RCW 70.105D.055
32 may petition the department to have the lien removed or the amount of
33 the lien reduced. If, after consideration of the petition and the
34 information supporting the petition, the department decides to deny the
35 request, the person may, within ninety days after receipt of the
36 department's denial, file suit for removal or reduction of the lien.
37 The person is entitled to removal of a lien filed under RCW
38 70.105D.055(2)(a) if they can prove by a preponderance of the evidence

1 that the person is not a liable party under RCW 70.105D.040. The
2 person is entitled to a reduction of the amount of the lien if they can
3 prove by a preponderance of the evidence:

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

7 (b) For liens filed under RCW 70.105D.055(2)(c), the amount of the
8 lien exceeds the remedial action costs the department incurred related
9 to cleanup of the real property or exceeds the increase of the fair
10 market value of the real property solely attributable to the remedial
11 action conducted by the department.

12 **Sec. 9.** RCW 70.105D.070 and 2012 2nd sp.s. c 7 s 920 and 2012 2nd
13 sp.s. c 2 s 6005 are each reenacted and amended to read as follows:

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

16 ~~((2) The following moneys shall be deposited into the state toxics
17 control account: (a) Those revenues which are raised by the tax
18 imposed under RCW 82.21.030 and which are attributable to that portion
19 of the rate equal to thirty three one hundredths of one percent; (b)
20 the costs of remedial actions recovered under this chapter or chapter
21 70.105A RCW; (c) penalties collected or recovered under this chapter;
22 and (d) any other money appropriated or transferred to the account by
23 the legislature. Moneys in the account may be used only to carry out
24 the purposes of this chapter, including but not limited to the
25 following activities:~~

26 ~~(i) The state's responsibility for hazardous waste planning,
27 management, regulation, enforcement, technical assistance, and public
28 education required under chapter 70.105 RCW;~~

29 ~~(ii) The state's responsibility for solid waste planning,
30 management, regulation, enforcement, technical assistance, and public
31 education required under chapter 70.95 RCW;~~

32 ~~(iii) The hazardous waste cleanup program required under this
33 chapter;~~

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

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

1 ~~(vi) State government programs for the safe reduction, recycling,~~
2 ~~or disposal of hazardous wastes from households, small businesses, and~~
3 ~~agriculture;~~

4 ~~(vii) Hazardous materials emergency response training;~~

5 ~~(viii) Water and environmental health protection and monitoring~~
6 ~~programs;~~

7 ~~(ix) Programs authorized under chapter 70.146 RCW;~~

8 ~~(x) A public participation program, including regional citizen~~
9 ~~advisory committees;~~

10 ~~(xi) Public funding to assist potentially liable persons to pay for~~
11 ~~the costs of remedial action in compliance with cleanup standards under~~
12 ~~RCW 70.105D.030(2)(e) but only when the amount and terms of such~~
13 ~~funding are established under a settlement agreement under RCW~~
14 ~~70.105D.040(4) and when the director has found that the funding will~~
15 ~~achieve both (A) a substantially more expeditious or enhanced cleanup~~
16 ~~than would otherwise occur, and (B) the prevention or mitigation of~~
17 ~~unfair economic hardship;~~

18 ~~(xii) Development and demonstration of alternative management~~
19 ~~technologies designed to carry out the hazardous waste management~~
20 ~~priorities of RCW 70.105.150;~~

21 ~~(xiii) During the 2009-2011 and 2011-2013 fiscal biennia, shoreline~~
22 ~~update technical assistance;~~

23 ~~(xiv) During the 2009-2011 fiscal biennium, multijurisdictional~~
24 ~~permitting teams;~~

25 ~~(xv) During the 2011-2013 fiscal biennium, actions for reducing~~
26 ~~public exposure to toxic air pollution, and actions taken through the~~
27 ~~family forest fish passage program to correct barriers to fish passage~~
28 ~~on privately owned small forest lands; and~~

29 ~~(xvi) During the 2011-2013 fiscal biennium, the department of~~
30 ~~ecology's water quality, shorelands and environmental assessment,~~
31 ~~hazardous waste, waste to resources, nuclear waste, and air quality~~
32 ~~programs.~~

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

37 ~~(a) Moneys deposited in the local toxics control account shall be~~

1 used by the department for grants or loans to local governments for the
2 following purposes in descending order of priority:

3 (i) Remedial actions;

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

5 (iii) Solid waste plans and programs under chapters 70.95, 70.95C,
6 70.95I, and 70.105 RCW;

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

11 (v) Cleanup and disposal of hazardous substances from abandoned or
12 derelict vessels, defined for the purposes of this section as vessels
13 that have little or no value and either have no identified owner or
14 have an identified owner lacking financial resources to clean up and
15 dispose of the vessel, that pose a threat to human health or the
16 environment.

