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**SUBSTITUTE SENATE BILL 6211**

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**State of Washington**

**62nd Legislature**

**2012 Regular Session**

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

READ FIRST TIME 02/03/12.

1       AN ACT Relating to accelerating cleanup of hazardous waste sites;  
2 amending RCW 70.105D.010, 70.105D.020, 70.105D.030, 70.105D.040,  
3 70.105D.050, and 43.79A.040; reenacting and amending RCW 70.105D.070;  
4 adding new sections to chapter 70.105D RCW; and creating a new section.

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

6       NEW SECTION.   **Sec. 1.** The legislature finds that the cleanup and  
7 reuse of former commercial, industrial, and other sites contaminated  
8 with hazardous substances has economic, environmental, and public  
9 health benefits for the communities where these sites are located.  
10 Public investment in the cleanup of hazardous waste sites has multiple  
11 benefits, with some estimates indicating that for every state dollar  
12 invested toward cleanup, there is generated six dollars in local tax  
13 revenue, seven dollars in payroll revenue, and thirty-two dollars in  
14 business revenue. The legislature further finds that the cleanup of  
15 these "brownfield" properties should not be conducted in isolation from  
16 the community's plans for future economic, environmental, and social  
17 uses of the property, and that integrating the cleanup with future site  
18 uses may provide a greater opportunity to bring substantial private  
19 resources into the cleanup.

1           Therefore, it is the intent of this act to authorize a greater  
2 emphasis in the allocation of state resources toward the cleanup and  
3 reuse of brownfield properties, to provide more flexible funding and  
4 oversight authority for local governments guiding the cleanup of  
5 brownfield properties, and to modify the state's cleanup program in  
6 ways that will accelerate cleanups throughout the state, thus providing  
7 near-term job benefits in the cleanup, as well as ongoing economic and  
8 environmental benefits through reuse of the cleaned up properties.

9           **Sec. 2.** RCW 70.105D.010 and 2002 c 288 s 1 are each amended to  
10 read as follows:

11           (1) Each person has a fundamental and inalienable right to a  
12 healthful environment, and each person has a responsibility to preserve  
13 and enhance that right. The beneficial stewardship of the land, air,  
14 and waters of the state is a solemn obligation of the present  
15 generation for the benefit of future generations.

16           (2) A healthful environment is now threatened by the irresponsible  
17 use and disposal of hazardous substances. There are hundreds of  
18 hazardous waste sites in this state, and more will be created if  
19 current waste practices continue. Hazardous waste sites threaten the  
20 state's water resources, including those used for public drinking  
21 water. Many of our municipal landfills are current or potential  
22 hazardous waste sites and present serious threats to human health and  
23 environment. The costs of eliminating these threats in many cases are  
24 beyond the financial means of our local governments and ratepayers.  
25 The main purpose of chapter 2, Laws of 1989 is to raise sufficient  
26 funds to clean up all hazardous waste sites and to prevent the creation  
27 of future hazards due to improper disposal of toxic wastes into the  
28 state's land and waters.

29           (3) Many farmers and small business owners who have followed the  
30 law with respect to their uses of pesticides and other chemicals  
31 nonetheless may face devastating economic consequences because their  
32 uses have contaminated the environment or the water supplies of their  
33 neighbors. With a source of funds, the state may assist these farmers  
34 and business owners, as well as those persons who sustain damages, such  
35 as the loss of their drinking water supplies, as a result of the  
36 contamination.

1 (4) It is in the public's interest to efficiently use our finite  
2 land base, to integrate our land use planning policies with our clean-  
3 up policies, and to clean up and reuse contaminated industrial and  
4 other brownfield properties in order to minimize (~~industrial~~)  
5 development pressures on undeveloped land and to make clean land  
6 available for (~~future~~) economic, environmental, and social (~~use~~)  
7 reuses.

8 (5) Because it is often difficult or impossible to allocate  
9 responsibility among persons liable for hazardous waste sites and  
10 because it is essential that sites be cleaned up well and  
11 expeditiously, each responsible person should be liable jointly and  
12 severally.

13 (6) Because releases of hazardous substances can adversely affect  
14 the health and welfare of the public, the environment, and property  
15 values, it is in the public interest that affected communities be  
16 notified of where releases of hazardous substances have occurred and  
17 what is being done to clean them up.

