

**E2SSB 5296** - S AMD 352  
By Senator Ranker

NOT CONSIDERED

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, will improve public health, will restore ecological functions,  
9 and will protect future generations from being exposed to toxic waste  
10 and hazardous substances. It is the intent of the legislature to  
11 prioritize the spending of revenues under chapter 70.105D RCW, the  
12 model toxics control act, on cleaning up the most toxic sites, while  
13 also providing jobs in communities around the state, and also upon  
14 funding activities that prevent the creation of toxic sites in the  
15 future.

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

18 The definitions in this section apply throughout this chapter  
19 unless the context clearly requires otherwise.

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

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

1 (3) "Director" means the director of ecology or the director's  
2 designee.

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

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

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

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

27 (b) "Fiduciary" does not mean:

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

34 (ii) A person who acquires ownership or control of a facility with  
35 the objective purpose of avoiding liability of the person or any other  
36 person. It is prima facie evidence that the fiduciary acquired  
37 ownership or control of the facility to avoid liability if the facility

1 is the only substantial asset in the fiduciary estate at the time the  
2 facility became subject to the fiduciary estate;

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

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

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

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

15 (8) "Fiduciary capacity" means the capacity of a person holding  
16 title to a facility, or otherwise having control of an interest in the  
17 facility pursuant to the exercise of the responsibilities of the person  
18 as a fiduciary.

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

28 (10) "Hazardous substance" means:

29 (a) Any dangerous or extremely hazardous waste as defined in RCW  
30 70.105.010 (~~((+5) and (+6))~~) (1) and (7), or any dangerous or extremely  
31 dangerous waste designated by rule pursuant to chapter 70.105 RCW;

32 (b) Any hazardous substance as defined in RCW 70.105.010(~~((+14))~~)  
33 (10) or any hazardous substance as defined by rule pursuant to chapter  
34 70.105 RCW;

35 (c) Any substance that, on March 1, 1989, is a hazardous substance  
36 under section 101(14) of the federal cleanup law, 42 U.S.C. Sec.  
37 9601(14);

38 (d) Petroleum or petroleum products; and

1 (e) Any substance or category of substances, including solid waste  
2 decomposition products, determined by the director by rule to present  
3 a threat to human health or the environment if released into the  
4 environment.

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

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

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

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

1 (14) "Industrial properties" means properties that are or have been  
2 characterized by, or are to be committed to, traditional industrial  
3 uses such as processing or manufacturing of materials, marine terminal  
4 and transportation areas and facilities, fabrication, assembly,  
5 treatment, or distribution of manufactured products, or storage of bulk  
6 materials, that are either:

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

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

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

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

26 (17) "Owner or operator" means:

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

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

32 The term does not include:

33 (i) An agency of the state or unit of local government which  
34 acquired ownership or control through a drug forfeiture action under  
35 RCW 69.50.505, or involuntarily through bankruptcy, tax delinquency,  
36 abandonment, or other circumstances in which the government  
37 involuntarily acquires title. This exclusion does not apply to an

1 agency of the state or unit of local government which has caused or  
2 contributed to the release or threatened release of a hazardous  
3 substance from the facility;

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

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

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

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

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

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

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

34 (iii) A fiduciary in his, her, or its personal or individual  
35 capacity. This exemption does not preclude a claim against the assets  
36 of the estate or trust administered by the fiduciary or against a  
37 nonemployee agent or independent contractor retained by a fiduciary.  
38 This exemption also does not apply to the extent that a person is

1 liable under this chapter independently of the person's ownership as a  
2 fiduciary or for actions taken in a fiduciary capacity which cause or  
3 contribute to a new release or exacerbate an existing release of  
4 hazardous substances. This exemption applies provided that, to the  
5 extent of the fiduciary's powers granted by law or by the applicable  
6 governing instrument granting fiduciary powers, the fiduciary complies  
7 with all of the following:

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

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

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

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

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

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

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

37 (iv) Any person who has any ownership interest in, operates, or  
38 exercises control over real property where a hazardous substance has

1 come to be located solely as a result of migration of the hazardous  
2 substance to the real property through the groundwater from a source  
3 off the property, if:

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

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

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

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

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

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

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



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

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

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

33 (21) "Potentially liable person" means any person whom the  
34 department finds, based on credible evidence, to be liable under RCW  
35 70.105D.040. The department shall give notice to any such person and  
36 allow an opportunity for comment before making the finding, unless an  
37 emergency requires otherwise.

