
HOUSE BILL 2566

State of Washington

64th Legislature

2016 Regular Session

By Representatives Fitzgibbon and McBride

Read first time 01/15/16. Referred to Committee on Environment.

1 AN ACT Relating to facilitating the disposal of contaminated
2 dredged sediments; and amending RCW 70.105D.010, 70.105D.040, and
3 79.105.500.

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

5 **Sec. 1.** RCW 70.105D.010 and 2002 c 288 s 1 are each amended to
6 read as follows:

7 (1) Each person has a fundamental and inalienable right to a
8 healthful environment, and each person has a responsibility to
9 preserve and enhance that right. The beneficial stewardship of the
10 land, air, and waters of the state is a solemn obligation of the
11 present generation for the benefit of future generations.

12 (2) A healthful environment is now threatened by the
13 irresponsible use and disposal of hazardous substances. There are
14 hundreds of hazardous waste sites in this state, and more will be
15 created if current waste practices continue. Hazardous waste sites
16 threaten the state's water resources, including those used for public
17 drinking water. Many of our municipal landfills are current or
18 potential hazardous waste sites and present serious threats to human
19 health and environment. The costs of eliminating these threats in
20 many cases are beyond the financial means of our local governments
21 and ratepayers. The main purpose of chapter 2, Laws of 1989 is to

1 raise sufficient funds to clean up all hazardous waste sites and to
2 prevent the creation of future hazards due to improper disposal of
3 toxic wastes into the state's land and waters.

4 (3) Many farmers and small business owners who have followed the
5 law with respect to their uses of pesticides and other chemicals
6 nonetheless may face devastating economic consequences because their
7 uses have contaminated the environment or the water supplies of their
8 neighbors. With a source of funds, the state may assist these farmers
9 and business owners, as well as those persons who sustain damages,
10 such as the loss of their drinking water supplies, as a result of the
11 contamination.

12 (4) It is in the public's interest to efficiently use our finite
13 land base, to integrate our land use planning policies with our
14 clean-up policies, and to clean up and reuse contaminated industrial
15 properties in order to minimize industrial development pressures on
16 undeveloped land and to make clean land available for future social
17 use.

18 (5) Because it is often difficult or impossible to allocate
19 responsibility among persons liable for hazardous waste sites and
20 because it is essential that sites be cleaned up well and
21 expeditiously, each responsible person should be liable jointly and
22 severally.

23 (6) Because releases of hazardous substances can adversely affect
24 the health and welfare of the public, the environment, and property
25 values, it is in the public interest that affected communities be
26 notified of where releases of hazardous substances have occurred and
27 what is being done to clean them up.

28 (7) The legislature finds that when dredged material can be
29 disposed of or beneficially reused in waters of the state without
30 increasing overall risks to human health and the environment, it is
31 in the public's interest to promote these actions when they are
32 carried out in compliance with permits and authorizations under
33 federal and state law. To facilitate the beneficial reuse and open
34 water disposal of dredged material, beneficial reuse and open water
35 disposal activities that are carried out in compliance with
36 authorizations under federal and state law should not be subject to
37 liability under this chapter.

38 **Sec. 2.** RCW 70.105D.040 and 2013 2nd sp.s. c 1 s 7 are each
39 amended to read as follows:

1 (1) Except as provided in subsection (3) of this section, the
2 following persons are liable with respect to a facility:

3 (a) The owner or operator of the facility;

4 (b) Any person who owned or operated the facility at the time of
5 disposal or release of the hazardous substances;

6 (c) Any person who owned or possessed a hazardous substance and
7 who by contract, agreement, or otherwise arranged for disposal or
8 treatment of the hazardous substance at the facility, or arranged
9 with a transporter for transport for disposal or treatment of the
10 hazardous substances at the facility, or otherwise generated
11 hazardous wastes disposed of or treated at the facility;

12 (d) Any person (i) who accepts or accepted any hazardous
13 substance for transport to a disposal, treatment, or other facility
14 selected by such person from which there is a release or a threatened
15 release for which remedial action is required, unless such facility,
16 at the time of disposal or treatment, could legally receive such
17 substance; or (ii) who accepts a hazardous substance for transport to
18 such a facility and has reasonable grounds to believe that such
19 facility is not operated in accordance with chapter 70.105 RCW; and

20 (e) Any person who both sells a hazardous substance and is
21 responsible for written instructions for its use if (i) the substance
22 is used according to the instructions and (ii) the use constitutes a
23 release for which remedial action is required at the facility.

