

SENATE BILL REPORT

ESB 7900

As Passed Senate, March 18, 1997

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 & Environment: 2/19/97 [DPA-WM].

Ways & Means: 3/6/97 [DPA (AE)].

Passed Senate, 3/18/97, 46-0.

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 by Committee on Agriculture & Environment.
Signed by Senators West, Chair; Strannigan, Vice Chair; Bauer, Brown, Hochstatter, Kohl, Long, Loveland, McDonald, Roach, Rossi, Sheldon, Snyder, Spanel, Swecker, Thibaudeau, Winsley and Zarelli.

Staff: Cathy Baker (786-7708)

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 and to the Legislature. The legislative recommendations address a number of provisions in the Model Toxics Control Act.

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 Department of Ecology currently has a policy of nonenforcement against owners of a property that overlies a contaminated ground-

water 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. This may create a disincentive for the sale or redevelopment of a site which has been subject to a remedial action.

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 Department of Ecology 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 Department of Ecology within 90 days. Ecology may require further remedial action if the cleanup is found to be inadequate. Under the Independent Remedial Action Program, the Department of Ecology will review the results of an independent cleanup for a fee. Once the review is complete, if the cleanup is satisfactory, the department will provide the owner with a written determination of no further action, which can benefit the owners at the time of property transfer or redevelopment. The Policy Advisory Committee found that all owners conducting independent cleanups would benefit from technical assistance and guidance from an experienced Department of Ecology 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 of Bill: 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.

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 purpose of allowing a settlement agreement with a person proposing to purchase or redevelop a contaminated property is to promote the cleanup and reuse of vacant commercial

or industrial property. Since the state does not have adequate resources to participate in all property transactions involving contaminated property, the Attorney General may give priority to settlements that provide a substantial public benefit.

Independent Remedial Action: The Department of Ecology is directed to provide advice and assistance to persons conducting independent remedial actions. Assistance may include opinions on whether remedial action is necessary. The Department of Ecology may collect the costs incurred in providing advice and assistance. Where appropriate, costs may be waived to support public participation.

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

A public hearing is required prior to entering a settlement agreement with a potentially liable person if at least ten people request one, or the Department of Ecology determines a hearing is necessary.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For (Agriculture & Environment): The Policy Advisory Committee worked for 18 months in reviewing implementation of the Model Toxics Control Act. This resulting bill makes a number of important changes to the act to accomplish better, faster, and cheaper cleanups. The increased technical assistance will assure more effective site cleanups. Provisions in this bill will further the goals of brownfields redevelopment.

Testimony Against (Agriculture & Environment): None.

Testified (Agriculture & Environment): PRO: Dan Ballbach, Landau Association, Inc.; Mary Burg, Ecology; Sharon Metcalf, Seattle/Assoc. WA Cities; Taryn McCain, The Boeing Company; Jerry Smedes, WA Envir. Ind. Association; Eric Johnson, WA Public Ports Association; Rod Brown, WA Environmental Council.

Testimony For (Ways & Means): The Policy Advisory Committee worked for 18 months in reviewing implementation of the Model Toxics Control Act. This resulting bill makes a number of important changes to the act to accomplish better, faster, and cheaper cleanups. The increased technical assistance will assure more effective site cleanups.

Testimony Against (Ways & Means): None.

Testified (Ways & Means): Senator Swecker, prime sponsor (pro); Mary Burg, Department of Ecology (pro); Jerry Smedes, WA Environmental Industry Assn. (pro); Eric Johnson, WA Public Ports Assn. (pro); Scott Merriman, WA Environmental Council (pro).

House Amendment(s): The Department of Ecology may not adjust the level of the public participation grants to account for inflation.