17 (b) Funds for plans and programs shall be allocated consistent with
18 the priorities and matching requirements established in chapters
19 70.105, 70.95C, 70.95I, and 70.95 RCW, except that any applicant that
20 is a Puget Sound partner, as defined in RCW 90.71.010, along with any
21 project that is referenced in the action agenda developed by the Puget
22 Sound partnership under RCW 90.71.310, shall, except as conditioned by
23 RCW 70.105D.120, receive priority for any available funding for any
24 grant or funding programs or sources that use a competitive bidding
25 process. During the 2007-2009 fiscal biennium, moneys in the account
26 may also be used for grants to local governments to retrofit public
27 sector diesel equipment and for storm water planning and implementation
28 activities.

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

33 (i) The director may alter grant matching requirements to create
34 incentives for local governments to expedite cleanups when one of the
35 following conditions exists:

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

1 ~~(B) Funding would create new substantial economic development,~~
2 ~~public recreational, or habitat restoration opportunities that would~~
3 ~~not otherwise occur; or~~

4 ~~(C) Funding would create an opportunity for acquisition and~~
5 ~~redevelopment of vacant, orphaned, or abandoned property under RCW~~
6 ~~70.105D.040(5) that would not otherwise occur;~~

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

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

10 ~~(d) To facilitate and expedite cleanups using funds from the local~~
11 ~~toxics control account, during the 2009-2011 fiscal biennium the~~
12 ~~director may establish grant-funded accounts to hold and disperse local~~
13 ~~toxics control account funds and funds from local governments to be~~
14 ~~used for remedial actions.~~

15 ~~(4) Except for unanticipated receipts under RCW 43.79.260 through~~
16 ~~43.79.282, moneys in the state and local toxics control accounts may be~~
17 ~~spent only after appropriation by statute.~~

18 ~~(5) Except during the 2011-2013 fiscal biennium, one percent of the~~
19 ~~moneys deposited into the state and local toxics control accounts shall~~
20 ~~be allocated only for public participation grants to persons who may be~~
21 ~~adversely affected by a release or threatened release of a hazardous~~
22 ~~substance and to not-for-profit public interest organizations. The~~
23 ~~primary purpose of these grants is to facilitate the participation by~~
24 ~~persons and organizations in the investigation and remedying of~~
25 ~~releases or threatened releases of hazardous substances and to~~
26 ~~implement the state's solid and hazardous waste management priorities.~~
27 ~~No grant may exceed sixty thousand dollars. Grants may be renewed~~
28 ~~annually. Moneys appropriated for public participation from either~~
29 ~~account which are not expended at the close of any biennium shall~~
30 ~~revert to the state toxics control account.~~

31 ~~(6) No moneys deposited into either the state or local toxics~~
32 ~~control account may be used for solid waste incinerator feasibility~~
33 ~~studies, construction, maintenance, or operation, or, after January 1,~~
34 ~~2010, for projects designed to address the restoration of Puget Sound,~~
35 ~~funded in a competitive grant process, that are in conflict with the~~
36 ~~action agenda developed by the Puget Sound partnership under RCW~~
37 ~~90.71.310.~~

1 ~~(7) The department shall adopt rules for grant or loan issuance and~~
2 ~~performance.~~

3 ~~(8) During the 2011-2013 fiscal biennium, the legislature may~~
4 ~~transfer from the local toxics control account to the state toxics~~
5 ~~control account such amounts as reflect excess fund balance in the~~
6 ~~account.~~

7 ~~(9) During the 2011-2013 fiscal biennium, the local toxics control~~
8 ~~account may also be used for local government shoreline update grants~~
9 ~~and actions for reducing public exposure to toxic air pollution;~~
10 ~~funding to local governments for flood levee improvements; and grants~~
11 ~~to local governments for brownfield redevelopment.))~~ (a) Moneys
12 collected under RCW 82.21.030 must be deposited as follows: Sixty
13 percent to the state toxics control account under subsection (2) of
14 this section and forty percent to the local toxics control account
15 under subsection (3) of this section. When the cumulative amount of
16 deposits made to the state and local toxics control accounts under this
17 section reaches the limit during a fiscal year as established in (b) of
18 this subsection, the remainder of the moneys collected under RCW
19 82.21.030 during that fiscal year must be deposited into the
20 environmental legacy stewardship account created in section 10 of this
21 act.

22 (b) The limit on distributions of moneys collected under RCW
23 82.21.030 to the state and local toxics control accounts for the fiscal
24 year beginning July 1, 2013, is one hundred eight million dollars.
25 This limit for each succeeding fiscal year must be increased by a
26 percentage rate that equals the fiscal growth factor as defined in RCW
27 43.135.025.

28 (c) In addition to the funds required under (a) of this subsection,
29 the following moneys must be deposited into the state toxics control
30 account: (i) The costs of remedial actions recovered under this
31 chapter or chapter 70.105A RCW; (ii) penalties collected or recovered
32 under this chapter; and (iii) any other money appropriated or
33 transferred to the account by the legislature.