24 (2) Each person who is liable under this section is strictly
25 liable, jointly and severally, for all remedial action costs and for
26 all natural resource damages resulting from the releases or
27 threatened releases of hazardous substances. The attorney general, at
28 the request of the department, is empowered to recover all costs and
29 damages from persons liable therefor.

30 (3) The following persons are not liable under this section:

31 (a) Any person who can establish that the release or threatened
32 release of a hazardous substance for which the person would be
33 otherwise responsible was caused solely by:

34 (i) An act of God;

35 (ii) An act of war; or

36 (iii) An act or omission of a third party (including but not
37 limited to a trespasser) other than (A) an employee or agent of the
38 person asserting the defense, or (B) any person whose act or omission
39 occurs in connection with a contractual relationship existing,
40 directly or indirectly, with the person asserting this defense to

1 liability. This defense only applies where the person asserting the
2 defense has exercised the utmost care with respect to the hazardous
3 substance, the foreseeable acts or omissions of the third party, and
4 the foreseeable consequences of those acts or omissions;

5 (b) Any person who is an owner, past owner, or purchaser of a
6 facility and who can establish by a preponderance of the evidence
7 that at the time the facility was acquired by the person, the person
8 had no knowledge or reason to know that any hazardous substance, the
9 release or threatened release of which has resulted in or contributed
10 to the need for the remedial action, was released or disposed of on,
11 in, or at the facility. This subsection (3)(b) is limited as follows:

12 (i) To establish that a person had no reason to know, the person
13 must have undertaken, at the time of acquisition, all appropriate
14 inquiry into the previous ownership and uses of the property,
15 consistent with good commercial or customary practice in an effort to
16 minimize liability. Any court interpreting this subsection (3)(b)
17 shall take into account any specialized knowledge or experience on
18 the part of the person, the relationship of the purchase price to the
19 value of the property if uncontaminated, commonly known or reasonably
20 ascertainable information about the property, the obviousness of the
21 presence or likely presence of contamination at the property, and the
22 ability to detect such contamination by appropriate inspection;

23 (ii) The defense contained in this subsection (3)(b) is not
24 available to any person who had actual knowledge of the release or
25 threatened release of a hazardous substance when the person owned the
26 real property and who subsequently transferred ownership of the
27 property without first disclosing such knowledge to the transferee;

28 (iii) The defense contained in this subsection (3)(b) is not
29 available to any person who, by any act or omission, caused or
30 contributed to the release or threatened release of a hazardous
31 substance at the facility;

32 (c) Any natural person who uses a hazardous substance lawfully
33 and without negligence for any personal or domestic purpose in or
34 near a dwelling or accessory structure when that person is: (i) A
35 resident of the dwelling; (ii) a person who, without compensation,
36 assists the resident in the use of the substance; or (iii) a person
37 who is employed by the resident, but who is not an independent
38 contractor;

1 (d) Any person who, for the purpose of growing food crops,
2 applies pesticides or fertilizers without negligence and in
3 accordance with all applicable laws and regulations;

4 (e) Any person who can establish that the release or threatened
5 release of a hazardous substance for which the person would otherwise
6 be responsible was authorized and occurred in compliance with all
7 applicable federal and state permits and authorizations for the
8 beneficial reuse or disposal of dredged sediments, including but not
9 limited to authorization by the department under this chapter,
10 permits issued by the United States Army corps of engineers under
11 section 103 of the marine protection, research, and sanctuaries act
12 (33 U.S.C. Sec. 1413) and related concurrences issued by the United
13 States environmental protection agency, or site use authorization by
14 the department of natural resources, or any combination of the
15 authorizations identified in this subsection (3)(e).

16 (4) There may be no settlement by the state with any person
17 potentially liable under this chapter except in accordance with this
18 section.

19 (a) The attorney general may agree to a settlement with any
20 potentially liable person only if the department finds, after public
21 notice and any required hearing, that the proposed settlement would
22 lead to a more expeditious cleanup of hazardous substances in
23 compliance with clean-up standards under RCW 70.105D.030(2)(e) and
24 with any remedial orders issued by the department. Whenever
25 practicable and in the public interest, the attorney general may
26 expedite such a settlement with persons whose contribution is
27 insignificant in amount and toxicity. A hearing shall be required
28 only if at least ten persons request one or if the department
29 determines a hearing is necessary.

30 (b) A settlement agreement under this section shall be entered as
31 a consent decree issued by a court of competent jurisdiction.

