

# SENATE BILL REPORT

## SHB 1448

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As Reported By Senate Committee On:  
Natural Resources, Parks & Recreation, March 31, 1999

**Title:** An act relating to clarifying state agency responsibility for cleaning up contaminated sediments.

**Brief Description:** Allowing the department of ecology to assume primary responsibility for the cleanup of state aquatic lands.

**Sponsors:** House Committee on Agriculture & Ecology (originally sponsored by Representatives Linville, G. Chandler, Cooper, Ericksen, Anderson and Morris).

**Brief History:**

**Committee Activity:** Natural Resources, Parks & Recreation: 3/29/99, 3/31/99 [DPA].

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### SENATE COMMITTEE ON NATURAL RESOURCES, PARKS & RECREATION

**Majority Report:** Do pass as amended.

Signed by Senators Jacobsen, Chair; T. Sheldon, Vice Chair; Morton, Oke, Rossi, Snyder, Spanel and Stevens.

**Staff:** Vic Moon (786-7469)

**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 Model Toxics Control Act is carried out by the Washington Department of Ecology and CERCLA is carried out by the U.S. Environmental Protection Agency. 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. As of 1996, there were 49 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 state and federal law 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 has primary responsibility for hazardous waste cleanup under state law. 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. The department 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.

**Summary of Amended Bill:** The Department of Ecology is provided with primary responsibility, on behalf of the state, for working with local communities in cleaning up contaminated sediments in urban harbors on state-owned aquatic lands. The department's decisions on cleanup of state-owned aquatic lands are binding on all other state agencies. For cleanups under CERCLA, the department is provided with primary responsibility for coordinating and making decisions on behalf of the state. The Shoreline Management Act and the Growth Management Act are reaffirmed as the local government land use planning tools.

The use of state-owned aquatic land for the disposal of contaminated sediments or for mitigation projects conducted by third parties is authorized. In examining whether to use state-owned aquatic land for disposal or for mitigation, the department is directed to evaluate a range of disposal alternatives and to consider habitat impacts, impacts to navigation and water-borne commerce, cost, and the benefits of prompt cleanup.

The department's ability to site disposal of contaminated sediments is limited to the use of a multi-user confined aquatic disposal site, or to other aquatic lands only when the following conditions are met: in-water disposal is the most environmentally protective option among a reasonable range of upland, nearshore, or deep-water disposal options; the department finds no significant adverse environmental impacts from the loss of nearshore habitat; and the normal use of harbor areas for commerce and navigation is not impaired. In examining disposal options, the department is required to consult with affected state agencies, federal agencies, local governments, and port districts.

Within 60 days of a decision by the Department of Ecology to dispose of contaminated sediments on state-owned aquatic lands pursuant to MTCA or in concurrence with a disposal decision under CERCLA, the Department of Natural Resources is required to issue a use authorization. The use authorization must contain the provisions needed to expeditiously allow the use of state-owned aquatic lands for disposal, and may contain measures deemed necessary to indemnify and hold the state harmless from additional liability arising from disposal. This provision is not intended to affect the powers and responsibilities of the Department of Natural Resources under the Aquatic Lands Act.

The Aquatic Lands Act is amended to include "habitat mitigation" in the definition of "water-dependent use."

**Amended Bill Compared to Substitute Bill:** The striking amendment removes broad authority language relating to urban harbors and removes references to existing laws and constitutional provisions.

**Appropriation:** None.

**Fiscal Note:** Available.

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

**Testimony For:** A single state voice is needed for toxic waste cleanup. The Department of Ecology has the basic authority for hazardous waste cleanup, administers the funds and sets the state's policy. The proposal only affects cleanups and has absolutely no effect on liability of any party including the state.

**Testimony Against:** The language is too broad and DNR should keep the authority to manage cleanup on state aquatic lands.

**Testified:** PRO: Kevin Guichon, Johannessen & Assoc., Middle Waterway Action Committee; Eric Johnson, WA Public Ports Assn.; Jim Darling, Port of Bellingham; Tom Newlon, Port of Seattle; Kari Frank, Puyallup Tribe; Didi Little, Bellingham; Scott Hazlegrove, AWB; CON: Bruce Wishart, People for Puget Sound; Ron Schultz, Audubon; Darlene Schanfald, Olympic Environmental Council; Paul Silver, DNR; Josh Baldi, WEC; CONCERNS: Randy Ray, Marine Industries Concerned for the Environment; Larry Shannon, WSTLA.