34 (2) Moneys in the state toxics control account must be used only to
35 carry out the purposes of this chapter and must be expended for the
36 following:

37 (a)(i) The state's responsibility for hazardous waste planning,

1 management, regulation, enforcement, technical assistance, and public
2 education required under chapter 70.105 RCW;
3 (ii) The state's responsibility for solid waste planning,
4 management, regulation, enforcement, technical assistance, and public
5 education required under chapter 70.95 RCW;
6 (iii) The hazardous waste clean-up program required under this
7 chapter;
8 (iv) State matching funds required under federal cleanup law;
9 (v) Financial assistance for local programs in accordance with
10 chapters 70.95, 70.95C, 70.95I, and 70.105 RCW;
11 (vi) State government programs for the safe reduction, recycling,
12 or disposal of paint and hazardous wastes from households, small
13 businesses, and agriculture;
14 (vii) Oil and hazardous materials spill prevention, preparedness,
15 training, and response activities;
16 (viii) Water and environmental health protection and monitoring
17 programs;
18 (ix) Programs authorized under chapter 70.146 RCW;
19 (x) Development and demonstration of alternative management
20 technologies designed to carry out the hazardous waste management
21 priorities of RCW 70.105.150;
22 (xi) State agriculture and health programs for the safe use,
23 reduction, recycling, or disposal of pesticides;
24 (xii) Storm water pollution control projects and activities that
25 protect or preserve existing remedial actions or prevent hazardous
26 clean-up sites;
27 (xiii) Funding requirements to maintain receipt of federal funds
28 under the federal solid waste disposal act (42 U.S.C. Sec. 6901 et
29 seq.);
30 (xiv) Air quality programs and actions for reducing public exposure
31 to toxic air pollution;
32 (xv) Public funding to assist prospective purchasers to pay for the
33 costs of remedial action in compliance with clean-up standards under
34 RCW 70.105D.030(2)(e) if:
35 (A) The facility is located within a redevelopment opportunity zone
36 designated under section 4 of this act;
37 (B) The amount and terms of the funding are established under a
38 settlement agreement under RCW 70.105D.040(5); and

1 (C) The director has found the funding meets any additional
2 criteria established in rule by the department, will achieve a
3 substantially more expeditious or enhanced cleanup than would otherwise
4 occur, and will provide a public benefit in addition to cleanup
5 commensurate with the scope of the public funding; and

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

14 (b) Priority for use of the funds is given to:

15 (i) Cleanup of high priority sites on the department's hazardous
16 sites list that have a draft or preliminary remedial investigation or
17 feasibility study on file with the department, a completed remedial
18 investigation or feasibility study, or a finalized clean-up action
19 plan, and are prepared to begin the clean-up action;

20 (ii) Cleanup of brownfield properties to make land available for
21 economic and job development opportunities that would not otherwise
22 occur; and

23 (iii) Cleanup of hazardous waste sites where public funding to
24 assist potentially liable persons is authorized under (a)(xvi) of this
25 subsection and when the potentially liable persons have a draft or
26 preliminary remedial investigation or feasibility study on file with
27 the department, a completed remedial investigation or feasibility
28 study, or a finalized clean-up action plan, and are prepared to begin
29 the clean-up action.

30 (3)(a) The department shall use moneys deposited in the local
31 toxics control account for grants to local governments for the
32 following purposes:

33 (i) Remedial actions, including planning for adaptive reuse of
34 properties as provided for under (c)(iv) of this subsection;

35 (ii) Extended grant agreements entered into under (c)(i) of this
36 subsection;

37 (iii) Storm water pollution source projects that: (A) Work in

1 conjunction with a remedial action; (B) protect completed remedial
2 actions against recontamination; or (C) prevent hazardous clean-up
3 sites;

4 (iv) Hazardous waste plans and programs under chapter 70.105 RCW;

5 (v) Solid waste plans and programs under chapters 70.95, 70.95C,
6 70.95I, and 70.105 RCW; and

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

15 (b) To expedite clean-up projects throughout the state, funding is
16 prioritized for:

17 (i) High priority sites identified on the department's hazardous
18 site list, that have a draft or preliminary remedial investigation or
19 feasibility study on file with the department, a completed remedial
20 investigation or feasibility study, or a finalized clean-up action
21 plan, and are prepared to begin the clean-up action;

22 (ii) Brownfield properties that are available for economic and job
23 development opportunities that would not otherwise occur; and

24 (iii) Public funding to assist potentially liable persons meeting
25 the requirements under (a)(vi) of this subsection when the potentially
26 liable persons have a draft or preliminary remedial investigation or
27 feasibility study on file with the department, a completed remedial
28 investigation or feasibility study, or a finalized clean-up action
29 plan.

30 (c) To expedite cleanups throughout the state, the department may
31 use the following strategies when providing grants to local governments
32 under this subsection:

33 (i) Enter into an extended grant agreement with a local government
34 conducting remedial actions at a facility where those actions extend
35 over multiple biennia and the total eligible cost of those actions
36 exceeds twenty million dollars. The agreement is subject to the
37 following limitations:

1 (A) The initial duration of such an agreement may not exceed ten
2 years. The department may extend the duration of such an agreement
3 upon finding substantial progress has been made on remedial actions at
4 the facility;

5 (B) Extended grant agreements may not exceed fifty percent of the
6 total eligible remedial action costs at the facility; and

7 (C) The department may not allocate future funding to an extended
8 grant agreement unless the local government has demonstrated to the
9 department that funds awarded under the agreement during the previous
10 biennium have been substantially expended or contracts have been
11 entered into to substantially expend the funds;