1 (22) "Prepare a facility for sale, transfer, or assignment" means  
2 to secure access to the facility; perform routine maintenance on the  
3 facility; remove inventory, equipment, or structures; properly maintain  
4 environmental compliance measures already in place at the facility;  
5 conduct remedial actions to cleanup releases at the facility; or to  
6 perform other similar activities intended to preserve the value of the  
7 facility where the borrower has defaulted on the loan or otherwise  
8 breached the security agreement or after foreclosure and its  
9 equivalents and in anticipation of a pending sale, transfer, or  
10 assignment, primarily to protect the holder's security interest in the  
11 facility. A holder can prepare a facility for sale, transfer, or  
12 assignment for up to one year prior to foreclosure and its equivalents  
13 and still stay within the security interest exemption in subsection  
14 (17)(b)(ii) of this section.

15 (23) "Primarily to protect a security interest" means the indicia  
16 of ownership is held primarily for the purpose of securing payment or  
17 performance of an obligation. The term does not include indicia of  
18 ownership held primarily for investment purposes nor indicia of  
19 ownership held primarily for purposes other than as protection for a  
20 security interest. A holder may have other, secondary reasons, for  
21 maintaining indicia of ownership, but the primary reason must be for  
22 protection of a security interest. Holding indicia of ownership after  
23 foreclosure or its equivalents for longer than five years shall be  
24 considered to be holding the indicia of ownership for purposes other  
25 than primarily to protect a security interest. For facilities that  
26 have been acquired through foreclosure or its equivalents prior to July  
27 23, 1995, this five-year period shall begin as of July 23, 1995.

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

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

37 (26) "Remedy" or "remedial action" means any action or expenditure  
38 consistent with the purposes of this chapter to identify, eliminate, or

1 minimize any threat or potential threat posed by hazardous substances  
2 to human health or the environment including any investigative and  
3 monitoring activities with respect to any release or threatened release  
4 of a hazardous substance and any health assessments or health effects  
5 studies conducted in order to determine the risk or potential risk to  
6 human health.

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

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

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

1       (30) "Brownfield property" means previously developed and currently  
2 abandoned or underutilized real property and adjacent surface waters  
3 and sediment where environmental, economic, or community reuse  
4 objectives are hindered by the release or threatened release of  
5 hazardous substances that the department has determined requires  
6 remedial action under this chapter or that the United States  
7 environmental protection agency has determined requires remedial action  
8 under the federal cleanup law.

9       (31) "Local government" means any political subdivision of the  
10 state, including a town, city, county, special purpose district, or  
11 other municipal corporation, including brownfield renewal authority  
12 created under section 5 of this act.

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

18       (33) "Prospective purchaser" means a person who is not currently  
19 liable for remedial action at a facility and who proposes to purchase,  
20 redevelop, or reuse the facility.

21       (34) "Redevelopment opportunity zone" means a geographic area  
22 designated under section 4 of this act.

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

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

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

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

1 (b) Moneys voluntarily deposited in the account for a specific  
2 redevelopment opportunity zone or a specific brownfield renewal  
3 authority; and

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

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

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

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

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

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

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

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

37 (10) After the department determines that all remedial actions  
38 within the redevelopment opportunity zone identified in the plan

1 approved under subsection (8) of this section are completed, including  
2 payment of all cost reasonably attributable to the remedial actions and  
3 cleanup, any remaining moneys must be transferred to the state toxics  
4 control account established under RCW 70.105D.070.

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

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

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

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

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

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

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

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

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

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

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

1 (c) The port district either:  
2 (i) Owns in fee all of the upland properties within the zone; or  
3 (ii) Owns in fee at least fifty percent of the upland property in  
4 the zone, the owners of other parcels of upland property in the zone  
5 have provided consent in writing to have their property included in the  
6 zone, and the governing body of the city and county in which the zone  
7 lies approves of the designation by resolution.

