SENATE BILL REPORT

SB 6232

AS REPORTED BY COMMITTEE ON ENVIRONMENT & NATURAL RESOURCES, FEBRUARY 5, 1992

Brief Description: Concerning the liability of municipalities that operate solid waste disposal facilities.

SPONSORS: Senators Rasmussen and Wojahn

SENATE COMMITTEE ON ENVIRONMENT & NATURAL RESOURCES

Majority Report: That Substitute Senate Bill No. 6232 be substituted therefor, and the substitute bill do pass.
Signed by Senators Metcalf, Chairman; Oke, Vice Chairman; Amondson, Barr, Conner, Owen, Snyder, and Sutherland.

Staff: Gary Wilburn (786-7453)

Hearing Dates: February 5, 1992

BACKGROUND:

Municipalities and private entities operate a variety of solid waste handling facilities in Washington, including landfills, incinerators, transfer stations, and other facilities for separation, processing and storage of waste and recyclable materials. In 1985 "minimum functional standards" were adopted for the siting and operation of solid waste facilities, addressing subjects such as required cover, liners, leachate collection, buffers from sensitive areas, monitoring, closure and post-closure, and standards for storage and transportation. In 1989 operators of landfills and incinerators were required to be certified by the state.

The minimum functional standards have led to closure of many landfills due to prohibitive costs for upgrade, and many more are operating under compliance schedules that will lead to closure in the near future.

In addition to these standards, local governments have adopted plans for the reduction of "moderate risk" waste, which is primarily household hazardous waste commonly disposed with solid waste collection. These programs seek to divert this waste for appropriate disposal through public education, local hazardous waste collection events, and inspection of waste at the landfill prior to disposal. Many closed landfills and several currently operating landfills have been found to contain large quantities of hazardous waste, with a varying composition of household and industrial waste, and are the subject of "superfund" and other hazardous waste cleanup activities.

As is the case for other landowners and owners of facilities operating on their land, the owners of solid waste disposal facilities may be liable for personal injury or property damage under a variety of tort theories developed by the courts. The most common theory, that of "negligence," requires that the injured party establish four elements: (1) that the law recognizes a standard of conduct owed under the circumstances for the protection against unreasonable risks; (2) that the actor failed to conform to this standard; (3) a reasonable close causal connection between the action and the injury; and (4) actual loss or damage. The second element, failure to conform to the standard of conduct recognized by the law, is commonly referred to as the "fault" element of negligence cases.

Over the centuries of the common law, the courts have determined that in some types of cases the element of "fault" need not be shown, and the actor should be "strictly liable" for the damage. The doctrine of strict liability has been extended to damage occurring due to abnormally dangerous conditions and activities. This line of cases is considered to have begun with an 1868 case in England, Rylands v. Fletcher, in which a neighboring owner's reservoir broke, leading to a flooding of the plaintiff's mine. In the United States, the doctrine has been extended to storage of water in large quantities, blasting, pile driving, explosives or inflammable liquids stored in quantity in the midst of a city, and similar activities considered to be unusual. The modern Restatement of Torts seeks to limit the doctrine to an "ultrahazardous activity," defined as one which "necessarily involves a risk of serious harm to the person, land or chattels of others which cannot be eliminated by the exercise of the utmost care," and "is not a matter of common usage."

A recent decision by the Pierce County Superior Court held that the doctrine of strict liability for abnormally dangerous activities applied to the escape of hazardous substances from a solid waste landfill operated by the city of Tacoma.

In addition to the common law strict liability doctrine, a variety of state and federal statutes impose strict liability for environmental contamination. Washington statutes impose strict liability for pollution of state waters, violation of air quality laws, and for cleanup of hazardous substances released to the environment.

SUMMARY:

No municipal corporation or other governmental subdivision that is an owner, operator or user of a solid waste incineration or landfill facility shall be liable to a person on the basis of strict liability if the facility is in substantial compliance with minimum functional standards, or with a judicial consent decree to which the Department of Ecology is a party. The act applies prospectively only, and only to causes of action commenced on or after the effective date of the act.

EFFECT OF PROPOSED SUBSTITUTE:

It is clarified that the limitation upon strict liability applies only to common law strict liability.

Appropriation: none

Revenue: none

Fiscal Note: none requested

TESTIMONY FOR:

Solid waste handling by municipalities in compliance with applicable operating standards should not give rise to strict liability; instead the damaged party should be required to prove negligence.

TESTIMONY AGAINST:

Hazardous substances typically disposed in municipal solid waste landfills make such facilities the type of operation for which strict liability for damages is appropriate.

TESTIFIED: Bill Barker, Walt Forsland, Bob Mack, City of Tacoma (pro); Bruce Wishart, Sierra Club