18 **Sec. 3.** RCW 70.105D.020 and 2007 c 104 s 18 are each amended to  
19 read as follows:

20 The definitions in this section apply throughout this chapter  
21 unless the context clearly requires otherwise.

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

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

31 (3) "Director" means the director of ecology or the director's  
32 designee.

33 (4) "Environmental covenant" has the same meaning as defined in RCW  
34 64.70.020.

35 (5) "Facility" means (a) any building, structure, installation,  
36 equipment, pipe or pipeline (including any pipe into a sewer or  
37 publicly owned treatment works), well, pit, pond, lagoon, impoundment,

1 ditch, landfill, storage container, motor vehicle, rolling stock,  
2 vessel, or aircraft, or (b) any site or area where a hazardous  
3 substance, other than a consumer product in consumer use, has been  
4 deposited, stored, disposed of, or placed, or otherwise come to be  
5 located.

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

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

20 (b) "Fiduciary" does not mean:

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

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

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

36 (iv) A person who is a beneficiary and fiduciary with respect to  
37 the same fiduciary estate, and who while acting as a fiduciary receives

1 benefits that exceed customary or reasonable compensation, and  
2 incidental benefits permitted under applicable law;

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

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

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

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

21 (10) "Hazardous substance" means:

22 (a) Any dangerous or extremely hazardous waste as defined in RCW  
23 70.105.010 (~~((+5) and (+6))~~) (1) and (7), or any dangerous or extremely  
24 dangerous waste designated by rule pursuant to chapter 70.105 RCW;

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

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

31 (d) Petroleum or petroleum products; and

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

36 The term hazardous substance does not include any of the following  
37 when contained in an underground storage tank from which there is not

1 a release: Crude oil or any fraction thereof or petroleum, if the tank  
2 is in compliance with all applicable federal, state, and local law.

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

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

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

33 (14) "Industrial properties" means properties that are or have been  
34 characterized by, or are to be committed to, traditional industrial  
35 uses such as processing or manufacturing of materials, marine terminal  
36 and transportation areas and facilities, fabrication, assembly,  
37 treatment, or distribution of manufactured products, or storage of bulk  
38 materials, that are either:

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

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

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

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

20 (17) "Owner or operator" means:

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

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

26 The term does not include:

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

35 (ii) A person who, without participating in the management of a  
36 facility, holds indicia of ownership primarily to protect the person's  
37 security interest in the facility. Holders after foreclosure and its

1 equivalent and holders who engage in any of the activities identified  
2 in subsection (18)(e) through (g) of this section shall not lose this  
3 exemption provided the holder complies with all of the following:

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

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

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

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

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

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

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

1 governing instrument granting fiduciary powers, the fiduciary complies  
2 with all of the following:

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

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

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

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

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

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

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

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

37 (A) The person can demonstrate that the hazardous substance has not

1 been used, placed, managed, or otherwise handled on the property in a  
2 manner likely to cause or contribute to a release of the hazardous  
3 substance that has migrated onto the property;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 studies conducted in order to determine the risk or potential risk to  
2 human health.

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

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

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

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

1 remedial action under this chapter or that the United States  
2 environmental protection agency has determined requires remedial action  
3 under the comprehensive environmental response, compensation, and  
4 liability act.

5 (31) "City" means a city or town.

6 (32) "Local government" means any political subdivision of the  
7 state, including a town, city, county, special purpose district, or  
8 other municipal corporation, including brownfield renewal authority  
9 created under section 6 of this act.

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

13 (34) "Redevelopment opportunity zone" means a geographic area  
14 designated under section 5 of this act.

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

17 (1) The brownfield redevelopment trust fund is created in the  
18 custody of the state treasurer. Expenditures from the trust fund may  
19 be used only for the purposes of remediation and cleanup of facilities  
20 within redevelopment opportunity zones established under this act  
21 except for expenses of the state investment board and the state  
22 treasurer as specified in subsection (2) of this section. Only the  
23 department may authorize expenditures from the trust fund.  
24 Disbursements from the trust fund are exempt from appropriations and  
25 the allotment provisions of chapter 43.88 RCW. Within the trust fund  
26 the department may establish separate subaccounts for specific  
27 redevelopment opportunity zones established under section 5 of this act  
28 or specific brownfield renewal authorities established under section 6  
29 of this act.

