

(6) Certify emergency medical program directors.

Passed the House March 5, 1988.

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## CHAPTER 112

[Engrossed Senate Bill No. 6440]

### HAZARDOUS WASTE CLEAN UP--ALTERNATIVE TO INITIATIVE 97

AN ACT Relating to the environment; amending RCW 90.48.466, 90.48.190, and 43-21B.310; adding a new section to chapter 9A.36 RCW; adding a new section to chapter 34.04 RCW; adding a new section to chapter 43.21C RCW; adding a new section to chapter 70.94 RCW; adding a new section to chapter 70.105 RCW; adding a new section to chapter 90.03 RCW; adding a new section to chapter 90.44 RCW; adding new sections to chapter 90.48 RCW; adding a new section to chapter 90.58 RCW; creating a new chapter in Title 70 RCW; creating a new chapter in Title 82 RCW; adding a new section to chapter 2, Laws of 1987 3rd ex. sess. and to chapter 82.22 RCW; creating new sections; repealing RCW 70.105A.010, 70.105A.020, 70.105A.030, 70.105A.040, 70.105A.050, 70.105A.060, 70.105A.070, 70.105A.080, 70.105A.090, 70.105A.900, and 70.105A.905; repealing section 65, chapter 2, Laws of 1987 3rd ex. sess. (uncodified); prescribing penalties; making appropriations; providing an effective date; providing an expiration date; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

**NEW SECTION.** Sec. 1. **INTENT.** The legislature recognizes that the beneficial stewardship of the land, air, and waters of the state is a solemn obligation of the present generation for the benefit of future generations.

A healthful environment is threatened by numerous hazardous waste sites in this state. The legislature finds that private parties should be provided with encouragement to exercise their responsibility to clean up the sites for which they are responsible, but that if they refuse to do so, then the state should conduct cleanup operations and recover the costs thereof from the private parties. The legislature also finds that there are numerous publicly owned sites that were former solid waste landfills and that because the cost of cleaning those sites frequently exceeds the financial resources of refuse rate payers, state financial assistance is appropriate.

The legislature finds that because it is often difficult or impossible to allocate responsibility among persons liable for hazardous waste sites and because it is essential that sites be cleaned up well and expeditiously, each liable person should be liable jointly and severally.

**NEW SECTION.** Sec. 2. **DEFINITIONS.** The definitions set forth in this section apply throughout this chapter.

(1) "Department" means the department of ecology.

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

(3) "Disposal" means the discharge, deposit, injection, release, dumping, spilling, leaking, placing, or allowing to seep of any hazardous substance into or on any land or water.

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

(5) "Federal cleanup law" means the Federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. Sec. 9601 et seq., as amended by Public Law 99-499.

(6) "Hazardous substance" means:

(a) Any dangerous or extremely hazardous waste as defined in RCW 70.105.010(5) and (6), or any dangerous or extremely hazardous waste designated by rule pursuant to chapter 70.105 RCW;

(b) Any hazardous substance as defined in RCW 70.105.010(14) or any hazardous substance as defined by rule pursuant to chapter 70.105 RCW;

(c) Any substance that, on the effective date of this section, is a hazardous substance under section 101(14) of the federal cleanup law;

(d) Any substance or category of substances determined by the director by rule to present a threat to human health or the environment if released into the environment;

(e) Solid waste decomposition products that present a substantial threat to human health or the environment; and

(f) Petroleum and petroleum products.

(7)(a) "Owner or operator" means:

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

(ii) In the case of an abandoned facility, any person who had owned, operated, or exercised control over the facility any time before its abandonment.

(b) The term "owner or operator" does not include:

(i) An agency of the state or unit of local government that acquired ownership or control involuntarily through bankruptcy, tax delinquency, abandonment, or circumstances in which the government involuntarily acquires title; or

(ii) A person who, without participating in the management of a facility, holds indicia of ownership primarily to protect the person's security interest in the facility; or

(iii) A person who holds a security interest in a facility, or who as a result of the interest acquires ownership or control of a facility, where the

security interest was created to secure the repayment of value extended solely for the purpose of remedial action costs, and the value actually has been or will be applied to that purpose; or

(iv) A person, including, but not limited to, a bank, savings and loan association, savings bank, credit union or insurance company, which, while holding a security interest in a facility and pursuant to such interest, exercises or has exercised control consistent with ordinary and customary lending practices, but such control shall not include operation of the facility or assumption of business decisions of the facility.

(c) Paragraph (b) of this subsection does not apply to a person who has caused or contributed to the release or threatened release of a hazardous substance from the facility, nor does it apply to any person whom the department finds uses a security interest as a device to avoid liability under this chapter.

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

(9) "Potentially liable person" means any person whom the department finds, based on credible evidence, to be liable under section 4 of this act.

(10) "Release" means any intentional or unintentional entry of any hazardous substance into the environment, including but not limited to the abandonment or disposal of containers of hazardous substances. A release of a pesticide for which liability is exempted under section 4(3)(d) of this act shall not be considered hazardous unless, either alone or in conjunction with other releases, the release of the pesticide threatens human health or the environment.

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

**NEW SECTION.** Sec. 3. DEPARTMENT'S POWERS AND DUTIES. (1) The department may exercise the following powers in addition to any other powers granted by law:

(a) The department may conduct, provide for conducting, or require potentially liable persons to conduct remedial actions to remedy a release or threatened release of a hazardous substance. In carrying out such powers, the department's authorized employees, agents, or contractors or the employees, agents, or contractors of a potentially liable person acting under an approved settlement agreement may enter upon property. In conducting such remedial actions, the department may obtain information and access to

property pursuant to section 11 of this act. In conducting, providing for, or requiring remedial action, the department shall give preference to permanent solutions to the maximum extent practicable and shall provide for or require adequate monitoring to ensure the effectiveness of the remedial action.

(b) The department may carry out all state programs authorized under the federal cleanup law and the Federal Resource, Conservation, and Recovery Act, 42 U.S.C. Sec. 6901 et seq., as amended.

(c) The department may classify substances as hazardous substances for purposes of section 2(6) of this act and classify substances and products as hazardous substances for purposes of section 45 of this act.

(d) The department may take any other actions necessary to carry out the provisions of this chapter, including the adoption of rules under chapter 34.04 RCW. The department may adopt emergency or interim rules where immediate promulgation of rules is necessary to implement this chapter prior to the adoption of final rules.

(e) Prior to adopting rules to carry out this chapter, the department shall facilitate discussions among persons interested in the rule-making and act to mediate differences among such persons in order to achieve to the maximum extent possible consent on the rules.

(2) The department shall immediately implement all provisions of this chapter to the maximum extent practicable, including investigative and remedial actions where appropriate. Within nine months after the effective date of this section, the department shall adopt rules under chapter 34.04 RCW to:

(a) Establish criteria for determining priorities among hazardous substance sites. These criteria shall assure that sites are ranked by a system that objectively and numerically assesses the relative degree of risk at such sites; and

(b) Establish reasonable deadlines not to exceed ninety days for initiating an investigation of a hazardous waste site after the department receives information that the site may pose a threat to human health or the environment and other reasonable deadlines for remedying releases or threatened releases at the site.

(3) Before November 1st of each even-numbered year, the department shall develop, with public notice and hearing, and submit to the ways and means and appropriate standing environmental committees of the senate and house of representatives a ranked list of projects and expenditures recommended for appropriation from both the state and local toxics control accounts. The department shall also provide the legislature and the public each year with an accounting of the department's activities supported by appropriations from the state toxics control account, including a list of known hazardous waste sites and their hazard rankings, actions taken and

planned at each site, how the department is meeting its top two management priorities under RCW 70.105.150, and all funds expended under this chapter.

(4) The department shall establish a scientific advisory board to render advice to the department with respect to the hazard ranking system, cleanup standards, remedial actions, deadlines for remedial actions, monitoring, the classification of substances as hazardous substances for purposes of substances or products as hazardous substances for purposes of section 2(6) of this act. The board shall consist of independent members representing varied interests. No members may be employees of the department. Members shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060.

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

(6) The department, with the assistance of the department of revenue, shall by December 1, 1991, submit to the legislature a report on the status of the cleanup program authorized by this chapter to include at a minimum the following:

(a) The amount of tax and other revenues generated and anticipated to be generated to fund the program, with a recommendation, if any, for revision of the taxing mechanism;

(b) An accounting of all expenditures made pursuant to this chapter, including a description of remedial actions in progress; each program, activity or remedial action funded and the amount of funding provided; and

(c) Projections of the need for funds for future remedial actions.

**NEW SECTION.** Sec. 4. STANDARD OF LIABILITY. (1) Except as provided in subsection (3) of this section, the following persons are liable with respect to a facility:

(a) The owner or operator of the facility;

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

(c) Any person who owned or possessed a hazardous substance and who by contract, agreement, or otherwise arranged for disposal or treatment of the hazardous substance at the facility, or arranged with a transporter for transport for disposal or treatment of the hazardous substance at the facility, or otherwise generated hazardous waste disposed of or treated at the facility;

(d) Any person (i) who accepts or accepted any hazardous substance for transport to a disposal, treatment, or other facility selected by the person, from which facility there is a release or a threatened release for which remedial action is required, unless the facility, at the time of disposal or treatment, could legally receive the substance; or (ii) who accepts a hazardous substance for transport to such a facility and has reasonable grounds to

believe that the facility is not operated in accordance with chapter 70.105 RCW; and

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

(2) Each person who is liable under this section is strictly liable, jointly and severally, for all remedial action costs at or associated with the facility and for all natural resource damages resulting from the releases or threatened releases of hazardous substances. The attorney general, at the request of the department, may recover all costs and damages from persons liable for them.

