

HOUSE BILL REPORT

HB 1820

As Reported by House Committee On:
Natural Resources, Ecology & Parks

Title: An act relating to providing an exemption from liability under the model toxics control act.

Brief Description: Limiting liability under the model toxics control act.

Sponsors: Representative Kagi.

Brief History:

Committee Activity:

Natural Resources, Ecology & Parks: 2/24/05, 2/28/05 [DPS].

Brief Summary of Substitute Bill

- Expands the exemptions for liability under the Model Toxics Control Act to include the former owners of a residential property that was insured with the Pollution Liability Insurance Agency at the time ownership in the property was transferred.

HOUSE COMMITTEE ON NATURAL RESOURCES, ECOLOGY & PARKS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives B. Sullivan, Chair; Upthegrove, Vice Chair; Buck, Ranking Minority Member; Kretz, Assistant Ranking Minority Member; Blake, Dickerson, Eickmeyer, Hunt, Orcutt and Williams.

Staff: Jason Callahan (786-7117).

Background:

Model Toxics Control Act

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 liable for cleaning a facility are jointly and severally liable.

There are some conditions under which an entity that would otherwise be liable for cleaning the property under MTCA are exempt. These include situations where the release of hazardous materials was caused by an act of God or by an omission by a third party, past owners who had no reason to know that the hazardous substances were disposed on the property, or owners who lawfully used pesticides, fertilizers, or other chemicals for domestic purposes.

Pollution Liability Insurance Agency

The Pollution Liability Insurance Agency (PLIA) is a state-operated program designed to make pollution liability insurance available and affordable to the owners and operators of heating oil tanks and underground storage tanks. This is accomplished by offering reinsurance services to the insurance industry.

The PLIA program covers both heating oil tanks and underground storage tanks. A heating oil tank is a tank for space heating of a home or working space. By contrast, an underground storage tank is a commercial tank or a combination of tanks used to store an accumulation of petroleum.

The PLIA and its programs do not receive state general funds. Rather, funding comes from two sources. These sources are a pollution liability fee imposed on dealers making sales of heating oil to a homeowner, and an excise tax on the wholesale value of petroleum. An owner of a heating oil tank must take positive action to elect coverage. However, the sales of heating oil to customers not electing coverage are assessed the pollution liability fee regardless if the homeowner has elected coverage.

The PLIA program is scheduled to expire on June 1, 2007.

Summary of Substitute Bill:

The exemptions for liability under MTCA are expanded to include the former owners of a residential property that was insured under PLIA at the time ownership in the property was transferred. The liability exemption only applies to releases of heating oil from underground storage tanks located on the residential property.

Substitute Bill Compared to Original Bill:

Specifies that the exemption from MTCA covers heating oil, and not petroleum products in general.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: This bill addresses an unfair situation where a previous homeowner acted responsibly, enrolled in the PLIA, and is being sued under MTCA because the new homeowner did not act responsibly and check the box that activates PLIA coverage. It is narrowly drafted so that the spills will still be cleaned up, but former owners will not be held responsible if they choose coverage through the PLIA. This is one good step towards addressing a number of issues with home heating oil tanks.

(With concerns) The Legislature should not amend the liabilities portion of MTCA. The liability provisions in MTCA are carefully crafted. Exempting former owners for any reason unfairly shifts the burden of cleaning a facility to the current owner. Other steps should be taken, such as ensuring that non-corrosive tanks be installed and broadening the PLIA coverage.

Testimony Against: None.

Persons Testifying: (In support) Representative Kagi, prime sponsor; and Charlie Brown, Pacific Northwest Oil Heating Council.

(With concerns) Pete Kmet, Department of Ecology.

Persons Signed In To Testify But Not Testifying: None.