

# ANALYSIS OF ESB 7900

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House Agriculture & Ecology Committee  
1997

April 2,

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## **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 MTCA and make recommendations to the Department of Ecology (DOE) and to the Legislature. The Policy Advising Committee submitted its report in December, 1996.*

*Liability: Under 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 the statute.*

*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 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 Policy Advisory Committee found that this requirement may unreasonably limit the availability of prospective purchaser agreements and discourage brownfields redevelopment.*

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

***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:**

*The bill implements four of the MCTA Policy Advisors 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. (Section 2).

***Independent Remedial Action:*** The DOE is directed to provide 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. Where appropriate, costs may be waived to support public participation. (Section 3).

***Settlement Agreements:*** A consent decree, such as a covenant not to sue, may be transferred to a subsequent owner of the property unless the consent decree is based on circumstances unique to the settling party. For consent decrees entered before the date of the act, the settling party may request an opinion from the Attorney General on whether unique circumstances exist which would limit the transferability of the consent decree. The requirement that settlement provide a substantial public benefit is deleted. The Attorney General may give priority to settlements that provide a substantial public benefit. (Section 4)

***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. (Section 5).

*A public hearing is required prior to entering a settlement agreement with a potentially liable person if at least 10 people request one, or the DOE determines a hearing is necessary. (Section 4).*