
SUBSTITUTE HOUSE BILL 1448

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.** The legislature recognizes that many of the
6 state's harbors are impacted from decades of urban population growth as
7 well as transportation, industrial, and commercial uses. The state
8 reaffirms the critical importance of its harbor areas for the
9 constitutionally recognized purposes of commerce and navigation, and
10 also recognizes that its estuaries and harbors are critical to the
11 health of its aquatic environment, including endangered species of
12 salmon.

13 The legislature acknowledges that in some harbors the state, as
14 both a regulator and a manager of aquatic lands, must be a cooperative
15 partner in comprehensive community efforts to revitalize and restore
16 urban harbors, and prepare recovery plans that address the requirements
17 of the federal endangered species act.

18 In order to encourage the cleanup of contaminated areas of urban
19 harbors, revitalize important water-dependent industries, improve

1 habitat for native fish populations, and establish certainty for
2 shoreline communities, the legislature declares its intent to
3 centralize and streamline the state's decision-making processes for the
4 comprehensive cleanup of urban harbors. The department of ecology
5 shall assume primary responsibility, on behalf of the state, for
6 working cooperatively with local communities to seek expeditious and
7 innovative cleanup solutions for state-owned aquatic lands. The
8 department of ecology's decisions for remediation of state-owned
9 aquatic lands shall be binding on all other state agencies.

10 The legislature also declares that it intends to use existing laws
11 and powers, particularly chapter 70.105D RCW, the model toxics control
12 act, and chapter 90.48 RCW, to effect the cleanup of urban harbors.
13 The policies and processes of these laws, combined with the state
14 environmental policy act, chapter 43.21C RCW, shall be the primary
15 basis of the department of ecology's urban harbor cleanup decision.

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 urban harbors. These land use planning processes
21 are recognized to be the basis of land use planning for urban harbors.

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

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

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

1 the availability of hazardous substances to the environment. In
2 examining remediation alternatives, the department of ecology shall
3 follow constitutional mandates to reserve harbor areas for navigation
4 and commerce.

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

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

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

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

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

22 (4) If the department of ecology, in exercising its regulatory
23 authority to require cleanup of contaminated sediments, chooses a
24 remedial action or concurs with an action required under the
25 comprehensive environmental response, compensation, and liability act
26 of 1980 that requires the use of state-owned aquatic land for
27 containment or disposal of sediments, or for mitigation of habitat, the
28 department of natural resources shall issue a use authorization within
29 sixty days of the date the department of ecology issues or concurs in
30 a final remedial action. This use authorization must contain the
31 provisions needed to expeditiously allow the use of state-owned aquatic
32 lands for the implementation of those activities required, or concurred
33 with, by the department of ecology. The use authorization may not
34 contain terms or conditions which, in the judgment of the department of
35 ecology, delay or alter the purpose of the remedial action. Any such
36 use authorization may contain measures to indemnify or otherwise hold
37 the state harmless from any additional liability arising out of the use
38 of state-owned aquatic lands. Nothing in this section shall be
39 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

1 the use of, state agencies other than the department of natural
2 resources.

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