
SUBSTITUTE HOUSE BILL 3041

State of Washington

56th Legislature

2000 Regular Session

By House Committee on Agriculture & Ecology (originally sponsored by Representatives Linville and G. Chandler)

Read first time 02/04/2000. Referred to Committee on .

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

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

6 NEW SECTION. **Sec. 1.** A new section is added to chapter 79.90 RCW
7 to read as follows:

8 (1) The legislature finds that contaminated sediments are
9 widespread in Puget Sound. As of the effective date of this act, at
10 least sixty sites have been identified as needing remedial action under
11 the comprehensive environmental response, compensation, and liability
12 act of 1980 (42 U.S.C. Sec. 9601 et seq.) and the model toxics control
13 act, chapter 70.105D RCW. Many of the sites needing remedial action
14 are located on state-owned aquatic lands. The purpose of this act is
15 to clarify the responsibilities of the department of natural resources
16 and the department of ecology with respect to the cleanup of
17 contaminated sediments on state-owned aquatic lands and the possibility
18 of using state-owned aquatic lands as part of appropriate sediment
19 remedial actions consistent with existing state and federal laws.

1 (2) The legislature finds that the purpose of cleaning up
2 contaminated sediments is to isolate contaminants from living organisms
3 in the marine environment. As such, cleanup is beneficial to the
4 citizens of the state of Washington. Conversely, delay of cleanup is
5 harmful for biological resources, as well as for port districts and
6 local communities that depend on a revitalized waterfront. Attempts to
7 clean up contaminated sediments have resulted in interagency debates
8 about whether it is permissible to use state-owned aquatic lands for
9 sediment remedial actions. Processes to resolve this issue, including
10 a pilot bay-wide planning project and meetings of agency directors,
11 have kept the parties out of court but have not successfully resolved
12 the fundamental issues. These issues have been defined as concern over
13 the toxicity of the sediments, the permanence of contaminated sediment
14 remediation on state-owned aquatic lands, and determination of the true
15 and complete costs of sediment remedial actions that use state-owned
16 aquatic lands. These are challenging issues. Yet, the legislature
17 believes enough time has passed without resolving these issues and
18 without remediating contaminated sediments, that it must now assume
19 responsibility for defining state policy on the use of state-owned
20 aquatic lands for contaminated sediment remediation, and for addressing
21 the other unresolved issues related to toxicity and costs of cleanup.

22 (3) The legislature also believes that the current system for
23 addressing liability and for allocating cleanup costs established under
24 the state and federal cleanup statutes is not an appropriate one for
25 resolving interagency disputes within state government. The
26 legislature defines the responsibilities of state agencies and must,
27 when necessary, examine those responsibilities to resolve conflicting
28 mandates and to better meet the needs of the state. Through the
29 creation of a joint select committee on contaminated sediment
30 management and liability, the legislature intends to address these
31 responsibilities and related issues, including, but not limited to:
32 The appropriateness of using state-owned aquatic lands for remediation
33 of contaminated sediments; the liability for any remedial action on
34 state-owned aquatic lands; the distribution of responsibility for
35 prospective liability among the parties expecting to use state-owned
36 aquatic lands for remediation; the availability of treatment
37 alternatives for contaminated sediments; the management of, and fair
38 market value for, any disposal sites on state lands; as well as the
39 resolution of the state's liability for causing or contributing to the

1 creation of contaminated sediments. In doing so, the legislature does
2 not intend to impede ongoing remedial actions.

3 (4) The legislature finds that it is in the state's interest to
4 undertake a program of bay-wide planning where appropriate to provide
5 opportunities for examining the feasibility of sediment removal or
6 consolidating most or all of the contaminated sediments in an urban
7 embayment in limited appropriate locations within that embayment or
8 within other more environmentally appropriate locations in Puget Sound.
9 The legislature also finds that bay-wide planning should address needs
10 for salmon recovery, public access to state-owned aquatic lands, and
11 economic development.

12 **Sec. 2.** RCW 79.90.465 and 1984 c 221 s 4 are each amended to read
13 as follows:

14 The definitions in this section apply throughout chapters 79.90
15 through 79.96 RCW.

16 (1) "Water-dependent use" means a use which cannot logically exist
17 in any location but on the water. Examples include, but are not
18 limited to, water-borne commerce; terminal and transfer facilities;
19 ferry terminals; watercraft sales in conjunction with other water-
20 dependent uses; watercraft construction, repair, and maintenance;
21 moorage and launching facilities; aquaculture; log booming; habitat
22 mitigation and restoration; and public fishing piers and parks.

