

# SENATE BILL REPORT

## SB 5505

---

---

As of February 21, 2005

**Title:** An act relating to liability for inadequate storm water control in densely populated urban areas.

**Brief Description:** Regarding liability for storm water control.

**Sponsors:** Senators Carrell, Morton, Honeyford and Mulliken.

**Brief History:**

**Committee Activity:** Water, Energy & Environment: 2/16/05.

---

### SENATE COMMITTEE ON WATER, ENERGY & ENVIRONMENT

**Staff:** Sam Thompson (786-7413)

**Background:** Historically, government entities were exempt from civil liability under the doctrine of sovereign immunity. Washington has waived its right of sovereign immunity, and state agencies and local governments are generally liable for damages resulting from their tortious conduct. It is suggested that local government liability be clarified with respect to storm water control.

**Summary of Bill:** Within designated growth areas in counties west of the Cascade Mountains with populations greater than 150,000 in 1995, where drainage to a natural watercourse has been increased significantly beyond the capacity of the watercourse in its natural condition, a city must make diligent efforts to develop, maintain, and enhance the capacity of storm water control facilities to protect life and property from flooding and attendant damages. A city is liable in an action for damages to a person whose property is damaged by flooding if the damages would have been avoided by the city's exercise of reasonable care in developing, maintaining, and enhancing the capacity of storm water control facilities.

**Appropriation:** None.

**Fiscal Note:** Available.

**Committee/Commission/Task Force Created:** No.

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

**Testimony For:** The cities of Tacoma and Fircrest have failed to adequately address stormwater drainage and storage issues that have led to recurring flooding of Leach Creek, which was once a small creek and is now sometimes a torrent. These cities should be held accountable. Property owners along Leach Creek have suffered property damage and declining property values. Extraordinary "100 year floods" have actually occurred three times in four

years. The cities have unjustly negotiated settlement agreements precluding owners from seeking further redress for the damages they have suffered.

**Testimony Against:** Tacoma has spent \$6.5 million to control flooding in the area, and has also worked with the state, Fircrest and University Place to address these problems, which have arisen as the Leach Creek area has become urbanized. A \$1.5 million settlement with 16 property owners was previously negotiated, and attempts have been made to compensate other owners. This legislation would dramatically increase potential liability of cities for matters and events effectively beyond their responsibility and control; the bill would limit the public duty doctrine, remove the "Act of God" defense, and constitutes an enormous unfunded mandate.

**Who Testified:** PRO: Senator Carrell, prime sponsor; Chris Dressler, Bill Herried and Vivian Bell, Leach Creek residents; John Alger, citizen.

CON: Anne Spangler, City of Tacoma; Dan Mathias, City of Everett; Susan Clough, City of Fircrest.