12 (ii) Enter into a grant agreement with a local government
13 conducting a remedial action that provides for periodic reimbursement
14 of remedial action costs as they are incurred as established in the
15 agreement;

16 (iii) Enter into a grant agreement with a local government prior to
17 it acquiring a property or obtaining necessary access to conduct
18 remedial actions, provided the agreement is conditioned upon the local
19 government acquiring the property or obtaining the access in accordance
20 with a schedule specified in the agreement;

21 (iv) Provide integrated planning grants to local governments to
22 fund studies necessary to facilitate remedial actions at brownfield
23 properties and adaptive reuse of properties following remediation.
24 Eligible activities include, but are not limited to: Environmental
25 site assessments; remedial investigations; health assessments;
26 feasibility studies; site planning; community involvement; land use and
27 regulatory analyses; building and infrastructure assessments; economic
28 and fiscal analyses; and any environmental analyses under chapter
29 43.21C RCW;

30 (v) Provide grants to local governments for remedial actions
31 related to areawide groundwater contamination. To receive the funding,
32 the local government does not need to be a potentially liable person or
33 be required to seek reimbursement of grant funds from a potentially
34 liable person;

35 (vi) The director may alter grant matching requirements to create
36 incentives for local governments to expedite cleanups when one of the
37 following conditions exists:

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

3 (B) Funding would create new substantial economic development,
4 public recreational opportunities, or habitat restoration opportunities
5 that would not otherwise occur; or

6 (C) Funding would create an opportunity for acquisition and
7 redevelopment of brownfield property under RCW 70.105D.040(5) that
8 would not otherwise occur;

9 (vii) When pending grant applications under (c)(iv) and (v) of this
10 subsection (3) exceed the amount of funds available, designated
11 redevelopment opportunity zones must receive priority for distribution
12 of available funds.

13 (d) To expedite multiparty clean-up efforts, the department may
14 purchase remedial action cost-cap insurance.

15 (4) Funds for plans and programs must be allocated consistent with
16 matching requirements established in chapters 70.95, 70.95C, 70.95I,
17 and 70.105 RCW.

18 (5) Except for unanticipated receipts under RCW 43.79.260 through
19 43.79.282, moneys in the state and local toxics control accounts may be
20 spent only after appropriation by statute.

21 (6) No moneys deposited into either the state or local toxics
22 control account may be used for: Natural disasters where there is no
23 hazardous substance contamination; high performance buildings; solid
24 waste incinerator and organic composting facility feasibility studies,
25 construction, maintenance, or operation; or after January 1, 2010, for
26 projects designed to address the restoration of Puget Sound, funded in
27 a competitive grant process, that are in conflict with the action
28 agenda developed by the Puget Sound partnership under RCW 90.71.310.
29 However, this subsection does not prevent an appropriation from the
30 state toxics control account to the department of revenue to enforce
31 compliance with the hazardous substance tax imposed in chapter 82.21
32 RCW.

33 (7) Except during the 2011-2013 fiscal biennium, one percent of the
34 moneys deposited into the state and local toxics control accounts shall
35 be allocated only for public participation grants to persons who may be
36 adversely affected by a release or threatened release of a hazardous
37 substance and to not-for-profit public interest organizations. The
38 primary purpose of these grants is to facilitate the participation by

1 persons and organizations in the investigation and remedying of
2 releases or threatened releases of hazardous substances and to
3 implement the state's solid and hazardous waste management priorities.
4 No grant may exceed sixty thousand dollars. Grants may be renewed
5 annually. Moneys appropriated for public participation from either
6 account that are not expended at the close of any biennium revert to
7 the state toxics control account.

8 (8) The department shall adopt rules for grant issuance and
9 performance. To accelerate both remedial action and economic recovery,
10 the department may expedite the adoption of rules necessary to
11 implement this act using the expedited procedures in RCW 34.05.353.
12 The department shall initiate the award of financial assistance by
13 August 1, 2013. To ensure the adoption of rules will not delay
14 financial assistance, the department may administer the award of
15 financial assistance through interpretive guidance pending the adoption
16 of rules through July 1, 2014.

17 NEW SECTION. Sec. 10. A new section is added to chapter 70.105D
18 RCW to read as follows:

19 (1) The environmental legacy stewardship account is created in the
20 state treasury. Beginning July 1, 2013, and every fiscal year
21 thereafter, the annual amount received from the tax imposed by RCW
22 82.21.030 that exceeds one hundred eight million dollars, plus the
23 fiscal growth factor under chapter 43.135 RCW, must be deposited into
24 the environmental legacy stewardship account. The state treasurer may
25 make periodic deposits into the environmental legacy stewardship
26 account based on forecasted revenue. Moneys in the account may only be
27 spent after appropriation.

