

HOUSE BILL REPORT

SHB 1208

As Passed Legislature

Title: An act relating to forfeited property.

Brief Description: Concerning forfeited property.

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

Brief History:

Committee Activity:

Natural Resources, Ecology & Parks: 1/27/05, 2/4/05 [DPS].

Floor Activity:

Passed House: 3/8/05, 97-1.

Passed Senate: 4/12/05, 42-2.

Passed Legislature.

Brief Summary of Substitute Bill

- Changes the definition of "owner or operator" in the Model Toxics Control Act so that a state entity or local government will not become liable as an owner or operator of a facility if the facility came into public ownership by way of a drug forfeiture action.

HOUSE COMMITTEE ON NATURAL RESOURCES, ECOLOGY & PARKS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives B. Sullivan, Chair; Upthegrove, Vice Chair; Buck, Ranking Minority Member; Kretz, Assistant Ranking Minority Member; Blake, DeBolt, Dickerson, Eickmeyer, Hunt, Orcutt and Williams.

Staff: Jason Callahan (786-7117).

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. They include the current owner or operator of the facility, any person who owned or operated the facility when the hazardous substances were disposed, and any person who owned or possessed a hazardous substance that was

disposed at 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. A state entity or a local government can satisfy the criteria for being considered an owner or operator of a facility, and assume liability, unless the facility came into public ownership through bankruptcy, tax delinquency, abandonment, or other circumstances where the government acquires title involuntarily.

Subject to some 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 Substitute 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.

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

Testimony For: Meth labs pose a significant challenge for law enforcement and prosecutors. Enforcement options are limited, and the only permanent sanction is forfeiture of the convicted drug producer's property. However, local governments have to decide between punishing the drug producer and taking the land out of his or her hands and assuming liability under the MTCA for owning a contaminated property. Some counties have decided that taking the land out of the hands of drug producers outweighs the cost of potential MTCA liability, but this bill would make sure that counties do not need to make that choice again in the future. It removes one hurdle in the prosecution of drug traffickers. In addition, the hunting community supports any measure that will reduce the likelihood that they will find drug labs in the woods.

Testimony Against: None.

Persons Testifying: Representative O'Brien, prime sponsor; Janice Ellis, Snohomish County Prosecuting Attorney; Pat Slack, Snohomish County Drug Task Force; and Ed Owens, Hunter Heritage Council.

Persons Signed In To Testify But Not Testifying: None.