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

35 (ii) When developing model remedies, the department shall solicit  
36 and consider proposals from qualified persons. The proposals must, in  
37 addition to describing the model remedy, provide the information  
38 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. Estimated cash resources  
19 must consider the annual cash flow requirements of major projects that  
20 receive appropriations expected to cross multiple biennia. To  
21 effectively monitor toxic accounts expenditures, the department shall  
22 develop a comprehensive ten-year financing report that identifies long-  
23 term remedial action project costs, tracks expenses, and projects  
24 future needs.

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

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

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

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

21 ~~(e))~~. The submittal must also identify separate budget estimates  
22 for large, multibiennia clean-up projects that exceed ten million  
23 dollars. The department shall prepare its ten-year capital budget plan  
24 that is submitted to the office of financial management to reflect the  
25 separate budget estimates for these large clean-up projects and include  
26 information on the projected private and public funding obligations for  
27 completion of the projects.

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

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

4 (b) For hazardous waste sites with a grant, loan, or direct  
5 investment in remedial actions by the state:

6 (i) The amount of money from the state and local toxics control  
7 accounts used to conduct remedial actions at the site and the amount of  
8 that money recovered from potentially liable persons;

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

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

13 (B) Remedial investigation;

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

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

16 (E) Operation and maintenance or monitoring of the constructed  
17 remedy; and

18 (F) The final completion date.

19 ~~((+5))~~ (7) The department shall establish a program to identify  
20 potential hazardous waste sites and to encourage persons to provide  
21 information about hazardous waste sites.

22 ~~((+6))~~ (8) For all facilities where an environmental covenant has  
23 been required under subsection (1)(f) of this section, including all  
24 facilities where the department has required an environmental covenant  
25 under an order, agreed order, or consent decree, or as a condition of  
26 a written opinion issued under the authority of subsection (1)(i) of  
27 this section, the department shall periodically review the  
28 environmental covenant for effectiveness. Except as otherwise provided  
29 in (c) of this subsection, the department shall conduct a review at  
30 least once every five years after an environmental covenant is  
31 recorded.

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

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

36 (ii) A physical inspection of the real property subject to the  
37 environmental covenant to determine compliance with the environmental

1 covenant, including whether any development or redevelopment of the  
2 real property has violated the terms of the environmental covenant; and

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (c) Any person who owned or possessed a hazardous substance and who  
2 by contract, agreement, or otherwise arranged for disposal or treatment  
3 of the hazardous substance at the facility, or arranged with a  
4 transporter for transport for disposal or treatment of the hazardous  
5 substances at the facility, or otherwise generated hazardous wastes  
6 disposed of or treated at the facility;

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

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

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

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

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

29 (i) An act of God;

30 (ii) An act of war; or

31 (iii) An act or omission of a third party (including but not  
32 limited to a trespasser) other than (A) an employee or agent of the  
33 person asserting the defense, or (B) any person whose act or omission  
34 occurs in connection with a contractual relationship existing, directly  
35 or indirectly, with the person asserting this defense to liability.  
36 This defense only applies where the person asserting the defense has  
37 exercised the utmost care with respect to the hazardous substance, the



1 foreseeable acts or omissions of the third party, and the foreseeable  
2 consequences of those acts or omissions;

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

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

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

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

30 (c) Any natural person who uses a hazardous substance lawfully and  
31 without negligence for any personal or domestic purpose in or near a  
32 dwelling or accessory structure when that person is: (i) A resident of  
33 the dwelling; (ii) a person who, without compensation, assists the  
34 resident in the use of the substance; or (iii) a person who is employed  
35 by the resident, but who is not an independent contractor;

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

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

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

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

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

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

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

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

37 (ii) The stay of enforcement under this subsection does not apply  
38 if the consent decree was based on circumstances unique to the settling

1 party that do not exist with regard to the successor in interest, such  
2 as financial hardship. For consent decrees entered into before July  
3 27, 1997, at the request of a settling party or a potential successor  
4 owner or operator, the attorney general shall issue a written opinion  
5 on whether a consent decree contains such unique circumstances. For  
6 all other consent decrees, such unique circumstances shall be specified  
7 in the consent decree.