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

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

(i) An act of God;

(ii) An act of war; or

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

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

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

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

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

(c) Any person who uses a hazardous substance lawfully and without negligence for any personal or domestic purpose in or near a dwelling or accessory structure when that person is: (i) A resident of the dwelling; (ii) a person who assists the resident in the use of the substance; or (iii) a person who is employed or retained by the resident;

(d) Any person who, without negligence and in accordance with all federal and state laws, applies pesticides or fertilizers for any of the following purposes: (i) Producing any crops, farm animals, or any other farm product; (ii) growing Christmas trees; (iii) growing any nursery plant; or (iv) growing trees, including trees for the production of timber. This exemption also extends to any owner of land leased to such person and an applicator with whom such person enters into a contract for the application of the pesticides or fertilizers, so long as the application is without negligence and is in accordance with all federal and state laws. This exemption does not apply to aquaculture; or

(e) Any person with respect to the release or threatened release of used motor oil collected by the person for recycling, if the oil (i) is not mixed with any other hazardous substance; and (ii) is collected, stored, and maintained by the person in compliance with all federal and state laws and without negligence. Unless the person has reason to believe the contrary, it shall be presumed that used motor oil that has been removed from a vehicle by the owner and delivered to the person for recycling has not been mixed with any other hazardous substance.

(4) Nothing in this chapter affects or modifies in any way any person's right to seek or obtain relief under other statutes or under common law, including but not limited to damages for injury or loss caused by a hazardous substance. No settlement by the department or remedial action ordered by a court or the department affects any person's right to obtain a remedy under common law or other statutes.

**NEW SECTION.** Sec. 5. PETROLEUM. (1) Petroleum, including crude oil or any fraction thereof, is covered only by the provisions of subsection (2) of this section and section 11(2) of this act, and by no other provisions of this chapter, unless:

- (a) It is an extremely hazardous waste under chapter 70.105 RCW; or
- (b) It is a hazardous substance under section 2(6)(c) or (e) of this act.

(2) The department may investigate, respond to, and order or initiate cleanup of spills, leaks, or discharges covered only by this subsection. The department may recover its costs incurred in exercising its powers under this section and any natural resource damages caused by the releases from any person owning or controlling the material released, or from any person otherwise responsible for the releases, and the persons are strictly liable, jointly and severally, for such costs and damages.

(3) This section expires on July 1, 1990, unless before that date legislation is enacted into law providing a comprehensive cleanup program for releases of petroleum (including crude oil or any fraction thereof) from storage tanks and specific funding sources for the program.

**NEW SECTION. Sec. 6. CLEANUP STANDARDS.** (1) The department shall select those actions that will attain a degree of cleanup that is protective of human health and the environment.

(2) Each remedial action approved by the department shall attain cleanup levels set by the department. Such levels shall include:

(a) With respect to each hazardous substance, a cleanup that, at a minimum, meets the substantive requirements of all applicable state and federal laws, regulations, and rules;

(b) With respect to hazardous substances for which no applicable state or federal law, regulation, or rule exists, the department shall set the cleanup level on a case-by-case basis in order to prevent potential harm to human health and the environment. In making this determination the department may refer to state and federal laws, regulations, rules, and criteria relevant and appropriate to this determination;

(c) With respect to each hazardous substance, where the proponents of a proposed remedial action demonstrate to the department by clear and convincing evidence that an alternative to cleanup levels established under (a) of this subsection would assure protection of human health and the environment, the department may allow a deviation from those cleanup levels.

**NEW SECTION. Sec. 7. VOLUNTARY CLEANUPS.** (1) Whenever the department has reason to believe that a release or threatened release of a hazardous substance will require remedial action, it shall notify potentially liable persons with respect to the release or threatened release, and provide them with a reasonable opportunity to propose a settlement agreement providing for remedial action. Whenever the department considers it to be in the public interest, the department shall expedite such an agreement with parties whose contribution of hazardous substances is insignificant in amount and toxicity.

(2) Within nine months after the effective date of this section, the department shall adopt rules under chapter 34.04 RCW to implement this section. At a minimum the rules shall:

(a) Provide procedures by which potentially liable persons may propose one or more remedial actions;



(b) Provide procedures for public notice and an opportunity to comment on proposed settlements;

(c) Establish reasonable deadlines and time periods for activities under this subsection; and

(d) Ensure that agreements providing for voluntary cleanups attain the cleanup levels required under section 6 of this act.

(3) Where the department and one or more potentially liable persons are unable to reach agreement for remedial action that will provide a final cleanup remedy, the persons may submit a final offer of a proposed settlement agreement, together with any material supporting the proposal. The department shall consider the offer and material submitted, as well as public comments provided on the offer, and shall issue a decision accepting or rejecting the offer. Where the department accepts the offer, it shall be entered as a consent decree pursuant to the procedures of subsection (5) of this section. Where the department rejects the offer, it shall state in writing its reasons for rejection. This review process shall not be considered a contested case for the purpose of the administrative procedure act, chapter 34-.04 RCW.

(4) The person or persons proposing an agreement rejected by the department under subsection (3) of this section have a right to review only as provided in section 13 of this act.

(5) Where the department and potentially liable persons reach an agreement providing for voluntary remedial action, it shall be filed with the appropriate superior court as a proposed consent decree. The court shall allow at least thirty days for public comments before the proposed decree is entered, and the department shall file with the court any written comments received on the proposed decree.

(6) A person who has resolved its liability to the state under this section is not liable for claims for contribution regarding matters addressed in the settlement. The settlement does not discharge any of the other potentially liable persons, but it reduces the total potential liability of the others to the state by the amount of the settlement.

(7) The director may enter into a settlement agreement that requires the department to provide a specified amount of money from the state toxics control account to help defray the costs of implementing the plan. These funds may be provided only in circumstances where the director finds it would expedite or enhance cleanup operations or achieve greater fairness with respect to the payment of remedial action costs. In determining whether public funding will achieve greater fairness, the director shall consider the extent to which public funding will prevent or mitigate economic hardship. The director shall adopt rules providing criteria and priorities governing public funding of remedial action costs under this subsection. The amount of public funding in an agreement under this section shall be determined solely in the discretion of the director and is not subject to review.

The department may recover the amount of public funding provided under this subsection from a potentially liable person who has not entered into a settlement agreement under this section or fulfilled all obligations under the agreement. For purposes of such a recovery action, the amount shall be considered as remedial action costs paid by the department.

**NEW SECTION. Sec. 8. COVENANTS NOT TO SUE.** (1) As a part of a settlement agreement accepted by the department, the director shall provide a covenant not to sue with respect to any remedial action that is required by the agreement and that will accomplish any of the following:

(a) Treatment of hazardous substances so as to destroy, eliminate, or permanently immobilize the hazardous constituents of the substances so that the substances, or any byproducts of the treatment or destruction process, no longer present any foreseeable future significant risk to human health or welfare or the environment; or

(b) When such destruction, elimination, or permanent immobilization is not practicable, the transportation of the hazardous substances from the site to an approved hazardous waste disposal facility meeting the requirements of the Federal Resource Conservation and Recovery Act, 42 U.S.C. Sec. 6924 and 6925, as amended as of the effective date of this section, and, if the substances are disposed of in this state, the rules of the department adopted pursuant to chapter 70.105 RCW for permanent disposal facilities; or

(c) Cleanup levels that have been set only under section 6(2)(a) of this act.

(2) (a) As a part of a settlement agreement with the department, the director may provide a covenant not to sue with respect to any remedial action if the cleanup levels have been established under section 6(2)(b) of this act, and if the covenant not to sue is determined by the director to be in the public interest.

(b) In making the determination of public interest the director shall consider the following factors:

(i) Whether the benefits from the expedition of the voluntary remedial action caused by the issuance of a covenant not to sue would exceed the potential future risk to human health and public finances caused by such issuance;

(ii) The nature of the risks that might remain at the facility;

(iii) The extent to which the remedial action is based on attainment of performance standards based on objective criteria for releases of substances to, or the presence of substances in, land, air, or water;

(iv) Whether the state toxics control account or sources of funding other than state general funds would be available for any additional remedial action that might eventually be necessary at the facility;

(v) Whether the monitoring and maintenance required at the site, if any, will protect human health and the environment; and

(vi) The extent to which the technology used in the remedial action is demonstrated to be effective.

(3) As a part of a settlement agreement with the department, the director may provide a covenant not to sue with respect to any remedial action taken if the cleanup level or levels have been established under section 6(2)(c) of this act and if:

(a) The director has determined that issuing the covenant is in the public interest as defined in subsection (2)(b) of this section;

(b) Compliance with the otherwise applicable standards is technically impracticable from an engineering perspective; and

(c) The remedial action provides optimum protection of human health and the environment.

