

# House Bill Analysis

## HB 3041

HOUSE AGRICULTURE AND ECOLOGY COMMITTEE

February  
2, 2000

- Clarifies state agency responsibility for cleaning up contaminated sediments.
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### BACKGROUND:

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. 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. At present, there are over 60 CERCLA and MTCA sites on state-owned aquatic lands. 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.

The Department of Natural Resources has two principal roles in the cleanup of contaminated sediments: it is a "potentially liable party" (PLP) under MTCA and CERCLA because it owns or manages state-owned aquatic lands, and it is authorized to make property management decisions under the Aquatic Lands Act (chapter 79.90 RCW).

The Department of Ecology (Ecology) has primary responsibility for hazardous waste cleanup under MTCA. Its duties include: (1) investigating and prioritizing sites; (2) providing technical assistance to PLPs desiring to perform cleanups; (3) setting cleanup standards for hazardous substances; and (4) requiring or undertaking cleanups where appropriate. Ecology is also granted enforcement authority, including the ability to enter property, enter into settlements, file actions or issue orders to compel cleanup, and impose civil penalties and seek recovery of state cleanup costs.

The Bellingham Bay Pilot Project was initiated in 1996 to provide a model for resolving issues related to contaminated sediment remediation in an urban embayment. The project was funded through appropriations under the Local Toxics Control Account. A proposal for resolving disposal and liability issues in Bellingham Bay was recently agreed to.

## **SUMMARY:**

The legislature finds that cleanup of contaminated sediments is beneficial, yet attempts to cleanup contaminated sediments have resulted in protracted debates about whether it is permissible to use state-owned aquatic lands for remediation of sites.

A number of unresolved policy issues exist related to remediation and the state's share of liability and costs. The legislature believes that it must address these issues. The legislature also believes that the current model for addressing liability and allocating costs among state agencies is not an appropriate one for resolving interagency issues.

Habitat mitigation– is defined as a water-dependent use, meaning that lease rates are one-third of fair market value.

Disposal of contaminated sediments– is defined as a non water-dependent use except if the disposal is also used to remediate existing on-site contamination.

Bay-wide plans– are defined as multi-jurisdictional plans developed for the aquatic lands of the state that include four elements:

- Cleanup of contaminated sediments;
- Restoration of estuary and salmon migration habitat;
- The highest achievable control of ongoing sources of point and nonpoint sources of pollutants to marine waters; and
- Identification of existing and projected aquatic land uses, including development of public access to the waterfront.

Plans must be integrated with comprehensive plans under the growth management act, and local master programs under the shoreline management act.

Disposal– is defined as one of two methods for remediating contaminated sediments: either contained or confined aquatic disposal, or nearshore confined disposal.

The department of natural resources is required to allow the use of state-owned aquatic lands for the cleanup of contaminated sediments when:

- A bay-wide plan has been completed and the plan identifies in-water disposal as the most environmentally protective and the most cost-effective option available among a range of options, including treatment and upland disposal;

- The area to be used for remediation is itself a site needing remediation, or a multi-user disposal site;
- An account has been established to receive funds to address in perpetuity any and all risks to the state from contingencies identified in the bay-wide plan;
- The state is indemnified from any and all future liability for contaminants that it is not liable for as established in a consent decree under state or federal cleanup authorities; and
- Constitutionally protected uses of harbor areas for commerce and navigation are not impaired.

Bay-wide plans must be initiated where less than 50 percent of the contaminated sediment sites in an embayment have been remediated as of the effective date of this act.

Bay-wide planning groups must include certain representation, including state and local government. Affected tribes and appropriate federal agencies are each invited to provide a representative. The group is to operate by consensus, and if consensus is not achievable, the issues needing to be resolved must be brought to the alternative dispute resolution program within the Attorney General's Office. The planning process is to be managed by the Department of Ecology, the Department of Natural Resources, and the affected local port district. Funding for the planning processes is to come from the Local Toxics Control Account.

A joint select committee on contaminated sediment management and liability is established. The committee consists of two representatives from each of the two major caucuses in the Senate and in the House of Representatives, or eight members. In addition, the membership also includes a representative from Ecology, Natural Resources, Transportation, Fish and Wildlife, the Puget Sound Action Team, the Governor's Office, and the Attorney General's Office.

The purpose of the committee is to address issues related to:

- The financial risk to the state from contaminated sediment disposal, and the need for financial assurance to offset this risk;
- How contaminated sediment sites should be managed;
- How the state's share of total cost should be determined;
- The fair market return to the state for the use of state-owned aquatic lands for remediation of contaminated sediments; and
- The sources of funding and financial mechanisms available to the state to fund the state's share of cleanup, management of sites, and contingency funding.

Staff support for the committee is to be provided by the House of Representatives and Senate. The committee is directed to provide a final report to the standing environment committees of the House and Senate by December 1, 2001. An interim progress report must be provided by December 1, 2000.

