

# HOUSE BILL REPORT

## ESSB 6123

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As Passed House - Amended  
March 4, 1994

**Title:** An act relating to authority of the state under the model toxics control act.

**Brief Description:** Modifying provisions of the model toxics control act.

**Sponsors:** Senate Committee on Ecology & Parks (originally sponsored by Senators Fraser, Deccio, Amondson, Loveland, Snyder, Sellar, Skratek, Pelz and Winsley).

**Brief History:**

Reported by House Committee on:

Environmental Affairs, February 24, 1994, DPA.

Passed House - Amended, March 4, 1994, 97-0.

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### HOUSE COMMITTEE ON ENVIRONMENTAL AFFAIRS

**Majority Report:** Do pass as amended. Signed by 13 members: Representatives Rust, Chair; Flemming, Vice Chair; Horn, Ranking Minority Member; Bray; Edmondson; Foreman; Hansen; Holm; L. Johnson; J. Kohl; Linville; Roland and Sheahan.

**Minority Report:** Do not pass. Signed by 1 member: Representative Van Luven, Assistant Ranking Minority Member.

**Staff:** Rick Anderson (786-7114).

**Background:** In 1991 the Department of Ecology adopted rules to establish cleanup standards for hazardous wastes sites identified under the Model Toxics Control Act. These rules, in part, established cleanup standards specifically for industrial sites. The industrial cleanup standards are less stringent than other cleanup standards but must contain restrictions on access to the area. These restrictions are known as "institutional controls" and include such measures as posting signs, fencing and establishing deed restrictions to ensure the land remains in industrial use. The Model Toxics Control Act does not specifically authorize deed restrictions on the future use of the land. The rules also state that the industrial cleanup standards will only apply to sites "located within a limited number of large industrial areas."

Extremely hazardous and dangerous wastes are designated by rule by the Department of Ecology. These designations may be more stringent than those wastes designated as hazardous wastes by the federal government. In hazardous waste site cleanups, soils excavated at the site may be subject not only to the cleanup standards and procedures under the Model Toxics Control Act, but also to the management and standards of the state's hazardous waste laws.

Current law states that extremely hazardous waste may only be disposed of in a site designated by the Department of Ecology. As there is no site designated to accept these wastes, the disposal of extremely hazardous waste is prohibited in this state.

Under the Model Toxics Control Act, the Attorney General may agree to a settlement with any potentially liable person if the agreement would lead to a more expeditious cleanup. The settlement agreement may contain an agreement that the state will not sue the person who agrees to clean up all or a portion of a site but the state reserves the right to sue if it makes a future discovery that the site still poses a threat to human health or the environment. A person who makes a settlement agreement with the state cannot be sued by other potentially liable parties. The Model Toxics Control Act does not explicitly authorize settlement agreements with prospective purchasers.

**Summary of Bill:** The department may enter into prospective purchaser settlements with persons who propose to purchase and redevelop a facility and are not currently liable for remedial action. Criteria are established to qualify for a prospective purchaser agreement. The settlement must include a cleanup plan, be in the public interest, expedite remedial action and not increase health risks to people in the vicinity of the site.

The department is directed to apply industrial cleanup standards at industrial sites. In counties planning under the Growth Management Act, industrial properties are defined as properties zoned for industrial use by a city or county. In counties not planning under the Growth Management Act, industrial properties must be zoned for industrial use and be adjacent to existing industrial areas.

The term "agreed orders" is defined. Agreed orders may be used for site cleanups but do not provide protection from lawsuit nor eligibility for public funding. The department is given explicit statutory authority to enter into and enforce agreed orders that contain permanent deed restrictions or other institutional controls.

Dangerous or extremely hazardous waste generated during a site cleanup is to be managed as a solid waste if the waste is not a hazardous waste under federal law, the cleanup is part of a settlement agreement, and the cleanup is protective of human health and the environment. The prohibition against disposing of extremely hazardous waste does not apply to extremely hazardous waste when the waste is left on the cleanup site as required under the conditions of a settlement agreement. City and county authority to condition or prohibit hazardous wastes entering a municipal solid waste landfill are not affected by the provisions of the bill.

**Fiscal Note:** Available on original bill.

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

**Testimony For:** The bill expedites cleanups on industrial land in a way that protects human health and the environment. It is safe to send waste that is designated as hazardous under state law but not federal law to state landfills if a number of conditions are met.

**Testimony Against:** None.

**Witnesses:** Senator Karen Fraser, prime sponsor; Eric Johnson, Washington Public Ports Association (pro); Tom Newlon, Port of Seattle (pro); Pete Kmet, Department of Ecology (pro); Chris Parsons, Washington Environmentalist Council; Doris Cellarius, Sierra Club; Paul Parker, Washington State Association of Counties (pro); Kris Backes, Association of Washington Business (pro); and Ernie Olmsted, Truck City Truck Stop.