28 (2) Moneys in the environmental legacy stewardship account may be
29 spent on:

30 (a) Performance and outcome based projects, activities, programs,
31 and services that support the clean-up, monitoring, and prevention of
32 releases of hazardous substances, water protection and monitoring,
33 water pollution prevention, monitoring and cleanup, and environmental
34 health protection and monitoring;

35 (b) Clean-up projects using model remedies, technologies,
36 procedures, contracts, and project management and oversight that result

1 in significant reductions in the time to complete clean-up projects
2 compared to baseline averages for comparable clean-up projects;

3 (c) Storm water projects;

4 (d) Remedial action grants;

5 (e) Cleanup and disposal of hazardous substances from abandoned or
6 derelict vessels, defined for the purposes of this section as vessels
7 that have little or no value and either have no identified owner or
8 have an identified owner lacking financial resources to clean up and
9 dispose of the vessel, that pose a threat to human health or the
10 environment;

11 (f) Appropriations to the state and local toxics control accounts
12 created in RCW 70.105D.070 if the legislature determines that
13 priorities for spending exceed available funds in those accounts.

14 NEW SECTION. **Sec. 11.** (1) For the biennium ending June 30, 2015,
15 the state treasurer must transfer forty-five million dollars from the
16 state toxics control account to the environmental legacy stewardship
17 account created in section 10 of this act.

18 (2) For the biennium ending June 30, 2015, the state treasurer must
19 transfer thirty-five million dollars from the local toxics control
20 account to the environmental legacy stewardship account.

21 NEW SECTION. **Sec. 12.** A new section is added to chapter 70.105
22 RCW to read as follows:

23 The radioactive mixed waste account is created within the state
24 treasury. All receipts received from facilities assessed service
25 charges established under RCW 70.105.280 must be deposited into the
26 account. Moneys in the account may be spent only after appropriation.
27 Expenditures from the account may only be used for carrying out the
28 department's powers and duties under this chapter related to the
29 regulation of facilities that treat, store, or dispose of mixed waste
30 or mixed waste facilities that are undergoing closure.

31 NEW SECTION. **Sec. 13.** By October 1, 2013, the state treasurer
32 must transfer the fund balance of the mixed waste fees within the state
33 toxics control account to the radioactive mixed waste account created
34 in section 12 of this act. The department of ecology shall report the

1 fund balance amount to the state treasurer for transfer into the
2 radioactive mixed waste account.

3 **Sec. 14.** RCW 70.105.280 and 1989 c 376 s 2 are each amended to
4 read as follows:

5 (1) The department may assess reasonable service charges against
6 those facilities that store, treat, incinerate, or dispose of dangerous
7 or extremely hazardous waste that contains both a nonradioactive
8 hazardous component and a radioactive component or which are undergoing
9 closure under this chapter in those instances where closure entails the
10 physical characterization of remaining wastes which contain both a
11 nonradioactive hazardous component and a radioactive component or the
12 management of such wastes through treatment or removal, except any
13 commercial low-level radioactive waste facility. Service charges may
14 not exceed the costs to the department in carrying out the duties of
15 this section.

16 (2) Program elements or activities for which service charges may be
17 assessed include:

18 (a) Office, staff, and staff support for the purposes of facility
19 or unit permit development, review, and issuance; and

20 (b) Actions taken to determine and ensure compliance with the
21 state's hazardous waste management act.

22 (3) Moneys collected through the imposition of such service charges
23 shall be deposited in the (~~state toxics control~~) radioactive mixed
24 waste account created in section 12 of this act.

25 (4) The department shall adopt rules necessary to implement this
26 section. Facilities that store, treat, incinerate, or dispose of
27 dangerous or extremely hazardous waste that contains both a
28 nonradioactive hazardous component and a radioactive component shall
29 not be subject to service charges prior to such rule making.
30 Facilities undergoing closure under this chapter in those instances
31 where closure entails the physical characterization of remaining wastes
32 which contain both a nonradioactive hazardous component and a
33 radioactive component or the management of such wastes through
34 treatment or removal shall not be subject to service charges prior to
35 such rule making.

1 **Sec. 15.** RCW 43.84.092 and 2012 c 198 s 2, 2012 c 196 s 7, 2012 c
2 187 s 14, and 2012 c 83 s 4 are each reenacted and amended to read as
3 follows:

4 (1) All earnings of investments of surplus balances in the state
5 treasury shall be deposited to the treasury income account, which
6 account is hereby established in the state treasury.

7 (2) The treasury income account shall be utilized to pay or receive
8 funds associated with federal programs as required by the federal cash
9 management improvement act of 1990. The treasury income account is
10 subject in all respects to chapter 43.88 RCW, but no appropriation is
11 required for refunds or allocations of interest earnings required by
12 the cash management improvement act. Refunds of interest to the
13 federal treasury required under the cash management improvement act
14 fall under RCW 43.88.180 and shall not require appropriation. The
15 office of financial management shall determine the amounts due to or
16 from the federal government pursuant to the cash management improvement
17 act. The office of financial management may direct transfers of funds
18 between accounts as deemed necessary to implement the provisions of the
19 cash management improvement act, and this subsection. Refunds or
20 allocations shall occur prior to the distributions of earnings set
21 forth in subsection (4) of this section.

