

2 **SHB 1448** - S COMM AMD

3 By Committee on Natural Resources, Parks & Recreation

4 ADOPTED 4/16/99

5 Strike everything after the enacting clause and insert the
6 following:

7 NEW SECTION. **Sec. 1.** In order to encourage the cleanup of
8 contaminated areas of aquatic lands, the legislature declares its
9 intent to centralize and streamline the state's decision-making
10 processes. The department of ecology shall assume primary
11 responsibility, on behalf of the state, for working cooperatively with
12 local communities to seek expeditious and innovative cleanup solutions
13 for state-owned aquatic lands. The department of ecology's decisions
14 for remediation of state-owned aquatic lands shall be binding on all
15 other state agencies.

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

21 In all land management matters involving state-owned aquatic land
22 other than the cleanup of state-owned aquatic land, the department of
23 natural resources shall retain all of its powers and responsibilities
24 for implementing chapters 79.90 through 79.96 RCW and shall continue to
25 exercise all of these existing land management powers and
26 responsibilities.

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

29 (1) The state finds that it may be appropriate to use state-owned
30 aquatic lands as part of a remedial action for contaminated sediments
31 from state or federally required cleanups of aquatic areas, or as
32 mitigation for the habitat impacts of cleanup or disposal actions. In
33 examining a proposal to use state-owned aquatic lands for disposal or
34 habitat mitigation, the department of ecology, as required under
35 chapters 70.105D, 90.48, and 43.21C RCW, shall evaluate a range of

1 alternatives that consider habitat impacts, impacts to navigation and
2 water-borne commerce, cost, and the benefits of expeditiously reducing
3 the availability of hazardous substances to the environment.

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

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

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

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

16 (3) In examining alternatives for remedial action, the department
17 shall consult with affected state agencies, federal agencies, tribes,
18 port districts, and local governments. In selecting disposal sites
19 under this section, the department shall strive to limit the number of
20 separate disposal locations.

21 (4) If the department of ecology, in exercising its regulatory
22 authority to require cleanup of contaminated sediments, chooses a
23 remedial action or concurs with an action required under the
24 comprehensive environmental response, compensation, and liability act
25 of 1980 that requires the use of state-owned aquatic land for
26 containment or disposal of sediments, or for mitigation of habitat, the
27 department of natural resources shall issue a use authorization within
28 sixty days of the date the department of ecology issues or concurs in
29 a final remedial action. This use authorization must contain the
30 provisions needed to expeditiously allow the use of state-owned aquatic
31 lands for the implementation of those activities required, or concurred
32 with, by the department of ecology. The use authorization may not
33 contain terms or conditions which, in the judgment of the department of
34 ecology, delay or alter the purpose of the remedial action. Any such
35 use authorization may contain measures to indemnify or otherwise hold
36 the state harmless from any additional liability arising out of the use
37 of state-owned aquatic lands. Nothing in this section shall be
38 construed to impose liability on the state as a result of the

1 department of ecology's exercise of its regulatory authority to require
2 cleanup.

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

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

10 The definitions in this section apply throughout chapters 79.90
11 through 79.96 RCW.

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

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

35 (3) "Nonwater-dependent use" means a use which can operate in a
36 location other than on the waterfront. Examples include, but are not
37 limited to, hotels, condominiums, apartments, restaurants, retail

1 stores, and warehouses not part of a marine terminal or transfer
2 facility.

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

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

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

15 (7) "Port district" means a port district created under Title 53
16 RCW.

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

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

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

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

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

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4 On page 1, line 2 of the title, after "sediments;" strike the
5 remainder of the title and insert "amending RCW 79.90.465; adding a new
6 section to chapter 79.90 RCW; and creating a new section."

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