(4) A "covenant not to sue" means a promise by the state of Washington, made with respect to a particular hazardous substance or a particular area, the cleaning up of which has been the purpose of a previous remedial action undertaken by the potentially liable person at the direction of the department and with the approval of the department. A covenant shall be commensurate with and strictly limited to the scope of the previous remedial action. In issuing the covenant, the state promises that, with respect to that substance or area, it will not initiate any future administrative or judicial action to force the potentially liable person to clean up, pay the expenses for cleaning up, conduct any investigations, or pay the expenses for any investigations. As used in this subsection, the word "investigations" does not include any monitoring or maintenance activities required under a covenant.

(5) A covenant may be issued with respect to all remedial actions included under a settlement agreement, or may be issued for one or more particular remedial actions included under a settlement agreement. If the remedial action is for cleaning up a particular hazardous substance, then the covenant does not extend to other hazardous substances. A covenant issued for a remedial action for cleaning up a particular hazardous substance shall contain an express reopener clause for the discovery of the release or threatened release of other hazardous substances.

(6) If the remedial action is for cleaning up a particular area, the covenant does not extend to other areas. Notwithstanding any other provision of this section, the issuance of a covenant for a particular area (as opposed to a covenant for a particular hazardous substance) is discretionary with the department, and shall only be issued for a remedial action that the department finds will ensure that (a) there will no longer be any foreseeable future risk in the area to human health or the environment and (b) all hazardous substances in the area are destroyed, eliminated, or permanently immobilized. In issuing an area covenant the department shall take special care to ensure that both the planned remedial action and its implementation conform to this chapter. A covenant issued for a particular area shall contain

an express reopener clause for the discovery of the release or threatened release of hazardous substances outside such area. As used in this section, the term "particular area" means a precisely described three-dimensional area.

(7) The issuance of a covenant not to sue does not affect the power of the state to take whatever actions are necessary, other than those expressly barred by the covenant, to protect members of the public from a health hazard, including, but not limited to, actions to prevent entrance upon the property, to prevent the use of the property for any purpose that exposes anyone to a health hazard, or to enter upon the property and take measures to clean up the hazardous substance. The issuance of a covenant does not affect any power of the state to institute or respond to any tort action or any other judicial or administrative action, so long as the state's action or response is not expressly barred by the covenant. With respect to any action filed against the state, a covenant does not bar the state from filing a cross-claim, counterclaim, or third party action against any person who may be liable or from seeking contribution from the person, so long as the damages or relief sought by the state in filing the cross-claim, counterclaim, or third party action is not expressly barred by the covenant.

(8) The director, with the concurrence of the attorney general, shall incorporate any covenant to be issued into the settlement agreement. The director's denial of a covenant meeting the requirements of subsection (1) of this section is reviewable under section 13 of this act. The director's denial of a proposed covenant under subsections (2) or (3) of this section is not subject to review. Any covenant not to sue shall be conditioned upon satisfactory performance of the settlement agreement and issuance of a certificate of completion pursuant to section 9 of this act. A covenant ceases to be conditional and becomes effective on the date of certification of completion of the agreement.

(9) If new information is revealed while implementing a settlement agreement, the potentially liable persons and the department may amend the agreement. If the new information reveals a significant quantity of a hazardous substance or condition not previously identified in the agreement as being present at the site, in an area of the site other than that described in the agreement, or in quantities significantly greater than as described in the agreement, then the agreement shall be amended. If a proposed amendment is to be incorporated into a final consent decree, public notice and opportunity to comment shall be allowed by the court prior to its entry in accordance with section 7(5) of this act. The department shall adopt rules providing a method for amending agreements. The existence of a covenant not to sue having conditional status pursuant to subsection (8) of this section neither bars amendments to settlements nor may be considered in deciding whether or not to amend settlements.

(10) A person receiving a covenant not to sue under this chapter is not relieved of any liability owed to persons, other than the state of

Washington, under any federal, state, or local law, including the common law.

(11) Issuance of a covenant not to sue to a potentially liable person does not relieve or decrease any other person's liability to the state.

**NEW SECTION. Sec. 9. CERTIFICATION OF COMPLETION.**

(1) Upon completion of all remedial actions called for in a settlement agreement, the parties to the agreement may apply for a certificate of completion from the department. The department shall provide notice of an application for certification of completion to interested persons and the public. The notice shall include a brief analysis of the application and indicate where additional information may be obtained. Public comment shall be accepted for a minimum of forty-five days from the date of the notice.

(2) The director shall grant or deny an application for certification of completion within ninety days of the application. If the director finds that the remedial action has been fully implemented, the director shall approve an application for certification of completion.

**NEW SECTION. Sec. 10. REMEDIAL ACTION CONTRACTOR LIABILITY.** (1) A person who is a remedial action contractor, or a person employed by any public body who provides services relating to remedial action, and who is working within the scope of the person's employment with respect to any release or threatened release of a hazardous substance from a facility, is not liable under this chapter, under any other state or local law, or under common law to any person for injuries, costs, damages, expenses, or other liability, including, but not limited to, claims for indemnification or contribution, and claims by third parties for death, personal injury, illness, or loss of or damage to property or economic loss, that result from the release or threatened release. This subsection does not apply in the case of a release or threatened release that is caused by conduct of the remedial action contractor that is negligent, grossly negligent, or that constitutes intentional misconduct.

(2) Nothing in this section affects the liability of any person under any warranty under state law, or the liability of an employer who is a remedial action contractor to any employee of such employer under any provision of law.

(3) The director may agree to hold harmless and indemnify any remedial action contractor meeting the requirements of this section against any liability, including the expenses of litigation or settlement, for negligence arising out of the contractor's performance in carrying out remedial action activities under this chapter, unless the liability was caused by conduct of the contractor that was grossly negligent or that constituted intentional misconduct. Indemnification under this subsection applies only to remedial action contractor liability that results from a release or threatened release

of a hazardous substance if the release arises out of remedial action activities. An indemnification agreement under this subsection shall include deductibles and shall place limits on the amount of indemnification to be made available.

(4) The exemption provided under subsection (1) of this section and the authority of the director to offer indemnification under subsection (3) of this section do not apply to any person liable under section 4(1) of this act.

(5) A person retained or hired by a potentially liable person is eligible for consideration for indemnification under subsection (3) of this section only if the remedial action is being implemented under an approved settlement agreement.

**NEW SECTION. Sec. 11. INVESTIGATION AND ACCESS.**

(1)(a) If there is a reasonable basis to believe there may be a release or threatened release of a hazardous substance, the director may require information or documents relevant to that release or threatened release from a person who has or may have information relevant to (i) the identification, nature, and volume of materials generated, treated, stored, transported to, or disposed of at a facility and the dates thereof, (ii) the nature or extent of a release or threatened release of a hazardous substance at or from a facility, (iii) the identity of potentially liable persons, or (iv) information relating to the ability of a person to pay for or perform a remedial action. The department may subpoena witnesses, documents, and other information that the department deems necessary. In case of a refusal to obey such a subpoena, the superior court for any county in which the person is found, resides, or transacts business has jurisdiction to issue an order requiring the person to appear before the department and give testimony or produce documents. Any failure to obey such order of the court may be punished by the court as contempt.

(b) Where there is a reasonable basis to believe there may be a release or threatened release of a hazardous substance, the department, its authorized employees, agents, or contractors, or the employees, agents, or contractors of a potentially liable person acting under an approved settlement agreement, upon reasonable notice may enter upon any real property, public or private, to conduct sampling, inspection, examination, and investigation directed at evaluating the release or threatened release and determining the need, if any, for remedial action. In the event of an emergency, no notice need be provided. In conducting those activities, the department or other person gaining access under this section shall take all feasible precautions to avoid disrupting the ongoing operation on the site. The department or other person gaining access under this section shall provide to the owner, operator, or person in charge of the facility, if requested, a portion of each sample taken equal in volume or weight to the portion retained. If any analysis is made of the samples, a copy of the results of the analysis shall be furnished

promptly to the owner, operator, or person in charge as well as to representatives of the public and other interested persons.

(2)(a) If the director determines that: (i) An emergency exists that requires immediate action to protect human health or the environment, and (ii) the owner or operator is unwilling or unable to take such immediate action, the department, its authorized employees, agents, or contractors, or the employees, agents, or contractors of a potentially liable person acting under departmental approval may without court order enter upon property, public or private, or take such remedial action as is necessary to abate the emergency.

(b) If the potentially liable person fails to implement a settlement or if no settlement has been achieved, or for the purpose of carrying out section 5(2) of this act, the director may determine, in accordance with the procedures set forth in this section, that action to respond to a release or threatened release of hazardous substances is necessary and that entry upon real property, public or private, is necessary to execute remedial action. Such entry may be made by the department, its authorized employees, agents, or contractors, or the employees, agents, or contractors of a potentially liable person acting under an approved settlement agreement. The director's determination shall be based upon inspection, study, or other data as may be available, shall be made in writing, and shall be available for public inspection and copying. The department shall supply the person owning, operating, or in charge of the property concerned, as well as all potentially liable persons with (i) a written document detailing the director's determination and the basis for the determination, (ii) a notice that remedial action and entry upon property shall proceed in no fewer than sixty days, and (iii) a request for a prompt response. The director shall confer with any person responding to receipt of service of the director's determination in order to accommodate that person's legitimate concerns while obtaining prompt and necessary remedial action.