30 (2) With the exception of investment and operating costs associated  
31 with the investment of money by the investment board paid under RCW  
32 43.33A.160 and 43.84.160 and the expenses and operating costs of the  
33 state treasurer paid under RCW 43.08.190 and 43.79A.040, the trust fund  
34 must be credited with all investment income earned by the trust fund.  
35 The trust fund must retain its interest earnings in accordance with RCW  
36 43.79A.040.

37 (3) The following receipts may be deposited into the trust fund:

1 (a) Moneys appropriated by the legislature for the brownfield  
2 redevelopment trust fund;

3 (b) Moneys voluntarily deposited in the trust fund for a specific  
4 redevelopment opportunity zone or a specific brownfield renewal  
5 authority; and

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

9 (4) The local government designating the redevelopment opportunity  
10 zone under section 5 of this act or the associated brownfield renewal  
11 authority created under section 6 of this act must be the beneficiary  
12 of the subaccount.

13 (5) Money may not be disbursed from the trust fund until the  
14 department has approved the expenditure. All expenditures must be used  
15 to conduct remedial actions on properties within the redevelopment  
16 opportunity zone consistent with a plan for the remediation of the  
17 properties approved by the department under this chapter. All  
18 expenditures must meet the eligibility requirements for the use by  
19 local governments under the rules for remedial action grants adopted by  
20 the department under this chapter, including requirements for the  
21 expenditure of nonstate match funding.

22 (6) The department must track moneys received, interest earned, and  
23 moneys expended separately for each subaccount.

24 (7) Beginning October 31, 2012, the department must provide a  
25 biennial report to the office of financial management and the  
26 legislature regarding the activity within each subaccount during the  
27 previous two fiscal years.

28 (8) After the department determines that all remedial actions  
29 within the redevelopment opportunity zone identified in the plan  
30 approved under subsection (5) of this section are completed, including  
31 payment of all cost reasonably attributable to the remedial actions,  
32 the department must dissolve the subaccount. Upon dissolution of the  
33 subaccount, any remaining moneys must be transferred to the state  
34 toxics control account established under RCW 70.105D.070.

35 (9) If the department determines that substantial progress has not  
36 been made on the plan approved under subsection (5) of this section  
37 within six years of creation of the subaccount or that the brownfield  
38 renewal authority is no longer a viable entity, the department may

1 inactivate the subaccount within the trust fund. Upon inactivation of  
2 a subaccount under this provision, after payment of outstanding  
3 obligations, all remaining funds must be transferred to the state  
4 toxics control account established under RCW 70.105D.070.

5 (10) The department is authorized to adopt rules to implement this  
6 section.

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

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

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

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

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

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

24 (2) A port district may designate a redevelopment opportunity zone  
25 when:

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

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

31 (c) The port district either:

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

33 (ii) Owns in fee at least fifty percent of the upland property in  
34 the zone, the owners of other parcels of property in the zone have  
35 provided consent in writing to have their property included in the  
36 zone, and the governing body of the city and county in which the zone  
37 lies approves of the designation by resolution.

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

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

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

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

25       (4) If the department determines that substantial progress has not  
26   been made on the plan approved under section 4(5) of this act within  
27   six years of a city, county, or port district establishing a brownfield  
28   renewal authority, the department may require dissolution of the  
29   brownfield renewal authority. Upon dissolution of the brownfield  
30   renewal authority, except as provided in section 5 of this act, all  
31   assets and liabilities transfer to the city, town, or port district  
32   establishing the brownfield renewal authority.