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

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

16 (i) The settlement will yield substantial new resources to  
17 facilitate cleanup;

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

20 (iii) Based on available information, the department determines  
21 that the redevelopment or reuse of the facility is not likely to  
22 contribute to the existing release or threatened release, interfere  
23 with remedial actions that may be needed at the ~~((site))~~ facility, or  
24 increase health risks to persons at or in the vicinity of the ~~((site))~~  
25 facility.

26 (b) The legislature recognizes that the state does not have  
27 adequate resources to participate in all property transactions  
28 involving contaminated property. The primary purpose of this  
29 subsection (5) is to promote the cleanup and reuse of ~~((vacant or  
30 abandoned commercial or industrial contaminated))~~ brownfield property.  
31 The attorney general and the department may give priority to  
32 settlements that will provide a substantial public benefit~~((,  
33 including, but not limited to the reuse of a vacant or abandoned  
34 manufacturing or industrial facility, or the development of a facility  
35 by a governmental entity to address an important public purpose))~~ in  
36 addition to cleanup.

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

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

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

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

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

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

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

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

33       (2) Any person who incurs costs complying with an order issued  
34 under subsection (1) of this section may petition the department for  
35 reimbursement of those costs. If the department refuses to grant  
36 reimbursement, the person may within thirty days thereafter file suit

1 and recover costs by proving that he or she was not a liable person  
2 under RCW 70.105D.040 and that the costs incurred were reasonable.

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

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

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

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

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

24 (7) Any person who owns real property or lender holding a mortgage  
25 on real property that is subject to a lien filed under RCW 70.105D.055  
26 may petition the department to have the lien removed or the amount of  
27 the lien reduced. If, after consideration of the petition and the  
28 information supporting the petition, the department decides to deny the  
29 request, the person may, within ninety days after receipt of the  
30 department's denial, file suit for removal or reduction of the lien.  
31 The person is entitled to removal of a lien filed under RCW  
32 70.105D.055(2)(a) if they can prove by a preponderance of the evidence  
33 that the person is not a liable party under RCW 70.105D.040. The  
34 person is entitled to a reduction of the amount of the lien if they can  
35 prove by a preponderance of the evidence:

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

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

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

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

10 (2)(a) The following moneys shall be deposited into the state  
11 toxics control account: ~~((a))~~ (i) Those revenues which are raised by  
12 the tax imposed under RCW 82.21.030 and which are attributable to that  
13 portion of the rate equal to thirty-three one-hundredths of one  
14 percent; ~~((b))~~ (ii) the costs of remedial actions recovered under  
15 this chapter or chapter 70.105A RCW; ~~((c))~~ (iii) penalties collected  
16 or recovered under this chapter; and ~~((d))~~ (iv) any other money  
17 appropriated or transferred to the account by the legislature.

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

21 (i) The state's responsibility for hazardous waste planning,  
22 management, regulation, enforcement, technical assistance, and public  
23 education required under chapters 70.105 and 70.95M RCW;

24 (ii) The state's responsibility for solid waste planning,  
25 management, regulation, enforcement, technical assistance, and public  
26 education required under chapters 70.95, 70.95D, 70.95M, 70.138, and  
27 70.280 RCW;

28 (iii) The hazardous waste cleanup program required under this  
29 chapter;

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

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

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

36 (vii) Hazardous materials emergency response ~~((training))~~  
37 activities;

1 (viii) Water and environmental health protection and monitoring  
2 programs;

3 (ix) Programs authorized under chapter 70.146 RCW;

4 (x) A public participation program(~~(, including regional citizen~~  
5 ~~advisory committees))~~);

6 (xi) Public funding to assist potentially liable persons to pay for  
7 the costs of remedial action in compliance with cleanup standards under  
8 RCW 70.105D.030(2)(e) but only when:

9 (A) The amount and terms of such funding are established under a  
10 settlement agreement under RCW 70.105D.040(4); and ~~((when))~~

11 (B) The director has found that the funding will achieve both  
12 ~~((A))~~ (I) a substantially more expeditious or enhanced cleanup than  
13 would otherwise occur(~~(,)~~); and ~~((B))~~ (II) the prevention or  
14 mitigation of unfair economic hardship;