(c) The department, with the assistance of the attorney general's office, may apply to superior court for an order authorizing entry upon real property to execute remedial action. The department's application shall (i) state that the notice procedures required in this section have been carried out, (ii) describe the property concerned, and (iii) describe the remedial action selected by the director and the schedule for remedial action. If, after a hearing, the superior court finds that the department's application and supporting materials establish that the department has made a reasonable attempt to accommodate any responding party's legitimate concerns, the superior court shall enter an order authorizing entry upon real property to execute remedial action.

(d) In such proceedings authorized by this subsection, the court may not review (i) the director's determination that remedial action is necessary,

that the entry upon real property is necessary, or the basis for such decisions; or (ii) any response by the director to the potentially liable person's concerns.

(3) The court may not enjoin or otherwise delay any remedial action deemed necessary by the director unless the superior court finds that the person lacks any adequate remedy at law.

**NEW SECTION. Sec. 12. ENFORCEMENT.** (1) Whenever, in the opinion of the director, a person (a) is potentially liable for a release or threatened release of a hazardous substance, (b) has been notified of its potential liability, but (c) either (i) has not submitted a proposed settlement or (ii) has submitted a proposed settlement, the department has rejected the proposal, and, if appealed, the denial has been affirmed by the superior court, then the director may seek appropriate injunctive or other judicial relief by filing an action in Thurston county superior court or issue such order as the director deems appropriate and serve the person with the order personally or by certified mail.

(2) Whenever the director determines that there exists an imminent danger that requires immediate remedial action to protect human health or the environment, the director may seek such injunctive relief or issue an order without prior notice or opportunity to submit a proposed settlement agreement.

(3) The director may bring an action in Thurston county superior court (a) against any potentially liable person who, without sufficient cause, fails to comply with an order issued under subsection (1) or (2) of this section to enforce the order, or (b) against any liable person to collect remedial action costs incurred by the department.

(4) In any action brought under subsection (3) of this section, the person, if liable, is responsible for:

(a) If the failure to comply with an order is willful, up to three times the amount of any remedial action costs incurred by the state as a result of the party's refusal to comply; and

(b) A civil penalty of up to ten thousand dollars for each day the party refuses to comply.

(5) The director may bring an action in Thurston county superior court to establish and collect a civil penalty for which a person is liable under section 17 of this act.

(6) Any potentially liable person who receives and complies with the terms of an order issued under this section may, within sixty days after completion of the required action, petition the director for reimbursement for any costs of the action for which the person is not liable. If the director refuses to grant all or part of the reimbursement sought, the petitioner may, within thirty days of the date of the refusal, file an action against the department in Thurston county superior court seeking reimbursement. The



judicial review shall be de novo, and the burden is on the department to establish liability.

(7) Before conducting a remedial action, the department may:

(a) Prepare a proposed scope of work based on any investigation or study conducted by or for the department, the potentially liable persons, or others;

(b) Provide the identified potentially liable persons and members of the public with notice of the proposed remedial action and an opportunity to comment on the scope of work proposed;

(c) Prepare a final scope of work based on the comments received and any other study or investigation conducted by or for the department.

(8) The proposed and final scope of work and the basis for them as well as all comments received by the department constitute the record of decision of the department.

(9) Where the department has developed a record of decision for a remedial action and the department has conducted the remedial action in accordance with the record, in any action brought to recover costs, the scope of work of the department shall be presumed reasonable and necessary unless demonstrated to be arbitrary and capricious.

NEW SECTION. Sec. 13. REVIEW OF ECOLOGY DECISIONS.

(1) The decisions of the department under this chapter are reviewable only as provided in this section or section 14 of this act.

(2) (a) A potentially liable person aggrieved by a department decision to deny a final offer of a proposed settlement may obtain review by filing a petition in the Thurston county superior court within ten days of receipt of that decision and serving a copy of that petition on the department. The review shall be based upon the administrative record which shall consist of the final offer of proposed settlement, the material submitted in support of that offer, all comments provided on the proposed settlement, the department's response, and all material relied on by the department in making its decision. The department's decision shall not be reversed unless it is clearly erroneous. The court shall hold a hearing upon such petition within thirty days after the department certifies the record to the court. Any person potentially aggrieved may intervene in the review proceeding under this subsection.

(b) If the potentially liable person appeals a superior court decision affirming the decision of the department, then, during the pendency of the appeal, no court may stay or otherwise delay any enforcement order issued or remedial action undertaken by the department.

(3) Any investigative or remedial action decision of the department or decision identifying potentially liable persons is reviewable exclusively in superior court as follows:

(a) In a cost recovery action pursuant to section 4 or 12 of this act;

(b) In a judicial action by the department to compel remedial action pursuant to section 12 of this act;

(c) In an action by a potentially liable person for reimbursement pursuant to section 12 of this act; or

(d) In an action by the department to establish and collect a civil penalty under section 12 of this act.

(4) Any person aggrieved by the granting or denial of a certificate of completion pursuant to section 9 of this act may file a petition for review pursuant to the administrative procedure act, chapter 34.04 RCW, of that decision in Thurston county superior court within thirty days of the department's decision.

NEW SECTION. Sec. 14. THIRD PARTY ACTIONS. (1) Any person may commence a civil action to compel the department to perform any nondiscretionary duty under this chapter. At least thirty days before commencing the action, the person must give notice of intent to sue, unless a substantial endangerment to health or the environment exists.

(2) Any person aggrieved by an action or inactions of a potentially liable person that may result in a release of a hazardous substance that presents an imminent and substantial endangerment to health or the environment may commence a civil action to compel the potentially liable person to comply with this chapter. Before any action may be commenced, the person aggrieved shall mail by certified mail a notice of intent to sue to the director. The director shall be allowed thirty days to negotiate or mediate a resolution to the dispute before any action may be filed.

(3) Any person aggrieved by the release or threatened release of a hazardous substance may commence a civil action against any person who fails to comply with an approved settlement agreement to compel compliance with the agreement.

(4) No action may be commenced under subsection (2) or (3) of this section where:

(a) The department is diligently prosecuting a judicial action or pursuing administrative action under this chapter to force a potentially liable person to respond to the release or threatened release of hazardous substances under this chapter; or

(b) The department is diligently pursuing remedial action against the release of the hazardous substance.

(5) Civil actions under this section may be brought in the superior court of Thurston county or of the county in which the release or threatened release exists.

(6) Nothing in this chapter affects or impairs any person's right under any other statute or under common law to commence a civil action relating to hazardous substances.

NEW SECTION. Sec. 15. LIENS. (1) Any liability to the state under this chapter constitutes a debt to the state. Any such debt constitutes a lien,

in favor of the state, on all real property on which the remedial action was conducted.

(2) The lien imposed by this section arises at the time costs are first incurred by the state with respect to a remedial action under this chapter.

(3) The department shall file a statement of claim, describing the property subject to the lien, in the appropriate office as designated by state law. The lien continues until the liability for the costs have been satisfied. Any lien filed pursuant to this section shall be subject to the rights of any purchaser, holder of a security interest, or judgment lien creditor whose interest is perfected in accordance with law before notice of the state lien is filed.

**NEW SECTION. Sec. 16. PROPERTY—RECORDS—SALE.**

(1) The owner of public or private nonresidential real property upon which a release of a significant quantity of a hazardous substance has been found by the department to have occurred shall place a notice in the records of real property kept by the auditor of the county in which the property is located. The notice shall: (a) identify the property; (b) identify the owner of the property and the person causing the notice to appear; (c) state that a release of a hazardous substance occurred on the property; (d) state the date the release occurred; and (e) direct further inquiries to the department. The department shall maintain records that identify the remedial action taken and the hazardous substance or substances released for each remedial action that has been conducted or approved by the department. Any person with an interest in the property, injured by the failure of a property owner to comply with this section, may recover damages for that injury by filing an action in superior court for the county in which the release occurred.

(2) Where the department has discovered the release of a significant quantity of a hazardous substance following an inspection of the facility, the department shall place a notice having the contents of the notice referred to in subsection (1) of this section in the records of real property kept by the auditor of the county in which the property is located.

(3) Any certification of completion issued in accordance with section 9 of this act shall be promptly filed with the records of real property kept by the auditor of the county in which the property is located and shall identify the property, the owner of the property, the date of issuance of the certificate, and the date the release occurred.

(4) Before selling any right, title, or interest in real property, whether public or private, the seller of the property shall provide a written statement to the purchaser describing any release of a significant quantity of a hazardous substance that the seller knows to have occurred during the prior twenty years on the property to be sold. Unless otherwise expressly agreed by seller and purchaser, any purchaser injured by failure of a seller of real property to provide the statement as required in this subsection may recover

damages for that injury by filing an action in superior court for the county in which the property is located.

(5) The department shall determine by rule, consistent with the purposes of this chapter, which releases are subject to the reporting and notification requirements under subsections (1), (2), and (4) of this section. This rule shall limit required reporting under this section to those releases that are of a magnitude that would cause a significant adverse impact to human health or the environment.

NEW SECTION. Sec. 17. FRAUD. If a potentially liable party commits fraud on the department or another potentially liable party in a proposed settlement agreement, in a request for a covenant not to sue, or in an application for a certificate of completion, then any limitation on liability or covenant not to sue otherwise provided is void, and the injured person, including the state of Washington, may recover actual damages sustained and a civil penalty of up to ten thousand dollars.