33       **Sec. 7.**    RCW 70.105D.030 and 2009 c 560 s 10 are each amended to  
34   read as follows:

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

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

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

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

27 (d) Carry out all state programs authorized under the federal  
28 cleanup law and the federal resource, conservation, and recovery act,  
29 42 U.S.C. Sec. 6901 et seq., as amended;

30 (e) Classify substances as hazardous substances for purposes of RCW  
31 70.105D.020 and classify substances and products as hazardous  
32 substances for purposes of RCW 82.21.020(1);

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

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

9 (h) Require holders to conduct remedial actions necessary to abate  
10 an imminent or substantial endangerment pursuant to RCW  
11 70.105D.020(17)(b)(ii)(C);

12 (i) Provide informal advice and assistance to persons regarding the  
13 administrative and technical requirements of this chapter. This may  
14 include site-specific advice to persons who are conducting or otherwise  
15 interested in independent remedial actions. Any such advice or  
16 assistance shall be advisory only, and shall not be binding on the  
17 department. As a part of providing this advice and assistance for  
18 independent remedial actions, the department may prepare written  
19 opinions regarding whether the independent remedial actions or  
20 proposals for those actions meet the substantive requirements of this  
21 chapter or whether the department believes further remedial action is  
22 necessary at the facility. Nothing in this chapter may be construed to  
23 preclude the department from issuing a written opinion on whether  
24 further remedial action is necessary at any portion of the real  
25 property located within a facility, even if further remedial action is  
26 still necessary elsewhere at the same facility. Such a written opinion  
27 on a portion of a facility must also provide an opinion on the status  
28 of the facility as a whole. The department may collect, from persons  
29 requesting advice and assistance, the costs incurred by the department  
30 in providing such advice and assistance; however, the department shall,  
31 where appropriate, waive collection of costs in order to provide an  
32 appropriate level of technical assistance in support of public  
33 participation. The state, the department, and officers and employees  
34 of the state are immune from all liability, and no cause of action of  
35 any nature may arise from any act or omission in providing, or failing  
36 to provide, informal advice and assistance. The department must track  
37 the number of requests for reviews of planned or completed independent  
38 remedial actions and establish performance measures to track how

1 quickly the department is able to respond to those requests. By  
2 November 1, 2012, the department must submit to the governor and the  
3 appropriate legislative fiscal and policy committees a report on  
4 achieving the performance measures and provide recommendations for  
5 improving performance, including staffing needs; (~~and~~)

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

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

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

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

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

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

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

37 (e) Publish and periodically update minimum cleanup standards for  
38 remedial actions at least as stringent as the cleanup standards under

1 section 121 of the federal cleanup law, 42 U.S.C. Sec. 9621, and at  
2 least as stringent as all applicable state and federal laws, including  
3 health-based standards under state and federal law; and

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

15 (3) To achieve and protect the state's long-term ecological health,  
16 the department shall prioritize sufficient funding to clean up  
17 hazardous waste sites and prevent the creation of future hazards due to  
18 improper disposal of toxic wastes, and create financing tools to clean  
19 up large-scale hazardous waste sites requiring multiyear commitments.  
20 To effectively monitor toxic accounts expenditures, the department  
21 shall develop a comprehensive ten-year financing report that identifies  
22 long-term remedial action project costs, tracks expenses, and projects  
23 future needs.

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

26 (a) Develop a comprehensive ten-year financing report in  
27 coordination with all local governments with clean-up responsibilities  
28 that identifies the projected biennial hazardous waste site remedial  
29 action needs that are eligible for funding from the local toxics  
30 control account;

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

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

36 (d) Project the remedial action need, cost, revenue, and any  
37 recommended working capital reserve estimate to the next biennium's  
38 long-term remedial action needs from both the local toxics control

1 account and the state toxics control account, and submit this  
2 information to the appropriate standing fiscal and environmental  
3 committees of the senate and house of representatives. This submittal  
4 must also include a ranked list of such remedial action projects for  
5 both accounts; and

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

13 (5) The department shall establish a program to identify potential  
14 hazardous waste sites and to encourage persons to provide information  
15 about hazardous waste sites.

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

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

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

30 (ii) A physical inspection of the real property subject to the  
31 environmental covenant to determine compliance with the environmental  
32 covenant, including whether any development or redevelopment of the  
33 real property has violated the terms of the environmental covenant; and

34 (iii) A review of the effectiveness of the environmental covenant  
35 in limiting or prohibiting activities that may interfere with the  
36 integrity of the remedial action or that may result in exposure to or  
37 migration of hazardous substances. This shall include a review of  
38 available monitoring data.

