

SENATE BILL REPORT

SB 5404

AS REPORTED BY COMMITTEE ON ECOLOGY & PARKS, FEBRUARY 12, 1993

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

SPONSORS: 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

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. Recovery costs may include attorney fees.

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 with the standards for hazardous waste cleanup as established by rule by the Department of Ecology.

The right of action created under this amendment to MTCA is retroactive.

EFFECT OF PROPOSED SUBSTITUTE:

The awarding of attorney fees is clarified. Remedial action costs will include attorney fees and expenses. The prevailing party in a contribution action will be able to recover attorney fees and costs.

The act applies both retroactively and prospectively. An emergency clause and severability clause are added.

Appropriation: none

Revenue: none

Fiscal Note: none requested

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)