NEW SECTION. Sec. 18. PESTICIDE WASTE DISPOSAL. The director of the department of agriculture may adopt rules to allow the department of agriculture to take possession and dispose of canceled, suspended, or otherwise unusable pesticides held by persons regulated under chapter 17.21 RCW. For the purposes of this section, the department may become licensed as a hazardous waste generator.

The director of agriculture shall develop the necessary administrative structure to implement a pesticide waste disposal program. Issues to be addressed shall include, but are not limited to: Collection site acquisition, liability and insurance, transportation to the collection site and to ultimate disposal sites, licensure and regulatory compliance, volume of material to be disposed of, education as to legal use as an alternative to disposal, container disposal, and analysis of unknown presumed pesticide. In implementing the provisions of this section, the department of agriculture may charge fees of persons disposing of pesticide wastes to offset wholly or partially the program authorized by this section.

NEW SECTION. Sec. 19. HOUSEHOLD WASTE DISPOSAL. The director of the department of ecology may adopt rules to allow the department to take possession and dispose of household hazardous wastes.

The director of ecology shall assist local governments with implementation of household hazardous waste (moderate risk wastes) collection and disposal plans under RCW 70.105.220. The department shall provide technical assistance to facilitate collection site identification, acquisition of insurance, transportation to the collection site and to ultimate disposal sites, licensure and regulatory compliance, assessment of volume of material to be disposed of, education as to legal use as an alternative to disposal, container disposal, analysis of unknown presumed household hazardous wastes and other assistance the department deems appropriate. The department shall

provide grants to local governments to implement household hazardous waste disposal and collection plans required under RCW 70.105.220.

In implementing the provisions of this section, the department or local governments may charge fees of persons disposing of household hazardous waste to offset wholly or partially the programs authorized by this section.

**NEW SECTION. Sec. 20. BUSINESS ASSISTANCE PROGRAM.** The department of ecology shall contract with a nonprofit organization to establish a "pollution prevention pays" program for the purpose of promoting hazardous waste reduction and recycling. The program shall provide technical assistance to businesses that generate hazardous waste, which shall consist of: (1) A library and bibliography of literature detailing methods of waste reduction and recycling, including an in-house data base consisting of case studies, program publications, and contacts; (2) a waste reduction and recycling hotline; (3) onsite consultations for generators of hazardous wastes; and (4) an educational outreach program.

**NEW SECTION. Sec. 21. HAZARDOUS SUBSTANCES CONFISCATED BY LAW ENFORCEMENT AGENCIES.** (1) The director of the department of ecology shall arrange for the collection of hazardous substances confiscated by law enforcement agencies pursuant to chapter 69.50 RCW or may provide financial assistance to law enforcement agencies for the disposal of such substances.

(2) The director of the department of ecology may adopt rules to allow the department to take possession and dispose of hazardous substances confiscated by law enforcement agencies under chapter 69.50 RCW.

(3) Any person convicted of a crime under chapter 69.50 RCW involving hazardous substances confiscated by a law enforcement agency may upon conviction, be assessed by the sentencing court with the costs of the disposal. Any money collected pursuant to this subsection shall not be subject to deposit in the public safety and education account. The department of ecology may seek reimbursement for the department's contributions to the cost of disposal from the moneys collected from such convicted person.

**NEW SECTION. Sec. 22. TOXICS CONTROL ACCOUNTS.** (1) The state toxics control account and the local toxics control account are created in the state treasury.

(2) The following moneys shall be deposited into the state toxics control account: (a) Forty-seven percent of those revenues that are raised by the tax imposed under section 46 of this act; (b) the costs of remedial actions recovered under this chapter or chapter 70.105A RCW after the effective date of this section; (c) penalties collected or recovered under this chapter; and (d) any other money appropriated or transferred to the account by the legislature.

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

(a) The state's responsibility for hazardous waste planning, management, regulation, enforcement, technical assistance, and public education required under chapter 70.105 RCW, including, but not limited to, programs for collection and disposal of household hazardous waste under chapter 70.105 RCW;

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

(c) The hazardous waste cleanup program required under this chapter;

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

(e) Financial assistance for local programs in accordance with RCW 70.95.130, 70.95.220, 70.95.530, 70.105.220, 70.105.225, 70.105.235(1) (a), (b), and (c), and 70.105.260;

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

(g) Hazardous materials emergency response training;

(h) Water and environmental health protection and monitoring programs;

(i) Programs authorized under chapter 70.146 RCW;

(j) A public participation program, including a grant program;

(k) Public funding to assist potentially liable persons to pay for the costs of remedial action;

(l) Development and demonstration of alternative management technologies designed to carry out the top two hazardous waste management priorities of RCW 70.105.150,

(m) Disposal of law enforcement agency drug related confiscations as required in section 21 of this act.

(4) Fifty-three percent of those revenues that are raised by the tax imposed under section 46 of this act shall be deposited into the local toxics control account. Moneys deposited in the local toxics control account shall be used by the department for grants or loans to local governments to carry out the following purposes in descending order of priority: (a) Remedial actions for public or private facilities used primarily for the disposal of municipal solid waste that are on the hazard ranking list; (b) hazardous waste plans and programs under RCW 70.105.220, 70.105.225, 70.105.235(1) (a), (b), and (c), and 70.105.260, including, but not limited to, programs for collection and disposal of household hazardous waste under chapter 70.105 RCW; (c) solid waste plans and programs under RCW 70.95.130 and 70.95.220; and (d) solid waste disposal and management facilities, meaning facilities or systems owned or operated by local governments for the purpose

of controlling, collecting, storing, treating, disposing, recycling, or recovery of solid wastes and including any equipment, structures, or property incidental to that purpose. However, the term does not include the acquisition of equipment used to collect residential or commercial garbage. In carrying out these priorities, the department shall ensure that moneys are made available to the maximum extent practicable to fund remedial actions.

(5) Except for unanticipated receipts under RCW 43.79.260 through 43.79.282, moneys in the state and local toxics control accounts may be spent only after appropriation by statute. All earnings from investment of balances in the accounts, except as provided in RCW 43.84.090, shall be credited to the accounts.

(6) When making grants or loans to local governments for assistance under this chapter, the department shall consider the following:

- (a) The protection of public health;
- (b) The cost to residential ratepayers without state assistance; and
- (c) Actions required under federal and state permits, enforcement orders, and consent decrees.

(7) The department shall develop specific matching requirements for assisting local governments in the funding of remedial actions, hazardous and solid waste plans and programs, and solid waste disposal and management facilities. Funds for hazardous and solid waste plans and programs shall be allocated consistently with the priorities established in chapters 70.95 and 70.105 RCW.

(8) One percent of the moneys deposited in the state and local toxics control accounts shall be allocated only for public participation grants. The department may provide public participation grants to groups of fifty or more persons who may be adversely affected by a release or threatened release of a hazardous substance and who petition the department for the grants. Grant moneys may be used only for the purposes of obtaining technical assistance in interpreting information with regard to the nature of the hazard, remedial investigation and feasibility study, record of decision, remedial design, selection and construction of remedial action, operation and maintenance, or removal at such facility. Each grant recipient shall be required, as a condition of the grant, to contribute funds equal to at least twenty percent of the grant amount and to commit such contributed funds toward the purposes for which the grant is made. Grants shall not exceed fifty thousand dollars for any one hazardous waste site, but the grant may be renewed to facilitate public participation at all stages of remedial action. All funds appropriated for public participation grants that remain unspent at the end of the biennium for which the appropriations are made revert to the state toxics control account.

**NEW SECTION.** Sec. 23. TOXICS CONTROL RESERVE ACCOUNT. (1) The toxics control reserve account is created in the state treasury. Money in the account shall be used solely for remedying releases

or threats of releases of hazardous substances by the state at sites for which a covenant not to sue has been entered into by the state. Money deposited in the account shall be administered by the department and is subject to legislative appropriation. All earnings from investment of balances in the toxics control reserve account, except as provided in RCW 43.84.090, shall be credited to the account.

(2) Beginning on July 1, 1988, and on July 1st of each year thereafter, the state treasurer shall transfer one and one-half million dollars from the state toxics control account and one and one-half million dollars from the local toxics control account to the toxics control reserve account. This subsection applies only if on July 1st the balance in the reserve account is less than twenty million dollars.

(3) After the reserve account balance first reaches twenty million dollars, the treasurer shall on July 1st of each year thereafter transfer equal amounts from the state toxics control account and the local toxics control account sufficient to bring the balance in the reserve account to twenty million dollars, but the contribution from each account shall not exceed one and one-half million dollars in any one year.

NEW SECTION. Sec. 24. EXISTING AGREEMENTS. The consent orders and decrees in effect on the effective date of this section shall remain valid and binding.

NEW SECTION. Sec. 25. EXEMPTION FROM PERMITS. A person conducting remedial action under an approved settlement agreement or the department conducting remedial action is exempt from the procedural and substantive requirements of state and local laws that would otherwise apply to the remedial action, including those requirements imposed by chapters 70.94, 70.105, 90.03, 90.44, and 90.58 RCW.

NEW SECTION. Sec. 26. APA EXEMPTION. A new section is added to chapter 34.04 RCW to read as follows:

This chapter shall not apply to review of final settlement offers under section 13 of this act.