32 (c) A settlement agreement may contain a covenant not to sue only
33 of a scope commensurate with the settlement agreement in favor of any
34 person with whom the attorney general has settled under this section.
35 Any covenant not to sue shall contain a reopener clause which
36 requires the court to amend the covenant not to sue if factors not
37 known at the time of entry of the settlement agreement are discovered
38 and present a previously unknown threat to human health or the
39 environment.

1 (d) A party who has resolved its liability to the state under
2 this section shall not be liable for claims for contribution
3 regarding matters addressed in the settlement. The settlement does
4 not discharge any of the other liable parties but it reduces the
5 total potential liability of the others to the state by the amount of
6 the settlement.

7 (e) If the state has entered into a consent decree with an owner
8 or operator under this section, the state shall not enforce this
9 chapter against any owner or operator who is a successor in interest
10 to the settling party unless under the terms of the consent decree
11 the state could enforce against the settling party, if:

12 (i) The successor owner or operator is liable with respect to the
13 facility solely due to that person's ownership interest or operator
14 status acquired as a successor in interest to the owner or operator
15 with whom the state has entered into a consent decree; and

16 (ii) The stay of enforcement under this subsection does not apply
17 if the consent decree was based on circumstances unique to the
18 settling party that do not exist with regard to the successor in
19 interest, such as financial hardship. For consent decrees entered
20 into before July 27, 1997, at the request of a settling party or a
21 potential successor owner or operator, the attorney general shall
22 issue a written opinion on whether a consent decree contains such
23 unique circumstances. For all other consent decrees, such unique
24 circumstances shall be specified in the consent decree.

25 (f) Any person who is not subject to enforcement by the state
26 under (e) of this subsection is not liable for claims for
27 contribution regarding matters addressed in the settlement.

28 (5)(a) In addition to the settlement authority provided under
29 subsection (4) of this section, the attorney general may agree to a
30 settlement with a prospective purchaser, provided that:

31 (i) The settlement will yield substantial new resources to
32 facilitate cleanup;

33 (ii) The settlement will expedite remedial action at the facility
34 consistent with the rules adopted under this chapter; and

35 (iii) Based on available information, the department determines
36 that the redevelopment or reuse of the facility is not likely to
37 contribute to the existing release or threatened release, interfere
38 with remedial actions that may be needed at the facility, or increase
39 health risks to persons at or in the vicinity of the facility.

1 (b) The legislature recognizes that the state does not have
2 adequate resources to participate in all property transactions
3 involving contaminated property. The primary purpose of this
4 subsection (5) is to promote the cleanup and reuse of brownfield
5 property. The attorney general and the department may give priority
6 to settlements that will provide a substantial public benefit in
7 addition to cleanup.

8 (c) A settlement entered under this subsection is governed by
9 subsection (4) of this section.

10 (6) As an alternative to a settlement under subsection (5) of
11 this section, the department may enter into an agreed order with a
12 prospective purchaser of a property within a designated redevelopment
13 opportunity zone. The agreed order is subject to the limitations in
14 RCW 70.105D.020(1), but stays enforcement by the department under
15 this chapter regarding remedial actions required by the agreed order
16 as long as the prospective purchaser complies with the requirements
17 of the agreed order.

18 (7) Nothing in this chapter affects or modifies in any way any
19 person's right to seek or obtain relief under other statutes or under
20 common law, including but not limited to damages for injury or loss
21 resulting from a release or threatened release of a hazardous
22 substance. No settlement by the department or remedial action ordered
23 by a court or the department affects any person's right to obtain a
24 remedy under common law or other statutes.

25 **Sec. 3.** RCW 79.105.500 and 2007 c 341 s 58 are each amended to
26 read as follows:

27 The legislature finds that the department provides, manages, and
28 monitors aquatic land dredged material disposal sites on state-owned
29 aquatic lands for materials dredged from rivers, harbors, and
30 shipping lanes. These disposal sites are approved through a
31 cooperative planning process by the departments of natural resources
32 and ecology, the United States army corps of engineers, and the
33 United States environmental protection agency in cooperation with the
34 Puget Sound partnership. These disposal sites are essential to the
35 commerce and well-being of the citizens of the state of Washington.
36 It is the policy of the state of Washington to encourage commerce and
37 navigation by facilitating the use of these disposal sites,
38 consistent with other environmental permitting and authorization
39 processes. Management and environmental monitoring of these sites are

1 necessary to protect environmental quality and to ((~~assure~~)) ensure
2 appropriate use of state-owned aquatic lands. The creation of an
3 aquatic land dredged material disposal site account is a reasonable
4 means to enable and facilitate proper management and environmental
5 monitoring of these disposal sites.

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