
SUBSTITUTE SENATE BILL 5404

State of Washington

53rd Legislature

1993 Regular Session

By Senate Committee on Ecology & Parks (originally sponsored by Senators Fraser and Barr)

Read first time 02/15/93.

1 AN ACT Relating to confirming a private right of action or right of
2 contribution under the model toxic control act; adding a new section to
3 chapter 70.105D RCW; and declaring an emergency.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** A new section is added to chapter 70.105D
6 RCW to read as follows:

7 Except as provided in RCW 70.105D.040(4)(d), a person may bring a
8 private right of action, including a claim for contribution or for
9 declaratory relief, against any other person liable under RCW
10 70.105D.040 for the recovery of remedial action costs. In the action,
11 natural resource damages paid to the state under this chapter may also
12 be recovered. Recovery shall be based on such equitable factors as the
13 court determines are appropriate. Remedial action costs shall include
14 attorneys' fees and expenses. Recovery of remedial action costs shall
15 be limited to those remedial actions that, when evaluated as a whole,
16 are the substantial equivalent of a department-conducted or department-
17 supervised remedial action. Substantial equivalence shall be
18 determined by the court with reference to the rules adopted by the
19 department under this chapter. An action under this section may be

1 brought after remedial action costs are incurred but must be brought
2 within three years from the date remedial action confirms cleanup
3 standards are met or within one year of the effective date of this act,
4 whichever is later. The prevailing party in such an action shall
5 recover its attorneys' fees and costs. This section applies to all
6 causes of action regardless of when the cause of action may have
7 arisen. To the extent a cause of action has arisen prior to the
8 effective date of this act, this section applies retroactively, but in
9 all other respects it applies prospectively.

10 NEW SECTION. **Sec. 2.** This act is necessary for the immediate
11 preservation of the public peace, health, or safety, or support of the
12 state government and its existing public institutions, and shall take
13 effect immediately.

14 NEW SECTION. **Sec. 3.** If any provision of this act or its
15 application to any person or circumstance is held invalid, the
16 remainder of the act or the application of the provision to other
17 persons or circumstances is not affected.

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