
HOUSE BILL 3041

State of Washington

56th Legislature

2000 Regular Session

By Representatives Linville and G. Chandler

Read first time 01/26/2000. 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 new
3 sections to chapter 79.90 RCW; creating a new section; and providing an
4 expiration date.

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.

18 (2) The legislature finds that the purpose of cleaning up
19 contaminated sediments is to isolate contaminants from living organisms

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

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

35 (4) The legislature finds that it is in the state's interest to
36 undertake a program of bay-wide planning to provide opportunities for
37 examining the feasibility of consolidating most or all of the
38 contaminated sediments in an urban embayment in one location within
39 that embayment or within another location in Puget Sound. The

1 legislature also finds that bay-wide planning should address needs for
2 salmon recovery, public access to state-owned aquatic lands, and
3 economic development.

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

6 The definitions in this section apply throughout chapters 79.90
7 through 79.96 RCW.

8 (1) "Water-dependent use" means a use which cannot logically exist
9 in any location but on the water. Examples include, but are not
10 limited to, water-borne commerce; terminal and transfer facilities;
11 ferry terminals; watercraft sales in conjunction with other water-
12 dependent uses; watercraft construction, repair, and maintenance;
13 moorage and launching facilities; aquaculture; log booming; habitat
14 mitigation; and public fishing piers and parks.

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

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

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

5 (5) "Log booming" means placing logs into and taking them out of
6 the water, assembling and disassembling log rafts before or after their
7 movement in water-borne commerce, related handling and sorting
8 activities taking place in the water, and the temporary holding of logs
9 to be taken directly into a processing facility. "Log booming" does
10 not include the temporary holding of logs to be taken directly into a
11 vessel.

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

13 (7) "Port district" means a port district created under Title 53
14 RCW.

15 (8) The "real rate of return" means the average for the most recent
16 ten calendar years of the average rate of return on conventional real
17 property mortgages as reported by the federal home loan bank board or
18 any successor agency, minus the average inflation rate for the most
19 recent ten calendar years.

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

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

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

32 (12) "State-owned aquatic lands" means those aquatic lands and
33 waterways administered by the department of natural resources or
34 managed under RCW 79.90.475 by a port district. "State-owned aquatic
35 lands" does not include aquatic lands owned in fee by, or withdrawn for
36 the use of, state agencies other than the department of natural
37 resources.

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

- 1 (a) Cleanup of contaminated sediments;
2 (b) Restoration of estuary and salmon migration habitat;
3 (c) The highest achievable control of ongoing sources of point and
4 nonpoint sources of pollutants to marine waters; and
5 (d) Identification of existing and projected aquatic land uses,
6 including development of public access to the waterfront. Any such
7 plan shall be integrated with comprehensive plans under the growth
8 management act, chapter 36.70A RCW, and local master programs under the
9 shoreline management act, chapter 90.58 RCW.

10 (14) "Disposal" means one of two methods for remediating
11 contaminated sediments:

12 (a) Contained aquatic disposal is the dredging and disposal of
13 contaminated sediments in natural or excavated bottom depressions or
14 behind berms to minimize the spread of materials on the bottom. A
15 variation of this method is the dredging and disposal of contaminated
16 material in a mound on an existing flat or gently sloping surface.
17 Both methods require capping of the dredged material with clean
18 sediments.

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

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

25 The department shall allow the use of state-owned aquatic lands for
26 the cleanup of contaminated sediments, or as mitigation for the impacts
27 of cleanup or disposal actions on aquatic habitat, when all of the
28 following apply:

29 (1) A bay-wide plan has been completed as provided in section 5 of
30 this act, and such plan identifies in-water disposal on state-owned
31 aquatic lands as the most environmentally protective and cost-effective
32 disposal option available among a reasonable range of remedial actions,
33 including upland disposal and treatment;

34 (2) The area to be used for disposal or mitigation is itself a site
35 needing remediation under state and federal cleanup statutes, or the
36 area to be used for disposal is a multiuser disposal site developed for
37 the purpose of accepting large volumes of contaminated sediments from
38 multiple sites in Puget Sound;

1 (3) An account has been established to receive funds to address in
2 perpetuity any and all risks to the state from the contingencies
3 identified in the plan under subsection (1) of this section;

4 (4) The state is indemnified from any and all future liability for
5 contaminated sediments disposed of on state-owned aquatic land that are
6 not attached to the original liability of the state as established in
7 a consent decree under state or federal cleanup authorities, except for
8 sediments for which no responsible person has been identified in the
9 consent decree; and

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

12 NEW SECTION. **Sec. 4.** A new section is added to chapter 79.90 RCW
13 to read as follows:

14 (1) Bay-wide plans shall include the elements defined in RCW
15 79.90.465(13) and shall be initiated in urban embayments where less
16 than fifty percent of identified contaminated sediments sites have been
17 remediated as of the effective date of this act.

18 (2) A bay-wide planning group for an urban embayment shall include
19 the following representation: The department of ecology, the
20 department of fish and wildlife, the department of natural resources,
21 the department of transportation, the Puget Sound water quality action
22 team, the local port district, the nearest city, and the county in
23 which the embayment is located. In addition, affected tribes shall
24 each be invited to provide a representative, and the United States army
25 corps of engineers, environmental protection agency, fish and wildlife
26 service, and national marine fisheries service also shall each be
27 invited to provide a representative. Each member shall have an equal
28 voice in the planning process and the group shall operate by consensus.
29 If consensus on planning outcomes is not achievable, the issues needing
30 to be resolved shall be brought to the alternative dispute resolution
31 program within the attorney general's office. The planning process
32 shall be managed by a committee comprised of the representatives of the
33 department of ecology, the department of natural resources, and the
34 local port district.

35 (3) Funding for plan development shall be from the local toxics
36 control account established in RCW 70.105D.070.

1 NEW SECTION. **Sec. 5.** (1) A joint select committee on contaminated
2 sediment management and liability is established. The committee shall
3 include two representatives from each of the two major caucuses in the
4 senate, appointed by the president of the senate, and two
5 representatives from each of the two major caucuses in the house of
6 representatives appointed by the co-speakers of the house of
7 representatives. The committee shall also include a representative
8 from each of the following: The attorney general's office, the
9 governor's office, the department of ecology, the department of natural
10 resources, the department of transportation, the department of fish and
11 wildlife, and the Puget Sound action team.

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

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

17 (b) How contaminated sediment disposal sites on state-owned aquatic
18 land should be managed;

19 (c) How the state's share of liability for contaminated sediments
20 should be determined;

21 (d) The fair market return to the state for the use of state-owned
22 aquatic land for disposal of contaminated sediment, when such disposal
23 occurs on already contaminated land;

24 (e) The sources of funding and financial mechanisms that are
25 available to fund the state's share of cleanup, the management of
26 disposal sites, and contingency funding.

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

30 (4) The committee shall provide a final report to the standing
31 environment committees of the house of representatives and the senate
32 by December 1, 2001. The committee shall provide an interim progress
33 report to the committees by December 1, 2000.

34 (5) This section expires December 31, 2001.

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