
**Natural Resources, Ecology &
Parks Committee**

HB 1866

Brief Description: Providing lien authority to the department of ecology to facilitate the recovery of remedial action costs under the model toxics control act.

Sponsors: Representatives Williams, Buck, Upthegrove, Blake, Eickmeyer, Nixon and Simpson.

Brief Summary of Bill

- Authorizes the Department of Ecology (DOE) to file a lien against a property where the State of Washington has incurred a remedial action cost that is unrecovered.
- Establishes liens filed by the DOE as having priority in rank over all other privileges, liens, encumbrances, or other security interests affecting the property.

Hearing Date: 2/17/05

Staff: Jeff Olsen (786-7157).

Background:

The state Model Toxics Control Act (MTCA) requires sites contaminated with hazardous materials to be cleaned up by liable parties. The MTCA is carried out by the Department of Ecology (DOE) to ensure that the vast majority of sites at which hazardous substances have been released are cleaned up.

The DOE's primary responsibility for hazardous waste cleanup under MTCA include: (1) investigating and prioritizing cleanup sites; (2) providing technical assistance to a potentially liable party desiring to perform cleanups; (3) setting cleanup standards for hazardous substances; and (4) requiring or undertaking cleanups where appropriate. The DOE is also granted enforcement authority, including the ability to enter property, enter into settlements, file actions or issue orders to compel cleanup, and impose civil penalties and seek recovery of state cleanup costs. The MTCA authorizes the DOE to recover costs the agency incurs in cleaning up toxic-contaminated sites from liable parties. The DOE uses recovered costs to fund cleanup of other contaminated sites. The DOE does not have authority to file a lien on property to facilitate cleanup cost recovery.

Summary of Bill:

If the state incurs remedial action costs when cleaning up real property, and is unable to recover its costs from a liable party, the Department of Ecology (DOE) may file a lien against the property. The lien has priority over all other liens or encumbrances. The amount of the lien cannot exceed the cost of the cleanup. Unless the DOE determines that it is in the public interest to remove the lien, the lien will continue in force until the liability is satisfied through the sale of the property or other means agreed to by the DOE. An exemption from the lien authority is specified for residential property consisting of four residential units or less, unless the property was used for illegal drug manufacturing and storage. The lien may not be used to collect a DOE judgment against a property owner. The DOE's decisions regarding filing of a lien are reviewable exclusively in superior court.

The DOE may accept a payment not to exceed the increase in the fair market value of the property attributable to the remedial action if it is in the public interest and the property is abandoned, the current owner is not liable under the MTCA, or the Attorney General determines that a settlement is warranted. The increase in value, to be measured at the time the property is sold, will be determined by subtracting the county assessor's valuation for the most recent year prior to the cleanup from the sale price after the cleanup.

Before filing a lien, the DOE must give the property owner, mortgagees and lienholders notice of its intent to file a lien. The notice must specify the lien's purpose, a property description, the state's cleanup costs, probable cause that the identified property is subject to the costs, and a 30-day time limit for responding with a defense. The DOE must provide notice of its intent to file a lien by certified mail, personal service, or publication in a local newspaper.

The DOE may file the lien if it receives no response or receives a response but determines that the owner has not established a valid defense. The lien is effective when filed with the auditor in the county where the property is located. A filed lien statement must include a property description and the amount of the lien.

If exigent circumstances require filing a lien prior to giving notice, or prior to expiration of the 30-day time limit for a response, the DOE may file the lien immediately. Exigent circumstances include an imminent bankruptcy filing by the owner, imminent property transfer, or both.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.