

SENATE BILL REPORT

SB 5201

As of January 25, 2013

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

Brief Description: Accelerating cleanup of hazardous waste sites.

Sponsors: Senators Ranker, Ericksen, Harper, Hobbs, Keiser, Kline, Eide and Hasegawa.

Brief History:

Committee Activity: Energy, Environment & Telecommunications: 1/23/13.

SENATE COMMITTEE ON ENERGY, ENVIRONMENT & TELECOMMUNICATIONS

Staff: Jan Odano (786-7486)

Background: The state Model Toxics Control Act (MTCA) is carried out by the Department of Ecology (DOE) to ensure that the vast majority of sites at which hazardous substances have been released are cleaned up. DOE is responsible to investigate, conduct remedial actions, enforce actions to protect human health, and provide technical and administrative assistance.

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

The state and local toxics control accounts provide funding for activities such as state programs for hazardous and solid waste planning, management, and enforcement; financial assistance for local hazardous and solid waste programs; and assistance for potentially liable persons to pay for remedial actions under certain circumstances. DOE must use local toxic control account funds for grants and loans to local governments with a priority for remedial actions.

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

When partnering with local communities and liable parties for cleanup, DOE may alter grant-matching requirements to incentivize local governments to expedite cleanups when funding would mitigate unfair economic hardship imposed by the cleanup liability; create new substantial economic development, public recreational, or habitat restoration opportunities; or create an opportunity for acquisition and redevelopment of vacant, orphaned, or abandoned property that would not otherwise occur.

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

The Brownfield Redevelopment Trust Fund (trust fund) is created only for remediation and clean-up activities within a designated redevelopment opportunity zone. The trust fund may receive legislative appropriations, voluntary contributions made to specific zones or brownfield redevelopment authorities, and receipts from settlements or court orders that direct payment to the trust fund for specific zones. The trust fund must be credited with all investment income earned by the trust fund. The local government establishing the redevelopment opportunity zone must be the beneficiary of the subaccount.

All expenditures must be used for remediation and cleanup of properties and facilities consistent with a plan approved by DOE. The expenditures must meet eligibility requirements for remedial action grants. DOE must provide a biennial report on each subaccount activity.

When DOE determines that all remedial actions are complete and payments are made, any remaining monies must be transferred to the state Toxics Control Account. If DOE determines that substantial progress has not been made within six years wherein deposits were made into the account, or the brownfield renewal authority is not a viable entity, then all remaining funds must be transferred to the state Toxics Control Account.

A city, county, or port district may designate a redevelopment opportunity zone when it adopts a resolution determining:

- at least 50 percent of the upland properties in the area are brownfields, and the brownfield properties do not need to be contiguous;
- the upland areas are completely owned by the city or county and the property owners have given consent to be included in the zone;
- cleanup will be integrated and consistent with comprehensive land-use plans for future uses; and
- the proposed property is within an urban growth area.

Port districts must additionally own at least 50 percent of the upland property, or have property owners consent to be included in the zone. The city or county must approve the redevelopment opportunity zone designation.

A city, county, or port district may establish a brownfield renewal authority (authority) for implementing cleanup and reuse of properties within a redevelopment opportunity zone. Any combination of cities, counties, and port districts may establish a brownfield renewal

authority through an interlocal agreement. The authority must be governed by a board of directors who are determined by resolution or interlocal agreement. The authority must be a municipal corporation. DOE may require a brownfield authority to dissolve, if it determines that substantial progress for remedial actions has not been made within six years of establishment of the authority. All assets, except remaining funds, transfer to the state Toxics Control Account, and liabilities transfer to the city, town, or port district establishing the authority.

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

Funds from the state Toxics Control Account may be used to assist prospective purchasers to pay for remediation at sites within a redevelopment opportunity zone, when the amount and terms are established in a settlement agreement and when DOE finds the funding provides for a substantially more expeditious or enhanced cleanup with public benefits.

Uses of funds from the local Toxics Control Account are prioritized to include remedial actions that include planning for adaptive reuse of properties. To expedite cleanups, DOE may enter into grant or loan agreements with local governments and may use strategies such as: entering into agreements that provide periodic reimbursement to the local government as the costs are incurred and to address area-wide groundwater contamination; entering into an agreement prior to the local government acquiring a property as long as there is a schedule for acquiring or obtaining access to the property specified in the agreement; and providing integrated planning grants or loans to local governments to fund studies for remedial actions at brownfield properties and adaptive reuse after remediation. Designated redevelopment opportunity zones have priority for available grant or loan funds when the demand exceeds the amount of available funding.

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

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

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

Appropriation: None.

Fiscal Note: Requested on January 24, 2013.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony: PRO: This may be a good idea for a pilot program using a less cumbersome process using memoranda of agreement with existing governmental entities. Accelerating cleanup at brownfield properties provides an opportunity to increase value at the private site, leverage private funding which will provide the greatest return on public funding. Grants through the trust are critical for matching funds for the mega projects.

OTHER: Funds in the brownfield trust may preclude flexibility in the use of the funds. State Toxic Control Account funds leverage private clean-up. Approximately 80 percent of clean-up sites are on private property.

Persons Testifying: PRO: Greg Hanon NAIOP, Rod Brown, WA Environmental Counsel, Johan Hellman, WA Public Ports Assn., Carl Schroeder, Assn. of WA Cities, Brandon Houskeeper, Assn. of WA Business, Jerry Smedes, NW Environmental Business Council.

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