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SENATE BILL 5943

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State of Washington                      65th Legislature      2017 2nd Special Session  
By Senator Ericksen

1            AN ACT Relating to cleaning up contaminated sites across  
2 Washington; amending RCW 70.105D.030, 70.105D.040, 70.105D.050,  
3 70.105D.060, 70.105D.070, 70.105D.130, 70.105D.100, 43.41.270,  
4 70.105D.090, 70.94.335, 70.95.270, 70.105.116, 77.55.061, 90.48.039,  
5 90.58.355, 70.105D.055, and 70.105D.080; reenacting and amending RCW  
6 70.105D.170 and 70.105D.020; adding a new section to chapter 43.21C  
7 RCW; adding a new section to chapter 70.105D RCW; decodifying RCW  
8 70.105D.010 and 70.105D.920; repealing RCW 43.21C.036 and  
9 70.105D.900; and providing an effective date.

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

11    **PART ONE**  
12    **POWERS AND DUTIES**

13            **Sec. 101.** RCW 70.105D.030 and 2013 2nd sp.s. c 1 s 6 are each  
14 amended to read as follows:

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

17            (a) Investigate, provide for investigating, or require  
18 potentially liable persons to investigate any releases or threatened  
19 releases of hazardous substances, including but not limited to  
20 inspecting, sampling, or testing to determine the nature or extent of

1 any release or threatened release. If there is a reasonable basis to  
2 believe that a release or threatened release of a hazardous substance  
3 may exist, the department's authorized employees, agents, or  
4 contractors may enter upon any property and conduct investigations.  
5 The department shall give reasonable notice before entering property  
6 unless an emergency prevents such notice. The department may by  
7 subpoena require the attendance or testimony of witnesses and the  
8 production of documents or other information that the department  
9 deems necessary;

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

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

24 (d) Carry out all state programs authorized under the federal  
25 cleanup law and the federal resource, conservation, and recovery act,  
26 42 U.S.C. Sec. 6901 et seq., as ~~((amended))~~ it existed on July 1,  
27 2018;

28 (e) Classify substances as hazardous substances for purposes of  
29 RCW 70.105D.020 and classify substances and products as hazardous  
30 substances for purposes of RCW 82.21.020(1). By January 1, 2020, the  
31 department shall review its classification of hazardous substances  
32 under this subsection to determine if any substances should be  
33 removed from the classification as a hazardous substance based on the  
34 best available data;

35 (f) Issue orders or enter into consent decrees or agreed orders  
36 that include, or issue written opinions under (i) of this subsection  
37 that may be conditioned upon, environmental covenants where necessary  
38 to protect human health and the environment from a release or  
39 threatened release of a hazardous substance from a facility. Prior to  
40 establishing an environmental covenant under this subsection, the

1 department shall consult with and seek comment from a city or county  
2 department with land use planning authority for real property subject  
3 to the environmental covenant. If a city or county that is consulted  
4 under this subsection does not provide comment within sixty days  
5 after the department consults it, the city or county is deemed to  
6 have waived its right to comment and the department is under no  
7 obligation to accept or consider comments received from the city or  
8 county, or delay in establishing an environmental covenant under this  
9 subsection;

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

15 (h) Require holders to conduct remedial actions necessary to  
16 abate an imminent or substantial endangerment pursuant to RCW  
17 70.105D.020(22)(b)(ii)(C);

18 (i) Provide informal advice and assistance to persons regarding  
19 the administrative and technical requirements of this chapter. This  
20 may include site-specific advice, and advice and assistance relating  
21 to the requirements of RCW 70.105D.090, to persons who are conducting  
22 or otherwise interested in independent remedial actions. Any such  
23 advice or assistance shall be advisory only, and shall not be binding  
24 on the department. As a part of providing this advice and assistance  
25 for independent remedial actions, the department may prepare written  
26 opinions regarding whether the independent remedial actions or  
27 proposals for those actions meet the substantive requirements of this  
28 chapter or whether the department believes further remedial action is  
29 necessary at the facility. The department must complete such a  
30 written opinion within ninety days of receiving the request for an  
31 opinion. Nothing in this chapter may be construed to preclude the  
32 department from issuing a written opinion on whether further remedial  
33 action is necessary at any portion of the real property located  
34 within a facility, even if further remedial action is still necessary  
35 elsewhere at the same facility. Such a written opinion on a portion  
36 of a facility must also provide an opinion on the status of the  
37 facility as a whole. The department may collect, from persons  
38 requesting advice and assistance, the costs incurred by the  
39 department in providing such advice and assistance; however, the  
40 department shall, where appropriate, waive collection of costs in

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

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

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

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

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

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

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

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

38 (iii) If a facility meets the requirements for use of a model  
39 remedy, an analysis of the feasibility of alternative remedies is not  
40 required under this chapter. (~~For department conducted and~~

1 ~~department supervised remedial actions, the department must provide~~  
2 ~~public notice and consider public comments on the proposed use of a~~  
3 ~~model remedy at a facility.))~~ The department may waive collection of  
4 its costs for providing a written opinion under (i) of this  
5 subsection on a cleanup that qualifies for and appropriately uses a  
6 model remedy; and

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

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

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

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

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

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

33 (e) Publish and periodically update minimum clean-up standards  
34 for remedial actions at least as stringent as the clean-up standards  
35 under section 121 of the federal cleanup law, 42 U.S.C. Sec. 9621,  
36 and at least as stringent as all applicable state and federal laws,  
37 including health-based standards under state and federal law. If the  
38 department adopts a minimum clean-up standard that is more stringent  
39 than any federal law, including the federal clean-up law, then within  
40 thirty days of adoption the department must notify the relevant

1 senate and house of representatives policy committees of the reasons  
2 supporting the department's adoption of the more stringent standard.  
3 The department must ensure that minimum clean-up standards do not  
4 require persons conducting remedial actions, including independent  
5 remedial actions, to remedy any release at the site of the remedial  
6 action caused by the entry of hazardous substances outside of the  
7 reasonable control of the person conducting the remedial action, such  
8 as the migration of hazardous substances onto the site from off-site  
9 upstream surface water that does not meet minimum clean-up standards  
10 when it enters the site; and

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

24 (3) To achieve and protect the state's long-term ecological  
25 health, the department shall plan to clean up hazardous waste sites  
26 and prevent the creation of future hazards due to improper disposal  
27 of toxic wastes at a pace that matches the estimated cash resources  
28 in the state and local toxics control accounts and the environmental  
29 legacy stewardship account created in RCW 70.105D.170. Estimated cash  
30 resources must consider the annual cash flow requirements of major  
31 projects that receive appropriations expected to cross multiple  
32 biennia. ~~((To effectively monitor toxic accounts expenditures, the~~  
33 ~~department shall develop a comprehensive ten-year financing report~~  
34 ~~that identifies long-term remedial action project costs, tracks~~  
35 ~~expenses, and projects future needs.~~

36 ~~(4) By November 1, 2016, the department must submit to the~~  
37 ~~governor and the appropriate legislative committees a report on the~~  
38 ~~status of developing model remedies and their use under this chapter.~~  
39 ~~The report must include: The number and types of model remedies~~  
40 ~~identified by the department under subsection (1)(k) of this section;~~

1 ~~the number and types of model remedy proposals prepared by qualified~~  
2 ~~private sector engineers, consultants, or contractors that were~~  
3 ~~accepted or rejected under subsection (1)(k) of this section and the~~  
4 ~~reasons for rejection; and the success of model remedies in~~  
5 ~~accelerating the cleanup as measured by the number of jobs created by~~  
6 ~~the cleanup, where this information is available to the department,~~  
7 ~~acres of land restored, and the number and types of hazardous waste~~  
8 ~~sites successfully remediated using model remedies.~~

9 ~~(5))~~ (4) Before September 20th of each even-numbered year, the  
10 department shall:

11 (a) Develop a comprehensive ten-year financing report in  
12 coordination with all local governments with clean-up  
13 responsibilities that identifies the projected biennial hazardous  
14 waste site remedial action needs that are eligible for funding from  
15 the state and local toxics control account and the environmental  
16 legacy stewardship account;

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

19 (c) Identify the projected remedial action needs for orphaned,  
20 abandoned, and other clean-up sites that are eligible for funding  
21 from the state and local toxics control accounts and the  
22 environmental legacy stewardship account;

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

38 ~~((6))~~ (5) By December 1st of each odd-numbered year, the  
39 department must provide the legislature and the public a report of  
40 the department's activities supported by appropriations from the

1 state and local toxics control accounts and the environmental legacy  
2 stewardship account. The report must be prepared and displayed in a  
3 manner that allows the legislature and the public to easily determine  
4 the statewide and local progress made in cleaning up hazardous waste  
5 sites under this chapter. The report must include, at a minimum:

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

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

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

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

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

19 (B) Remedial investigation;

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

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

22 (E) Operation and maintenance or monitoring of the constructed  
23 remedy; and

24 (F) The final completion date.