22 (3) Except for the provisions of RCW 43.84.160, the treasury income
23 account may be utilized for the payment of purchased banking services
24 on behalf of treasury funds including, but not limited to, depository,
25 safekeeping, and disbursement functions for the state treasury and
26 affected state agencies. The treasury income account is subject in all
27 respects to chapter 43.88 RCW, but no appropriation is required for
28 payments to financial institutions. Payments shall occur prior to
29 distribution of earnings set forth in subsection (4) of this section.

30 (4) Monthly, the state treasurer shall distribute the earnings
31 credited to the treasury income account. The state treasurer shall
32 credit the general fund with all the earnings credited to the treasury
33 income account except:

34 (a) The following accounts and funds shall receive their
35 proportionate share of earnings based upon each account's and fund's
36 average daily balance for the period: The aeronautics account, the
37 aircraft search and rescue account, the Alaskan Way viaduct replacement
38 project account, the brownfield redevelopment trust fund account, the

1 budget stabilization account, the capital vessel replacement account,
2 the capitol building construction account, the Cedar River channel
3 construction and operation account, the Central Washington University
4 capital projects account, the charitable, educational, penal and
5 reformatory institutions account, the cleanup settlement account, the
6 Columbia river basin water supply development account, the Columbia
7 river basin taxable bond water supply development account, the Columbia
8 river basin water supply revenue recovery account, the common school
9 construction fund, the county arterial preservation account, the county
10 criminal justice assistance account, the deferred compensation
11 administrative account, the deferred compensation principal account,
12 the department of licensing services account, the department of
13 retirement systems expense account, the developmental disabilities
14 community trust account, the drinking water assistance account, the
15 drinking water assistance administrative account, the drinking water
16 assistance repayment account, the Eastern Washington University capital
17 projects account, the Interstate 405 express toll lanes operations
18 account, the education construction fund, the education legacy trust
19 account, the election account, the energy freedom account, the energy
20 recovery act account, the essential rail assistance account, The
21 Evergreen State College capital projects account, the federal forest
22 revolving account, the ferry bond retirement fund, the freight
23 congestion relief account, the freight mobility investment account, the
24 freight mobility multimodal account, the grade crossing protective
25 fund, the public health services account, the high capacity
26 transportation account, the state higher education construction
27 account, the higher education construction account, the highway bond
28 retirement fund, the highway infrastructure account, the highway safety
29 (~~account—[fund]~~) fund, the high occupancy toll lanes operations
30 account, the hospital safety net assessment fund, the industrial
31 insurance premium refund account, the judges' retirement account, the
32 judicial retirement administrative account, the judicial retirement
33 principal account, the local leasehold excise tax account, the local
34 real estate excise tax account, the local sales and use tax account,
35 the marine resources stewardship trust account, the medical aid
36 account, the mobile home park relocation fund, the motor vehicle fund,
37 the motorcycle safety education account, the multimodal transportation
38 account, the municipal criminal justice assistance account, the natural

1 resources deposit account, the oyster reserve land account, the pension
2 funding stabilization account, the perpetual surveillance and
3 maintenance account, the public employees' retirement system plan 1
4 account, the public employees' retirement system combined plan 2 and
5 plan 3 account, the public facilities construction loan revolving
6 account beginning July 1, 2004, the public health supplemental account,
7 the public transportation systems account, the public works assistance
8 account, the Puget Sound capital construction account, the Puget Sound
9 ferry operations account, the Puyallup tribal settlement account, the
10 real estate appraiser commission account, the recreational vehicle
11 account, the regional mobility grant program account, the resource
12 management cost account, the rural arterial trust account, the rural
13 mobility grant program account, the rural Washington loan fund, the
14 site closure account, the skilled nursing facility safety net trust
15 fund, the small city pavement and sidewalk account, the special
16 category C account, the special wildlife account, the state employees'
17 insurance account, the state employees' insurance reserve account, the
18 state investment board expense account, the state investment board
19 commingled trust fund accounts, the state patrol highway account, the
20 state route number 520 civil penalties account, the state route number
21 520 corridor account, the state wildlife account, the supplemental
22 pension account, the Tacoma Narrows toll bridge account, the teachers'
23 retirement system plan 1 account, the teachers' retirement system
24 combined plan 2 and plan 3 account, the tobacco prevention and control
25 account, the tobacco settlement account, the toll facility bond
26 retirement account, the transportation 2003 account (nickel account),
27 the transportation equipment fund, the transportation fund, the
28 transportation improvement account, the transportation improvement
29 board bond retirement account, the transportation infrastructure
30 account, the transportation partnership account, the traumatic brain
31 injury account, the tuition recovery trust fund, the University of
32 Washington bond retirement fund, the University of Washington building
33 account, the volunteer firefighters' and reserve officers' relief and
34 pension principal fund, the volunteer firefighters' and reserve
35 officers' administrative fund, the Washington judicial retirement
36 system account, the Washington law enforcement officers' and
37 firefighters' system plan 1 retirement account, the Washington law
38 enforcement officers' and firefighters' system plan 2 retirement

1 account, the Washington public safety employees' plan 2 retirement
2 account, the Washington school employees' retirement system combined
3 plan 2 and 3 account, the Washington state economic development
4 commission account, the Washington state health insurance pool account,
5 the Washington state patrol retirement account, the Washington State
6 University building account, the Washington State University bond
7 retirement fund, the water pollution control revolving fund, and the
8 Western Washington University capital projects account. Earnings
9 derived from investing balances of the agricultural permanent fund, the
10 normal school permanent fund, the permanent common school fund, the
11 scientific permanent fund, the state university permanent fund, and the
12 state reclamation revolving account shall be allocated to their
13 respective beneficiary accounts.

