

1 **SSB 5787** - H AMD TO H AMD (5787-S AMH LINV DINE 142)
2 By Representative _____ **486 FAILED 4/18/03**

3 On page 1, line 25 of the amendment, after "(2)" insert "In
4 addition to any penalty that may be imposed according to RCW
5 90.48.140 and civil damages awarded according to RCW 90.48.142, a
6 person may be liable for damages to any person who is injured or
7 whose property is damaged because of a violation of the provisions
8 of this chapter related to a project for which the suitability of
9 fill material was evaluated using a leaching test according to
10 subsection (1) of this section. The person who is injured or whose
11 property is damaged may file an action in superior court to recover
12 damages, including reasonable attorneys fees. For purposes of this
13 action, any violation of the provisions of this chapter related to
14 a project for which the suitability of fill material was evaluated
15 using a leaching test according to subsection (1) of this section
16 shall be considered negligence per se according to RCW 5.40.050.
17 (3)"

18 On page 1, after line 26 of the amendment, insert the
19 following:

20 "**Sec. 2.** RCW 5.40.050 and 2001 c 194 s 5 are each amended to
21 read as follows:

22 A breach of a duty imposed by statute, ordinance, or
23 administrative rule shall not be considered negligence per se, but
24 may be considered by the trier of fact as evidence of negligence;
25 however, any breach of duty as provided by statute, ordinance, or
26 administrative rule relating to electrical fire safety, the use of
27 smoke alarms, sterilization of needles and instruments used in
28 tattooing or electrology as required under RCW 70.54.350, violation
29 of the provisions of chapter 90.48 RCW as specified in section 1 of
30 this act, or driving while under the influence of intoxicating
31 liquor or any drug, shall be considered negligence per se."

- 1 Renumber the remaining sections consecutively and correct any
- 2 internal references accordingly.

- 3 Correct the title.

EFFECT: Authorizes a civil action for personal injury or property damage in the water quality statutes for damages based on a water quality violation related to a project for which fill material was evaluated by a specified leaching test. Specifies a water quality violation related to such a project is negligence per se.