

HOUSE BILL REPORT

HB 1597

As Reported By House Committee On:
Environmental Affairs

Title: An act relating to correction of the model toxics control act to confirm the availability of a private right of action or right of contribution.

Brief Description: Providing a private right of contribution under the model toxics control act.

Sponsors: Representatives Rust, Horn, Flemming and J. Kohl.

Brief History:

Reported by House Committee on:
Environmental Affairs, February 11, 1993, DPS.

HOUSE COMMITTEE ON ENVIRONMENTAL AFFAIRS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 14 members: Representatives Rust, Chair; Flemming, Vice Chair; Horn, Ranking Minority Member; Van Luven, Assistant Ranking Minority Member; Bray; Edmondson; Foreman; Hansen; Holm; L. Johnson; J. Kohl; Linville; Roland; and Sheahan.

Staff: Harry Reinert (786-7110).

Background: Both Washington State and Congress have passed laws regulating the treatment and disposal of hazardous wastes and have passed laws imposing liability on those responsible for contamination at sites where hazardous wastes have been disposed. These statutes impose responsibility for clean up costs even on those who were not aware of the consequences of their actions at the time of disposal. In addition, both state and federal law provide that the responsibility for the costs associated with clean up is joint and several. This means that a person only partially responsible for the contamination may be required by the state or federal government to pay the full cost of the clean up. That party may, with some limitations, seek contribution from others who are also responsible for the contamination. This is done through an action for contribution filed in court. The court has the task of determining the relative responsibilities of each identified entity who contributed to the contamination and then determining what share of the clean up costs each party

should pay. This private right of contribution is available under the federal statute. However, as a result of a recent decision of the Washington Supreme Court, there is no such right under the Model Toxics Control Act.

The Model Toxics Control Act (MTCA) was adopted by Washington voters as Initiative 97 in November 1988. MTCA establishes a liability and clean up scheme for sites contaminated with hazardous wastes or hazardous substances. There are two methods by which a clean up required by MTCA may be undertaken: one is under the guidance of the Department of Ecology; the other is an independent clean up conducted by one or more of the responsible parties.

In July 1992 the Washington State Supreme Court, in answer to a request from the federal district court to interpret MTCA, concluded that MTCA does not authorize a party to bring an action for a private right of contribution. *Bird-Johnson v. Dana*, 119 wn.2d 423 (1992). The effect of the decision is to prevent a person who undertakes an independent clean up under MTCA from seeking contributions from other potentially liable parties. In order to obtain contribution under MTCA, the Department of Ecology must first order the potentially liable parties to undertake a remedial action. This has the disadvantage of requiring the state to expend its resources in evaluating the site and possibly overseeing the clean up.

Summary of Substitute Bill: There is a private right of contribution under the Model Toxics Control Act (MTCA). The court shall award reasonable attorneys fees to the prevailing party in an action for contribution. In order to be eligible for contribution, the clean up must be substantially equivalent to a state managed clean up. The right of contribution is retroactive and prospective.

An action for contribution under MTCA must be filed within one year after the effective date of the legislation, or three years after the date the clean up is completed, whichever is later.

Substitute Bill Compared to Original Bill: The original bill authorized, but did not require, the court to award reasonable attorneys' fees to the prevailing party. The original bill only stated that the bill was retroactive. The substitute provides that the bill is both retroactive and prospective.

Fiscal Note: Not requested.

Effective Date of Substitute Bill: The bill contains an emergency clause and takes effect immediately.

Testimony For: The right of contribution enforces the accountability of all parties responsible for hazardous waste contamination. Under current law significant delays in cleanup may occur due to the necessary assessment by the Department of Ecology of proportional responsibility.

Testimony Against: None.

Witnesses: Bruce Hilyer, Washington Environmental Council; Bruce Wishart, Sierra Club (pro); Randy Ray, Maritime Environmental Coalition (pro); Carol Fleskes, Department of Ecology (pro); Kris Backes, Association of Washington Business (pro); Darlene Madenwald, Washington Environmental Council (pro); Larry Peterson, Washington State Association of Prosecuting Attorneys (pro); Kathleen Collins, Association of Washington Cities (pro); Jim Boldt, Port of Tacoma (pro); Marc Greenberg, Murray Pacific (pro); and Mayor Karen Vialle, City of Tacoma (pro).