

# HOUSE BILL REPORT

## SHB 1290

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### As Passed Legislature

**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:**

##### **Committee Activity:**

Environment & Energy: 1/28/19, 1/31/19 [DPS];

Appropriations: 2/18/19, 2/20/19 [DPS(ENVI)].

##### **Floor Activity:**

Passed House: 3/7/19, 98-0.

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

Passed Legislature.

#### **Brief Summary of Substitute Bill**

- Authorizes the Department of Ecology (Ecology) to offer an expedited process for providing advice and assistance under the Model Toxics Control Act.
- Requires Ecology to collect its full costs incurred in connection with providing expedited advice and assistance.
- Authorizes Ecology to waive its advice and assistance costs when the owner of a property commits to developing the property for affordable housing.

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### HOUSE COMMITTEE ON ENVIRONMENT & ENERGY

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Fitzgibbon, Chair; Lekanoff, Vice Chair; DeBolt, Doglio, Fey, Mead, Peterson and Shewmake.

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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.*

**Minority Report:** Without recommendation. Signed by 2 members: Representatives Dye, Assistant Ranking Minority Member; Boehnke.

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

**Staff:** Robert Hatfield (786-7117).

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## HOUSE COMMITTEE ON APPROPRIATIONS

**Majority Report:** The substitute bill by Committee on Environment & Energy be substituted therefor and the substitute bill do pass. Signed by 32 members: Representatives Ormsby, Chair; Bergquist, 2nd Vice Chair; Robinson, 1st Vice Chair; Stokesbary, Ranking Minority Member; MacEwen, Assistant Ranking Minority Member; Rude, Assistant Ranking Minority Member; Caldier, Cody, Dolan, Dye, Fitzgibbon, Hansen, Hoff, Hudgins, Jinkins, Kraft, Macri, Mosbrucker, Pettigrew, Pollet, Ryu, Schmick, Senn, Springer, Stanford, Steele, Sullivan, Sutherland, Tarleton, Tharinger, Volz and Ybarra.

**Staff:** Dan Jones (786-7118).

### **Background:**

#### The Model Toxics Control Act.

The Model Toxics Control Act (MTCA) was enacted as a result of the passage of Initiative 97 in 1988. The stated primary purpose of the MTCA is raising "sufficient funds to clean up all hazardous waste sites and to prevent the creation of future hazards due to improper disposal of toxic wastes into the state's lands and waters." The MTCA also grants the Department of Ecology (Ecology) authority to develop rules and oversee the cleanups done by public and private entities throughout the state.

#### Hazardous Waste Sites.

A hazardous waste site under the MTCA is any site where Ecology has confirmed a release or a threatened release of a hazardous substance that requires remedial action. A site is defined by the nature and extent of contamination associated with one or more releases of hazardous substances. Contaminated sites on land are known as upland sites, and contaminated sites along waterways are known as sediment sites.

#### The Model Toxics Control Act Site Cleanup Process.

Cleanups of hazardous waste sites under the MTCA can be conducted in one of three general ways:

- independent cleanups, in which the property owner cleans up the property independently, either with or without Ecology consultation;
- Ecology-supervised cleanups, in which Ecology supervises a cleanup conducted by a potentially liable person under either an administrative order or a court-approved consent decree; or
- Ecology-conducted cleanups, in which Ecology conducts the cleanup under a state contract, such as when no potentially liable person can be identified, or when such persons are unable or unwilling to pay for the cleanup.

Independent Cleanups–Cleanup Without the Department of Ecology Consultation.

Under a non Ecology supervised cleanup, the property owner determines the cleanup schedule, as well as the scope and extent of the cleanup. However, Ecology will not provide an opinion on the sufficiency of the cleanup. Independent cleanups do not require public notice.

Independent Cleanups–Cleanup with Ecology Consultation.