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

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

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

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

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

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

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

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

24 **Sec. 8.** RCW 70.105D.040 and 1997 c 406 s 4 are each amended to  
25 read as follows:

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

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

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

31 (c) Any person who owned or possessed a hazardous substance and who  
32 by contract, agreement, or otherwise arranged for disposal or treatment  
33 of the hazardous substance at the facility, or arranged with a  
34 transporter for transport for disposal or treatment of the hazardous  
35 substances at the facility, or otherwise generated hazardous wastes  
36 disposed of or treated at the facility;

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

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

13 (2) Each person who is liable under this section is strictly  
14 liable, jointly and severally, for all remedial action costs and for  
15 all natural resource damages resulting from the releases or threatened  
16 releases of hazardous substances. The attorney general, at the request  
17 of the department, is empowered to recover all costs and damages from  
18 persons liable therefor.

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

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

23 (i) An act of God;

24 (ii) An act of war; or

25 (iii) An act or omission of a third party (including but not  
26 limited to a trespasser) other than (A) an employee or agent of the  
27 person asserting the defense, or (B) any person whose act or omission  
28 occurs in connection with a contractual relationship existing, directly  
29 or indirectly, with the person asserting this defense to liability.  
30 This defense only applies where the person asserting the defense has  
31 exercised the utmost care with respect to the hazardous substance, the  
32 foreseeable acts or omissions of the third party, and the foreseeable  
33 consequences of those acts or omissions;

34 (b) Any person who is an owner, past owner, or purchaser of a  
35 facility and who can establish by a preponderance of the evidence that  
36 at the time the facility was acquired by the person, the person had no  
37 knowledge or reason to know that any hazardous substance, the release

1 or threatened release of which has resulted in or contributed to the  
2 need for the remedial action, was released or disposed of on, in, or at  
3 the facility. This subsection (3)(b) is limited as follows:

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

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

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

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

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

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

36 (a) The attorney general may agree to a settlement with any  
37 potentially liable person only if the department finds, after public  
38 notice and any required hearing, that the proposed settlement would

1 lead to a more expeditious cleanup of hazardous substances in  
2 compliance with clean-up standards under RCW 70.105D.030(2)(e) and with  
3 any remedial orders issued by the department. Whenever practicable and  
4 in the public interest, the attorney general may expedite such a  
5 settlement with persons whose contribution is insignificant in amount  
6 and toxicity. A hearing shall be required only if at least ten persons  
7 request one or if the department determines a hearing is necessary.

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

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

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

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

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

31 (ii) The stay of enforcement under this subsection does not apply  
32 if the consent decree was based on circumstances unique to the settling  
33 party that do not exist with regard to the successor in interest, such  
34 as financial hardship. For consent decrees entered into before July  
35 27, 1997, at the request of a settling party or a potential successor  
36 owner or operator, the attorney general shall issue a written opinion  
37 on whether a consent decree contains such unique circumstances. For

1 all other consent decrees, such unique circumstances shall be specified  
2 in the consent decree.

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

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

11 (i) The settlement will yield substantial new resources to  
12 facilitate cleanup;

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

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

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

32 (i) Public access to an area not otherwise accessible to the  
33 public;

34 (ii) New or improved public recreational activities;

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

37 (iv) Preservation of a historic property listed pursuant to chapter  
38 84.26 RCW.

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

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

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

18 **Sec. 9.** RCW 70.105D.050 and 2005 c 211 s 2 are each amended to  
19 read as follows:

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

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

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

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

35 (2) Any person who incurs costs complying with an order issued  
36 under subsection (1) of this section may petition the department for  
37 reimbursement of those costs. If the department refuses to grant

1 reimbursement, the person may within thirty days thereafter file suit  
2 and recover costs by proving that he or she was not a liable person  
3 under RCW 70.105D.040 and that the costs incurred were reasonable.

