

SENATE BILL REPORT

SHB 2051

As Reported By Senate Committee On:
Agriculture & Environment, February 18, 1998
Ways & Means, February 27, 1998

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

Brief Description: Exempting environmental remedial services, labor, and businesses from taxation.

Sponsors: 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 & Environment: 4/1/97 [DP-WM]; 2/18/98 [DPA-WM].
Ways & Means: 2/26/98, 2/27/98 [DPA].

SENATE COMMITTEE ON AGRICULTURE & ENVIRONMENT

Majority Report: Do pass as amended and be referred to Committee on Ways & Means.
Signed by Senators Morton, Chair; Swecker, Vice Chair; Fraser, McAuliffe, Newhouse, Oke and Rasmussen.

Staff: Kari Guy (786-7437)

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: Do pass as amended.

Signed by Senators West, Chair; Deccio, Vice Chair; Strannigan, Vice Chair; Fraser, Hochstatter, Kohl, Long, Loveland, Rossi, Schow, B. Sheldon, Spanel, Thibaudeau and Zarelli.

Staff: Terry Wilson (786-7433)

Background: The state Model Toxics Control Act (MTCA), 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 will conduct an initial investigation, 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 will be placed on the 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. Approximately 90 percent of site cleanups, mostly leaking underground storage tanks, are conducted independently.

Because the cleaning of real and personal property is a retail sale, businesses conducting cleanups independently are subject to the retailing business and occupation (B&O) tax at the rate of 0.471 percent. The entire contract, which includes materials, labor, and services, is subject to the sales tax. The state sales tax is 6.5 percent, and local sales taxes can add another 2.2 percent.

In 1989, the Department of Revenue adopted a policy stating that the tax laws of the state should be administered in such a manner as to encourage and facilitate rapid site cleanup. The department ruled that businesses conducting cleanups at listed sites according to state and federal laws on the cleanup of contaminated sites are performing a service because the contract involves more than cleaning property. As a result, businesses conducting cleanups at listed sites are subject to the B&O tax at the services rate of 1.75 percent (1.50 percent July 1, 1998). Because the activity is a service and not a retail sale, no sales tax is imposed on the contract. However, the business performing the service is considered the consumer of materials incorporated into the project and pays the sales tax on the materials when purchased.

In 1996, the Legislature modified the taxation of hazardous waste cleanup at sites belonging to the federal government (Hanford). These activities are a service and not subject to sales tax. As such, the business performing the service pays sales tax on materials incorporated into the project. However, a special B&O service tax rate was provided equal to the retailing rate of 0.471 percent.

The following chart summarizes the current taxation of hazardous waste sites.

	Independent Cleanups	MTCA/Superfund Cleanups	Hanford Site
Retail sale	Yes	No - Service	No - Service
B&O Tax	0.471% (Retailing)	1.5% (Service)	0.471% (New class)
Sales Tax	Materials & Labor (Paid by Consumer)	Materials (Paid by Contractor)	Materials (Paid by Contractor)

Summary of Amended Bill: Hazardous waste site cleanups are taxed in the same manner as hazardous waste site cleanups for the federal government. The contract is not subject to the sales tax but the business performing the service must pay sales tax on materials incorporated into the project. The B&O tax rate for any person in the business of hazardous waste site cleanup is reduced to 0.471 percent. The site cleanup must be conducted consistent with the state Model Toxics Control Act or federal hazardous waste cleanup laws.

To qualify for the special tax treatment, the owner of a site must submit certification containing the location of the site, the name and address of a contact person, a statement that the proposed cleanup is consistent with state and federal hazardous waste laws, and a description of the proposed cleanup actions to be taken. The owner must also provide a certification from a professional engineer that confirms the activities to be conducted at the site.

The Department of Revenue must respond to the site owner within 30 days confirming receipt of the certification. The owner must then provide a copy of the confirmation to each person who conducts cleanup activities at the site.

When the cleanup is complete, the owner must submit a report documenting the site cleanup and compliance with the Model Toxics Control Act to the Department of Ecology.

The special tax treatment provided by the bill expires July 1, 2003.

Agriculture & Environment Amendment Compared to Substitute Bill: The committee amendment expands the certification process for determining when a site is undergoing site cleanup to confirm that a business is eligible for the special tax treatment. The amendment adds an expiration date for the changes.

Ways & Means Amendment Compared to Agriculture & Environment Amendment: The Ways & Means Committee amendment contains all the changes of the Agriculture & Environment Committee amendment except the expiration dates are changed from June 30, 2003, to July 1, 2003, and the definition of environmental remedial action is clarified.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For (Agriculture & Environment): This bill will create a level playing field for all hazardous waste site cleanups, and speed cleanup of brownfield areas. The language related to certification in the striking amendment will simplify the process, and ensure the process is not abused.

Testimony Against (Agriculture & Environment): None.

Testified (Agriculture & Environment): Scott Hazlegrove, AWB (pro); Jerry Smedes, Smedes & Associates (pro); Mary Burg, Dept. of Ecology (pro); Anne Solwick, Dept of Revenue.

Testimony For (Ways & Means): The 1995 policy advisory committee determined the best way to cleanup sites. This is one of the recommendations that fixes the inequality that you are penalized for cleaning up before you are put on a site list. The fiscal note assumes that everyone will go through the certification process to qualify for the tax exemption. This is a good incentive for a good environment. This is important for pollution control liability

programs of the Pollution Liability Insurance Agency which would have save a substantial amount of money if this bill becomes law.

Testimony Against (Ways & Means): None.

Testified (Ways & Means): PRO: Jerry Smedes, NW Environmental Business Council; Scott Hazelgrove, AWB; Ian McGowan, Kaiser Aluminum; Jim Sims; Pollution Liability Insurance Agency; Charlie Brown, Washington Oil Marketers Association.