14 (b) Any state agency that has independent authority over accounts
15 or funds not statutorily required to be held in the state treasury that
16 deposits funds into a fund or account in the state treasury pursuant to
17 an agreement with the office of the state treasurer shall receive its
18 proportionate share of earnings based upon each account's or fund's
19 average daily balance for the period.

20 (5) In conformance with Article II, section 37 of the state
21 Constitution, no treasury accounts or funds shall be allocated earnings
22 without the specific affirmative directive of this section.

23 **Sec. 16.** RCW 43.84.092 and 2012 c 198 s 2, 2012 c 196 s 7, 2012 c
24 187 s 14, 2012 c 83 s 4, and 2012 c 36 s 5 are each reenacted and
25 amended to read as follows:

26 (1) All earnings of investments of surplus balances in the state
27 treasury shall be deposited to the treasury income account, which
28 account is hereby established in the state treasury.

29 (2) The treasury income account shall be utilized to pay or receive
30 funds associated with federal programs as required by the federal cash
31 management improvement act of 1990. The treasury income account is
32 subject in all respects to chapter 43.88 RCW, but no appropriation is
33 required for refunds or allocations of interest earnings required by
34 the cash management improvement act. Refunds of interest to the
35 federal treasury required under the cash management improvement act
36 fall under RCW 43.88.180 and shall not require appropriation. The
37 office of financial management shall determine the amounts due to or

1 from the federal government pursuant to the cash management improvement
2 act. The office of financial management may direct transfers of funds
3 between accounts as deemed necessary to implement the provisions of the
4 cash management improvement act, and this subsection. Refunds or
5 allocations shall occur prior to the distributions of earnings set
6 forth in subsection (4) of this section.

7 (3) Except for the provisions of RCW 43.84.160, the treasury income
8 account may be utilized for the payment of purchased banking services
9 on behalf of treasury funds including, but not limited to, depository,
10 safekeeping, and disbursement functions for the state treasury and
11 affected state agencies. The treasury income account is subject in all
12 respects to chapter 43.88 RCW, but no appropriation is required for
13 payments to financial institutions. Payments shall occur prior to
14 distribution of earnings set forth in subsection (4) of this section.

15 (4) Monthly, the state treasurer shall distribute the earnings
16 credited to the treasury income account. The state treasurer shall
17 credit the general fund with all the earnings credited to the treasury
18 income account except:

19 (a) The following accounts and funds shall receive their
20 proportionate share of earnings based upon each account's and fund's
21 average daily balance for the period: The aeronautics account, the
22 aircraft search and rescue account, the Alaskan Way viaduct replacement
23 project account, the brownfield redevelopment trust fund account, the
24 budget stabilization account, the capital vessel replacement account,
25 the capitol building construction account, the Cedar River channel
26 construction and operation account, the Central Washington University
27 capital projects account, the charitable, educational, penal and
28 reformatory institutions account, the cleanup settlement account, the
29 Columbia river basin water supply development account, the Columbia
30 river basin taxable bond water supply development account, the Columbia
31 river basin water supply revenue recovery account, the Columbia river
32 crossing project account, the common school construction fund, the
33 county arterial preservation account, the county criminal justice
34 assistance account, the deferred compensation administrative account,
35 the deferred compensation principal account, the department of
36 licensing services account, the department of retirement systems
37 expense account, the developmental disabilities community trust
38 account, the drinking water assistance account, the drinking water

1 assistance administrative account, the drinking water assistance
2 repayment account, the Eastern Washington University capital projects
3 account, the Interstate 405 express toll lanes operations account, the
4 education construction fund, the education legacy trust account, the
5 election account, the energy freedom account, the energy recovery act
6 account, the essential rail assistance account, The Evergreen State
7 College capital projects account, the federal forest revolving account,
8 the ferry bond retirement fund, the freight congestion relief account,
9 the freight mobility investment account, the freight mobility
10 multimodal account, the grade crossing protective fund, the public
11 health services account, the high capacity transportation account, the
12 state higher education construction account, the higher education
13 construction account, the highway bond retirement fund, the highway
14 infrastructure account, the highway safety (~~(account-[fund])~~) fund, the
15 high occupancy toll lanes operations account, the hospital safety net
16 assessment fund, the industrial insurance premium refund account, the
17 judges' retirement account, the judicial retirement administrative
18 account, the judicial retirement principal account, the local leasehold
19 excise tax account, the local real estate excise tax account, the local
20 sales and use tax account, the marine resources stewardship trust
21 account, the medical aid account, the mobile home park relocation fund,
22 the motor vehicle fund, the motorcycle safety education account, the
23 multimodal transportation account, the municipal criminal justice
24 assistance account, the natural resources deposit account, the oyster
25 reserve land account, the pension funding stabilization account, the
26 perpetual surveillance and maintenance account, the public employees'
27 retirement system plan 1 account, the public employees' retirement
28 system combined plan 2 and plan 3 account, the public facilities
29 construction loan revolving account beginning July 1, 2004, the public
30 health supplemental account, the public transportation systems account,
31 the public works assistance account, the Puget Sound capital
32 construction account, the Puget Sound ferry operations account, the
33 Puyallup tribal settlement account, the real estate appraiser
34 commission account, the recreational vehicle account, the regional
35 mobility grant program account, the resource management cost account,
36 the rural arterial trust account, the rural mobility grant program
37 account, the rural Washington loan fund, the site closure account, the
38 skilled nursing facility safety net trust fund, the small city pavement