15 (xii) Public funding to assist prospective purchasers to pay for  
16 the costs of remedial action in compliance with clean-up standards  
17 under RCW 70.105D.030(2)(e) if:

18 (A) The facility is located within a redevelopment opportunity zone  
19 designated under section 4 of this act;

20 (B) The amount and terms of the funding are established under a  
21 settlement agreement under RCW 70.105D.040(5); and

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

27 (xiii) Development and demonstration of alternative management  
28 technologies designed to carry out the hazardous waste management  
29 priorities of RCW 70.105.150;

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

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

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

1 ~~(xvi) During the 2011-2013 fiscal biennium, the department of~~  
2 ~~ecology's water quality, shorelands and environmental assessment,~~  
3 ~~hazardous waste, waste to resources, nuclear waste, and air quality~~  
4 ~~programs)) State agriculture and health programs for the safe use,~~  
5 ~~reduction, recycling, or disposal of pesticides;~~

6 (xv) Storm water pollution control programs and projects. This  
7 includes, but is not limited to, projects that:

8 (A) Work in conjunction with remedial actions;

9 (B) Protect completed remedial actions against recontamination; or

10 (C) Prevent the creation of hazardous waste sites;

11 (xvi) Funding requirements to maintain receipt of federal funds  
12 under the federal solid waste disposal act (42 U.S.C. Sec. 6901 et  
13 seq.);

14 (xvii) Air quality programs and actions for reducing public  
15 exposure to toxic air pollution;

16 (xviii) Programs regulating the use of hazardous substances in  
17 products or other high priority chemicals, as defined in RCW  
18 70.240.010; and

19 (xix) Public information and education programs related to  
20 hazardous substances and materials under chapter 70.102 RCW.

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

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

28 (i) Extended grant agreements entered into under (c)(i) of this  
29 subsection;

30 (ii) Remedial actions, including planning for adaptive reuse of  
31 properties as provided for under (c)(iv) of this subsection (3);

32 ~~((+ii))~~ (iii) Storm water pollution control programs and projects  
33 where the purpose of the project is limited exclusively to the  
34 treatment, detention, prevention, or monitoring of storm water  
35 pollution and no portion of the funding is provided for enhancing other  
36 uses of project properties. These projects may include competitive  
37 grants to local governments that apply criteria to identify the best



1 green infrastructure retrofits and other projects with high water  
2 quality and environmental benefits;

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

4 ~~((+iii+))~~ (v) Solid waste plans and programs under chapters 70.95,  
5 70.95C, 70.95I, and 70.105 RCW;

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

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

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

28 (c) To expedite cleanups throughout the state, the department  
29 ~~((shall partner with local communities and liable parties for cleanups.  
30 The department is authorized to use the following additional strategies  
31 in order to ensure a healthful environment for future generations))~~ may  
32 use the following strategies when providing grants and loans to local  
33 governments under this subsection:

34 (i) Enter into an extended grant agreement with a local government  
35 conducting remedial actions at a facility where those actions extend  
36 over multiple biennia and the total eligible cost of those actions  
37 exceeds twenty million dollars. The agreement is subject to the  
38 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 or loan 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 or loan agreement with a local government  
17 prior to it acquiring a property or obtaining necessary access to  
18 conduct remedial actions, provided the agreement is conditioned upon  
19 the local government acquiring the property or obtaining the access in  
20 accordance with a schedule specified in the agreement;

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

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

35       (vi) The director may alter ((grant-matching)) grant or loan  
36 matching requirements to create incentives for local governments to  
37 expedite cleanups when one of the 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, or habitat restoration opportunities that would  
5 not otherwise occur; or

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

9 (~~(ii) The use of outside contracts to conduct necessary studies;~~  
10 ~~(iii) The purchase of remedial action cost cap insurance, when~~  
11 ~~necessary to expedite multiparty clean-up efforts~~) (vii) When pending  
12 grant and loan applications under (c)(iv) and (v) of this subsection  
13 (3) exceed the amount of funds available, designated redevelopment  
14 opportunity zones must receive priority for distribution of available  
15 funds.

