HOUSE BILL ANALYSIS

HB 2623

***Title*:** An act relating to studying options for funding contaminated sediment cleanup.

***Brief Description*:** Studying options for funding contaminated sediment cleanup.

***Sponsors*:** Representatives Regala, Anderson, Wolfe, Edmonds, Romero, Campbell and Miloscia; by request of Commissioner of Public Lands and Department of Fish and Wildlife.

HOUSE COMMITTEE ON NATURAL RESOURCES

Meeting Date: January 28, 2000.

Bill Analysis Prepared by: Carole Richmond, Analyst (786-7114)

Background:

Hazardous Site Cleanup

The state Model Toxics Control Act (chapter 70.105D RCW) (MTCA) and the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42. U.S.C. Sec. 9601 et seq.) (CERCLA) require sites contaminated with hazardous materials to be cleaned up by liable parties. The combined effect of CERCLA and MTCA is to ensure that the vast majority of sites at which hazardous substances have been released are cleaned up. Contaminated sites are found on land and under water.

Contaminated Sediments

The state of Washington owns about two million acres of aquatic lands; that is, the bedlands, shorelands, and tidelands of navigable water. These lands are managed for the public by the Department of Natural Resources. Many of these lands are leased to ports, businesses, and municipalities for water-dependent uses. Over the years, state-owned aquatic lands have become contaminated in many of these leased areas by hazardous releases and spills. The most recent estimates indicate that about 60 separate sites on state-owned aquatic lands qualify for CERCLA or MTCA status. Most of the CERCLA sites are found in the large urban embayments of Puget Sound and adjacent to military facilities. The MTCA sites are smaller and more dispersed. The cleanup method used most frequently for contaminated sediments is "capping" in the nearshore areas where the contaminants are most often found, or burial in deeper underwater excavations.

Liability

The cleanup statutes impose strict, joint, and several liability– on responsible parties, meaning that no intent or negligence has to be found for a party to be liable, and that any single party can be made responsible for the entire obligation. The first step in assigning responsibility is identifying potentially liable parties– (PLPs) under MTCA, or potentially responsible parties– (PRPs) under CERCLA. The parties may include site owners and operators, and other persons whose activities may have resulted in site contamination. After the parties have been identified, the regulatory agencies are allowed to bring suit to recover the costs of cleanup. The costs of litigation to resolve each party's liability can cost as much as the party's actual share of cleanup.

Funding for Cleanup

The Department of Natural Resources is a potentially liable party and potentially responsible party on behalf of the state because it owns or manages the contaminated sites on state-owned aquatic lands. Sites cannot be cleaned up until the funds for cleanup have been obtained. A share of the costs of cleanup is expected from the state, although the size of that share has not been determined in most cases.

Like most public entities, the department does not have the means to pay for its share of the cost of cleaning up historic contamination. Cities, towns, counties, and port districts are eligible for local model toxics account funds, but state agencies are not eligible for those funds. Funds for the state's share of cleanup could come from a variety of potential sources, including the state toxics control account, the local toxics control account, department funds, or as-yet-to-be-created funds.

Summary of Bill:

The lack of options for the state to pay for its share of cleanup is noted as a barrier to cleanup.

The Institute for Public Policy and Management within the University of Washington is directed to research options for funding the cleanup of contaminated sediments in Puget Sound. The institute is directed to review and develop recommendations on:

- sources of existing funds and the balances and restrictions on those funds;
- the amount of contamination, types of contamination, location, and costs estimates for the total costs of cleanup, including the public's share of this cost;
- options for new funding sources;
- eligibility criteria for existing funds.

The institute is directed to involve state agencies and to report to the Natural Resources Committees of the House of Representatives and the Senate no later than December 1, 2000.

A sum of $100,000 from the general fund is appropriated to the Washington Institute for Public Policy and Management for fiscal year 2001 to support this study.

Appropriation: The sum of $100,000.

Fiscal Note: Not requested.

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

Rulemaking Authority: None.