

SENATE BILL REPORT

SSB 5404

AS PASSED SENATE, MARCH 8, 1993

Brief Description: Allowing a private right of action under the model toxic control act.

SPONSORS: Senate Committee on Ecology & Parks (originally sponsored by Senators Fraser and Barr)

SENATE COMMITTEE ON ECOLOGY & PARKS

Majority Report: That Substitute Senate Bill No. 5404 be substituted therefor, and the substitute bill do pass.

Signed by Senators Fraser, Chairman; Barr, Deccio, McCaslin, Moore, Sutherland, and Talmadge.

Staff: Shannon Murphy (786-7483)

Hearing Dates: February 10, 1993; February 12, 1993

HOUSE COMMITTEE ON ENVIRONMENTAL AFFAIRS

BACKGROUND:

The Model Toxics Control Act (MTCA) was adopted by the voters as Initiative 97 in November 1988. The purpose of the act is to raise sufficient funds to clean up hazardous waste sites and to prevent creation of future hazards due to improper disposal of toxic wastes into the state's land and waters.

The state Supreme Court has ruled that a party who incurs costs in the cleanup of a hazardous waste site does not have the right to seek contribution from other responsible parties under MTCA.

SUMMARY:

Parties involved in the cleanup of a site contaminated with hazardous substances may bring a claim for contribution or for declaratory relief for recovery of remedial costs under MTCA. Remedial action costs may include cleanup and investigation costs. The recovery of remedial action costs will be based on the cost of a comparable Department of Ecology conducted or supervised remedial action. Natural resource damages may also be recovered. Recovery costs will be based on equitable factors as the court determines. Remedial action costs will include attorney fees and expenses.

Parties may bring an action for contribution after remedial action costs are incurred. The action must be brought within three years of the cleanup action or within one year of this act. All cleanup activities must meet the standards for hazardous waste cleanup as established by rule by the

Department of Ecology. The prevailing party in a contribution action shall recover attorney fees and costs.

The act applies both retroactively and prospectively. The act contains a severability clause.

Appropriation: none

Revenue: none

Fiscal Note: none requested

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

TESTIMONY FOR:

Allowing for the right of contribution under the Model Toxics Control Act will expedite cleanup actions. Without the right of contribution, settlements will be delayed and cleanup efforts suspended.

TESTIMONY AGAINST: None

TESTIFIED: Kevin Lyon, City of Tacoma (pro); Brad Jones, City of Tacoma (pro); Eric Johnson, Washington Public Ports Association (pro); Jim Boldt, Port of Tacoma (pro); Louise Sandison, Port of Tacoma (pro); Carol Fleskes, Department of Ecology (pro); Kris Baches, Association of Washington Business (pro); Jay Manning, Office of the Attorney General (pro); Bruce Wishart, Sierra Club (pro); Mark Greenberg, Murray Pacific (pro); Ron Leighton, Murray Pacific (pro); Gary Garrison, Cascade Time Company (con)

HOUSE AMENDMENT(S):

Under the Senate bill, remedial action costs include attorneys fees and expenses. In contribution actions, the prevailing party shall recover attorneys fees and costs. The House amendment adds the term "reasonable" to attorneys fees.