

# FINAL BILL REPORT

## SB 5421

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**C 104 L 07**  
Synopsis as Enacted

**Brief Description:** Concerning environmental covenants.

**Sponsors:** Senators Fraser, Morton, Poulsen, Swecker, Marr, Regala, Rockefeller, Pridemore, Oemig, Honeyford, Rasmussen, Shin, Kohl-Welles and Kline.

**Senate Committee on Water, Energy & Telecommunications**

**Senate Committee on Ways & Means**

**House Committee on Judiciary**

**House Committee on Appropriations**

**Background:** Following cleanup operations, federal and state toxic cleanup agencies sometimes impose "institutional controls" upon contaminated land to protect people and the environment from exposure to residual contamination. One type of institutional control, an "environmental covenant," is a legally-enforceable land use restriction that is intended to "run with the land"— i.e., apply to the original covenanting landowner and all succeeding landowners. The Department of Ecology (DOE) has imposed environmental covenants in its cleanups of contaminated land pursuant to the state Model Toxics Control Act.

Concern has been raised that certain common law restrictions may invalidate environmental covenants when contaminated land is sold. Other concerns have been raised about enforcement of environmental covenants.

In 2003, the National Conference of Commissioners on Uniform State Laws (NCCUSL), an advisory body made up of legal experts in various fields, proposed a uniform state law, the Uniform Environmental Covenants Act (UECA), to address these concerns and clarify current law. As of January 2007, 15 states have enacted UECA.

**Summary:** The Uniform Environmental Covenants Act (UECA) is enacted, with modifications and adaptations to Washington law. UECA establishes requirements for a land use restriction or control, an "environmental covenant," to control future use of contaminated land.

Under UECA, environmental covenants:

- are defined as restrictions under environmental response projects that impose activity and use limitations;
- must include property descriptions, use limitations, and parties with enforcement authority, and be recorded in county recording offices;
- must be signed by DOE or the federal Environmental Protection Agency (EPA), whichever has jurisdiction;
- will "run with the land" and remain valid, protected from possible invalidation under common law doctrines;

- may not allow uses prohibited by zoning or other land use laws—they may, however, impose more stringent restraints;
- are perpetual in duration unless otherwise stated in the covenant, or unless terminated or modified pursuant to specified procedures;
- may be enforced by DOE or EPA (whichever has jurisdiction), parties to the covenant and other specified parties;
- will be individually identified in an on-line covenant registry maintained by DOE, with information about where to find complete texts in county recording offices.

DOE will periodically review and, if necessary, enforce the environmental covenants it imposes as part of its cleanups of contaminated land under the state Model Toxics Control Act.

**Votes on Final Passage:**

Senate	46	1
House	84	13

**Effective:** July 22, 2007