

# SENATE BILL REPORT

## SB 5051

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As Reported by Senate Committee On:  
Environment, Water & Energy, February 21, 2011

**Title:** An act relating to public notice of proposed settlements of environmental and public health enforcement actions.

**Brief Description:** Concerning public notice of proposed settlements of environmental and public health enforcement actions.

**Sponsors:** Senators Kline, Rockefeller, Nelson, Keiser, Ranker and Chase.

**Brief History:**

**Committee Activity:** Environment, Water & Energy: 1/25/11, 2/21/11 [DPS, DNP].

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### SENATE COMMITTEE ON ENVIRONMENT, WATER & ENERGY

**Majority Report:** That Substitute Senate Bill No. 5051 be substituted therefor, and the substitute bill do pass.

Signed by Senators Rockefeller, Chair; Nelson, Vice Chair; Chase, Fraser and Ranker.

**Minority Report:** Do not pass.

Signed by Senators Honeyford, Ranking Minority Member; Delvin, Holmquist Newbry and Morton.

**Staff:** Sam Thompson (786-7413)

**Background:** The state Model Toxics Control Act (MTCA), an initiative approved by voters in 1988, established procedures for requiring potentially liable persons to clean up hazardous waste sites. A provision in MTCA requires the Department of Ecology (Ecology) to provide the public with both notice of, and an opportunity to comment upon proposed settlements of enforcement actions against potentially liable persons. Ecology must hold a public hearing on a proposed settlement if at least ten persons request one or if Ecology determines that a hearing is necessary.

While MTCA's requirements regarding proposed settlements of enforcement actions are unusual in Washington law, other states have adopted similar requirements in varied environmental and public health laws, and federal agencies must provide public notice and opportunity to comment upon proposed settlements in actions to enforce several federal laws,

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including the Clean Air Act and the Comprehensive Environmental Response, Compensation, and Liability Act.

In Washington, settlements that have been entered into by state and local agencies are subject to disclosure under the state Public Records Act. *Yakima Newspapers, Inc. v. City of Yakima*, 77 Wn.App. 319, 890 P.2d 544 (1995).

**Summary of Bill (Recommended Substitute):** The following state agencies must, within ten days of settling a civil action they have instituted to enforce certain laws, implementing rules, and related permits (standards), post the settlement on their Internet site:

- Ecology in actions to enforce standards concerning air pollution, solid waste, municipal sewage sludge, hazardous waste, vessel oil spill prevention and response, surface and groundwater use, reclaimed water use, water pollution, oil and hazardous substance spill prevention and response, and underground storage tanks;
- Department of Agriculture in actions to enforce pesticide control and dairy nutrient management standards;
- Department of Health in actions to enforce on-site sewage disposal and public water system standards;
- Department of Natural Resources in actions to enforce Forest Practices Act standards; and
- Department of Fish and Wildlife in actions to enforce hydraulic permit standards.

A settlement is defined as an agreement partially or entirely resolving liability of an alleged violator.

**EFFECT OF CHANGES MADE BY ENVIRONMENT, WATER & ENERGY COMMITTEE (Recommended Substitute):** Provisions are deleted that require public notice and opportunity to comment upon proposed settlements of civil actions by state agencies, regional air authorities, counties, cities, and local health agencies to enforce several environmental and public health laws. Instead, the following state agencies must, within ten days of settling a civil action they have instituted to enforce certain laws, implementing rules, and related permits (standards), post the settlement on their Internet site:

- Ecology in actions to enforce standards concerning: air pollution; solid waste; municipal sewage sludge; hazardous waste; vessel oil spill prevention and response; surface and groundwater use; reclaimed water use; water pollution; oil and hazardous substance spill prevention and response; and underground storage tanks;
- Department of Agriculture in actions to enforce pesticide control and dairy nutrient management standards;
- Department of Health in actions to enforce on-site sewage disposal and public water system standards;
- Department of Natural Resources in actions to enforce Forest Practices Act standards; and
- Department of Fish and Wildlife in actions to enforce hydraulic permit standards.

A settlement is defined as an agreement partially or entirely resolving liability of an alleged violator.

**Appropriation:** None.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** No.

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

**Staff Summary of Public Testimony on Original Bill:** PRO: The affected public should be provided with notice of proposed settlements, facilitating input, and robust discussion. Notice and hearing costs should be minimal.

CON: This bill's requirements could prevent quick responses to solve public health problems. Public notice and hearing requirements will delay settlements and could potentially have a chilling effect on settlements; affected businesses and property owners will face uncertainty and higher costs. Costs to state and local government will be significant.

**Persons Testifying:** PRO: Senator Kline, prime sponsor.

CON: Denise Clifford, Department of Health; John Sherman, Tacoma-Pierce County Health; Karen Terwilliger, Ecology; Bill Stauffacher, American Forest & Paper Assn., Building Industry Assn. of WA; Steve Gano, Cal Portland Cement, Goodrich Aviation, Longview Fibre; Grant Nelson, Assn. of WA Business; Debra Munguia, WA Forest Protection Assn.; John Stuhlmiller, Washington Farm Bureau.