As with an independent cleanup without Ecology consultation, the property owner determines the cleanup schedule, as well as the scope and extent of the cleanup. However, through the MTCA's Voluntary Cleanup Program, a property owner may request technical assistance and an opinion on the sufficiency of the cleanup from Ecology. The Department of Ecology is authorized to collect from property owners the costs Ecology incurred in providing advice and assistance, but Ecology must, where appropriate, waive collection of costs in order to provide an appropriate level of technical assistance in support of public participation. Based on the review, Ecology either issues a letter stating that the site needs no further action or identifies what additional work is needed.

**Summary of Substitute Bill:**

Expedited Process for Technical Assistance.

The Department of Ecology (Ecology) may offer an expedited process for providing informal advice and assistance. For requests for informal advice and assistance under the expedited process, Ecology must collect all costs incurred by Ecology in providing the advice and assistance. The Department of Ecology may establish conditions for requesting expedited advice and assistance. The Department of Ecology must track the length of time that elapses between the submission of a request for expedited assistance at a facility and the issuance of a letter on the sufficiency of the cleanup at the facility.

Waiver of Costs–Generally.

The Department of Ecology is authorized to waive costs for advice and assistance in the following general circumstances:

- for providing technical assistance in support of public participation;
- for providing written opinions on a cleanup that qualifies for and appropriately uses a model remedy; or
- based on a person's ability to pay.

If costs are waived, Ecology is authorized to file a lien against the real property for which Ecology has incurred the costs.

Waiver of Costs for Affordable Housing.

The Department of Ecology may waive collection of informal advice and assistance costs if the person requesting the assistance commits to remediate contaminated real property for development of affordable housing, as determined by Ecology. Prior to waiving costs, Ecology must consider the requestor's ability to pay and the public benefit of the development. To ensure the property is used for affordable housing, Ecology is authorized to file a lien against the property, require the person to record an interest in the real property, or use other means to ensure the property is used for affordable housing.

**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony (Environment & Energy):**

(In support) This bill would create a self-funding expedited review process and would waive review costs where affordable housing is built on the remediated property. The voluntary cleanup program plays a critical role in cleanup of hazardous sites because cleanups are often driven by redevelopment and sale. Opinion letters from the Department of Ecology (Ecology) are very important because without them, owners may not be able to sell the property. Over the last few years, supply has not kept up with the demand for voluntary cleanup assistance, which makes it difficult for projects that may be on short timetables. The bill also helps Ecology to assist other customers through the standard review process. Customers requesting expedited assistance would need to pay for the full cost of cleanup reviews. Those fees would go to a dedicated account, and staff providing expedited reviews would be paid out of those fees.

The bill also assists in providing affordable housing. Cleanup costs drive up the costs of affordable housing, so waiving Ecology assistance costs helps in the provision of affordable housing.

There have been property owners who have not been able to close on projects because the timeline for the voluntary cleanup program was too long for lenders. Those sites have remained unremediated and underutilized. Fixing the voluntary cleanup program would help the environment and the economy.

(Opposed) None.

**Staff Summary of Public Testimony (Appropriations):**

(In support) The changes to the Voluntary Cleanup Program (VCP) under the bill were developed in partnership with the real estate development community and would help the Department of Ecology reduce the backlog of projects needing VCP services and benefit projects working under tight timelines. The VCP would become less reliant on the State Toxics Control Account. The bill would help address the need for affordable housing by waiving fees for affordable housing projects. The new expedited process for the VCP was informed by best practices in other states and provides a good example of agency and industry cooperation.

(Opposed) None.

**Persons Testifying (Environment & Energy):** Representative Peterson, prime sponsor; Michael Feldcamp, Department of Ecology; Jerry VanderWood, Associated General

Contractors; Connie Sue Martin, Schwabe Williamson and Wyatt; and Greg Hannan, Commercial Real Estate Association.

**Persons Testifying** (Appropriations): Michael Feldcamp, Department of Ecology; and Greg Hanon, NAIOP.

**Persons Signed In To Testify But Not Testifying** (Environment & Energy): None.

**Persons Signed In To Testify But Not Testifying** (Appropriations): None.