NEW SECTION. Sec. 27. SEPA EXEMPTION. A new section is added to chapter 43.21C RCW to read as follows:

The detailed statement and other procedural requirements of this chapter are not applicable to remedial action by the state or authorized or ordered by the state under chapter 70.\_\_\_\_ RCW (sections 1 through 25 of this act).

NEW SECTION. Sec. 28. EXEMPTION FROM PERMITS. A new section is added to chapter 70.94 RCW to read as follows:

A person conducting a remedial action pursuant to an approved settlement agreement or the department undertaking a remedial action under chapter 70.\_\_\_\_ RCW (sections 1 through 25 of this act) is exempt from the procedural and substantive requirements of this chapter.



NEW SECTION. Sec. 29. EXEMPTION FROM PERMITS. A new section is added to chapter 70.105 RCW to read as follows:

A person conducting a remedial action pursuant to an approved settlement agreement or the department conducting a remedial action under chapter 70.\_\_\_\_ RCW (sections 1 through 25 of this act) is exempt from the procedural and substantive requirements of this chapter.

NEW SECTION. Sec. 30. EXEMPTION FROM PERMITS. A new section is added to chapter 90.03 RCW to read as follows:

A person conducting a remedial action pursuant to an approved settlement agreement or the department conducting a remedial action under chapter 70.\_\_\_\_ RCW (sections 1 through 25 of this act) is exempt from the procedural and substantive requirements of this chapter.

NEW SECTION. Sec. 31. EXEMPTION FROM PERMITS. A new section is added to chapter 90.44 RCW to read as follows:

A person conducting a remedial action pursuant to an approved settlement agreement or the department conducting a remedial action under chapter 70.\_\_\_\_ RCW (sections 1 through 25 of this act) is exempt from the procedural and substantive requirements of this chapter.

NEW SECTION. Sec. 32. EXEMPTION FROM PERMITS. A new section is added to chapter 90.48 RCW to read as follows:

A person conducting a remedial action pursuant to an approved settlement agreement or the department conducting a remedial action under chapter 70.\_\_\_\_ RCW (sections 1 through 25 of this act) is exempt from the procedural and substantive requirements of this chapter.

NEW SECTION. Sec. 33. EXEMPTION FROM PERMITS. A new section is added to chapter 90.58 RCW to read as follows:

A person conducting a remedial action pursuant to an approved settlement agreement or the department conducting a remedial action under chapter 70.\_\_\_\_ RCW (sections 1 through 25 of this act) is exempt from the procedural and substantive requirements of this chapter.

NEW SECTION. Sec. 34. TOXIC ENDANGERMENT. A new section is added to chapter 9A.36 RCW to read as follows:

(1) A person is guilty of toxic endangerment if he or she:

(a) Knowingly transports, treats, stores, handles, disposes of, or exports a hazardous substance or toxin in violation of state law; and

(b) Knows that such conduct places another person in imminent danger of death or serious bodily injury.

(2) As used in this section, "imminent danger" means that there is a substantial likelihood that harm will be experienced within a reasonable period of time if the danger is not eliminated.

(3) Toxic endangerment is a class B felony.

NEW SECTION. Sec. 35. It is the intent of the legislature in enacting sections 35 through 43 of this act to provide the department of ecology with

the necessary resources to adequately administer water quality discharge permits issued by the state. In doing this, the legislature intends to improve water quality state-wide by enhancing the ability of the department of ecology to adequately inspect dischargers into state ground and surface waters and implement water pollution control laws. Further, the legislature intends also to improve water quality through better control of toxicants.

**NEW SECTION.** Sec. 36. Beginning in fiscal year 1989, the department shall recover its administrative expenses for operating all aspects of its water quality discharge permit system except adjustments specified in section 38 of this act and those expenses that are directly related to enforcement by implementing a system to collect fees from persons holding state and federal waste discharge permits. The total amount of fees collected under this chapter in any fiscal year shall not exceed three million six hundred thousand dollars. Accordingly, for purposes of sections 37 through 41 of this act, "administrative expenses" means the costs incurred by the department in:

- (1) Processing permit applications and modifications;
- (2) Monitoring and evaluating compliance with permits;
- (3) Conducting inspections;
- (4) Securing laboratory analysis of samples taken during inspections;
- (5) Reviewing required plans and documents directly related to operations of permittees;
- (6) Monitoring compliance with delegated pretreatment programs; and
- (7) Supporting the overhead expenses that are directly related to each of the preceding activities.

Administrative expenses shall not include costs related to processing of penalties and notices of violation, inspections that extend beyond routine compliance monitoring, criminal investigations, or the overhead expenses that are directly related to these activities.

**NEW SECTION.** Sec. 37. (1) The department shall establish an initial fee schedule to be implemented on July 1, 1988.

(2) Except as provided in section 38 of this act, beginning on July 1, 1988, the department shall charge any person or entity holding a permit under RCW 90.48.160, 90.48.162, or 90.48.260, annual fees to recover administrative expenses as defined in section 36 of this act. In no event may the fee for any permit authorizing the discharge of eight hundred gallons or less in any one day exceed one hundred and fifty dollars for any fiscal year. This fee limit shall be periodically adjusted by the department to reflect inflation.

(3) The department shall establish an accounting mechanism to relate administrative expenses incurred in performing activities described in section 36 of this act with fees charged to persons or entities holding permits by January 1, 1989.

(4) The department shall submit a report to the appropriate standing committees of the legislature on January 1, 1991, and biennially thereafter describing the actions it has taken over the prior biennium to improve the administrative efficiency of its water quality permit system.

**NEW SECTION.** Sec. 38. Fees charged pursuant to section 37 of this act shall be subject to the following conditions:

(1) The department shall consider the economic impact of fees on small dischargers and shall provide appropriate adjustments.

(2) The department shall ensure that indirect dischargers do not pay twice for the administrative expenses of a permit. Accordingly, the department shall not assess fees for permits issued by a city, town, or municipal corporation under RCW 90.48.165.

(3) The department shall review applications for credits from any public entity engaging in comprehensive monitoring programs and shall approve or deny such applications, in whole or in part, before assessing permit fees. Credits shall be granted in accordance with a schedule adopted by the department by rule and shall not exceed twenty-five percent of the permit fee assessed over the five-year period of the permit. The total amount of credits granted for the five-year period beginning July 1, 1988, shall not exceed fifty thousand dollars. Permit fee credits granted by the department shall not be recoverable from the water quality permit account.

**NEW SECTION.** Sec. 39. All fees collected under section 37 of this act shall be deposited in the water quality permit account, which is hereby created in the state treasury, subject to appropriation. Money in the account collected from fees shall be expended exclusively by the department of ecology for the purposes of administering permits issued by the department under RCW 90.48.160, 90.48.162, and 90.48.260. Other funds deposited into this account may be used for the purposes of this chapter.

**NEW SECTION.** Sec. 40. (1) The department of ecology shall submit a report to the appropriate standing committees of the legislature no later than January 1, 1989. The report shall include a fee schedule proposed for use in fiscal years 1990 and beyond. The legislature shall evaluate this report in determining whether to change the revenue limit specified in section 36 of this act.

(2) In developing the fee schedule, the department shall consult with and be advised by representatives of dischargers, environmental organizations, other state agencies, and other interested parties. The advice received by the department shall be included in the report. The report shall also include a projection of the level of fees necessary to adequately operate the program.

**NEW SECTION.** Sec. 41. (1) In determining requirements for monitoring the condition of the waters of the state and of effluent discharged therein to be included in each permit issued by the department under RCW

90.48.160, 90.48.162, and 90.48.260, the department shall ensure that all such monitoring requirements are reasonably related to: (a) Determining compliance with the permit; (b) attaining all known, available, and reasonable treatment; or (c) determining what effects the discharge from the specific facility may have on the waters of the state or the biota or sediment in the waters of the state.

(2) Monitoring activities required pursuant to subsection (1)(c) of this section shall be structured so that, if monitoring is conducted within the terms of the permit, after an appropriate period of time, the permittee may request that the department reduce the monitoring schedule and/or scope. If in the determination of the department the results of the monitoring identify no measurable adverse effects or potential adverse effects to the waters of the state or biota or sediment in the waters of the state, then a reduced schedule and/or scope shall apply. If monitoring identifies measurable adverse effects or potential adverse effects of the discharge from the specific facility on the waters of the state or biota or sediment of the waters of the state, continued, more frequent, and/or more comprehensive monitoring shall be required by action of the department. The department may allow coordinated monitoring activities where discharges from multiple persons or entities holding permits may be causing cumulative effects and where cost savings will result from such coordination.

(3) A permit may be modified during its term to revise monitoring requirements pursuant to the applicable federal requirements or if monitoring methods or approaches become available that might reasonably be expected to measure adverse effects to the waters of the state or biota or sediment in the waters of the state.

Sec. 42. Section 4, chapter 249, Laws of 1985 and RCW 90.48.460 are each amended to read as follows:

Until June 30, 1988, the department of ecology shall collect administrative expenses from any person or entity requesting action of the department pertaining to the processing of applications for permits provided in RCW 90.48.160, 90.48.162, and 90.48.260. For the purposes of this section, "administrative expenses" shall mean the total actual costs incurred by the department in processing such permit applications.