25 ~~((+7))~~ (6) The department shall establish a program to identify  
26 potential hazardous waste sites and to encourage persons to provide  
27 information about hazardous waste sites.

28 ~~((+8))~~ (7) For all facilities where an environmental covenant  
29 has been required under subsection (1)(f) of this section, including  
30 all facilities where the department has required an environmental  
31 covenant under an order, agreed order, or consent decree, or as a  
32 condition of a written opinion issued under the authority of  
33 subsection (1)(i) of this section, the department shall periodically  
34 review the environmental covenant for effectiveness. ~~((Except as  
35 otherwise provided in (c) of this subsection,))~~ The department shall  
36 conduct a review at least once every five years after an  
37 environmental covenant is recorded.

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

39 (i) A review of the title of the real property subject to the  
40 environmental covenant to determine whether the environmental



1 covenant was properly recorded and, if applicable, amended or  
2 terminated;

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

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

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

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

25 ~~(i) Enter all required information about the environmental~~  
26 ~~covenant into the registry established under RCW 64.70.120 by June~~  
27 ~~30, 2008;~~

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

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

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

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

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

37

**PART TWO**

38

**LIABILITY AND ENFORCEMENT**

1       **Sec. 201.** RCW 70.105D.040 and 2013 2nd sp.s. c 1 s 7 are each  
2 amended to read as follows:

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

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

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

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

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

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

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

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

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

36       (i) An act of God;

37       (ii) An act of war; or

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

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

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

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

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

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

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

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

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

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

18 (b) A settlement agreement under this section shall be entered as  
19 a consent decree issued by a court of competent jurisdiction. The  
20 court shall provide for expedited review of a proposed settlement  
21 agreement under this section, and must approve a lawful agreement  
22 within sixty days of the date of proposal, unless the parties  
23 stipulate to setting a later date for approval.

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

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

38 (e) If the state has entered into a consent decree with an owner  
39 or operator under this section, the state shall not enforce this  
40 chapter against any owner or operator who is a successor in interest

1 to the settling party unless under the terms of the consent decree  
2 the state could enforce against the settling party, if:

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

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

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

19 (5)(a) In addition to the settlement authority provided under  
20 subsection (4) of this section, the attorney general may agree to a  
21 settlement with a prospective purchaser, provided that:

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

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

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

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

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

1 (6) As an alternative to a settlement under subsection (5) of  
2 this 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  
6 this chapter regarding remedial actions required by the agreed order  
7 as long as the prospective purchaser complies with the requirements  
8 of the 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 attorney general or department, or  
14 remedial action ordered by a court or the department, affects any  
15 person's right to obtain a remedy under common law or other statutes.

16 **Sec. 202.** RCW 70.105D.050 and 2013 2nd sp.s. c 1 s 8 are each  
17 amended to 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  
21 the 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  
25 sufficient cause, to comply with an order or agreed order of the  
26 director is liable in an action brought by the attorney general for:

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

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

31 The treble damages and civil penalty under this subsection apply to  
32 all 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  
37 and recover costs by proving that he or she was not a liable person  
38 under RCW 70.105D.040 and that the costs incurred were reasonable.

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

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

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

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

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

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

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

38 (b) For liens filed under RCW 70.105D.055(2)(c), the amount of  
39 the lien exceeds the remedial action costs the department incurred  
40 related to cleanup of the real property or exceeds the increase of

1 the fair market value of the real property solely attributable to the  
2 remedial action conducted by the department.

3 (8) The expenditure of moneys under the state and local toxics  
4 control accounts created in RCW (~~(70.105D.170)~~) 70.105D.070 and the  
5 environmental legacy stewardship account created in RCW 70.105D.170  
6 does not alter the liability of any person under this chapter, or the  
7 authority of the department under this chapter, including the  
8 authority to recover those moneys.

9 **Sec. 203.** RCW 70.105D.060 and 2007 c 104 s 20 are each amended  
10 to read as follows:

11 The department's investigative and remedial decisions under RCW  
12 70.105D.030 and 70.105D.050, its decisions regarding filing a lien  
13 under RCW 70.105D.055, and its decisions regarding liable persons  
14 under RCW 70.105D.020, 70.105D.040, 70.105D.050, and 70.105D.055  
15 shall be reviewable exclusively in superior court and only at the  
16 following times: (1) In a cost recovery suit under RCW  
17 70.105D.050(3); (2) in a suit by the department to enforce an order  
18 or an agreed order, or seek a civil penalty under this chapter; (3)  
19 in a suit for reimbursement under RCW 70.105D.050(2); (4) in a suit  
20 by the department to compel investigative or remedial action; and (5)  
21 (~~(in a citizen's suit under RCW 70.105D.050(5); and (6))~~) in a suit  
22 for removal or reduction of a lien under RCW 70.105D.050(7). Except  
23 in suits for reduction or removal of a lien under RCW 70.105D.050(7),  
24 the court shall uphold the department's actions unless they were  
25 arbitrary and capricious. In suits for reduction or removal of a lien  
26 under RCW 70.105D.050(7), the court shall review such suits pursuant  
27 to the standards set forth in RCW 70.105D.050(7).

28 **PART THREE**

29 **GRANT AND SPENDING PRIORITIES**

30 **Sec. 301.** RCW 70.105D.070 and 2016 sp.s. c 36 s 943 are each  
31 amended to read as follows:

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

34 (2)(a) Moneys collected under RCW 82.21.030 must be deposited as  
35 follows: Fifty-six percent to the state toxics control account under  
36 subsection (3) of this section and forty-four percent to the local  
37 toxics control account under subsection (4) of this section. When the



1 cumulative amount of deposits made to the state and local toxics  
2 control accounts under this section reaches the limit during a fiscal  
3 year as established in (b) of this subsection, the remainder of the  
4 moneys collected under RCW 82.21.030 during that fiscal year must be  
5 deposited into the environmental legacy stewardship account created  
6 in RCW 70.105D.170.

7 (b) The limit on distributions of moneys collected under RCW  
8 82.21.030 to the state and local toxics control accounts for ~~((the))~~  
9 each fiscal year ~~((beginning July 1, 2013,))~~ is one hundred forty  
10 million dollars.

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

17 (d) At least sixty percent of the funds appropriated for the  
18 state toxics control account and local toxics control account under  
19 this section each fiscal year, excluding any funds deposited in the  
20 environmental legacy stewardship account created in RCW 70.105D.170,  
21 must be used for the purposes described in subsections (3)(c), (d),  
22 (f), (g), and (i) and (4) of this section.

23 (3) Moneys in the state toxics control account must be used only  
24 to carry out the purposes of this chapter, including but not limited  
25 to the following activities:

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

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

32 (c) The hazardous waste clean-up program required under this  
33 chapter;

34 (d) State matching funds required under federal cleanup law;

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

37 ~~((State government programs for the safe reduction,~~  
38 ~~recycling, or disposal of paint and hazardous wastes from households,~~  
39 ~~small businesses, and agriculture;~~

1       ~~(g) Oil and hazardous materials spill prevention, preparedness,~~  
2 ~~training, and response activities;~~

3       ~~(h) Water and environmental health protection and monitoring~~  
4 ~~programs;~~

5       ~~(i) Programs authorized under chapter 70.146 RCW;~~

6       ~~(j) A public participation program;~~

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

15       ~~((l))~~ (g) Development and demonstration of alternative  
16 management technologies designed to carry out the hazardous waste  
17 management priorities of RCW 70.105.150;

18       ~~((m) State agriculture and health programs for the safe use,~~  
19 ~~reduction, recycling, or disposal of pesticides;~~

20       ~~(n) Storm water pollution control projects and activities that~~  
21 ~~protect or preserve existing remedial actions or prevent hazardous~~  
22 ~~clean-up sites;~~

