HOUSE BILL REPORT
HB 1448

As Reported By House Committee On:
Agriculture and Ecology

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

Brief History:
Committee Activity:
Agriculture and Ecology: 2/4/99, 2/18/99 [DPS].

Brief Summary of Substitute Bill

- Clarifies state agency responsibility for cleaning up contaminated sediments on state-owned aquatic lands.

HOUSE COMMITTEE ON AGRICULTURE AND ECOLOGY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Linville, Democratic Co-Chair; Cooper, Democratic Vice Chair; Koster, Republican Vice Chair; Anderson; B. Chandler; Fortunato; Grant; Reardon; Schoesler; Sump and Wood.

Staff: Carole Richmond (786-7114).

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 MTCA and CERCLA 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 (Ecology) has primary responsibility for hazardous waste cleanup under MTCA. 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. Ecology 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 Substitute Bill:

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. Ecology's decisions on cleanup of state-owned aquatic lands are binding on all other state agencies.

The use of existing statutes (i.e., MTCA, the Water Pollution Control Act, and the State Environmental Policy Act) is reaffirmed as the basis for cleaning up urban harbors. For cleanups under CERCLA, Ecology is provided with primary responsibility for coordinating and making decisions on behalf of the state. Shoreline master programs and port district comprehensive plans are also declared to be the primary land use planning processes for urban harbors.

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, Ecology 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.

Ecology'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; Ecology 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, Ecology is required to consult with affected state agencies, federal agencies, local governments, and port districts.

Within 60 days of a decision by 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."

Substitute Bill Compared to Original Bill:

The substitute bill removes the requirement that Ecology balance factors, including the state's liability, in arriving at a disposal site decision. Disposal options on state-owned aquatic land are limited to the use of a multi-user disposal facility, or to other aquatic lands only when three conditions are met: disposal must be the most environmentally protective option, no significant adverse impacts from the loss of nearshore habitat are permitted, and the normal use of harbor areas may not be impaired. Within 60 days of a decision by Ecology to dispose of contaminated sediments on state-owned aquatic land, the Department of Natural Resources is required to issue a use authorization. Provisions may be included in the use authorization to indemnify the state from additional liability arising from disposal.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: (Original bill) (1) The Bellingham Bay Demonstration Pilot Project was intended to accomplish cleanup "faster, better, cheaper," but has not accomplished this goal. The project planning process required additional funding because of protracted debate over disposal. The state is the driving force behind this project; it needs to speak with one voice. (2) Current laws are not well suited to cleanup of contaminated sediments. The state has dual responsibilities. The bill clarifies state policy by encouraging cleanups and relying on existing land use and port district plans for aquatic use decisions. Keeping sediments wet is better for the environment. (3) Clarification of policy lets us move forward. (4) Planning efforts have taken too long and produced too little.

(With concerns) (1) As currently written, the role of special purpose districts in land use planning is too broad. (2) The indemnification language could create problems. The disposal process should be neutral and should not affect existing liability. All parties should retain their existing liability after the disposal process.

(With comments) (1) The measure raises very important policy issues, for example, regarding the ability of state agencies to work together and which policies should prevail with regard to contaminated sediment disposal. This issue should not rest on personalities and is not about that. This measure is intended to institutionalize the state's capacity to address contaminated sediment disposal.

Testimony Against: (Original bill) (1) The measure has the potential to erode landowner rights and is premature. The issues are complex; it's an oversimplification to say that a single point of contact will create a better solution. (2) The issues are not only about faster cleanup and liability, but about which disposal methods are best. What happens to state-owned aquatic lands after they're filled and capped? The effect of this measure will be to shift liability for disposal to the state.

Testified: (In support) Jim Darling, Port of Bellingham; Eric Johnson, Washington Public Ports Association; Dick Little, city of Bellingham; and Cathy Feole, Northwest Pulp and Paper Association.

(With concerns**)** Dave Williams, Association of Washington Cities; and Scott Hazlegrove, Association of Washington Business.

(Comments) Tom Fitzsimmons, Department of Ecology.

(Against) Paul Silver, Department of Natural Resources; and Ron Schultz, National Audubon Society.