23 (2) "Water-oriented use" means a use which historically has been
24 dependent on a waterfront location, but with existing technology could
25 be located away from the waterfront. Examples include, but are not
26 limited to, wood products manufacturing, watercraft sales, fish
27 processing, petroleum refining, sand and gravel processing, log
28 storage, and house boats. For the purposes of determining rent under
29 this chapter, water-oriented uses shall be classified as water-
30 dependent uses if the activity either is conducted on state-owned
31 aquatic lands leased on October 1, 1984, or was actually conducted on
32 the state-owned aquatic lands for at least three years before October
33 1, 1984. If, after October 1, 1984, the activity is changed to a use
34 other than a water-dependent use, the activity shall be classified as
35 a nonwater-dependent use. If continuation of the existing use requires
36 leasing additional state-owned aquatic lands and is permitted under the
37 shoreline management act of 1971, chapter 90.58 RCW, the department may
38 allow reasonable expansion of the water-oriented use.

1 (3) "Nonwater-dependent use" means a use which can operate in a
2 location other than on the waterfront. Examples include, but are not
3 limited to, hotels, condominiums, apartments, restaurants, retail
4 stores, ((and)) warehouses not part of a marine terminal or transfer
5 facility, and disposal of contaminated sediments on state-owned aquatic
6 lands except if such disposal is also used to remediate preexisting on-
7 site sediment contamination.

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

12 (5) "Log booming" means placing logs into and taking them out of
13 the water, assembling and disassembling log rafts before or after their
14 movement in water-borne commerce, related handling and sorting
15 activities taking place in the water, and the temporary holding of logs
16 to be taken directly into a processing facility. "Log booming" does
17 not include the temporary holding of logs to be taken directly into a
18 vessel.

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

20 (7) "Port district" means a port district created under Title 53
21 RCW.

22 (8) The "real rate of return" means the average for the most recent
23 ten calendar years of the average rate of return on conventional real
24 property mortgages as reported by the federal home loan bank board or
25 any successor agency, minus the average inflation rate for the most
26 recent ten calendar years.

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

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

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

1 (12) "State-owned aquatic lands" means those aquatic lands and
2 waterways administered by the department of natural resources or
3 managed under RCW 79.90.475 by a port district. "State-owned aquatic
4 lands" does not include aquatic lands owned in fee by, or withdrawn for
5 the use of, state agencies other than the department of natural
6 resources.

7 (13) "Bay-wide plan" means a multijurisdictional plan developed for
8 the aquatic lands of the state that includes the following elements:

9 (a) Cleanup of contaminated sediments;

10 (b) Restoration of estuary and salmon migration habitat;

11 (c) The highest achievable control of ongoing sources of point and
12 nonpoint sources of pollutants to marine waters; and

13 (d) Identification of existing and projected aquatic land uses,
14 including development of public access to the waterfront. Any such
15 plan shall be integrated with comprehensive plans under the growth
16 management act, chapter 36.70A RCW; local master programs under the
17 shoreline management act, chapter 90.58 RCW; and watershed plans under
18 chapter 90.82 RCW.

19 (14) "In-water disposal" means one of three methods for remediating
20 contaminated sediments:

21 (a) Confined aquatic disposal is the dredging and disposal of
22 contaminated sediments in natural or excavated bottom depressions or
23 behind berms to minimize the spread of materials on the bottom. A
24 variation of this method is the dredging and disposal of contaminated
25 material in a mound on an existing flat or gently sloping surface.
26 Both methods require capping of the dredged material with clean
27 sediments.

28 (b) Nearshore confined disposal is the dredging and disposal of
29 contaminated sediments at a site constructed partially or completely in
30 water adjacent to shore, where the dredged material is contained by a
31 dike or berm and capped with clean sediment.

32 (c) Containment of contaminated sediments by covering or capping
33 them with clean sediments of a sufficient thickness to isolate the
34 contaminants from the environment.

35 NEW SECTION. Sec. 3. A new section is added to chapter 79.90 RCW
36 to read as follows:

37 For remedial actions initiated under state and federal cleanup
38 authorities after the effective date of this act, the department shall

1 allow the use of state-owned aquatic lands for the cleanup of
2 contaminated sediments, or as mitigation for the impacts of cleanup or
3 disposal actions on aquatic habitat, when all of the following apply:

4 (1) A bay-wide plan has been completed as provided in section 4 of
5 this act, and such plan identifies in-water disposal on state-owned
6 aquatic lands as the preferred option available among a reasonable
7 range of remedial actions. The plan shall clearly identify the most
8 environmentally protective remedial option regardless of cost, and
9 shall provide sufficient rationale and documentation in the plan to
10 support this finding. The plan shall also identify the most cost-
11 effective remedial option, and shall provide sufficient rationale and
12 documentation in the plan to support this finding. Any balancing of
13 these two factors done in developing the preferred option shall also be
14 clearly described.