16 (d) To (~~facilitate and expedite cleanups using funds from the~~  
17 ~~local toxics control account, during the 2009-2011 fiscal biennium the~~  
18 ~~director may establish grant-funded accounts to hold and disperse local~~  
19 ~~toxics control account funds and funds from local governments to be~~  
20 ~~used for remedial actions~~) expedite multiparty clean-up efforts, the  
21 department may purchase remedial action cost-cap insurance.

22 (4) Except for unanticipated receipts under RCW 43.79.260 through  
23 43.79.282, moneys in the state and local toxics control accounts may be  
24 spent only after appropriation by statute.

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

1 (6) No moneys deposited into either the state or local toxics  
2 control account may be used for solid waste incinerator feasibility  
3 studies, construction, maintenance, or operation, or, after January 1,  
4 2010, for projects designed to address the restoration of Puget Sound,  
5 funded in a competitive grant process, that are in conflict with the  
6 action agenda developed by the Puget Sound partnership under RCW  
7 90.71.310.

8 (7) The department shall adopt rules for grant or loan 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 (8) During the 2011-2013 fiscal biennium, the legislature may  
18 transfer from the local toxics control account to the state toxics  
19 control account such amounts as reflect excess fund balance in the  
20 account.

21 (9) During the 2011-2013 fiscal biennium, the local toxics control  
22 account may also be used for local government shoreline update grants  
23 and actions for reducing public exposure to toxic air pollution;  
24 funding to local governments for flood levee improvements; and grants  
25 to local governments for brownfield redevelopment.

26 **Sec. 10.** RCW 43.84.092 and 2013 c 251 s 3 and 2013 c 96 s 3 are  
27 each reenacted and amended to read as follows:

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

31 (2) The treasury income account shall be utilized to pay or receive  
32 funds associated with federal programs as required by the federal cash  
33 management improvement act of 1990. The treasury income account is  
34 subject in all respects to chapter 43.88 RCW, but no appropriation is  
35 required for refunds or allocations of interest earnings required by  
36 the cash management improvement act. Refunds of interest to the  
37 federal treasury required under the cash management improvement act

1 fall under RCW 43.88.180 and shall not require appropriation. The  
2 office of financial management shall determine the amounts due to or  
3 from the federal government pursuant to the cash management improvement  
4 act. The office of financial management may direct transfers of funds  
5 between accounts as deemed necessary to implement the provisions of the  
6 cash management improvement act, and this subsection. Refunds or  
7 allocations shall occur prior to the distributions of earnings set  
8 forth in subsection (4) of this section.

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

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

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

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

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

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

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

10 **Sec. 11.** RCW 43.84.092 and 2013 c 251 s 4 and 2013 c 96 s 4 are  
11 each reenacted and amended to read as follows:

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

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

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



1 (4) Monthly, the state treasurer shall distribute the earnings  
2 credited to the treasury income account. The state treasurer shall  
3 credit the general fund with all the earnings credited to the treasury  
4 income account except:

5 (a) The following accounts and funds shall receive their  
6 proportionate share of earnings based upon each account's and fund's  
7 average daily balance for the period: The aeronautics account, the  
8 aircraft search and rescue account, the Alaskan Way viaduct replacement  
9 project account, the brownfield redevelopment trust fund account, the  
10 budget stabilization account, the capital vessel replacement account,  
11 the capitol building construction account, the Cedar River channel  
12 construction and operation account, the Central Washington University  
13 capital projects account, the charitable, educational, penal and  
14 reformatory institutions account, the cleanup settlement account, the  
15 Columbia river basin water supply development account, the Columbia  
16 river basin taxable bond water supply development account, the Columbia  
17 river basin water supply revenue recovery account, the Columbia river  
18 crossing project account, the common school construction fund, the  
19 county arterial preservation account, the county criminal justice  
20 assistance account, the deferred compensation administrative account,  
21 the deferred compensation principal account, the department of  
22 licensing services account, the department of retirement systems  
23 expense account, the developmental disabilities community trust  
24 account, the drinking water assistance account, the drinking water  
25 assistance administrative account, the drinking water assistance  
26 repayment account, the Eastern Washington University capital projects  
27 account, the Interstate 405 express toll lanes operations account, the  
28 education construction fund, the education legacy trust account, the  
29 election account, the energy freedom account, the energy recovery act  
30 account, the essential rail assistance account, The Evergreen State  
31 College capital projects account, the federal forest revolving account,  
32 the ferry bond retirement fund, the freight mobility investment  
33 account, the freight mobility multimodal account, the grade crossing  
34 protective fund, the public health services account, the high capacity  
35 transportation account, the state higher education construction  
36 account, the higher education construction account, the highway bond  
37 retirement fund, the highway infrastructure account, the highway safety  
38 fund, the high occupancy toll lanes operations account, the hospital