Sec. 43. Section 4, chapter 71, Laws of 1955 as last amended by section 138, chapter 109, Laws of 1987 and RCW 90.48.190 are each amended to read as follows:

A permit shall be subject to termination upon thirty days' notice in writing if the department finds:

(1) That it was procured by misrepresentation of any material fact or by lack of full disclosure in the application;

(2) That there has been a violation of the conditions thereof;

(3) That a material change in quantity or type of waste disposal exists;

or

(4) That an applicant or permittee has failed to pay required fees under RCW 90.48.460 or section 37 of this act.

NEW SECTION. Sec. 44. INTENT OF HAZARDOUS SUBSTANCE TAX. It is the intent of this chapter to impose a tax only once for each hazardous substance possessed in this state and to tax the first possession of all hazardous substances, including substances and products that the department of ecology determines to present a threat to human health or the environment. This chapter is not intended to exempt any person from tax liability under any other law.

NEW SECTION. Sec. 45. DEFINITIONS. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Hazardous substance" means:

(a) Any substance that, on the effective date of this section, is a hazardous substance under section 101(14) of the Federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. Sec. 9601(14), as amended by Public Law 99-499;

(b) Petroleum products;

(c) Any pesticide product required to be registered under the Federal Insecticide, Fungicide and Rodenticide Act; and

(d) Any other substance, category of substance, and any product or category of product determined by the director of ecology by rule to present a threat to human health or the environment if released into the environment. The director of ecology shall not add or delete substances from this definition more often than twice during each calendar year. For tax purposes, changes in this definition take effect on the first day of the next month that is at least thirty days after the effective date of the rule. The word "product" or "products" as used in this paragraph (d) means an item or items containing both: (i) One or more substances that are hazardous substances under (a), (b), or (c) of this subsection or that are substances or categories of substances determined under this paragraph (d) to present a threat to human health or the environment if released into the environment; and (ii) one or more substances that are not hazardous substances. Until April 1, 1988, "hazardous substance" does not include substances or products packaged as a household product and distributed for domestic use.

(2) "Petroleum product" means plant condensate, lubricating oil, gasoline, aviation fuel, kerosene, diesel motor fuel, benzol, fuel oil, residual oil, liquefied or liquefiable gases such as butane, ethane, and propane, and every other product derived from the refining of crude oil, but the term does not include crude oil.

(3) "Possession" means the control of a hazardous substance located within this state and includes both actual and constructive possession. "Actual possession" occurs when the person with control has physical possession. "Constructive possession" occurs when the person with control does

not have physical possession. "Control" means the power to sell or use a hazardous substance or to authorize the sale or use by another.

(4) "Previously taxed hazardous substance" means a hazardous substance in respect to which a tax has been paid under this chapter and which has not been remanufactured or reprocessed in any manner (other than mere repackaging or recycling for beneficial reuse) since the tax was paid.

(5) "Wholesale value" means the price paid by a wholesaler or retailer to a manufacturer or the price paid by a retailer to a wholesaler when the price represents the value at the time of first possession in Washington state. In cases where no sales transaction has occurred, "wholesale value" means the fair market wholesale value, determined as nearly as possible according to the wholesale selling price at the place of use of similar substances of like quality and character, in accordance with rules of the department.

(6) Except for terms defined in this section, the definitions in chapters 82.04, 82.08, and 82.12 RCW apply to this chapter.

**NEW SECTION. Sec. 46. HAZARDOUS SUBSTANCE TAX. (1)** A tax is imposed on the privilege of possession of hazardous substances in this state. The rate of the tax shall be eight-tenths of one percent multiplied by the wholesale value of the substance.

(2) Moneys collected under this chapter shall be deposited in the toxics control accounts under section 22 of this act.

(3) Chapter 82.32 RCW applies to the tax imposed in this chapter. The tax due dates, reporting periods, and return requirements applicable to chapter 82.04 RCW apply equally to the tax imposed in this chapter. The department may adopt rules to ensure that taxes imposed on retailers are imposed equally as a tax imposed on first possessors who are not retailers. The rules may provide that the tax be imposed based on a percentage of sales for any class of retailer.

**NEW SECTION. Sec. 47. EXEMPTIONS.** The following are exempt from the tax imposed in this chapter:

(1) Any successive possession of a previously taxed hazardous substance. If tax due under this chapter has not been paid with respect to a hazardous substance, the department may collect the tax from any person who has had possession of the hazardous substance. If the tax is paid by any person other than the first person having taxable possession of a hazardous substance, the amount of tax paid constitutes a debt owed by the first person having taxable possession to the person who paid the tax.

(2) Any possession of a hazardous substance by a natural person under circumstances where the substance is used, or is to be used, for a personal or domestic purpose (and not for any business purpose) by that person or a relative of, or person residing in the same dwelling as, that person.

(3) Any possession of (a) alumina, (b) natural gas, (c) petroleum coke, (d) liquid fuel or fuel gas used in petroleum processing, or (e) petroleum products that are exported for use or sale outside this state as fuel.

(4) Persons or activities that the state is prohibited from taxing under the United States Constitution.

(5) Any persons possessing a hazardous substance where the possession first occurred before the effective date of this section.

**NEW SECTION.** Sec. 48. CREDITS. (1) Credit shall be allowed in accordance with rules of the department of revenue for taxes paid under this chapter with respect to fuel carried from this state in the fuel tank of any airplane, ship, truck, or other vehicle.

(2) Credit shall be allowed, in accordance with rules of the department, against the taxes imposed in this chapter for any hazardous substance tax paid to another state with respect to the same hazardous substance. The amount of the credit shall not exceed the tax liability arising under this chapter with respect to that hazardous substance. For the purpose of this subsection:

(a) "Hazardous substance tax" means a tax:

(i) That is imposed on the act or privilege of possessing hazardous substances, and that is not generally imposed on other activities or privileges; and

(ii) That is measured by the value of the hazardous substance, in terms of wholesale value or other terms, and in the determination of which the deductions allowed would not constitute the tax an income tax or value added tax.

(b) "State" means (i) the state of Washington, (ii) a state of the United States other than Washington, or any political subdivision of such other state, (iii) the District of Columbia, and (iv) any foreign country or political subdivision thereof.

Sec. 49. Section 6, chapter 109, Laws of 1987 and RCW 43.21B.310 are each amended to read as follows:

(1) Any order issued by the department or authority pursuant to RCW 70.94.211, 70.94.332, 70.105.095, 43.27A.190, 86.16.020, or 90.48.120(2) or any provision enacted after July 26, 1987, or any permit, certificate, or license issued by the department may be appealed to the pollution control hearings board if the appeal is filed with the board and served on the department or authority within thirty days after receipt of the order. Except as provided under chapter 70.— RCW (sections 1 through 25 of this act,) this is the exclusive means of appeal of such an order.

(2) The department or the authority in its discretion may stay the effectiveness of an order during the pendency of such an appeal.

(3) At any time during the pendency of an appeal of such an order to the board, the appellant may apply pursuant to RCW 43.21B.— (section 7, chapter 109, Laws of 1987) to the hearings board for a stay of the order or for the removal thereof.

(4) Any appeal must contain the following in accordance with the rules of the hearings board:

- (a) The appellant's name and address;
  - (b) The date and docket number of the order, permit, or license appealed;
  - (c) A description of the substance of the order, permit, or license that is the subject of the appeal;
  - (d) A clear, separate, and concise statement of every error alleged to have been committed;
  - (e) A clear and concise statement of facts upon which the requester relies to sustain his or her statements of error; and
  - (f) A statement setting forth the relief sought.
- (5) Upon failure to comply with any final order of the department, the attorney general, on request of the department, may bring an action in the superior court of the county where the violation occurred or the potential violation is about to occur to obtain such relief as necessary, including injunctive relief, to insure compliance with the order. The air authorities may bring similar actions to enforce their orders.
- (6) An appealable decision or order shall be identified as such and shall contain a conspicuous notice to the recipient that it may be appealed only by filing an appeal with the hearings board and serving it on the department within thirty days of receipt.

**NEW SECTION. Sec. 50. APPROPRIATION TO THE DEPARTMENT OF ECOLOGY—STATE TOXICS CONTROL ACCOUNT.** The sum of fourteen million six hundred eighty-one thousand dollars, or so much thereof as may be necessary, is appropriated for the biennium ending June 30, 1989, from the state toxics account to the department of ecology, of which:

- (1) \$10,000,000, or so much thereof as may be necessary, shall be expended for the purposes of administering and conducting remedial action;
- (2) \$4,030,000, or so much thereof as may be necessary, shall be expended for the ongoing implementation of the hazardous waste regulatory program authorized by chapter 70.105 RCW including, but not limited to, activities to permit and inspect hazardous waste facilities;
- (3) \$340,000, or so much thereof as may be necessary, shall be used to provide technical assistance to local governments in accordance with RCW 70.105.170 and 70.105.255, and for local planning grants as provided in RCW 70.105.220 and 70.105.235(1) (a), (b), and (c);
- (4) \$311,000, or so much thereof as may be necessary, shall be used for solid waste management activities including, but not limited to: (a) State and local solid waste enforcement; (b) development and dissemination of technical assistance information for local governments regarding proper management and disposal of solid waste in accordance with RCW 70.95.100 and 70.95.263(2); and (c) local planning grants as provided in RCW 70.95.130.



