

# SENATE BILL REPORT

## SHB 1290

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As Passed Senate, April 12, 2019

**Title:** An act relating to reviews of voluntary cleanups.

**Brief Description:** Concerning reviews of voluntary cleanups.

**Sponsors:** House Committee on Environment & Energy (originally sponsored by Representatives Peterson, Barkis, Robinson, Lekanoff, Maycumber and Pollet; by request of Department of Ecology).

**Brief History:** Passed House: 3/07/19, 98-0.

**Committee Activity:** Environment, Energy & Technology: 3/14/19, 3/21/19 [DP-WM].  
Ways & Means: 3/28/19, 4/09/19 [DP].

**Floor Activity:**

Passed Senate: 4/12/19, 47-0.

### Brief Summary of Bill

- Authorizes the Department of Ecology (DOE) to establish an expedited review process for independent remedial actions, and waive costs for cleaning up properties for affordable housing.
- Requires persons requesting an expedited review to cover all costs for DOE's assistance.

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### SENATE COMMITTEE ON ENVIRONMENT, ENERGY & TECHNOLOGY

**Majority Report:** Do pass and be referred to Committee on Ways & Means.

Signed by Senators Carlyle, Chair; Palumbo, Vice Chair; Fortunato, Assistant Ranking Member, Environment; Sheldon, Assistant Ranking Member, Energy & Technology; Billig, Brown, Das, Hobbs, Lias, McCoy, Nguyen, Short and Wellman.

**Staff:** Jan Odano (786-7486)

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### SENATE COMMITTEE ON WAYS & MEANS

**Majority Report:** Do pass.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

Signed by Senators Rolfes, Chair; Frockt, Vice Chair, Operating, Capital Lead; Mullet, Capital Budget Cabinet; Braun, Ranking Member; Brown, Assistant Ranking Member, Operating; Honeyford, Assistant Ranking Member, Capital; Bailey, Becker, Billig, Carlyle, Conway, Darneille, Hasegawa, Hunt, Keiser, Liias, Palumbo, Pedersen, Rivers, Schoesler, Van De Wege, Wagoner and Warnick.

**Staff:** Jed Herman (786-7346)

**Background:** Washington State's Model Toxics Control Act (MTCA) is carried out by DOE to ensure cleanup of sites where hazardous substances have been released. MTCA is funded by a 0.7 percent tax on the wholesale value of hazardous substances, cost recovery from remedial actions, mixed waste fees, and to a lesser extent fines, penalties, and other charges. In addition to cost recovery, DOE may place a lien on property where the state has not recovered its costs for remedial actions.

Under MTCA, DOE is directed to investigate, conduct remedial actions, enforce actions to protect human health, and provide technical and administrative assistance. Hazardous waste sites are ranked by considering the amount and type of contamination, the risk the contamination will spread, and routes of exposure. Liable parties must clean up sites contaminated with hazardous materials. A potentially liable person includes a current or past facility owner or operator, or someone who owned the hazardous substance and arranged for its disposal or treatment or transport. When there is more than one potentially liable person, each person is jointly and severally liable for cleanup at the site.

In general, a person may cleanup a site with or without supervision by DOE. DOE supervises remedial actions under a formal cleanup process for consent decrees with settlement of liability, agreed orders, and enforcement orders. In addition, a property owner may choose to independently cleanup without any supervision or consultation by DOE. The property owner determines the clean up schedule, as well as the scope and extent of the cleanup. However, DOE will not provide an opinion on the sufficiency of the clean up. Independent cleanups do not require public notice.

As with an independent cleanup under the Voluntary Cleanup Program, the property owner determines the clean up schedule, as well as the scope and extent of the cleanup. A property owner may request technical assistance and an opinion on the sufficiency of the cleanup from DOE. DOE may provide written opinions on whether the independent remedial action meet cleanup requirements or if further action is needed. DOE is not precluded from issuing a written opinion for any portion of property where the remedial action is occurring, however it must include an opinion of the status of the entire property. The advice and assistance provided is not binding on DOE, and the state, DOE, and employees of the state are immune from all liability.

DOE may collect all costs incurred from persons requesting advice and assistance and may waive the costs to support technical assistance for public participation.

**Summary of Bill:** DOE is authorized to provide an expedited process for persons conducting independent remedial action. Persons requesting assistance are required to cover

all costs incurred by DOE. DOE must establish performance measures and track the number of requests and progress of reviews of planned or completed remedial actions.

DOE may use a cost recovery or fee structure, or both, to collect its costs and may establish a separate fee and cost recovery structure for providing expedited advice and assistance. The fees may be calculated on the complexity of the contaminated site and other site-specific factors, as determined by DOE.

Costs may be waived for remediation of contaminated properties for development of affordable housing after considering the requestor's ability to pay and the potential public benefit of the development. DOE may file a lien against the property to ensure the property is being used for affordable housing.

The Voluntary Cleanup Account is created to receive all fees collected and costs recovered when providing assistance and advice for independent remedial actions.

DOE may adopt rules to implement the program, however the rulemaking must not delay implementation of independent remedial actions.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

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

**Staff Summary of Public Testimony (Environment, Energy & Technology):** PRO: The bill makes two changes to the voluntary cleanup program, which plays a critical role to get cleanup done in the state. Under the program, property owners can get assistance with their cleanups and written opinions about the cleanups. The changes were developed in partnership with the real estate development community to help solve the capacity issue and reduce demand on MTCA funding. It also addresses the critical need for affordable housing. This allows the project applicant, if they meet certain conditions, to pay for an expedited process yet leaves the current program in place for those who do not want to pay up front. This has been an excellent example of agency and industry cooperation. This bill is good for the environment and economy, and will help cleanup of contaminated property get back into productive use quickly.

**Persons Testifying (Environment, Energy & Technology):** PRO: Michael Feldcamp, Department of Ecology; Greg Hanon, NAIOP; Jerry VanderWood, Associated General Contractors.

**Persons Signed In To Testify But Not Testifying (Environment, Energy & Technology):** No one.

**Staff Summary of Public Testimony (Ways & Means):** PRO: DOE supports this legislation. The bill was developed in collaboration with land developers. The bill will reduce the dependence on tax revenue for cleanups.

**Persons Testifying (Ways & Means):** PRO: Angie Wirkkala, Department of Ecology.

**Persons Signed In To Testify But Not Testifying (Ways & Means):** No one.