

# HOUSE BILL REPORT

## ESB 7900

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### As Reported By House Committee On: Agriculture & Ecology

**Title:** An act relating to implementing the model toxics control act policy advisory committee recommendations.

**Brief Description:** Implementing the model toxics control act policy advisory committee recommendations (Introduced with House sponsors).

**Sponsors:** Senators Swecker, Fraser, Anderson, Rasmussen, Zarelli, Oke, Goings, Morton, Haugen, Hale, Spanel, Rossi, Johnson, Schow, Kohl, Sellar, Franklin, Horn, Kline, McAuliffe and Winsley.

**Brief History:**

**Committee Activity:**

Agriculture & Ecology: 4/2/97, 4/3/97 [DP].

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### HOUSE COMMITTEE ON AGRICULTURE & ECOLOGY

**Majority Report:** Do pass. Signed by 10 members: Representatives Chandler, Chairman; Parlette, Vice Chairman; Linville, Ranking Minority Member; Anderson, Assistant Ranking Minority Member; Cooper; Delvin; Koster; Mastin; Regala and Sump.

**Minority Report:** Do not pass. Signed by 1 member: Representative Schoesler, Vice Chairman.

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

**Background:** The Model Toxic Control Act (MTCA) was adopted through the initiative process in 1988. In 1995, the Legislature created the MTCA Policy Advisory Committee to review implementation of the MTCA and make recommendations to the Department of Ecology (DOE) and to the Legislature. The committee submitted its report in December 1996.

**Liability:** Under the MTCA, the owner of a contaminated site, the owner at the time of waste disposal, and any person generating or transporting the hazardous waste may be jointly or severally liable for the costs of site cleanup. The DOE currently has a policy of nonenforcement against owners of a property that overlies a contaminated

groundwater plume, if the property is not a source of contamination and the property owner has not contributed to the contamination. However, there is no exemption from liability in current law.

Settlement Agreements: Potentially liable persons may settle their liability with the state if their contribution to the site contamination is insignificant in amount and toxicity, or if the persons are not currently liable and are proposing to purchase or redevelop a contaminated site. The settlement agreement may include a covenant not to sue, which precludes future enforcement of the MTCA against the settling party. If the property is subsequently transferred, the covenant not to sue is not automatically transferred to the new owner.

In addition, settlement with a person proposing to purchase or redevelop a contaminated site must provide a "substantial public benefit." The committee found that this requirement may unreasonably limit the availability of prospective purchaser agreements and discourage redevelopment of industrial lands.

Independent Remedial Action: Currently approximately 90 percent of sites are cleaned up independent of the DOE oversight. The majority of these cleanups are for underground storage tanks. If a property owner chooses to do an independent cleanup, the results of the cleanup must be reported to the DOE within 90 days. The DOE may require further remedial action if the cleanup is found to be inadequate. The MCTA Policy Advisory Committee found that owners conducting independent cleanups would benefit from technical assistance and guidance from the DOE site manager. This technical assistance is not currently authorized in current law.

Public Participation: One percent of the money deposited in the state and local toxics control accounts is allocated for public participation grants. The grants are limited to \$50,000.

**Summary of Bill:** The bill implements four of the MCTA Policy Advisory Committee recommendations.

Liability: The owner of a site that overlies a plume of contaminated groundwater is not held liable for the contamination. To be eligible for this exemption, an owner must demonstrate that hazardous substances used on the site have not contributed to the contamination, and agree to allow access to the property and not to interfere with cleanup of the contaminated groundwater.

Independent Remedial Action: The DOE is directed to provide site specific informal advice and assistance to persons conducting independent remedial actions. Assistance may include opinions on whether remedial action is necessary. The DOE may collect a fee to recover the costs incurred in providing advice and assistance. The DOE cannot be held liable for the advice it offers.

Settlement Agreements: A settlement agreement may be transferred to a subsequent owner of the property unless the agreement is based on circumstances unique to the settling party. For agreements entered into before the effective date of this act, the settling party may request an opinion from the attorney general on whether unique circumstances exist which would limit the transferability of the agreement. A settlement is not required to provide a substantial public benefit but the attorney general may give priority to settlements that provide a substantial public benefit. A public hearing is required prior to entering a settlement agreement with a potentially liable person if at least 10 people request one, or if the DOE determines a hearing is necessary.

Public Participation: Grants for public participation are not to exceed \$60,000. The director of the DOE may adjust this amount annually to account for inflation.

**Appropriation:** None.

**Fiscal Note:** Available.

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

**Testimony For:** The bill implements recommendations of the MTCA Policy Advisory Committee. The committee worked for two years on these recommendations and reached broad consensus on most of the issues. The DOE will be reconvening the committee to review the DOE's proposed rules to implement the committee's recommendations.

**Testimony Against:** None.

**Testified:** Dan Ballback, MCTA Policy Advisory Committee; Mary Burg, Department of Ecology, MCTA Policy Advisory Committee; and Jerry Smedes, Washington Environmental Industry Association, MCTA Policy Advisory Committee (in favor).