

SENATE BILL REPORT

SHB 1208

As Reported By Senate Committee On:
Water, Energy & Environment, March 30, 2005

Title: An act relating to forfeited property.

Brief Description: Concerning forfeited property.

Sponsors: House Committee on Natural Resources, Ecology & Parks (originally sponsored by Representative O'Brien).

Brief History: Passed House: 3/08/05, 97-1.

Committee Activity: Water, Energy & Environment: 3/24/05, 3/30/05 [DP].

SENATE COMMITTEE ON WATER, ENERGY & ENVIRONMENT

Majority Report: Do pass.

Signed by Senators Poulsen, Chair; Rockefeller, Vice Chair; Morton, Ranking Minority Member; Fraser, Hewitt, Honeyford, Mulliken and Pridemore.

Staff: Margaret King (786-7416)

Background: The Model Toxics Control Act (MTCA) outlines the liabilities and responsibilities of the owner or operator of a site that has been contaminated by a hazardous substance or substances. The cleaning of these contaminated sites, known as facilities, can be the responsibility of a broad range of individuals, including any person who owned or possessed a hazardous substance that was disposed at the facility, any person who owned or operated the facility when the hazardous substances were disposed, and the current owner or operator of the facility. All entities identified as being responsible for cleaning a facility are jointly and severally liable for the expense.

The "owner or operator" of a facility is defined as any person with ownership interest or managerial control of a facility, or that was the last owner of an abandoned facility. Accordingly, a state entity or a local government can be considered an owner or operator of a facility, and be subject to liability; unless the facility came into public ownership through bankruptcy, tax delinquency, abandonment, or other circumstances where the government acquires title involuntarily.

Subject to certain conditions, ownership of any real property that is used with the knowledge of the owner for the manufacturing, compounding, processing, delivery, importation, or exportation of a controlled substance may be seized and transferred to a public entity. If the seized property is contaminated with hazardous substances, to such a degree that it qualifies as a facility under the MTCA, then that public entity could be held liable as an owner or operator under the MTCA. Property seizure requires a positive action by a public entity; therefore, it would not qualify as an involuntary acquisition of title under the MTCA's exceptions to the definition of owner or operator.

Summary of Bill: A state entity or local government will not become liable under the MTCA as an owner or operator of a facility if the facility came into public ownership by way of a drug forfeiture action.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: Many times the only permanent solution for removal of meth lab is forfeiture of the drug producer's property yet it is a difficult decision for a governmental entity to seize property that was and/or is used as meth lab because it assumes liability under MTCA.

Testimony Against: None.

Who Testified: PRO: Representative O'Brien, prime sponsor; Alfred Gehrl, Snohomish County Prosecutor's Office; John Flood, Snohomish Regional Drug Task Force.