The appropriation in this section shall be reduced by any amount expended under the appropriation in section 50, chapter 2, Laws of 1987 3rd ex. sess.

**NEW SECTION. Sec. 51. APPROPRIATION TO THE DEPARTMENT OF AGRICULTURE—STATE TOXICS CONTROL ACCOUNT.** The sum of two hundred thirty-four thousand dollars, or so much thereof as may be necessary, is appropriated for the biennium ending June 30, 1989, from the state toxics control account to the department of agriculture to administer and carry out the agricultural waste management programs. The appropriation in this section shall be reduced by any amount expended under the appropriation in section 51, chapter 2, Laws of 1987 3rd ex. sess.

**NEW SECTION. Sec. 52. APPROPRIATION TO THE DEPARTMENT OF COMMUNITY DEVELOPMENT—STATE TOXICS CONTROL ACCOUNT.** The sum of three hundred eighty-four thousand dollars, or so much thereof as may be necessary, is appropriated for the biennium ending June 30, 1989, from the state toxics control account to the department of community development to carry out hazardous waste training for fire fighters. This appropriation shall be reduced by any amount expended under the appropriation in section 52, chapter 2, Laws of 1987 3rd ex. sess.

**NEW SECTION. Sec. 53. APPROPRIATION TO THE DEPARTMENT OF REVENUE—STATE TOXICS CONTROL ACCOUNT.** The sum of one hundred six thousand dollars, or so much thereof as may be necessary, is appropriated for the biennium ending June 30, 1989, from the state toxics control account to the department of revenue to administer the collection of taxes imposed by this act. This appropriation shall be reduced by any amount expended under the appropriation in section 53, chapter 2, Laws of 1987 3rd ex. sess.

**NEW SECTION. Sec. 54. APPROPRIATION TO THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES—STATE TOXICS CONTROL ACCOUNT.** The sum of seven hundred ten thousand dollars, or so much thereof as may be necessary, is appropriated for the biennium ending June 30, 1989, from the state toxics control account to the department of social and health services, of which:

(1) \$124,000, or so much thereof as may be necessary, shall be used to test public drinking water supplies for organic chemicals;

(2) \$313,000, or so much thereof as may be necessary, shall be used to monitor drinking water supplies potentially affected by hazardous waste releases;

(3) \$273,000, or so much thereof as may be necessary, shall be used for health risk assessments, health monitoring activities, and health information services for communities near a hazardous waste site.

This appropriation shall be reduced by any amount expended under the appropriation in section 54, chapter 2, Laws of 1987 3rd ex. sess.

**NEW SECTION.** Sec. 55. APPROPRIATION TO THE DEPARTMENT OF ECOLOGY—LOCAL TOXICS CONTROL ACCOUNT. The sum of eighteen million six hundred eighty-five thousand dollars, or so much thereof as may be necessary, is appropriated for the biennium ending June 30, 1989, from the local toxics account to the department of ecology, of which:

(1) \$936,000, or so much thereof as may be necessary, shall be expended for local solid waste enforcement grants.

(2) \$17,749,000, or so much thereof as may be necessary, shall be used for grants and loans pursuant to section 22(4) of this act.

This appropriation shall be reduced by any amount expended under the appropriation in section 55, chapter 2, Laws of 1987 3rd ex. sess.

**NEW SECTION.** Sec. 56. APPROPRIATION TO THE DEPARTMENT OF ECOLOGY—TOXICS CONTROL RESERVE ACCOUNT. Effective July 1, 1988, the sum of three million dollars, or so much thereof as may be necessary, is appropriated for the biennium ending June 30, 1989, from the toxics control reserve account to the department of ecology to carry out the purposes of this act. This appropriation shall be reduced by any amount expended under the appropriation in section 56, chapter 2, Laws of 1987 3rd ex. sess.

**NEW SECTION.** Sec. 57. APPROPRIATION TO THE DEPARTMENT OF ECOLOGY—BUSINESS ASSISTANCE PROGRAM. The sum of one hundred fifty thousand dollars, or so much thereof as may be necessary, is appropriated from the state toxics control account to the department of ecology for the biennium ending June 30, 1989, to carry out the purposes of section 20 of this act. This appropriation shall be reduced by any amount expended under the appropriation in section 57, chapter 2, Laws of 1987 3rd ex. sess.

**NEW SECTION.** Sec. 58. The sum of three million six hundred thousand dollars, or so much thereof as may be necessary, is appropriated from the water quality permit account to the department of ecology for the biennium ending June 30, 1989, to carry out the purposes of sections 35 through 43 of this act. This appropriation shall be reduced by any amount expended under the appropriation in section 58, chapter 2, Laws of 1987 3rd ex. sess.

**NEW SECTION.** Sec. 59. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

**NEW SECTION.** Sec. 60. Section captions used in this act do not constitute any part of the law.

NEW SECTION. Sec. 61. Sections 1 through 25 of this act constitute a new chapter in Title 70 RCW. Sections 36 through 41 of this act are each added to chapter 90.48 RCW. Sections 44 through 48 of this act constitute a new chapter in Title 82 RCW.

NEW SECTION. Sec. 62. Sections 44 through 48 of this act shall take effect on January 1, 1988. The department of revenue may immediately take such steps as may be necessary to ensure that the tax imposed under sections 44 through 48 of this act is implemented on its effective date.

NEW SECTION. Sec. 63. REPEALERS. The following acts or parts of acts are each repealed:

(1) Section 1, chapter 65, Laws of 1983 1st ex. sess. and RCW 70-105A.010;

(2) Section 2, chapter 65, Laws of 1983 1st ex. sess. and RCW 70-105A.020;

(3) Section 3, chapter 65, Laws of 1983 1st ex. sess., section 129, chapter 7, Laws of 1985 and RCW 70.105A.030;

(4) Section 4, chapter 65, Laws of 1983 1st ex. sess. and RCW 70-105A.040;

(5) Section 5, chapter 65, Laws of 1983 1st ex. sess. and RCW 70-105A.050;

(6) Section 6, chapter 65, Laws of 1983 1st ex. sess. and RCW 70-105A.060;

(7) Section 7, chapter 65, Laws of 1983 1st ex. sess. and RCW 70-105A.070;

(8) Section 8, chapter 65, Laws of 1983 1st ex. sess. and RCW 70-105A.080;

(9) Section 13, chapter 65, Laws of 1983 1st ex. sess. and RCW 70-105A.090;

(10) Section 9, chapter 65, Laws of 1983 1st ex. sess. and RCW 70-105A.900; and

(11) Section 15, chapter 65, Laws of 1983 1st ex. sess. and RCW 70-105A.905.

NEW SECTION. Sec. 64. (1) The state treasurer shall transfer to the state toxics control account the balance of all funds in the hazardous waste control and elimination account which remain in this account immediately prior to the effective date of this section. Any person who, by the effective date of this section, has not paid the fees and other amounts due under those sections of chapter 70.105A RCW which are repealed by section 63 of this act shall continue to be obligated to pay such fees and amounts. All payments received after the effective date of this section shall be deposited into the state toxics control account. The provisions of those RCW sections which are repealed in section 63 of this act shall continue to apply to those fees and amounts which are due on the effective date of this section.

(2) The repeal of RCW 70.105A.030 shall be applied retroactively as of January 1, 1987, so that no person, as defined in RCW 70.105A.020, will have to pay any fee for 1987, collectible in 1988.

NEW SECTION. Sec. 65. Sections 1 through 64 of this act shall take effect March 1, 1989.

NEW SECTION. Sec. 66. Sections 1 through 64 of this 1988 act shall constitute the alternative to Initiative 97, which has been proposed to the legislature. The secretary of state is directed to place sections 1 through 64 of this 1988 act on the ballot in conjunction with Initiative 97, pursuant to Article II, section 1(a) of the state Constitution.

NEW SECTION. Sec. 67. Section 65, chapter 2, Laws of 1987 3rd ex. sess. (uncodified) is hereby repealed.

NEW SECTION. Sec. 68. Chapter 2, Laws of 1987 3rd ex. sess. shall expire March 1, 1989: PROVIDED, That if the voters fail to approve Initiative 97 and fail to approve the alternative to the initiative proposed by the legislature, chapter 2, Laws of 1987 3rd ex. sess. shall expire on the date the election results are certified.

NEW SECTION. Sec. 69. A new section is added to chapter 2, Laws of 1987 3rd ex. sess. and to chapter 82.22 RCW to read as follows:

Notwithstanding RCW 82.22.020, "hazardous substance" does not include substances or products packaged as a household product and distributed for domestic use until June 1, 1988, and does not include such substances or products in inventory before June 1, 1988.

NEW SECTION. Sec. 70. Section 69 of this act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately.

Passed the Senate March 7, 1988.

Passed the House February 29, 1988.

Approved by the Governor March 18, 1988.

Filed in Office of Secretary of State March 18, 1988.

## CHAPTER 113

[Engrossed House Bill No. 1629]

### PHYSICIANS' ASSISTANTS—ELIGIBILITY OF FOREIGN MEDICAL SCHOOL GRADUATES

AN ACT Relating to physicians' assistants; amending RCW 18.71A.010; and adding a new section to chapter 18.71A RCW.

Be it enacted by the Legislature of the State of Washington: