

SENATE BILL REPORT

SB 6079

AS REPORTED BY COMMITTEE ON ECOLOGY & PARKS, JANUARY 28, 1994

Brief Description: Providing for public notice of significant release of hazardous substances.

SPONSORS: Senators Talmadge, Deccio, Fraser, Winsley and Oke

SENATE COMMITTEE ON ECOLOGY & PARKS

Majority Report: That Substitute Senate Bill No. 6079 be substituted therefor, and the substitute bill do pass.

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

Staff: Gary Wilburn (786-7453)

Hearing Dates: January 24, 1994; January 28, 1994

BACKGROUND:

The Model Toxics Control Act provides for a comprehensive program for the identification and cleanup of hazardous waste sites. Under the act, the current owner of the site, the owner at the time of waste disposal, as well as those generating the waste, and certain transporters of the waste to the site, are jointly and severally liable for all of the costs of the cleanup. An owner or past owner may assert a defense liability, when such person establishes that it had no reason to know of the site contamination at the time of purchase, having taken appropriate inquiry into past ownership and uses of the property. The act provides that a reviewing court is to consider the person's specialized knowledge or experience, the relationship of the purchase price to the value if uncontaminated, commonly known or reasonably ascertainable information about the property, the obviousness of the contamination, and the ability to detect it by appropriate inspection. An owner who knows of the contamination and sells the property without disclosing this to the buyer is not entitled to this defense.

Significant uncertainty remains on how the "innocent purchaser" defense may be construed. Except for industrial and major commercial properties, site surveys for subsurface contamination are unusual. The Department of Ecology maintains a list of hazardous waste sites for which a preliminary review indicates some cleanup is likely to be necessary. However, there is no statewide system by which prospective purchasers may easily access this information.

Under both federal law and the rules implementing MTCA, persons responsible for a spill are required to report it to the appropriate agencies. However, there is no system for

accessing this information by prospective purchasers of the property on which the spill occurred. In addition, many contaminated sites are the result of waste disposal occurring many years or decades in the past.

SUMMARY:

The owner of nonresidential property who has reason to believe is contaminated shall place a notice in the county's real property records. The elements of the notice are specified. If the Department of Ecology discovers a significant release on a site, it shall notify the owner of the notice requirements.

Before sale of the property upon which a significant release has occurred, the seller shall provide a written statement to the purchaser describing the release. A purchaser injured by the failure of the seller to provide the statement may recover damages in a superior court action. Ecology is to provide information of these requirements to owners of nonresidential property on the hazardous waste site list.

Ecology shall determine by rule which releases are subject to the notification and reporting requirements. The requirements apply to agencies managing public property as well as to owners of private property.

EFFECT OF PROPOSED SUBSTITUTE:

The seller must disclose to the buyer information on releases that the seller knows to have occurred within the past 50 years, rather than 20 as under the original bill.

Appropriation: none

Revenue: none

Fiscal Note: requested January 12, 1994

Effective Date: Section 1 takes effect January 1, 1995.

TESTIMONY FOR:

This will assure greater buyer knowledge of site contamination before purchasing property.

TESTIMONY AGAINST: None

TESTIFIED: Carol Fleskes, Department of Ecology; Kathryn Gerla, Attorney General's office; Randy Ray, MEC; Bruce Wishart, Sierra Club; Kevin Godbout, Weyerhaeuser