23       ~~(o))~~ (h) Funding requirements to maintain receipt of federal  
24 funds under the federal solid waste disposal act (42 U.S.C. Sec. 6901  
25 et seq.);

26       ~~((p) Air quality programs and actions for reducing public~~  
27 ~~exposure to toxic air pollution;~~

28       ~~(q))~~ (i) Public funding to assist prospective purchasers to pay  
29 for the costs of remedial action in compliance with clean-up  
30 standards under RCW 70.105D.030(2)(e) if:

31       (i) The facility is located within a redevelopment opportunity  
32 zone designated under RCW 70.105D.150;

33       (ii) The amount and terms of the funding are established under a  
34 settlement agreement under RCW 70.105D.040(5); and

35       (iii) The director has found the funding meets any additional  
36 criteria established in rule by the department, will achieve a  
37 substantially more expeditious or enhanced cleanup than would  
38 otherwise occur, and will provide a public benefit in addition to  
39 cleanup commensurate with the scope of the public funding; and

1 ~~((r) Petroleum-based plastic or expanded polystyrene foam debris~~  
2 ~~cleanup activities in fresh or marine waters;~~

3 ~~(s))~~ (j) Appropriations to the local toxics control account or  
4 the environmental legacy stewardship account created in RCW  
5 70.105D.170, if the legislature determines that priorities for  
6 spending exceed available funds in those accounts(;

7 ~~(t) During the 2013-2015 and 2015-2017 fiscal biennia, the~~  
8 ~~department of ecology's water quality, shorelands, environmental~~  
9 ~~assessment, administration, and air quality programs;~~

10 ~~(u) During the 2013-2015 fiscal biennium, actions at the state~~  
11 ~~conservation commission to improve water quality for shellfish;~~

12 ~~(v) During the 2013-2015 and 2015-2017 fiscal biennia, actions at~~  
13 ~~the University of Washington for reducing ocean acidification;~~

14 ~~(w) During the 2015-2017 fiscal biennium, for the University of~~  
15 ~~Washington Tacoma soil remediation project;~~

16 ~~(x) For the 2013-2015 fiscal biennium, moneys in the state toxics~~  
17 ~~control account may be spent on projects in section 3160, chapter 19,~~  
18 ~~Laws of 2013 2nd sp. sess. and for transfer to the local toxics~~  
19 ~~control account;~~

20 ~~(y) For the 2013-2015 fiscal biennium, moneys in the state toxics~~  
21 ~~control account may be transferred to the radioactive mixed waste~~  
22 ~~account; and~~

23 ~~(z) For the 2015-2017 fiscal biennium, forest practices~~  
24 ~~regulation at the department of natural resources)).~~

25 (4)(a) The department shall use moneys deposited in the local  
26 toxics control account for grants or loans to local governments for  
27 the following purposes in descending order of priority:

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

30 (ii) Remedial actions, including planning for adaptive reuse of  
31 properties as provided for under ~~((e))~~ (c)(iv) of this subsection.  
32 The department must prioritize funding of remedial actions at:

33 (A) Facilities on the department's hazardous sites list with a  
34 high hazard ranking for which there is an approved remedial action  
35 work plan or an equivalent document under federal cleanup law;

36 (B) Brownfield properties within a redevelopment opportunity zone  
37 if the local government is a prospective purchaser of the property  
38 and there is a department-approved remedial action work plan or  
39 equivalent document under the federal cleanup law;

1       ~~((Storm water pollution source projects that: (A) Work in~~  
2 ~~conjunction with a remedial action; (B) protect completed remedial~~  
3 ~~actions against recontamination; or (C) prevent hazardous clean up~~  
4 ~~sites;~~

5       ~~(iv))~~) Hazardous waste plans and programs under chapter 70.105  
6 RCW;

7       ~~((v))~~) (iv) Solid waste plans and programs under chapters 70.95,  
8 70.95C, 70.95I, and 70.105 RCW; and

9       ~~((vi) Petroleum based plastic or expanded polystyrene foam~~  
10 ~~debris cleanup activities in fresh or marine waters; and~~

11       ~~(vii))~~) (v) Appropriations to the state toxics control account or  
12 the environmental legacy stewardship account created in RCW  
13 70.105D.170, if the legislature determines that priorities for  
14 spending exceed available funds in those accounts.

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

18       ~~(c) ((During the 2013-2015 fiscal biennium, the local toxics~~  
19 ~~control account may also be used for local government storm water~~  
20 ~~planning and implementation activities.~~

21       ~~(d) During the 2013-2015 fiscal biennium, the legislature may~~  
22 ~~transfer from the local toxics control account to the state general~~  
23 ~~fund, such amounts as reflect the excess fund balance in the account.~~

24       ~~(e))~~) To expedite cleanups throughout the state, the department  
25 may use the following strategies when providing grants to local  
26 governments under this subsection:

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

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

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

38       (C) The department may not allocate future funding to an extended  
39 grant agreement unless the local government has demonstrated to the  
40 department that funds awarded under the agreement during the previous

1 biennium have been substantially expended or contracts have been  
2 entered into to substantially expend the funds;

3 (ii) Enter into a grant agreement with a local government  
4 conducting a remedial action that provides for periodic reimbursement  
5 of remedial action costs as they are incurred as established in the  
6 agreement;

7 (iii) Enter into a grant agreement with a local government prior  
8 to it acquiring a property or obtaining necessary access to conduct  
9 remedial actions, provided the agreement is conditioned upon the  
10 local government acquiring the property or obtaining the access in  
11 accordance with a schedule specified in the agreement;

12 (iv) Provide integrated planning grants to local governments to  
13 fund studies necessary to facilitate remedial actions at brownfield  
14 properties and adaptive reuse of properties following remediation.  
15 Eligible activities include, but are not limited to: Environmental  
16 site assessments; remedial investigations; health assessments;  
17 feasibility studies; site planning; community involvement; land use  
18 and regulatory analyses; building and infrastructure assessments;  
19 economic and fiscal analyses; and any environmental analyses under  
20 chapter 43.21C RCW;

21 (v) Provide grants to local governments for remedial actions  
22 related to area-wide groundwater contamination. To receive the  
23 funding, the local government does not need to be a potentially  
24 liable person or be required to seek reimbursement of grant funds  
25 from a potentially liable person;

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

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

31 (B) Funding would create new substantial economic development,  
32 public recreational opportunities, or habitat restoration  
33 opportunities that would not otherwise occur; or

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

37 (vii) When pending grant applications under ~~((e))~~ (c)(iv) and  
38 (v) of this subsection (4) exceed the amount of funds available,  
39 designated redevelopment opportunity zones must receive priority for  
40 distribution of available funds.

1       ~~((f))~~ (d) To expedite multiparty clean-up efforts, the  
2 department may purchase remedial action cost-cap insurance. ~~((For the~~  
3 ~~2013-2015 fiscal biennium, moneys in the local toxics control account~~  
4 ~~may be spent on projects in sections 3024, 3035, 3036, and 3059,~~  
5 ~~chapter 19, Laws of 2013 2nd sp. sess.))~~

6       (5) Except for unanticipated receipts under RCW 43.79.260 through  
7 43.79.282, moneys in the state and local toxics control accounts may  
8 be spent only after appropriation by statute.

9       (6) No moneys deposited into either the state or local toxics  
10 control account may be used for: Natural disasters where there is no  
11 hazardous substance contamination; high performance buildings; solid  
12 waste incinerator facility feasibility studies, construction,  
13 maintenance, or operation; or ~~((after January 1, 2010,))~~ for projects  
14 designed to address the restoration of Puget Sound, funded in a  
15 competitive grant process, that are in conflict with the action  
16 agenda developed by the Puget Sound partnership under RCW 90.71.310.  
17 However, this subsection does not prevent an appropriation from the  
18 state toxics control account to the department of revenue to enforce  
19 compliance with the hazardous substance tax imposed in chapter 82.21  
20 RCW.

