

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 1448

56th Legislature
1999 Regular Session

Passed by the House April 24, 1999
Yeas 66 Nays 30

Speaker of the House of Representatives

Speaker of the House of Representatives

Passed by the Senate April 16, 1999
Yeas 33 Nays 14

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

We, Dean R. Foster and Timothy A. Martin, Co-Chief Clerks of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1448** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

Chief Clerk

FILED

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 1448

AS AMENDED BY THE SENATE

Passed Legislature - 1999 Regular Session

State of Washington

56th Legislature

1999 Regular Session

By House Committee on Agriculture & Ecology (originally sponsored by Representatives Linville, G. Chandler, Cooper, Ericksen, Anderson and Morris)

Read first time 02/22/1999.

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.** In order to encourage the cleanup of
6 contaminated areas of aquatic lands, the legislature declares its
7 intent to centralize and streamline the state's decision-making
8 processes. The department of ecology shall assume primary
9 responsibility, on behalf of the state, for working cooperatively with
10 local communities to seek expeditious and innovative cleanup solutions
11 for state-owned aquatic lands. The department of ecology's decisions
12 for remediation of state-owned aquatic lands shall be binding on all
13 other state agencies.

14 The legislature recognizes that local governments, through the
15 shoreline management act, chapter 90.58 RCW, and the growth management
16 act, chapter 36.70A RCW, have planned comprehensively in conjunction
17 with the state and with port districts for the land uses that will
18 occur on and around aquatic lands.

1 In all land management matters involving state-owned aquatic land
2 other than the cleanup of state-owned aquatic land, the department of
3 natural resources shall retain all of its powers and responsibilities
4 for implementing chapters 79.90 through 79.96 RCW and shall continue to
5 exercise all of these existing land management powers and
6 responsibilities.

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

9 (1) The state finds that it may be appropriate to use state-owned
10 aquatic lands as part of a remedial action for contaminated sediments
11 from state or federally required cleanups of aquatic areas, or as
12 mitigation for the habitat impacts of cleanup or disposal actions. In
13 examining a proposal to use state-owned aquatic lands for disposal or
14 habitat mitigation, the department of ecology, as required under
15 chapters 70.105D, 90.48, and 43.21C RCW, shall evaluate a range of
16 alternatives that consider habitat impacts, impacts to navigation and
17 water-borne commerce, cost, and the benefits of expeditiously reducing
18 the availability of hazardous substances to the environment.

19 (2) The department of ecology may require the disposal or
20 containment of contaminated sediments on state-owned aquatic lands only
21 in an approved multi-user confined aquatic disposal site, or when the
22 following conditions are met:

23 (a) The department finds that such use presents the most
24 environmentally protective option among a reasonable range of upland,
25 nearshore, and in-water disposal options;

26 (b) The department of ecology finds that there are no unacceptable
27 adverse environmental impacts from the loss of nearshore vegetated
28 aquatic habitat; and

29 (c) The normal use of harbor areas for commerce and navigation is
30 not impaired.

31 (3) In examining alternatives for remedial action, the department
32 shall consult with affected state agencies, federal agencies, tribes,
33 port districts, and local governments. In selecting disposal sites
34 under this section, the department shall strive to limit the number of
35 separate disposal locations.

36 (4) If the department of ecology, in exercising its regulatory
37 authority to require cleanup of contaminated sediments, chooses a
38 remedial action or concurs with an action required under the

1 comprehensive environmental response, compensation, and liability act
2 of 1980 that requires the use of state-owned aquatic land for
3 containment or disposal of sediments, or for mitigation of habitat, the
4 department of natural resources shall issue a use authorization within
5 sixty days of the date the department of ecology issues or concurs in
6 a final remedial action. This use authorization must contain the
7 provisions needed to expeditiously allow the use of state-owned aquatic
8 lands for the implementation of those activities required, or concurred
9 with, by the department of ecology. The use authorization may not
10 contain terms or conditions which, in the judgment of the department of
11 ecology, delay or alter the purpose of the remedial action. Any such
12 use authorization may contain measures to indemnify or otherwise hold
13 the state harmless from any additional liability arising out of the use
14 of state-owned aquatic lands. Nothing in this section shall be
15 construed to impose liability on the state as a result of the
16 department of ecology's exercise of its regulatory authority to require
17 cleanup.

18 (5) This section only applies to the cleanup and mitigation of the
19 impacts of cleanup of state-owned aquatic land. It does not affect the
20 powers and responsibilities of the department of natural resources for
21 implementing chapters 79.90 through 79.96 RCW in any other land
22 management matters.

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

25 The definitions in this section apply throughout chapters 79.90
26 through 79.96 RCW.

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

34 (2) "Water-oriented use" means a use which historically has been
35 dependent on a waterfront location, but with existing technology could
36 be located away from the waterfront. Examples include, but are not
37 limited to, wood products manufacturing, watercraft sales, fish
38 processing, petroleum refining, sand and gravel processing, log

1 storage, and house boats. For the purposes of determining rent under
2 this chapter, water-oriented uses shall be classified as water-
3 dependent uses if the activity either is conducted on state-owned
4 aquatic lands leased on October 1, 1984, or was actually conducted on
5 the state-owned aquatic lands for at least three years before October
6 1, 1984. If, after October 1, 1984, the activity is changed to a use
7 other than a water-dependent use, the activity shall be classified as
8 a nonwater-dependent use. If continuation of the existing use requires
9 leasing additional state-owned aquatic lands and is permitted under the
10 shoreline management act of 1971, chapter 90.58 RCW, the department may
11 allow reasonable expansion of the water-oriented use.

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

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

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

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

29 (7) "Port district" means a port district created under Title 53
30 RCW.

31 (8) The "real rate of return" means the average for the most recent
32 ten calendar years of the average rate of return on conventional real
33 property mortgages as reported by the federal home loan bank board or
34 any successor agency, minus the average inflation rate for the most
35 recent ten calendar years.

36 (9) The "inflation rate" for a given year is the percentage rate of
37 change in the previous calendar year's all commodity producer price
38 index of the bureau of labor statistics of the United States department

1 of commerce. If the index ceases to be published, the department shall
2 designate by rule a comparable substitute index.

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

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

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

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