SENATE BILL REPORT

SB 5285

As Reported By Senate Committee On:
Judiciary, February 12, 1999

Title: An act relating to nuisances.

Brief Description: Permitting certain actions based on air emission or water or solid waste discharge.

Sponsors: Senators Hargrove, McCaslin, Johnson and Haugen.

Brief History:
Committee Activity: Judiciary: 2/1/99, 2/12/99 [DPS, DNPS].

SENATE COMMITTEE ON JUDICIARY

Majority Report: That Substitute Senate Bill No. 5285 be substituted therefor, and the substitute bill do pass.

Signed by Senators Goings, Hargrove, Haugen, Johnson, Long, McCaslin, Roach and Zarelli.

Minority Report: Do not pass substitute.

Signed by Senators Kline, Vice Chair; Costa and Thibaudeau.

Staff: Dick Armstrong (786-7460)

Background: A nuisance law allows a person to file a civil action against another person whose actions either injure their property or unreasonably interfere with the enjoyment of their property. For example, a person who conducts a business lawfully and in the best manner practicable with a sound operation may still commit a nuisance if the operation interferes unreasonably with another person's use and enjoyment of their property.

Additionally, a person may be liable for damages under a nuisance per se theory. Under this theory, liability attaches because the activity itself is a nuisance (i.e., illegal activity such as a house of prostitution). Under this theory, the defendant cannot argue that his or her actions were reasonable.

Business groups believe that in a recent case the Washington Supreme Court applied the nuisance per se theory to a paper mill's discharge of pollutants into the groundwater without determining whether the actions of the mill were reasonable under the circumstances or allowed by a permit issued by the Department of Ecology.

Summary of Substitute Bill: A specific statute is created governing when a action for damages can be brought under a nuisance law for air emissions, water discharge, or solid waste discharge or release.

An action for nuisance can be maintained if air emission, water discharge, or solid waste discharge or release is done in a manner not authorized by statute, rule, licence or permit from an agency, or court order. In addition, an aggrieved party would also have to prove that such violations were an actual cause of the damage.

Substitute Bill Compared to Original Bill: The original bill was not considered.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: The recent Supreme Court case has made the law on nuisance unclear and will result in costly lawsuits for many small businesses. The law should be clarified for environmental actions. The statute is narrowly drafted. Standards to get permits in the environmental area are very strict. There should also be a showing of causation for damages.

Testimony Against: The bill will result in a lot of litigation being redirected against state agencies. Even activities that are legal and permitted can cause damage to another person's property.

Testified: PRO: Sven Ericson, private attorney; Scott Hazelgrove, AWB; CON: Josh Baldi, Washington Environmental Council; Bruce Wishart, People for Puget Sound.