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HOUSE BILL 1448

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State of Washington

56th Legislature

1999 Regular Session

By Representatives Linville, G. Chandler, Cooper, Ericksen, Anderson and Morris

Read first time 01/25/1999. Referred to Committee on Agriculture & Ecology.

1 AN ACT Relating to clarifying state agency responsibility for  
2 cleaning up contaminated sediments; amending RCW 79.90.465; adding a  
3 new section to chapter 79.90 RCW; and creating a new section.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** The legislature recognizes that many of the  
6 state's harbors are impacted from decades of urban population growth as  
7 well as transportation, industrial, and commercial uses. The state  
8 reaffirms the critical importance of its harbor areas for the  
9 constitutionally recognized purposes of commerce and navigation, and  
10 also recognizes that its estuaries and harbors are critical to the  
11 health of its aquatic environment, including endangered species of  
12 salmon.

13 The legislature acknowledges that in some harbors the state, as  
14 both a regulator and a manager of aquatic lands, must be a cooperative  
15 partner in comprehensive community efforts to revitalize and restore  
16 urban harbors, and prepare recovery plans that address the requirements  
17 of the federal endangered species act.

18 In order to encourage the cleanup of contaminated areas of urban  
19 harbors, revitalize important water-dependent industries, improve

1 habitat for native fish populations, and establish certainty for  
2 shoreline communities, the legislature declares its intent to  
3 centralize and streamline the state's decision-making processes for the  
4 comprehensive cleanup of urban harbors. The department of ecology  
5 shall assume primary responsibility, on behalf of the state, for  
6 working cooperatively and expeditiously with local communities to seek  
7 rapid and innovative cleanup solutions for state-owned aquatic lands.  
8 The department of ecology's decisions for remediation of state-owned  
9 aquatic lands shall be binding on all other state agencies.

10 The legislature also declares that it intends to use existing laws  
11 and powers, particularly chapter 70.105D RCW, the model toxics control  
12 act, and chapter 90.48 RCW, to effect the cleanup of urban harbors.  
13 The primary policies and processes of these laws, combined with the  
14 state environmental policy act, chapter 43.21C RCW, shall be the basis  
15 of the department of ecology's urban harbor cleanup strategy. For  
16 aquatic cleanups conducted under the comprehensive environmental  
17 response, compensation, and liability act, the department of ecology  
18 shall assume primary responsibility for coordinating and making  
19 decisions on behalf of the state.

20 The legislature recognizes that local governments, through the  
21 shoreline management act, chapter 90.58 RCW, and the growth management  
22 act, chapter 36.70A RCW, have planned comprehensively in conjunction  
23 with the state for the land uses that will occur on and around urban  
24 harbors. These land use planning processes, coupled with existing port  
25 district comprehensive plans, are declared to be the primary land use  
26 planning processes for urban harbors.

27 In all land management matters involving state-owned aquatic land  
28 other than the cleanup of state-owned aquatic land, the department of  
29 natural resources shall retain all of its powers and responsibilities  
30 for implementing chapters 79.90 through 79.96 RCW and shall continue to  
31 exercise all of these existing land management powers and  
32 responsibilities.

33 NEW SECTION. **Sec. 2.** A new section is added to chapter 79.90 RCW  
34 to read as follows:

35 The state finds that it may be appropriate to use state-owned  
36 aquatic lands as part of a comprehensive remedial action for  
37 contaminated sediments from state or federally ordered cleanups of  
38 aquatic areas, or as mitigation for the habitat impacts of cleanup or

1 disposal actions. In examining a proposal to use state-owned aquatic  
2 lands for disposal or habitat mitigation, the department of ecology is  
3 directed to evaluate a range of alternatives that balance habitat  
4 impacts, impacts to navigation and water-borne commerce, the liability  
5 of the state or other parties potentially liable under chapter 70.105D  
6 RCW, cost-effectiveness, and the benefits of expeditiously reducing the  
7 availability of hazardous substances to the environment. In examining  
8 remediation alternatives, the department of ecology shall follow  
9 constitutional mandates to reserve harbor areas for navigation and  
10 commerce.

11 The use of state-owned aquatic lands under this section requires a  
12 use authorization. An agreed order or consent decree issued under  
13 chapter 70.105D RCW constitutes a use authorization for state-owned  
14 aquatic lands. In developing such a use authorization, the department  
15 of ecology shall have the power to obligate the state on matters  
16 relating to: (1) Cleanups of contaminated sediments on state-owned  
17 aquatic land; or (2) the selection and implementation of protective  
18 clean-up measures involving disposal of contaminated sediments on  
19 state-owned aquatic land.