21       ~~(7) ((Except during the 2011-2013 and the 2015-2017 fiscal~~  
22 ~~biennia, one percent of the moneys collected under RCW 82.21.030~~  
23 ~~shall be allocated only for public participation grants to persons~~  
24 ~~who may be adversely affected by a release or threatened release of a~~  
25 ~~hazardous substance and to not for profit public interest~~  
26 ~~organizations. The primary purpose of these grants is to facilitate~~  
27 ~~the participation by persons and organizations in the investigation~~  
28 ~~and remedying of releases or threatened releases of hazardous~~  
29 ~~substances and to implement the state's solid and hazardous waste~~  
30 ~~management priorities. No grant may exceed sixty thousand dollars.~~  
31 ~~Grants may be renewed annually. Moneys appropriated for public~~  
32 ~~participation that are not expended at the close of any biennium~~  
33 ~~revert to the state toxics control account.~~

34       ~~(8))~~ The department shall adopt rules for grant or loan issuance  
35 and performance. ~~((To accelerate both remedial action and economic~~  
36 ~~recovery, the department may expedite the adoption of rules necessary~~  
37 ~~to implement chapter 1, Laws of 2013 2nd sp. sess. using the~~  
38 ~~expedited procedures in RCW 34.05.353. The department shall initiate~~  
39 ~~the award of financial assistance by August 1, 2013. To ensure the~~  
40 ~~adoption of rules will not delay financial assistance, the department~~

1 ~~may administer the award of financial assistance through interpretive~~  
2 ~~guidance pending the adoption of rules through July 1, 2014.~~

3 ~~(9))~~ (8) Except as provided under subsection (3)~~((k) and (g))~~  
4 (f) and (i) of this section, nothing in chapter 1, Laws of 2013 2nd  
5 sp. sess. affects the ability of a potentially liable person to  
6 receive public funding.

7 ~~((10) During the 2015-2017 fiscal biennium the local toxics~~  
8 ~~control account may also be used for the centennial clean water~~  
9 ~~program and for the storm water financial assistance program~~  
10 ~~administered by the department of ecology.))~~

11 **Sec. 302.** RCW 70.105D.130 and 2010 1st sp.s. c 37 s 947 are each  
12 amended to read as follows:

13 (1) The cleanup settlement account is created in the state  
14 treasury. The account is not intended to replace the state toxics  
15 control account established under RCW 70.105D.070. All receipts from  
16 the sources identified in subsection (2) of this section must be  
17 deposited into the account. Moneys in the account may be spent only  
18 after appropriation. Expenditures from the account may be used only  
19 as identified in subsection (4) of this section.

20 (2) The following receipts must be deposited into the cleanup  
21 settlement account:

22 (a) Receipts from settlements or court orders that direct payment  
23 to the account and resolve a person's liability or potential  
24 liability under this chapter for either or both of the following:

25 (i) Conducting future remedial action at a specific facility, if  
26 it is not feasible to require the person to conduct the remedial  
27 action based on the person's financial insolvency, limited ability to  
28 pay, or insignificant contribution under RCW 70.105D.040(4)(a);

29 (ii) Assessing or addressing the injury to natural resources  
30 caused by the release of a hazardous substance from a specific  
31 facility; and

32 (b) Receipts from investment of the moneys in the account.

33 (3) If a settlement or court order does not direct payment of  
34 receipts described in subsection (2)(a) of this section into the  
35 cleanup settlement account, then the receipts from any payment to the  
36 state must be deposited into the state toxics control account.

37 (4) Expenditures from the cleanup settlement account may only be  
38 used to conduct remedial actions at the specific facility or to  
39 assess or address the injury to natural resources caused by the

1 release of hazardous substances from that facility for which the  
2 moneys were deposited in the account. Conducting remedial actions or  
3 assessing or addressing injury to natural resources includes direct  
4 expenditures and indirect expenditures such as department oversight  
5 costs. (~~During the 2009-2011 fiscal biennium, the legislature may~~  
6 ~~transfer excess fund balances in the account into the state~~  
7 ~~efficiency and restructuring account. Transfers of excess fund~~  
8 ~~balances made under this section shall be made only to the extent~~  
9 ~~amounts transferred with required repayments do not impair the ten-~~  
10 ~~year spending plan administered by the department of ecology for~~  
11 ~~environmental remedial actions dedicated for any designated clean-up~~  
12 ~~site associated with the Everett smelter and Tacoma smelter,~~  
13 ~~including plumes, or former Asarco mine sites. The cleanup settlement~~  
14 ~~account must be repaid with interest under provisions of the state~~  
15 ~~efficiency and restructuring account.))~~

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

18 (6) After the department determines that all remedial actions at  
19 a specific facility, and all actions assessing or addressing injury  
20 to natural resources caused by the release of hazardous substances  
21 from that facility, are completed, including payment of all related  
22 costs, any moneys remaining for the specific facility must be  
23 transferred to the state toxics control account established under RCW  
24 70.105D.070.

25 (7) The department shall provide the office of financial  
26 management and the fiscal committees of the legislature with a report  
27 by October 31st of each year regarding the activity within the  
28 cleanup settlement account during the previous fiscal year.

29 **Sec. 303.** RCW 70.105D.170 and 2013 2nd sp.s. c 28 s 1, 2013 2nd  
30 sp.s. c 19 s 7042, and 2013 2nd sp.s. c 4 s 991 are each reenacted  
31 and amended to read as follows:

32 (1) The environmental legacy stewardship account is created in  
33 the state treasury. (~~Beginning July 1, 2013, and every~~) Each fiscal  
34 year (~~thereafter~~), the annual amount received from the tax imposed  
35 by RCW 82.21.030 that exceeds one hundred forty million dollars must  
36 be deposited into the environmental legacy stewardship account. The  
37 state treasurer may make periodic deposits into the environmental  
38 legacy stewardship account based on forecasted revenue. Moneys in the  
39 account may only be spent after appropriation.



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

3 (a) Grants or loans to local governments for performance and  
4 outcome-based projects, model remedies, demonstration projects,  
5 procedures, contracts, and project management and oversight that  
6 result in significant reductions in the time to complete compared to  
7 baseline averages;

8 (b) Purposes authorized under RCW 70.105D.070 (3) and (4); and

9 ~~((Grants or loans awarded through a competitive grant program  
10 administered by the department to fund design and construction of  
11 low-impact development retrofit projects and other high quality  
12 projects that reduce storm water pollution from existing  
13 infrastructure. The competitive grant program must apply criteria to  
14 review, rank, and prioritize projects for funding based on their  
15 water quality benefits, ecological benefits, and effectiveness at  
16 reducing environmental degradation; and~~

17 ~~(d))~~ Cleanup and disposal of hazardous substances from abandoned  
18 or derelict vessels, defined for the purposes of this section as  
19 vessels that have little or no value and either have no identified  
20 owner or have an identified owner lacking financial resources to  
21 clean up and dispose of the vessel, that pose a threat to human  
22 health or the environment.

23 (3) Except as provided under RCW 70.105D.070(3) ~~((k) and (q))~~  
24 (f) and (i), nothing in chapter 1, Laws of 2013 2nd sp. sess. expands  
25 the ability of a potentially liable person to receive public funding.

26 ~~((4) Moneys in the environmental legacy stewardship account may  
27 also be used as follows:~~

28 ~~(a) During the 2013-2015 fiscal biennia, shoreline update  
29 technical assistance and for local government shoreline master  
30 program update grants;~~

31 ~~(b) During the 2013-2015 fiscal biennium, solid and hazardous  
32 waste compliance at the department of corrections;~~

33 ~~(c) During the 2013-2015 fiscal biennium, activities at the  
34 department of fish and wildlife concerning water quality monitoring,  
35 hatchery water quality regulatory compliance, and technical  
36 assistance to local governments on growth management and shoreline  
37 management;~~

38 ~~(d) During the 2013-2015 fiscal biennium, forest practices  
39 regulation and aquatic land investigation and cleanup activities at  
40 the department of natural resources.~~

1       ~~(5) For the 2013-2015 fiscal biennium, moneys in the~~  
2 ~~environmental legacy stewardship account may be transferred to the~~  
3 ~~local toxics control account.)~~)

4       **Sec. 304.** RCW 70.105D.100 and 2001 c 227 s 5 are each amended to  
5 read as follows:

6       In providing grants to local governments, the department shall  
7 require grant ~~((recipients))~~ applicants to incorporate the  
8 environmental benefits of the project into their grant applications,  
9 and the department shall utilize the statement of environmental  
10 ~~((benefit[s]))~~ benefits in its prioritization and selection process.  
11 The department shall also develop appropriate outcome-focused  
12 performance measures to be used both for management and performance  
13 assessment of the grant program. To the extent possible, the  
14 department should coordinate its performance measure system with  
15 other natural resource-related agencies as defined in RCW 43.41.270.  
16 The department shall consult with affected interest groups in  
17 implementing this section.

18       **Sec. 305.** RCW 43.41.270 and 2009 c 345 s 12 are each amended to  
19 read as follows:

20       (1) The office ~~((of financial management))~~ shall assist natural  
21 resource-related agencies in developing outcome-focused performance  
22 measures for administering natural resource-related and  
23 environmentally based grant and loan programs. These performance  
24 measures are to be used in determining grant eligibility, for program  
25 management and performance assessment.

26       (2) The office ~~((of financial management))~~ and the recreation and  
27 conservation office shall assist natural resource-related agencies in  
28 developing recommendations for a monitoring program to measure  
29 outcome-focused performance measures required by this section. ~~((The~~  
30 ~~recommendations must be consistent with the framework and coordinated~~  
31 ~~monitoring strategy developed by the monitoring oversight committee~~  
32 ~~established in RCW 77.85.210.))~~

33       (3) Natural resource agencies shall consult with grant or loan  
34 recipients including local governments, tribes, nongovernmental  
35 organizations, and other interested parties, and report to the office  
36 ~~((of financial management))~~ on the implementation of this section.

37       (4) For purposes of this section, "natural resource-related  
38 agencies" include the department of ecology, the department of

1 natural resources, the department of fish and wildlife, the state  
2 conservation commission, the recreation and conservation funding  
3 board, the salmon recovery funding board, and the public works board  
4 within the department of (~~community, trade, and economic~~  
5 ~~development~~) commerce.

6 (5) For purposes of this section, "natural resource-related  
7 environmentally based grant and loan programs" includes the  
8 conservation reserve enhancement program; dairy nutrient management  
9 grants under chapter 90.64 RCW; state conservation commission water  
10 quality grants under chapter 89.08 RCW; coordinated prevention  
11 grants, (~~public participation grants,~~) and remedial action grants  
12 under RCW 70.105D.070; water pollution control facilities financing  
13 under chapter 70.146 RCW; aquatic lands enhancement grants under RCW  
14 79.105.150; habitat grants under the Washington wildlife and  
15 recreation program under RCW 79A.15.040; salmon recovery grants under  
16 chapter 77.85 RCW; and the public works trust fund program under  
17 chapter 43.155 RCW. The term also includes programs administered by  
18 the department of fish and wildlife related to protection or recovery  
19 of fish stocks which are funded with moneys from the capital budget.

#### 20 PART FOUR

#### 21 PERMITS AND APPEALS

22 **Sec. 401.** RCW 70.105D.090 and 2003 c 39 s 30 are each amended to  
23 read as follows:

24 (1) A person conducting an independent remedial action, a  
25 remedial action at a facility under a consent decree, order, or  
26 agreed order, and the department when it conducts a remedial action,  
27 are exempt from the procedural requirements of chapters 70.94, 70.95,  
28 70.105, 77.55, 90.48, and 90.58 RCW, and the procedural requirements  
29 of any laws requiring or authorizing local government permits or  
30 approvals for the remedial action. For a remedial action conducted  
31 under a consent decree, order, or agreed order, or when the  
32 department conducts a remedial action, the department shall ensure  
33 compliance with the substantive provisions of chapters 70.94, 70.95,  
34 70.105, 77.55, 90.48, and 90.58 RCW, and the substantive provisions  
35 of any laws requiring or authorizing local government permits (~~or~~)  
36 or approvals. The department shall establish procedures for ensuring  
37 that (~~such~~) remedial actions, except independent remedial actions,  
38 comply with the substantive requirements adopted pursuant to such

1 laws, and shall consult with the state agencies and local governments  
2 charged with implementing these laws. The procedures shall provide an  
3 opportunity for comment by the public and by the state agencies and  
4 local governments that would otherwise implement the laws referenced  
5 in this section. Nothing in this section is intended to prohibit  
6 implementing agencies from charging a fee to the person conducting  
7 the remedial action to defray the costs of services rendered relating  
8 to the substantive requirements for the remedial action.

9 (2) An exemption in this section or in RCW 70.94.335, 70.95.270,  
10 70.105.116, (~~77.55.030~~) 77.55.061, 90.48.039, and 90.58.355 shall  
11 not apply if the department determines that the exemption would  
12 result in loss of approval from a federal agency necessary for the  
13 state to administer any federal law, including the federal resource  
14 conservation and recovery act, the federal clean water act, the  
15 federal clean air act, and the federal coastal zone management act.  
16 Such a determination by the department shall not affect the  
17 applicability of the exemptions to other statutes specified in this  
18 section.

19 **Sec. 402.** RCW 70.94.335 and 1994 c 257 s 15 are each amended to  
20 read as follows:

21 The procedural requirements of this chapter shall not apply to  
22 any person conducting an independent remedial action, a remedial  
23 action at a facility pursuant to a consent decree, order, or agreed  
24 order issued pursuant to chapter 70.105D RCW, or to the department of  
25 ecology when it conducts a remedial action under chapter 70.105D RCW.  
26 Except for independent remedial actions, the department of ecology  
27 shall ensure compliance with the substantive requirements of this  
28 chapter through the consent decree, order, or agreed order issued  
29 pursuant to chapter 70.105D RCW, or during the department-conducted  
30 remedial action, through the procedures developed by the department  
31 pursuant to RCW 70.105D.090.

32 **Sec. 403.** RCW 70.95.270 and 1994 c 257 s 16 are each amended to  
33 read as follows:

34 The procedural requirements of this chapter shall not apply to  
35 any person conducting an independent remedial action, a remedial  
36 action at a facility pursuant to a consent decree, order, or agreed  
37 order issued pursuant to chapter 70.105D RCW, or to the department of  
38 ecology when it conducts a remedial action under chapter 70.105D RCW.

1 Except for independent remedial actions, the department of ecology  
2 shall ensure compliance with the substantive requirements of this  
3 chapter through the consent decree, order, or agreed order issued  
4 pursuant to chapter 70.105D RCW, or during the department-conducted  
5 remedial action, through the procedures developed by the department  
6 pursuant to RCW 70.105D.090.

7 **Sec. 404.** RCW 70.105.116 and 1994 c 257 s 17 are each amended to  
8 read as follows:

9 The procedural requirements of this chapter shall not apply to  
10 any person conducting an independent remedial action, a remedial  
11 action at a facility pursuant to a consent decree, order, or agreed  
12 order issued pursuant to chapter 70.105D RCW, or to the department of  
13 ecology when it conducts a remedial action under chapter 70.105D RCW.  
14 Except for independent remedial actions, the department of ecology  
15 shall ensure compliance with the substantive requirements of this  
16 chapter through the consent decree, order, or agreed order issued  
17 pursuant to chapter 70.105D RCW, or during the department-conducted  
18 remedial action, through the procedures developed by the department  
19 pursuant to RCW 70.105D.090.

20 **Sec. 405.** RCW 77.55.061 and 1994 c 257 s 18 are each amended to  
21 read as follows:

22 The procedural requirements of this chapter shall not apply to  
23 any person conducting an independent remedial action, a remedial  
24 action at a facility pursuant to a consent decree, order, or agreed  
25 order issued pursuant to chapter 70.105D RCW, or to the department of  
26 ecology when it conducts a remedial action under chapter 70.105D RCW.  
27 Except for independent remedial actions, the department of ecology  
28 shall ensure compliance with the substantive requirements of this  
29 chapter through the consent decree, order, or agreed order issued  
30 pursuant to chapter 70.105D RCW, or during the department-conducted  
31 remedial action, through the procedures developed by the department  
32 pursuant to RCW 70.105D.090.

33 **Sec. 406.** RCW 90.48.039 and 1994 c 257 s 19 are each amended to  
34 read as follows:

35 The procedural requirements of this chapter shall not apply to  
36 any person conducting an independent remedial action, a remedial  
37 action at a facility pursuant to a consent decree, order, or agreed

1 order issued pursuant to chapter 70.105D RCW, or to the department of  
2 ecology when it conducts a remedial action under chapter 70.105D RCW.  
3 Except for independent remedial actions, the department of ecology  
4 shall ensure compliance with the substantive requirements of this  
5 chapter through the consent decree, order, or agreed order issued  
6 pursuant to chapter 70.105D RCW, or during the department-conducted  
7 remedial action, through the procedures developed by the department  
8 pursuant to RCW 70.105D.090.

9 **Sec. 407.** RCW 90.58.355 and 2015 3rd sp.s. c 15 s 9 are each  
10 amended to read as follows:

11 Requirements to obtain a substantial development permit,  
12 conditional use permit, variance, letter of exemption, or other  
13 review conducted by a local government to implement this chapter do  
14 not apply to:

15 (1) Any person conducting an independent remedial action, a  
16 remedial action at a facility pursuant to a consent decree, order, or  
17 agreed order issued pursuant to chapter 70.105D RCW, or to the  
18 department of ecology when it conducts a remedial action under  
19 chapter 70.105D RCW. Except for independent remedial actions, the  
20 department must ensure compliance with the substantive requirements  
21 of this chapter through the consent decree, order, or agreed order  
22 issued pursuant to chapter 70.105D RCW, or during the department-  
23 conducted remedial action, through the procedures developed by the  
24 department pursuant to RCW 70.105D.090;

25 (2) Any person installing site improvements for storm water  
26 treatment in an existing boatyard facility to meet requirements of a  
27 national pollutant discharge elimination system storm water general  
28 permit. The department must ensure compliance with the substantive  
29 requirements of this chapter through the review of engineering  
30 reports, site plans, and other documents related to the installation  
31 of boatyard storm water treatment facilities; or

32 (3) The department of transportation projects and activities that  
33 meet the conditions of RCW 90.58.356.

34 NEW SECTION. **Sec. 408.** A new section is added to chapter 43.21C  
35 RCW to read as follows:

36 Decisions pertaining to remedial actions, including independent  
37 remedial actions, conducted under chapter 70.105D RCW are not subject  
38 to the requirements of this chapter.

1 NEW SECTION. **Sec. 409.** A new section is added to chapter  
2 70.105D RCW to read as follows:

3 In the event that a remedial action or any permit, approval,  
4 certification, or other authorization obtained for a remedial action  
5 is appealed or challenged, the department shall ensure, to the  
6 greatest extent practicable, that any aspect of the remedial action  
7 not affected by the appeal or challenge may proceed on schedule while  
8 the appeal or challenge is pending. This section only applies to  
9 remedial actions conducted by the department or by a person under a  
10 consent decree, order, or agreed order. Nothing in this section  
11 creates any right of appeal not conferred by other existing law or  
12 that is in conflict with RCW 70.105D.060.

13 **PART FIVE**

14 **MISCELLANEOUS PROVISIONS**

15 **Sec. 501.** RCW 70.105D.020 and 2013 2nd sp.s. c 1 s 2 are each  
16 reenacted and amended to read as follows:

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

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

27 (2) "Area-wide groundwater contamination" means groundwater  
28 contamination on multiple adjacent properties with different  
29 ownerships consisting of hazardous substances from multiple sources  
30 that have resulted in commingled plumes of contaminated groundwater  
31 that are not practicable to address separately.

32 (3) "Brownfield property" means previously developed and  
33 currently abandoned or underutilized real property and adjacent  
34 surface waters and sediment where environmental, economic, or  
35 community reuse objectives are hindered by the release or threatened  
36 release of hazardous substances that the department has determined  
37 requires remedial action under this chapter or that the United States

1 environmental protection agency has determined requires remedial  
2 action under the federal cleanup law.

3 (4) "City" means a city or town.

4 (5) "Department" means the department of ecology.

5 (6) "Director" means the director of (~~ecology~~) the department  
6 or the director's designee.

7 (7) "Environmental covenant" has the same meaning as defined in  
8 RCW 64.70.020.

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

17 (9) "Federal cleanup law" means the federal comprehensive  
18 environmental response, compensation, and liability act of 1980, 42  
19 U.S.C. Sec. 9601 et seq., as (~~amended by Public Law 99-499~~) it  
20 existed on July 1, 2018.

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

33 (b) "Fiduciary" does not mean:

34 (i) A person acting as a fiduciary with respect to a trust or  
35 other fiduciary estate that was organized for the primary purpose of,  
36 or is engaged in, actively carrying on a trade or business for  
37 profit, unless the trust or other fiduciary estate was created as  
38 part of, or to facilitate, one or more estate plans or because of the  
39 incapacity of a natural person;



1 (ii) A person who acquires ownership or control of a facility  
2 with the objective purpose of avoiding liability of the person or any  
3 other person. It is prima facie evidence that the fiduciary acquired  
4 ownership or control of the facility to avoid liability if the  
5 facility is the only substantial asset in the fiduciary estate at the  
6 time the facility became subject to the fiduciary estate;

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

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

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

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

19 (11) "Fiduciary capacity" means the capacity of a person holding  
20 title to a facility, or otherwise having control of an interest in  
21 the facility pursuant to the exercise of the responsibilities of the  
22 person as a fiduciary.

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

32 (13) "Hazardous substance" means:

33 (a) Any dangerous or extremely hazardous waste as defined in RCW  
34 70.105.010 (1) and (7), or any dangerous or extremely dangerous waste  
35 designated by rule pursuant to chapter 70.105 RCW;

36 (b) Any hazardous substance as defined in RCW 70.105.010(10) or  
37 any hazardous substance as defined by rule pursuant to chapter 70.105  
38 RCW;

1 (c) Any substance that, on (~~March 1, 1989~~) July 1, 2018, is a  
2 hazardous substance under section 101(14) of the federal cleanup law,  
3 42 U.S.C. Sec. 9601(14);

4 (d) Petroleum or petroleum products; and

5 (e) Any substance or category of substances, including solid  
6 waste decomposition products, determined by the director by rule to  
7 present a threat to human health or the environment if released into  
8 the environment.

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

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

29 (15) "Independent remedial actions" means remedial actions  
30 conducted without department oversight or approval, and not under an  
31 order, agreed order, or consent decree.

32 (16) "Indicia of ownership" means evidence of a security  
33 interest, evidence of an interest in a security interest, or evidence  
34 of an interest in a facility securing a loan or other obligation,  
35 including any legal or equitable title to a facility acquired  
36 incident to foreclosure and its equivalents. Evidence of such  
37 interests includes, mortgages, deeds of trust, sellers interest in a  
38 real estate contract, liens, surety bonds, and guarantees of  
39 obligations, title held pursuant to a lease financing transaction in  
40 which the lessor does not select initially the leased facility, or

1 legal or equitable title obtained pursuant to foreclosure and their  
2 equivalents. Evidence of such interests also includes assignments,  
3 pledges, or other rights to or other forms of encumbrance against the  
4 facility that are held primarily to protect a security interest.

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

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

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

16 (18) "Institutional controls" means measures undertaken to limit  
17 or prohibit activities that may interfere with the integrity of a  
18 remedial action or result in exposure to or migration of hazardous  
19 substances at a site. "Institutional controls" include environmental  
20 covenants.

21 (19) "Local government" means any political subdivision of the  
22 state, including a town, city, county, special purpose district, or  
23 other municipal corporation, including a brownfield renewal authority  
24 created under RCW 70.105D.160.

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

30 (21) "Operating a facility primarily to protect a security  
31 interest" occurs when all of the following are met: (a) Operating the  
32 facility where the borrower has defaulted on the loan or otherwise  
33 breached the security agreement; (b) operating the facility to  
34 preserve the value of the facility as an ongoing business; (c) the  
35 operation is being done in anticipation of a sale, transfer, or  
36 assignment of the facility; and (d) the operation is being done  
37 primarily to protect a security interest. Operating a facility for  
38 longer than one year prior to foreclosure or its equivalents shall be  
39 presumed to be operating the facility for other than to protect a  
40 security interest.

