
**Fisheries, Ecology & Parks
Committee**

HB 2752

Brief Description: Concerning forfeited property.

Sponsors: Representatives O'Brien, McCoy, Lovick, Kirby, Kagi and Simpson, D..

Brief Summary of 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.

Hearing Date: 1/30/04

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 (Chapter 79.105D RCW). 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 liable for cleaning a facility are jointly and severally liable (RCW 70.150D.040).

The owner or operator of a facility is defined as any person with ownership interest or 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 (RCW 69.50.505). If the seized property is contaminated with hazardous substances, to such a degree that it qualifies as a facility under MTCA, then that public entity could be held liable as an owner or operator under MTCA. Property seizure requires a positive action by a public entity; therefore, it would not

qualify as an involuntary acquisition of title under MTCA's exceptions to the definition of owner or operator.

Summary of Bill:

A state entity or local government will not become liable under 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.