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

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

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

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

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

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

37 (a) For liens filed under RCW 70.105D.055(2)(a), the amount of the

1 lien exceeds the remedial action costs the department incurred related  
2 to cleanup of the real property; and

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

8 **Sec. 10.** RCW 70.105D.070 and 2011 1st sp.s. c 50 s 964 are each  
9 reenacted and amended to read as follows:

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

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

14 ((+a)) (i) Those revenues which are raised by the tax imposed  
15 under RCW 82.21.030 and which are attributable to that portion of the  
16 rate equal to thirty-three one-hundredths of one percent;

17 ((+b)) (ii) The costs of remedial actions recovered under this  
18 chapter or chapter 70.105A RCW;

19 ((+c)) (iii) Penalties collected or recovered under this chapter;  
20 and

21 ((+d)) (iv) Any other money appropriated or transferred to the  
22 account by the legislature.

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

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

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

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

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

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

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

4 (vii) Hazardous materials emergency response training;

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

7 (ix) Programs authorized under chapter 70.146 RCW;

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

10 (xi) Public funding to assist potentially liable persons to pay for  
11 the costs of remedial action in compliance with clean-up standards  
12 under RCW 70.105D.030(2)(e) but only when:

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

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

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

22 (A) The facility is located within a redevelopment opportunity zone  
23 designated under section 5 of this act;

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

26 (C) The director has found the funding meets any additional  
27 criteria established in rule by the department, will achieve a  
28 substantially more expeditious or enhanced cleanup than would otherwise  
29 occur, and will provide a public benefit in addition to cleanup  
30 commensurate with the scope of the public funding such as:

31 (I) Public access to an area not otherwise accessible to the  
32 public;

33 (II) New or improved public recreational activities;

34 (III) Enhancement of a natural resource habitat that would not  
35 otherwise occur; or

36 (IV) Preservation of an historic property listed pursuant to  
37 chapter 84.26 RCW;

1        (xiii) Development and demonstration of alternative management  
2 technologies designed to carry out the hazardous waste management  
3 priorities of RCW 70.105.150;

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

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

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

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

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

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

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

20        (iii) Solid waste plans and programs under chapters 70.95, 70.95C,  
21 70.95I, and 70.105 RCW;

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

26        (v) Cleanup and disposal of hazardous substances from abandoned or  
27 derelict vessels, defined for the purposes of this section as vessels  
28 that have little or no value and either have no identified owner or  
29 have an identified owner lacking financial resources to clean up and  
30 dispose of the vessel, that pose a threat to human health or the  
31 environment.

32        (b) Funds for plans and programs shall be allocated consistent with  
33 the priorities and matching requirements established in chapters  
34 70.105, 70.95C, 70.95I, and 70.95 RCW, except that any applicant that  
35 is a Puget Sound partner, as defined in RCW 90.71.010, along with any  
36 project that is referenced in the action agenda developed by the Puget  
37 Sound partnership under RCW 90.71.310, shall, except as conditioned by  
38 RCW 70.105D.120, receive priority for any available funding for any

1 grant or funding programs or sources that use a competitive bidding  
2 process. During the 2007-2009 fiscal biennium, moneys in the account  
3 may also be used for grants to local governments to retrofit public  
4 sector diesel equipment and for storm water planning and implementation  
5 activities.

6 (c) To expedite cleanups throughout the state, the department shall  
7 partner with local communities and liable (~~(parties for cleanups. The~~  
8 ~~department is authorized to use)~~) persons conducting remedial actions,  
9 and may use the following additional strategies in order to facilitate  
10 economic development and ensure a healthful environment for future  
11 generations:

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

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

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

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

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

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

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

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

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

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

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

25 (5) Except during the 2009-2011 fiscal biennium, one percent of the  
26 moneys deposited into the state and local toxics control accounts shall  
27 be allocated only for public participation grants to persons who may be  
28 adversely affected by a release or threatened release of a hazardous  
29 substance and to not-for-profit public interest organizations. The  
30 primary purpose of these grants is to facilitate the participation by  
31 persons and organizations in the investigation and remedying of  
32 releases or threatened releases of hazardous substances and to  
33 implement the state's solid and hazardous waste management priorities.  
34 No grant may exceed sixty thousand dollars. Grants may be renewed  
35 annually. Moneys appropriated for public participation from either  
36 account which are not expended at the close of any biennium shall  
37 revert to the state toxics control account.

