

# HOUSE BILL REPORT

## SHB 2051

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### As Amended by the Senate

**Title:** An act relating to exempting from taxation remedies and remedial actions regarding hazardous waste.

**Brief Description:** Exempting from taxation remedies and remedial actions taken regarding hazardous waste.

**Sponsors:** By House Committee on Agriculture & Ecology (originally sponsored by Representatives Chandler, Linville, Regala, Mastin, D. Schmidt, Grant, Veloria, Clements, Cody and Parlette).

**Brief History:**

**Committee Activity:**

Agriculture & Ecology: 2/24/97, 2/27/97 [DPS];  
Finance: 3/10/97 [DPS(AGEC)].

**Floor Activity:**

Passed House: 3/19/97, 96-1;  
Passed House: 1/16/98, 93-0.  
Senate Amended.

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### HOUSE COMMITTEE ON AGRICULTURE & ECOLOGY

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Chandler, Chairman; Parlette, Vice Chairman; Schoesler, Vice Chairman; Linville, Ranking Minority Member; Anderson, Assistant Ranking Minority Member; Cooper; Delvin; Koster; Mastin; Regala and Sump.

**Staff:** Rick Anderson (786-7114).

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### HOUSE COMMITTEE ON FINANCE

**Majority Report:** The substitute bill by Committee on Agriculture & Ecology be substituted therefor and the substitute bill do pass. Signed by 12 members: Representatives B. Thomas, Chairman; Carrell, Vice Chairman; Mulliken, Vice

Chairman; Boldt, Assistant Ranking Minority Member; Butler; Conway; Kastama; Morris; Pennington; Schoesler; Thompson and Van Luven.

**Minority Report:** Do not pass. Signed by 3 members: Representatives Dunshee, Ranking Minority Member; Dickerson, Assistant Ranking Minority Member; and Mason.

**Staff:** Rick Peterson (786-7150).

**Background:** The state Model Toxics Control Act, adopted as an initiative in 1988, requires the cleanup of contaminated sites. Sites with hazardous waste contamination must be reported to the Department of Ecology. The department must conduct an initial investigation of a known and reported site, followed by a site hazard assessment. If the result of the site hazard assessment shows that the site will require further cleanup action, the site is placed on the department's hazardous sites list.

At any point in the investigation and assessment process, a person may choose to conduct an independent cleanup without Department of Ecology oversight. When an independent cleanup is completed, the cleanup results must be reported to the Department of Ecology. Currently approximately 90 percent of site cleanups, mostly leaking underground storage tanks, are conducted independently.

Contractors and subcontractors conducting hazardous waste cleanup services perform a number of different activities at a cleanup site. These activities include site development such as excavation of uncontaminated soil, paving, and landscaping, and activities directly related to the cleanup, such as the removal of contaminated soil or water. Prior to 1989, some of these activities fell under one (B&O) tax rate, other activities at another B&O tax rate. In 1989, the Department of Revenue adopted a policy which exempts site cleanups from state sales tax on cleanup activities and provides a uniform B&O tax rate if certain conditions are met. However, the policy applies only to hazardous waste sites that have been placed on the Department of Ecology's hazardous sites list. Currently, businesses contracting for cleanups at a listed site are charged at the B&O tax rate for services at 1.83 percent but do not pay sales tax. Businesses contracting cleanups independently are charged at the lower B&O retailing rate of 0.471 percent but do pay sales tax.

**Summary of Bill:** All contracted hazardous waste cleanup activities are taxed uniformly. Hazardous waste cleanup activities are exempt from sales tax if the remediation is consistent with the state Model Toxics Control Act, or other applicable laws. Remediation activities includes services related to identification, investigation, or cleanup of hazardous substances, including asbestos removal when the removal is required under the Model Toxics Control Act.

The business and occupation tax rate for all businesses contracting environmental cleanup actions is set at the rate of 0.471 percent. The owner of a property that is subject to an environmental remedial action must send written notification to the Department of Ecology and to persons who provided subcontracted services related to the cleanup.

**EFFECT OF SENATE AMENDMENT(S):** The exemption from retail sales taxation provided for labor and services for environmental remedial actions and setting at 0.471 percent the B&O tax rate for income from environmental remedial actions now apply only until July 1, 2003.

The "environmental remedial actions" that qualify for the tax exemption and reduction are specified. They are: actions conducted, supervised, or ordered by the Department of Ecology (DOE) under the Model Toxics Control Act as well as those that are, on the whole, substantially equivalent to such actions; and actions conducted under the supervision or order of the U.S. Environmental Protection Agency or that are consistent the national contingency plan adopted under the federal Comprehensive Environmental Response Compensation and Liability Act and are conducted at facilities that are included on the national priorities list or that are subject to a removal action under the federal act.

The contents of the certification to be provided the DOE regarding the action are specified in greater detail, and this information must also be provided to the Department of Revenue (DOR). It must now include statements certifying that the action qualifies as an environmental remedial action and certain statements and confirmations of licensed professional engineers, storage tank service supervisors, or environmental professionals. The DOR must confirm receipt of a certification within 30 days. The owner of the site must provide a copy of the confirmation (rather than the certification notification) to each person who takes environmental remedial actions at the site, and each such person must state the charges for the labor and services for the action.

When the remedial action is completed, the owner must submit to the DOE a report documenting the remedial actions taken and their compliance with the Model Toxics Control Act.

A person who falsifies or misrepresents statements in a certification is subject to penalties that may be levied for violations of the statutes regulating engineers and surveyors, the statutes regulating underground storage tanks, or the statutes regarding false or misleading statements knowingly made to a public servant. In addition to other taxes or penalties, a person who improperly reports the person's tax class must be assessed a penalty of 50 percent of the tax due plus interest. The DOR must waive the penalty if it finds the misreporting was due to circumstances beyond the control of the person filing it.

**Appropriation:** None.

**Fiscal Note:** Available. New fiscal note requested on March 11, 1997.

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

**Testimony For:** (Agriculture & Ecology) This bill is one of two bills recommended by the Model Toxics Control Act Policy Advisory Committee. There was broad support for this bill in the Policy Advisory Committee. The current tax policy for hazardous waste cleanup is discriminatory. This bill will treat all parties uniformly. A clear distinction between remediation activities and site development activities is needed.

(Finance) Under the current tax situation the owner of a cleanup site pays a higher tax on the cleanup activity if they clean up right away. The lower tax is available if the owner waits to be put on the designated list. Waiting may allow the contamination to spread. The tax system should not encourage delayed cleanup. This uniform tax treatment is a recommendation of the Model Toxics Control Act Advisory Committee.

**Testimony Against:** (Agriculture & Ecology) None.

(Finance) None.

**Testified:** (Agriculture & Ecology) Mary Burg, Department of Ecology (pro); Jerry Smedes, Washington Environmental Industry Association (pro); Eric Johnson, Washington Public Ports Association (pro); and Anne Solwick, Department of Revenue (neutral).

(Finance) Representative Chandler, prime sponsor; and Dr. Jerry Smedes, Washington Environmental Industry Association.