1 (22) "Owner or operator" means:

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

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

7 The term does not include:

8 (i) An agency of the state or unit of local government which  
9 acquired ownership or control through a drug forfeiture action under  
10 RCW 69.50.505, or involuntarily through bankruptcy, tax delinquency,  
11 abandonment, or other circumstances in which the government  
12 involuntarily acquires title. This exclusion does not apply to an  
13 agency of the state or unit of local government which has caused or  
14 contributed to the release or threatened release of a hazardous  
15 substance from the facility;

16 (ii) A person who, without participating in the management of a  
17 facility, holds indicia of ownership primarily to protect the  
18 person's security interest in the facility. Holders after foreclosure  
19 and its equivalent and holders who engage in any of the activities  
20 identified in subsection (23)(e) through (g) of this section shall  
21 not lose this exemption provided the holder complies with all of the  
22 following:

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

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

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

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

33 (E) Any remedial actions conducted by the holder are in  
34 compliance with any preexisting requirements identified by the  
35 department, or, if the department has not identified such  
36 requirements for the facility, the remedial actions are conducted  
37 consistent with the rules adopted under this chapter; and

38 (F) The holder does not exacerbate an existing release. The  
39 exemption in this subsection (22)(b)(ii) does not apply to holders  
40 who cause or contribute to a new release or threatened release or who

1 are otherwise liable under RCW 70.105D.040(1) (b), (c), (d), and (e);  
2 provided, however, that a holder shall not lose this exemption if it  
3 establishes that any such new release has been remediated according  
4 to the requirements of this chapter and that any hazardous substances  
5 remaining at the facility after remediation of the new release are  
6 divisible from such new release;

7 (iii) A fiduciary in his, her, or its personal or individual  
8 capacity. This exemption does not preclude a claim against the assets  
9 of the estate or trust administered by the fiduciary or against a  
10 nonemployee agent or independent contractor retained by a fiduciary.  
11 This exemption also does not apply to the extent that a person is  
12 liable under this chapter independently of the person's ownership as  
13 a fiduciary or for actions taken in a fiduciary capacity which cause  
14 or contribute to a new release or exacerbate an existing release of  
15 hazardous substances. This exemption applies provided that, to the  
16 extent of the fiduciary's powers granted by law or by the applicable  
17 governing instrument granting fiduciary powers, the fiduciary  
18 complies with all of the following:

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

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

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

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

29 (E) Any remedial actions conducted by the fiduciary are in  
30 compliance with any preexisting requirements identified by the  
31 department, or, if the department has not identified such  
32 requirements for the facility, the remedial actions are conducted  
33 consistent with the rules adopted under this chapter; and

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

35 The exemption in this subsection (22)(b)(iii) does not apply to  
36 fiduciaries who cause or contribute to a new release or threatened  
37 release or who are otherwise liable under RCW 70.105D.040(1) (b),  
38 (c), (d), and (e); provided however, that a fiduciary shall not lose  
39 this exemption if it establishes that any such new release has been  
40 remediated according to the requirements of this chapter and that any

1 hazardous substances remaining at the facility after remediation of  
2 the new release are divisible from such new release. The exemption in  
3 this subsection (22)(b)(iii) also does not apply where the  
4 fiduciary's powers to comply with this subsection (22)(b)(iii) are  
5 limited by a governing instrument created with the objective purpose  
6 of avoiding liability under this chapter or of avoiding compliance  
7 with this chapter; or

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

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

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

19 (C) The person does not engage in activities that damage or  
20 interfere with the operation of remedial actions installed on the  
21 person's property or engage in activities that result in exposure of  
22 humans or the environment to the contaminated groundwater that has  
23 migrated onto the property;

24 (D) If requested, the person allows the department, potentially  
25 liable persons who are subject to an order, agreed order, or consent  
26 decree, and the authorized employees, agents, or contractors of each,  
27 access to the property to conduct remedial actions required by the  
28 department. The person may attempt to negotiate an access agreement  
29 before allowing access; and

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

32 (23) "Participation in management" means exercising decision-  
33 making control over the borrower's operation of the facility,  
34 environmental compliance, or assuming or manifesting responsibility  
35 for the overall management of the enterprise encompassing the day-to-  
36 day decision making of the enterprise.

37 The term does not include any of the following: (a) A holder with  
38 the mere capacity or ability to influence, or the unexercised right  
39 to control facility operations; (b) a holder who conducts or requires  
40 a borrower to conduct an environmental audit or an environmental site

1 assessment at the facility for which indicia of ownership is held;  
2 (c) a holder who requires a borrower to come into compliance with any  
3 applicable laws or regulations at the facility for which indicia of  
4 ownership is held; (d) a holder who requires a borrower to conduct  
5 remedial actions including setting minimum requirements, but does not  
6 otherwise control or manage the borrower's remedial actions or the  
7 scope of the borrower's remedial actions except to prepare a facility  
8 for sale, transfer, or assignment; (e) a holder who engages in  
9 workout or policing activities primarily to protect the holder's  
10 security interest in the facility; (f) a holder who prepares a  
11 facility for sale, transfer, or assignment or requires a borrower to  
12 prepare a facility for sale, transfer, or assignment; (g) a holder  
13 who operates a facility primarily to protect a security interest, or  
14 requires a borrower to continue to operate, a facility primarily to  
15 protect a security interest; and (h) a prospective holder who, as a  
16 condition of becoming a holder, requires an owner or operator to  
17 conduct an environmental audit, conduct an environmental site  
18 assessment, come into compliance with any applicable laws or  
19 regulations, or conduct remedial actions prior to holding a security  
20 interest is not participating in the management of the facility.

21 (24) "Person" means an individual, firm, corporation,  
22 association, partnership, consortium, joint venture, commercial  
23 entity, state government agency, unit of local government, federal  
24 government agency, or Indian tribe.

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

1 (26) "Potentially liable person" means any person whom the  
2 department finds, based on credible evidence, to be liable under RCW  
3 70.105D.040. The department shall give notice to any such person and  
4 allow an opportunity for comment before making the finding, unless an  
5 emergency requires otherwise.

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

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

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

36 (30) "Public notice" means, at a minimum, adequate notice mailed  
37 to all persons who have made timely request of the department and to  
38 persons residing in the potentially affected vicinity of the proposed  
39 action; mailed to appropriate news media; published in the newspaper



1 of largest circulation in the city or county of the proposed action;  
2 and opportunity for interested persons to comment.

3 (31) "Redevelopment opportunity zone" means a geographic area  
4 designated under RCW 70.105D.150.

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

9 (33) "Remedy" or "remedial action" means any action or  
10 expenditure consistent with the purposes of this chapter to identify,  
11 eliminate, or minimize any threat or potential threat posed by  
12 hazardous substances to human health or the environment including any  
13 investigative and monitoring activities with respect to any release  
14 or threatened release of a hazardous substance and any health  
15 assessments or health effects studies conducted in order to determine  
16 the risk or potential risk to human health.

17 (34) "Security interest" means an interest in a facility created  
18 or established for the purpose of securing a loan or other  
19 obligation. Security interests include deeds of trusts, sellers  
20 interest in a real estate contract, liens, legal, or equitable title  
21 to a facility acquired incident to foreclosure and its equivalents,  
22 and title pursuant to lease financing transactions. Security  
23 interests may also arise from transactions such as sale and  
24 leasebacks, conditional sales, installment sales, trust receipt  
25 transactions, certain assignments, factoring agreements, accounts  
26 receivable financing arrangements, easements, and consignments, if  
27 the transaction creates or establishes an interest in a facility for  
28 the purpose of securing a loan or other obligation.

29 (35) "Workout activities" means those actions by which a holder,  
30 at any time prior to foreclosure and its equivalents, seeks to  
31 prevent, cure, or mitigate a default by the borrower or obligor; or  
32 to preserve, or prevent the diminution of, the value of the security.  
33 Workout activities include: Restructuring or renegotiating the terms  
34 of the security interest; requiring payment of additional rent or  
35 interest; exercising forbearance; requiring or exercising rights  
36 pursuant to an assignment of accounts or other amounts owed to an  
37 obligor; requiring or exercising rights pursuant to an escrow  
38 agreement pertaining to amounts owed to an obligor; providing  
39 specific or general financial or other advice, suggestions,  
40 counseling, or guidance; and exercising any right or remedy the

1 holder is entitled to by law or under any warranties, covenants,  
2 conditions, representations, or promises from the borrower.

3 **Sec. 502.** RCW 70.105D.055 and 2005 c 211 s 1 are each amended to  
4 read as follows:

5 (1) It is in the public interest for the department to recover  
6 remedial action costs incurred in discharging its responsibility  
7 under this chapter, as these recovered funds can then be applied to  
8 the cleanup of other facilities. Thus, in addition to other cost-  
9 recovery mechanisms provided under this chapter, this section is  
10 intended to facilitate the recovery of state funds spent on remedial  
11 actions by providing the department with lien authority. This will  
12 also prevent a facility owner or mortgagee from gaining a financial  
13 windfall from increased land value resulting from department-  
14 conducted remedial actions at the expense of the state taxpayers.