1 safety net assessment fund, the industrial insurance premium refund  
2 account, the judges' retirement account, the judicial retirement  
3 administrative account, the judicial retirement principal account, the  
4 local leasehold excise tax account, the local real estate excise tax  
5 account, the local sales and use tax account, the marine resources  
6 stewardship trust account, the medical aid account, the mobile home  
7 park relocation fund, the motor vehicle fund, the motorcycle safety  
8 education account, the multimodal transportation account, the municipal  
9 criminal justice assistance account, the natural resources deposit  
10 account, the oyster reserve land account, the pension funding  
11 stabilization account, the perpetual surveillance and maintenance  
12 account, the public employees' retirement system plan 1 account, the  
13 public employees' retirement system combined plan 2 and plan 3 account,  
14 the public facilities construction loan revolving account beginning  
15 July 1, 2004, the public health supplemental account, the public works  
16 assistance account, the Puget Sound capital construction account, the  
17 Puget Sound ferry operations account, the real estate appraiser  
18 commission account, the recreational vehicle account, the regional  
19 mobility grant program account, the resource management cost account,  
20 the rural arterial trust account, the rural mobility grant program  
21 account, the rural Washington loan fund, the site closure account, the  
22 skilled nursing facility safety net trust fund, the small city pavement  
23 and sidewalk account, the special category C account, the special  
24 wildlife account, the state employees' insurance account, the state  
25 employees' insurance reserve account, the state investment board  
26 expense account, the state investment board commingled trust fund  
27 accounts, the state patrol highway account, the state route number 520  
28 civil penalties account, the state route number 520 corridor account,  
29 the state wildlife account, the supplemental pension account, the  
30 Tacoma Narrows toll bridge account, the teachers' retirement system  
31 plan 1 account, the teachers' retirement system combined plan 2 and  
32 plan 3 account, the tobacco prevention and control account, the tobacco  
33 settlement account, the toll facility bond retirement account, the  
34 transportation 2003 account (nickel account), the transportation  
35 equipment fund, the transportation fund, the transportation improvement  
36 account, the transportation improvement board bond retirement account,  
37 the transportation infrastructure account, the transportation  
38 partnership account, the traumatic brain injury account, the tuition

1 recovery trust fund, the University of Washington bond retirement fund,  
2 the University of Washington building account, the volunteer  
3 firefighters' and reserve officers' relief and pension principal fund,  
4 the volunteer firefighters' and reserve officers' administrative fund,  
5 the Washington judicial retirement system account, the Washington law  
6 enforcement officers' and firefighters' system plan 1 retirement  
7 account, the Washington law enforcement officers' and firefighters'  
8 system plan 2 retirement account, the Washington public safety  
9 employees' plan 2 retirement account, the Washington school employees'  
10 retirement system combined plan 2 and 3 account, the Washington state  
11 economic development commission account, the Washington state health  
12 insurance pool account, the Washington state patrol retirement account,  
13 the Washington State University building account, the Washington State  
14 University bond retirement fund, the water pollution control revolving  
15 administration account, the water pollution control revolving fund, and  
16 the Western Washington University capital projects account. Earnings  
17 derived from investing balances of the agricultural permanent fund, the  
18 normal school permanent fund, the permanent common school fund, the  
19 scientific permanent fund, the state university permanent fund, and the  
20 state reclamation revolving account shall be allocated to their  
21 respective beneficiary accounts.

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

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

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

33 The radioactive mixed waste account is created within the state  
34 treasury. All receipts received from facilities assessed service  
35 charges established under RCW 70.105.280 must be deposited into the  
36 account. Moneys in the account may be spent only after appropriation.  
37 Expenditures from the account may only be used for carrying out the

1 department's powers and duties under this chapter related to the  
2 regulation of facilities that treat, store, or dispose of mixed waste  
3 or mixed waste facilities that are undergoing closure.