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

8 (7) The department shall adopt rules for grant or loan issuance and  
9 performance. To accelerate both remedial action and economic recovery,  
10 the department may expedite the adoption of rules necessary to  
11 implement this act using the expedited procedures in RCW 34.05.353.  
12 The department shall initiate the award of financial assistance by July  
13 1, 2012. To ensure the adoption of rules will not delay financial  
14 assistance, the department may administer the award of financial  
15 assistance through interpretive guidance pending the adoption of rules  
16 through July 1, 2013.

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

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

26 ~~(10) During the 2009-2011 fiscal biennium, the legislature may~~  
27 ~~transfer from the state toxics control account to the state general~~  
28 ~~fund such amounts as reflect the excess fund balance in the account.~~

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

32 **Sec. 11.** RCW 43.79A.040 and 2011 1st sp.s. c 37 s 603 are each  
33 amended to read as follows:

34 (1) Money in the treasurer's trust fund may be deposited, invested,  
35 and reinvested by the state treasurer in accordance with RCW 43.84.080  
36 in the same manner and to the same extent as if the money were in the

1 state treasury, and may be commingled with moneys in the state treasury  
2 for cash management and cash balance purposes.

3 (2) All income received from investment of the treasurer's trust  
4 fund must be set aside in an account in the treasury trust fund to be  
5 known as the investment income account.

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

14 (4)(a) Monthly, the state treasurer must distribute the earnings  
15 credited to the investment income account to the state general fund  
16 except under (b), (c), and (d) of this subsection.

17 (b) The following accounts and funds must receive their  
18 proportionate share of earnings based upon each account's or fund's  
19 average daily balance for the period: The Washington promise  
20 scholarship account, the college savings program account, the  
21 Washington advanced college tuition payment program account, the  
22 accessible communities account, the community and technical college  
23 innovation account, the agricultural local fund, the American Indian  
24 scholarship endowment fund, the foster care scholarship endowment fund,  
25 the foster care endowed scholarship trust fund, the students with  
26 dependents grant account, the basic health plan self-insurance reserve  
27 account, the contract harvesting revolving account, the Washington  
28 state combined fund drive account, the commemorative works account, the  
29 county enhanced 911 excise tax account, the Washington international  
30 exchange scholarship endowment fund, the toll collection account, the  
31 developmental disabilities endowment trust fund, the energy account,  
32 the fair fund, the family leave insurance account, the food animal  
33 veterinarian conditional scholarship account, the fruit and vegetable  
34 inspection account, the future teachers conditional scholarship  
35 account, the game farm alternative account, the GET ready for math and  
36 science scholarship account, the Washington global health technologies  
37 and product development account, the grain inspection revolving fund,  
38 the industrial insurance rainy day fund, the juvenile accountability

1 incentive account, the law enforcement officers' and firefighters' plan  
2 expense fund, the local tourism promotion account, the pilotage  
3 account, the produce railcar pool account, the regional transportation  
4 investment district account, the rural rehabilitation account, the  
5 stadium and exhibition center account, the youth athletic facility  
6 account, the self-insurance revolving fund, the sulfur dioxide  
7 abatement account, the children's trust fund, the Washington horse  
8 racing commission Washington bred owners' bonus fund and breeder awards  
9 account, the Washington horse racing commission class C purse fund  
10 account, the individual development account program account, the  
11 Washington horse racing commission operating account (earnings from the  
12 Washington horse racing commission operating account must be credited  
13 to the Washington horse racing commission class C purse fund account),  
14 the life sciences discovery fund, the Washington state heritage center  
15 account, the reduced cigarette ignition propensity account, the  
16 brownfield redevelopment trust fund, and the reading achievement  
17 account.

18 (c) The following accounts and funds must receive eighty percent of  
19 their proportionate share of earnings based upon each account's or  
20 fund's average daily balance for the period: The advanced right-of-way  
21 revolving fund, the advanced environmental mitigation revolving  
22 account, the federal narcotics asset forfeitures account, the high  
23 occupancy vehicle account, the local rail service assistance account,  
24 and the miscellaneous transportation programs account.

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

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

35 NEW SECTION. **Sec. 12.** If any provision of this act or its  
36 application to any person or circumstance is held invalid, the

1 remainder of the act or the application of the provision to other  
2 persons or circumstances is not affected.

--- END ---