15 (2) If the state of Washington incurs remedial action costs  
16 relating to a remedial action of real property, and those remedial  
17 action costs are unrecovered by the state of Washington, the  
18 department may file a lien against that real property.

19 (a) Except as provided in (c) of this subsection, liens filed  
20 under this section shall have priority in rank over all other  
21 privileges, liens, monetary encumbrances, or other security interests  
22 affecting the real property, whenever incurred, filed, or recorded,  
23 except for the following liens:

24 (i) Local and special district property tax assessments; and

25 (ii) Mortgage liens recorded before liens or notices of intent to  
26 conduct remedial actions are recorded under this section.

27 (b) Liens filed pursuant to (a) and (c) of this subsection shall  
28 not exceed the remedial action costs incurred by the state.

29 (c)(i) If the real property for which the department has incurred  
30 remedial action costs is abandoned, the department may choose to  
31 limit the amount of the lien to the increase in the fair market value  
32 of the real property that is attributable to a remedial action  
33 conducted by the department. The increase in fair market value shall  
34 be determined by subtracting the county assessor's value of the real  
35 property for the most recent year prior to remedial action being  
36 initiated from the value of the real property after remedial action.  
37 The value of the real property after remedial action shall be  
38 determined by the bona fide purchase price of the real property or by  
39 a real estate appraiser retained by the department. Liens limited in

1 this way have priority in rank over all other privileges, liens,  
2 monetary encumbrances, or other security interests affecting the real  
3 property, whenever incurred, filed, or recorded.

4 (ii) For the purposes of this subsection, "abandoned" means there  
5 has not been significant business activity on the real property for  
6 three years or property taxes owed on the real property are three  
7 years in arrears prior to the department incurring costs attributable  
8 to this lien.

9 (d) The department shall, when notifying potentially liable  
10 persons of their potential liability under RCW 70.105D.040, include a  
11 notice stating that if the department incurs remedial action costs  
12 relating to the remediation of real property and the costs are not  
13 recovered by the department, the department may file a lien against  
14 that real property under this section.

15 (e) Except for emergency remedial actions, the department must  
16 provide notice to the following persons before initiating remedial  
17 actions conducted by persons under contract to the department on real  
18 property on which a lien may be filed under this section:

19 (i) The real property owner;

20 (ii) Mortgagees;

21 (iii) Lienholders of record;

22 (iv) Persons known to the department to be conducting remedial  
23 actions at the facility at the time of such notice; and

24 (v) Persons known to the department to be under contract to  
25 conduct remedial actions at the facility at the time of such notice.

26 For emergency remedial actions, this notice shall be provided  
27 within thirty days after initiation of the emergency remedial  
28 actions.

29 (f) The department may record a copy of the notice in (e) of this  
30 subsection, along with a legal description of the property on which  
31 the remedial action will take place, with the county auditor in the  
32 county where the real property is located. If the department  
33 subsequently files a lien, the effective date of the lien will be the  
34 date this notice was recorded.

35 (3) Before filing a lien under this section, the department shall  
36 give the owner of real property on which the lien is to be filed and  
37 mortgagees and lienholders of record a notice of its intent to file a  
38 lien:

39 (a) The notice required under this subsection (3) must be sent by  
40 certified mail to the real property owner and mortgagees of record at

1 the addresses listed in the recorded documents. If the real property  
2 owner is unknown or if a mailed notice is returned as undeliverable,  
3 the department shall provide notice by posting a legal notice in the  
4 newspaper of largest circulation in the county (~~(in which)~~) in  
5 which the site is located. The notice shall provide:

6 (i) A statement of the purpose of the lien;

7 (ii) A brief description of the real property to be affected by  
8 the lien;

9 (iii) A statement of the remedial action costs incurred by the  
10 state related to the real property affected by the lien;

11 (iv) A brief statement of facts showing probable cause that the  
12 real property is the subject of the remedial action costs incurred by  
13 the department; and

14 (v) The time period following service or other notice during  
15 which any recipient of the notice whose legal rights may be affected  
16 by the lien may comment on the notice.

17 (b) Any comments on the notice must be received by the department  
18 on or before thirty days following service or other provision of the  
19 notice of intent to file a lien.

20 (c) If no comments are received by the department, the lien may  
21 be filed on the real property immediately.

22 (d) If the department receives any comments on the lien, the  
23 department shall determine if there is probable cause for filing the  
24 certificate of lien. If the department determines there is probable  
25 cause, the department may file the lien. Any further challenge to the  
26 lien may only occur at the times specified under RCW 70.105D.060.

27 (e) If the department has reason to believe that exigent  
28 circumstances require the filing of a lien prior to giving notice  
29 under this subsection (3), or prior to the expiration of the time  
30 period for comments, the department may file the lien immediately.  
31 For the purposes of this subsection (3), exigent circumstances  
32 include, but are not limited to, an imminent bankruptcy filing by the  
33 real property owner, or the imminent transfer or sale of the real  
34 property subject to lien by the real property owner, or both.

35 (4) A lien filed under this section is effective when a statement  
36 of lien is filed with the county auditor in the county where the real  
37 property is located. The statement of lien must include a description  
38 of the real property subject to lien and the amount of the lien.

39 (5) Unless the department determines it is in the public interest  
40 to remove the lien, the lien continues until the liability for the

1 remedial action costs have been satisfied through sale of the real  
2 property, foreclosure, or other means agreed to by the department.  
3 Any action for foreclosure of the lien shall be brought by the  
4 attorney general in a civil action in the court having jurisdiction  
5 and in the manner prescribed for the judicial foreclosure of a  
6 mortgage.

7 (6)(a) This section does not apply to real property owned by a  
8 local government or special purpose district or real property used  
9 solely for residential purposes and consisting of four residential  
10 units or less at the time the lien is recorded. This limitation does  
11 not apply to illegal drug manufacturing and storage sites under  
12 chapter 64.44 RCW.

13 (b) If the real property owner has consented to the department  
14 filing a lien on the real property, then only subsection (3)(a)(i)  
15 through (iii) of this section requiring notice to mortgagees and  
16 lienholders of record apply.

17 **Sec. 503.** RCW 70.105D.080 and 1997 c 406 s 6 are each amended to  
18 read as follows:

19 Except as provided in RCW 70.105D.040(4) (d) and (f), a person  
20 may bring a private right of action, including a claim for  
21 contribution or for declaratory relief, against any other person  
22 liable under RCW 70.105D.040 for the recovery of remedial action  
23 costs. In the action, natural resource damages paid to the state  
24 under this chapter may also be recovered. Recovery shall be based on  
25 such equitable factors as the court determines are appropriate.  
26 Remedial action costs shall include reasonable attorneys' fees and  
27 expenses. Recovery of remedial action costs shall be limited to those  
28 remedial actions that, when evaluated as a whole, are the substantial  
29 equivalent of a department-conducted or department-supervised  
30 remedial action. Substantial equivalence shall be determined by the  
31 court with reference to the rules adopted by the department under  
32 this chapter. An action under this section may be brought after  
33 remedial action costs are incurred but must be brought within three  
34 years from the date remedial action confirms cleanup standards are  
35 met (~~(or within one year of May 12, 1993, whichever is later)~~). The  
36 prevailing party in such an action shall recover its reasonable  
37 attorneys' fees and costs. This section applies to all causes of  
38 action regardless of when the cause of action may have arisen. To the  
39 extent a cause of action has arisen prior to May 12, 1993, this

1 section applies retroactively, but in all other respects it applies  
2 prospectively.

3 NEW SECTION. **Sec. 504.** The following acts or parts of acts are  
4 each repealed:

5 (1) RCW 43.21C.036 (Hazardous substance remedial actions—  
6 Procedural requirements and documents to be integrated) and 1994 c  
7 257 s 21; and

8 (2) RCW 70.105D.900 (Short title—1989 c 2) and 1989 c 2 s 22  
9 (Initiative Measure No. 97, approved November 8, 1988).

10 NEW SECTION. **Sec. 505.** The following sections are decodified:

11 (1) RCW 70.105D.010 (Declaration of policy); and

12 (2) RCW 70.105D.920 (Effective date—1989 c 2).

13 NEW SECTION. **Sec. 506.** This act takes effect July 1, 2018.

14 NEW SECTION. **Sec. 507.** If any provision of this act or its  
15 application to any person or circumstance is held invalid, the  
16 remainder of the act or the application of the provision to other  
17 persons or circumstances is not affected.

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