4 NEW SECTION. **Sec. 13.** By October 1, 2013, the state treasurer  
5 must transfer the fund balance of the mixed waste fees within the state  
6 toxics control account to the radioactive mixed waste account created  
7 in section 12 of this act. The department of ecology shall report the  
8 fund balance amount to the state treasurer for transfer into the  
9 radioactive mixed waste account.

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

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

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

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

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

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

32 (4) The department shall adopt rules necessary to implement this  
33 section. Facilities that store, treat, incinerate, or dispose of  
34 dangerous or extremely hazardous waste that contains both a  
35 nonradioactive hazardous component and a radioactive component shall  
36 not be subject to service charges prior to such rule making.

1 Facilities undergoing closure under this chapter in those instances  
2 where closure entails the physical characterization of remaining wastes  
3 which contain both a nonradioactive hazardous component and a  
4 radioactive component or the management of such wastes through  
5 treatment or removal shall not be subject to service charges prior to  
6 such rule making.

7 NEW SECTION. **Sec. 15.** (1) The department of ecology shall convene  
8 a model toxics control act investment work group. The work group  
9 shall:

10 (a) Review past and current use of moneys in the state and local  
11 toxics control accounts;

12 (b) Determine what investments are needed to accomplish the goals  
13 and objectives of chapter 70.105D RCW, including pollution prevention,  
14 waste management, and cleanup;

15 (c) Determine the extent to which state and local toxics control  
16 accounts funds should be used for storm water remediation and  
17 prevention and oil spill prevention, preparedness, training, and  
18 response activities; and

19 (d) Develop a long-term investment strategy for funds allocated  
20 from the state and local toxics control accounts.

21 (2) The members of the work group include:

22 (a) One member from each of the two major caucuses in the senate  
23 appointed by the president of the senate and one member from each of  
24 the two major caucuses in the house of representatives, appointed by  
25 the speaker of the house of representatives;

26 (b) Local government representatives, including port directors,  
27 environmental health directors, and solid waste managers;

28 (c) Business representatives, including large and small businesses  
29 with interests in implementation of chapter 70.105D RCW;

30 (d) Representatives of environmental and community groups;

31 (e) Representatives from state agencies that currently use money  
32 from the state and local toxics control accounts; and

33 (f) A representative of the office of financial management.

34 (3) Except as otherwise provided in subsection (2)(a) of this  
35 section, the director of the department of ecology shall select the  
36 work group members.

1 (4) The director of the department of ecology shall chair the work  
2 group.

3 (5) The work group must report its findings and recommendations to  
4 the governor and appropriate policy and fiscal committees of the house  
5 of representatives and senate by December 1, 2014.

6 NEW SECTION. **Sec. 16.** Section 10 of this act expires on the date  
7 the requirements set out in section 7, chapter 36, Laws of 2012 are  
8 met.

9 NEW SECTION. **Sec. 17.** Section 11 of this act takes effect on the  
10 date the requirements set out in section 7, chapter 36, Laws of 2012  
11 are met.

12 NEW SECTION. **Sec. 18.** If any provision of this act or its  
13 application to any person or circumstance is held invalid, the  
14 remainder of the act or the application of the provision to other  
15 persons or circumstances is not affected."

**E2SSB 5296** - S AMD  
By Senator Ranker

**NOT CONSIDERED**

16 On page 1, beginning on line 1 of the title, after "act;" strike  
17 the remainder of the title and insert "amending RCW 70.105D.020,  
18 70.105D.030, 70.105D.040, 70.105D.050, and 70.105.280; reenacting and  
19 amending RCW 70.105D.070, 43.84.092, and 43.84.092; adding new sections  
20 to chapter 70.105D RCW; adding a new section to chapter 70.105 RCW;  
21 creating new sections; providing a contingent effective date; and  
22 providing a contingent expiration date."

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 the 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, multibiennia cleanups.

Restores state and local toxics control account uses.

Removes the environmental legacy stewardship account, related references, and associated fund transfers.

Adds a task force to review and make recommendations on the priorities for the use of the hazardous substance tax.

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