1 and sidewalk account, the special category C account, the special
2 wildlife account, the state employees' insurance account, the state
3 employees' insurance reserve account, the state investment board
4 expense account, the state investment board commingled trust fund
5 accounts, the state patrol highway account, the state route number 520
6 civil penalties account, the state route number 520 corridor account,
7 the state wildlife account, the supplemental pension account, the
8 Tacoma Narrows toll bridge account, the teachers' retirement system
9 plan 1 account, the teachers' retirement system combined plan 2 and
10 plan 3 account, the tobacco prevention and control account, the tobacco
11 settlement account, the toll facility bond retirement account, the
12 transportation 2003 account (nickel account), the transportation
13 equipment fund, the transportation fund, the transportation improvement
14 account, the transportation improvement board bond retirement account,
15 the transportation infrastructure account, the transportation
16 partnership account, the traumatic brain injury account, the tuition
17 recovery trust fund, the University of Washington bond retirement fund,
18 the University of Washington building account, the volunteer
19 firefighters' and reserve officers' relief and pension principal fund,
20 the volunteer firefighters' and reserve officers' administrative fund,
21 the Washington judicial retirement system account, the Washington law
22 enforcement officers' and firefighters' system plan 1 retirement
23 account, the Washington law enforcement officers' and firefighters'
24 system plan 2 retirement account, the Washington public safety
25 employees' plan 2 retirement account, the Washington school employees'
26 retirement system combined plan 2 and 3 account, the Washington state
27 economic development commission account, the Washington state health
28 insurance pool account, the Washington state patrol retirement account,
29 the Washington State University building account, the Washington State
30 University bond retirement fund, the water pollution control revolving
31 fund, and the Western Washington University capital projects account.
32 Earnings derived from investing balances of the agricultural permanent
33 fund, the normal school permanent fund, the permanent common school
34 fund, the scientific permanent fund, the state university permanent
35 fund, and the state reclamation revolving account shall be allocated to
36 their respective beneficiary accounts.

37 (b) Any state agency that has independent authority over accounts
38 or funds not statutorily required to be held in the state treasury that

1 deposits funds into a fund or account in the state treasury pursuant to
2 an agreement with the office of the state treasurer shall receive its
3 proportionate share of earnings based upon each account's or fund's
4 average daily balance for the period.

5 (5) In conformance with Article II, section 37 of the state
6 Constitution, no treasury accounts or funds shall be allocated earnings
7 without the specific affirmative directive of this section.

8 NEW SECTION. **Sec. 17.** Section 15 of this act expires on the date
9 the requirements set out in section 7, chapter 36, Laws of 2012 are
10 met.

11 NEW SECTION. **Sec. 18.** Section 16 of this act takes effect on the
12 date the requirements set out in section 7, chapter 36, Laws of 2012
13 are met.

14 NEW SECTION. **Sec. 19.** If any provision of this act or its
15 application to any person or circumstance is held invalid, the
16 remainder of the act or the application of the provision to other
17 persons or circumstances is not affected.

18 NEW SECTION. **Sec. 20.** This act is necessary for the immediate
19 preservation of the public peace, health, or safety, or support of the
20 state government and its existing public institutions, and takes effect
21 July 1, 2013."

2SSB 5296 - S AMD
By Senators Ericksen, Honeyford

PULLED 04/22/2013

22 On page 1, beginning on line 1 of the title, after "act;" strike
23 the remainder of the title and insert "amending RCW 70.105D.020,
24 70.105D.030, 70.105D.040, 70.105D.050, and 70.105.280; reenacting and
25 amending RCW 70.105D.070, 43.84.092, and 43.84.092; adding new sections
26 to chapter 70.105D RCW; adding a new section to chapter 70.105 RCW;

1 creating new sections; providing an effective date; providing a
2 contingent effective date; providing a contingent expiration date; and
3 declaring an emergency."

EFFECT: Incorporates SSB 5201, accelerating cleanup of hazardous waste sites.

Allows cities, counties, and port districts to establish brownfield renewal authority for the purposes of designating and remediating redevelopment opportunity zones.

Allows the use of state and local toxics control account funds for remediation and cleanup of brownfield properties.

Creates the brownfield redevelopment trust fund.

Adds extended grant agreements with local governments as an option for large, multiyear cleanups.

Restores public participation grants as a use under state toxics control account.

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