20 Any such agreed order or consent decree shall contain those  
21 measures as the department of ecology deems are necessary to indemnify  
22 or otherwise hold the state harmless for liability from potentially  
23 liable parties under chapter 70.105D RCW. The department of ecology  
24 shall consult with the department of natural resources regarding the  
25 content of the indemnity measures in those instances where the  
26 department of natural resources is not a potentially liable party under  
27 chapter 70.105D RCW.

28 **Sec. 3.** RCW 79.90.465 and 1984 c 221 s 4 are each amended to read  
29 as follows:

30 The definitions in this section apply throughout chapters 79.90  
31 through 79.96 RCW.

32 (1) "Water-dependent use" means a use which cannot logically exist  
33 in any location but on the water. Examples include, but are not  
34 limited to, water-borne commerce; terminal and transfer facilities;  
35 ferry terminals; watercraft sales in conjunction with other water-  
36 dependent uses; watercraft construction, repair, and maintenance;  
37 moorage and launching facilities; aquaculture; log booming; aquatic  
38 habitat mitigation; and public fishing piers and parks.

1 (2) "Water-oriented use" means a use which historically has been  
2 dependent on a waterfront location, but with existing technology could  
3 be located away from the waterfront. Examples include, but are not  
4 limited to, wood products manufacturing, watercraft sales, fish  
5 processing, petroleum refining, sand and gravel processing, log  
6 storage, and house boats. For the purposes of determining rent under  
7 this chapter, water-oriented uses shall be classified as water-  
8 dependent uses if the activity either is conducted on state-owned  
9 aquatic lands leased on October 1, 1984, or was actually conducted on  
10 the state-owned aquatic lands for at least three years before October  
11 1, 1984. If, after October 1, 1984, the activity is changed to a use  
12 other than a water-dependent use, the activity shall be classified as  
13 a nonwater-dependent use. If continuation of the existing use requires  
14 leasing additional state-owned aquatic lands and is permitted under the  
15 shoreline management act of 1971, chapter 90.58 RCW, the department may  
16 allow reasonable expansion of the water-oriented use.

17 (3) "Nonwater-dependent use" means a use which can operate in a  
18 location other than on the waterfront. Examples include, but are not  
19 limited to, hotels, condominiums, apartments, restaurants, retail  
20 stores, and warehouses not part of a marine terminal or transfer  
21 facility.

22 (4) "Log storage" means the water storage of logs in rafts or  
23 otherwise prepared for shipment in water-borne commerce, but does not  
24 include the temporary holding of logs to be taken directly into a  
25 vessel or processing facility.

26 (5) "Log booming" means placing logs into and taking them out of  
27 the water, assembling and disassembling log rafts before or after their  
28 movement in water-borne commerce, related handling and sorting  
29 activities taking place in the water, and the temporary holding of logs  
30 to be taken directly into a processing facility. "Log booming" does  
31 not include the temporary holding of logs to be taken directly into a  
32 vessel.

33 (6) "Department" means the department of natural resources.

34 (7) "Port district" means a port district created under Title 53  
35 RCW.

36 (8) The "real rate of return" means the average for the most recent  
37 ten calendar years of the average rate of return on conventional real  
38 property mortgages as reported by the federal home loan bank board or

1 any successor agency, minus the average inflation rate for the most  
2 recent ten calendar years.

3 (9) The "inflation rate" for a given year is the percentage rate of  
4 change in the previous calendar year's all commodity producer price  
5 index of the bureau of labor statistics of the United States department  
6 of commerce. If the index ceases to be published, the department shall  
7 designate by rule a comparable substitute index.

8 (10) "Public utility lines" means pipes, conduits, and similar  
9 facilities for distribution of water, electricity, natural gas,  
10 telephone, other electronic communication, and sewers, including sewer  
11 outfall lines.

12 (11) "Terminal" means a point of interchange between land and water  
13 carriers, such as a pier, wharf, or group of such, equipped with  
14 facilities for care and handling of cargo and/or passengers.

15 (12) "State-owned aquatic lands" means those aquatic lands and  
16 waterways administered by the department of natural resources or  
17 managed under RCW 79.90.475 by a port district. "State-owned aquatic  
18 lands" does not include aquatic lands owned in fee by, or withdrawn for  
19 the use of, state agencies other than the department of natural  
20 resources.

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