

SENATE BILL REPORT

SB 6046

As Reported By Senate Committee On:
International Trade & Economic Development, March 1, 2005

Title: An act relating to financing local economic development projects.

Brief Description: Financing local economic development projects.

Sponsors: Senators Shin and Rasmussen.

Brief History:

Committee Activity: International Trade & Economic Development: 3/01/05, 3/1/05 [DPS].

SENATE COMMITTEE ON INTERNATIONAL TRADE & ECONOMIC DEVELOPMENT

Majority Report: That Substitute Senate Bill No. 6046 be substituted therefor, and the substitute bill do pass.

Signed by Senators Shin, Chair; Sheldon, Vice Chair; Pflug, Ranking Minority Member; Doumit, Eide, Roach and Zarelli.

Staff: Jack Brummel (786-7428)

Background: Brownfield redevelopment can be an effective economic development tool. A brownfield is real estate that has actual or perceived contamination and potential for redevelopment or reuse. Brownfield sites are often abandoned or underutilized, provide little or no tax revenue, and pose a threat to public health and safety. Liability and financing concerns can discourage or impede private developers and lenders from investing in the cleanup and redevelopment of brownfields. Washington has thousands of known contaminated properties which may lay fallow indefinitely unless liability protection and incentives are created that encourage private investment.

The Model Toxics Control Act (MTCA) outlines the liabilities and responsibilities of the owner or operator of sites that have been contaminated by hazardous substances. The cleaning of these contaminated sites, known as facilities, can be the responsibility of a broad range of individuals.

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, and assume liability, but there is an exception to this when the facility came into public ownership through bankruptcy, tax delinquency, abandonment, or other circumstances where the government acquires title involuntarily.

If property is seized through a drug forfeiture action, it may be contaminated with hazardous substances to such a degree that it qualifies as a facility under MTCA, and then the public entity holding it 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 exception to the definition of owner or operator. Nor would acquisition for redevelopment purposes meet the exception.

Summary of Substitute Bill: Local jurisdictions that own brownfield sites may enter into an agreement with the Washington Economic Development Finance Authority (WEDFA) to issue bonds to finance the costs associated with cleaning up and developing a brownfield site. The agreement between the local jurisdiction and WEDFA is to require the pledging of cleanup payments from the lessee of the property to pay off the bonds. Local jurisdictions may not enter into such agreements unless they have submitted a local economic development project plan covering the property and the Department of Community, Trade, and Economic Development (CTED) has determined that it meets financial and project criteria.

The Local Economic Development Project Financing Account is established to receive and disburse funds for the payment of bonds issued to cover project costs. Cleanup payments associated with a local economic development project are deposited in the fund until the local jurisdiction's monetary obligations are met.

Bonds issued by WEDFA to finance local project costs are payable solely out of the Local Economic Development Project Financing Account. The bonds are special obligation bonds and are not obligations of the state. The authority's agreement with a local jurisdiction will include security provisions to ensure payment of bonds and associated obligations.

A state entity or local government will not become liable under the Model Toxic Control Act as an owner or operator of a facility if the facility came into public ownership by way of a drug forfeiture action or acquisition to carry out a local economic development project approved by CTED.

Local economic development project sites that have been cleaned and are being leased are not subject to the leasehold excise tax for the period of time the lessee is making cleanup payments to pay off the bonds issued to cover project costs.

Substitute Bill Compared to Original Bill: The substitute uses cleanup payments, rather than leasehold excise taxes, to pay off the bonds. Lessees are exempted from leasehold excise taxes while making leasehold payments. Liability exemption is tied to CTED approval of a cleanup project.

Appropriation: None.

Fiscal Note: Requested on substitute March 2, 2005.

Committee/Commission/Task Force Created: No.

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

Testimony For: This is another tool for communities to use to redevelop polluted properties. This bill will use market forces to get brownfields redeveloped. These places are attractive locations, once cleaned up they will be productive. Federal law provides that purchasers of brownfield sites, who have not polluted the site, are free of liability but there is no corresponding protection from liability under the state Model Toxics Control Act.

Testimony Against: None.

Other: The exemption from liability is not the primary roadblock to brownfield redevelopment. The liability concerns can be addressed on other ways.

Who Testified: Sharon Kophs, CTED; Jonathan Hayes, WA Economic Development Finance Authority (testified at work session). PRO: Eric Johnson, WA. Public Ports Assoc. OTHER: Jim Pendowski, Dept. of Ecology.