15 (2) The area to be used for disposal or mitigation is itself a site
16 needing remediation under state and federal cleanup statutes, or the
17 area to be used for disposal is a multiuser disposal site developed for
18 the purpose of accepting large volumes of contaminated sediments from
19 multiple sites in Puget Sound.

20 (3) Financial assurances have been established to receive funds to
21 address in perpetuity any and all risks to the state from the
22 contingencies identified in the plan under subsection (1) of this
23 section.

24 (4) The state is indemnified from future liability to the fullest
25 extent allowed by law for contaminated sediments disposed of on state-
26 owned aquatic land that are not attached to the original liability of
27 the state as established in a consent decree under state or federal
28 cleanup authorities, except for sediments for which no responsible
29 person has been identified in the consent decree.

30 (5) Constitutionally protected uses of harbor areas for commerce
31 and navigation are not impaired.

32 (6) Bay-wide plans shall include the elements defined in RCW
33 79.90.465(13) and shall be initiated in urban embayments or in smaller
34 bays and inlets where remedial actions for contaminated sediment sites
35 identified under state or federal clean-up authorities have not been
36 initiated as of the effective date of this act.

37 (7) A bay-wide planning group for an urban embayment shall include
38 the following representation: The department of ecology, the
39 department of fish and wildlife, the department of natural resources,

1 the department of transportation, the Puget Sound water quality action
2 team, the local port district, the nearest city, and the county in
3 which the embayment is located. In addition, affected tribes shall
4 each be invited to provide a representative, and the United States army
5 corps of engineers, environmental protection agency, fish and wildlife
6 service, and national marine fisheries service also shall each be
7 invited to provide a representative. Each member shall have an equal
8 voice in the planning process and the group shall operate by consensus.
9 If consensus on planning outcomes is not achievable, state agencies
10 shall resolve the issues needing resolution through the process
11 identified in RCW 43.17.320 through 43.17.340. The planning process
12 shall be managed by a committee comprised of the representatives of the
13 department of ecology, the department of natural resources, and the
14 local port district.

15 (8) The bay-wide planning process includes timely and meaningful
16 opportunity for public involvement, including public meetings and a
17 citizen advisory panel.

18 (9) Funding for plan development shall be from the local toxics
19 control account established in RCW 70.105D.070.

20 (10) This section expires June 30, 2002.

21 NEW SECTION. **Sec. 4.** (1) A joint select committee on contaminated
22 sediment management and liability is established. The committee shall
23 include two representatives from each of the two major caucuses in the
24 senate, appointed by the president of the senate, and two
25 representatives from each of the two major caucuses in the house of
26 representatives appointed by the co-speakers of the house of
27 representatives. The committee shall also include a representative
28 from each of the following: The attorney general's office, the
29 governor's office, the department of ecology, the department of natural
30 resources, the department of transportation, the department of fish and
31 wildlife, and the Puget Sound action team.

32 (2) The purpose of the joint select committee on contaminated
33 sediment management and liability is to address the following issues:

34 (a) The appropriateness of using state-owned aquatic land for the
35 remediation of contaminated sediments;

36 (b) The availability and feasibility of treatment for contaminated
37 sediments;

1 (c) The financial risk to the state associated with disposal of
2 contaminated sediments and how much funding should be available in a
3 contingency fund to offset this risk;

4 (d) How contaminated sediment disposal sites on state-owned aquatic
5 land should be managed;

6 (e) How the state's share of liability for contaminated sediments
7 should be determined;

8 (f) The fair market return to the state for the use of state-owned
9 aquatic land for disposal of contaminated sediment, when such disposal
10 occurs on already contaminated land;

11 (g) The sources of funding and financial mechanisms that are
12 available to fund the state's share of cleanup, the management of
13 sediment remediation sites, and contingency funding.

14 (3) Staff support for the joint select committee on contaminated
15 sediment management and liability shall be provided by the office of
16 program research and senate committee services.

17 (4) The committee shall provide a final report to the standing
18 environment committees of the house of representatives and the senate
19 by December 1, 2001. The committee shall provide an interim progress
20 report to the committees by December 1, 2000.

21 (5) This section expires June 30, 2002.

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