
SUBSTITUTE HOUSE BILL 1692

State of Washington

55th Legislature

1997 Regular Session

By House Committee on Capital Budget (originally sponsored by Representatives Sehlin, Morris, Anderson, Honeyford, Huff, Lantz and Chopp)

Read first time 03/05/97.

1 AN ACT Relating to management of state-owned aquatic lands;
2 amending RCW 79.90.465, 79.90.475, 79.90.520, and 79.93.040; and adding
3 a new section to chapter 79.90 RCW.

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

5 **Sec. 1.** RCW 79.90.465 and 1984 c 221 s 4 are each amended to read
6 as follows:

7 The definitions in this section apply throughout chapters 79.90
8 through 79.96 RCW.

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

16 (2) "Water-oriented use" means a use which historically has been
17 dependent on a waterfront location, but with existing technology could
18 be located away from the waterfront. Examples include, but are not
19 limited to, wood products manufacturing, watercraft sales, fish

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

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

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

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

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

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

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

37 (9) The "inflation rate" for a given year is the percentage rate of
38 change in the previous calendar year's all commodity producer price
39 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.

16 (13) "City" means a city or town created under Title 35 or 35A RCW.

17 (14) "Marina" means a waterfront facility that provides moorage for
18 recreation vessels, charter vessels, commercial fishing vessels, and
19 water-based aircraft. A marina facility may include fuel docks and
20 associated chandlery activities designed to serve recreational vessels,
21 charter vessels, commercial fishing vessels, and water-based aircraft.

22 **Sec. 2.** RCW 79.90.475 and 1984 c 221 s 6 are each amended to read
23 as follows:

24 Upon request of a port district, the department and port district
25 may enter into an agreement authorizing the port district to manage
26 state-owned aquatic lands (~~abutting or used in conjunction with and~~
27 ~~contiguous to uplands owned, leased, or otherwise managed by a port~~
28 ~~district,~~) for port purposes as provided in Title 53 RCW. The lands
29 that may be included in a port district aquatic lands management
30 agreement are those state-owned aquatic lands abutting or used in
31 conjunction with and contiguous to uplands owned, leased, or otherwise
32 managed by a port district. All state-owned aquatic lands beneath
33 public marina facilities developed or maintained by a port district are
34 eligible for management by the port district under a management
35 agreement.

36 ((Such)) A port district aquatic lands management agreement shall
37 include, but not be limited to, provisions defining the specific area
38 to be managed, the term, conditions of occupancy, reservations,

1 periodic review, and other conditions to ensure consistency with the
2 state Constitution and the policies of this chapter. If a port
3 district acquires operating management, lease, or ownership of real
4 property which abuts state-owned aquatic lands currently under lease
5 from the state to a person other than the port district, the port
6 district shall manage such aquatic lands if: (1) The port district
7 acquires the leasehold interest in accordance with state law, or (2)
8 the current lessee and the department agree to termination of the
9 current lease to accommodate management by the port. The
10 administration of aquatic lands covered by a port district aquatic
11 lands management agreement shall be consistent with the aquatic land
12 policies of chapters 79.90 through 79.96 RCW and the implementing
13 (~~regulations~~) rules adopted by the department. The administrative
14 procedures for management of the lands shall be those of Title 53 RCW.

15 No rent shall be due the state for the use of state-owned aquatic
16 lands managed under this section for water-dependent or water-oriented
17 uses. If a port district manages state-owned aquatic lands under this
18 section and either leases or otherwise permits any person to use such
19 lands, the rental fee attributable to such aquatic land only shall be
20 comparable to the rent charged lessees for the same or similar uses by
21 the department: PROVIDED, That a port district need not itemize for
22 the lessee any charges for state-owned aquatic lands improved by the
23 port district for use by carriers by water. If a port leases state-
24 owned aquatic lands to any person for nonwater-dependent use, eighty-
25 five percent of the revenue attributable to the rent of the state-owned
26 aquatic land only shall be paid to the state.

27 Upon application for a management agreement, and so long as the
28 application is pending and being diligently pursued, no rent shall be
29 due the department for the lease by the port district of state-owned
30 aquatic lands included within the application for water-dependent or
31 water-oriented uses.

32 The department and representatives of the port industry shall
33 develop a proposed model management agreement which shall be used as
34 the basis for negotiating the management agreements required by this
35 section. The model management agreement shall be reviewed and approved
36 by the board of natural resources.

37 NEW SECTION. **Sec. 3.** A new section is added to chapter 79.90 RCW
38 to read as follows:

1 (1) Upon request of a city, the department and city may enter into
2 an agreement authorizing the city to manage state-owned aquatic lands
3 for the purpose of operating a publicly owned marina. The lands that
4 may be included in a city aquatic lands management agreement are those
5 state-owned aquatic lands abutting or used in conjunction with and
6 contiguous to uplands owned, leased, or otherwise managed by a city.
7 All state-owned aquatic lands beneath any publicly owned marina
8 developed or maintained by a city are eligible for management by the
9 city under a management agreement.

10 A city aquatic lands management agreement shall include, but not be
11 limited to, provisions defining the specific area to be managed, the
12 term, conditions of occupancy, reservations, periodic review, and other
13 conditions to ensure consistency with the state Constitution and the
14 policies of this chapter. If a city acquires operating management,
15 lease, or ownership of real property that abuts state-owned aquatic
16 lands currently under lease from the state to a person other than the
17 city, the city shall manage the aquatic lands if: (a) The city
18 acquires the leasehold interest in accordance with state law, or (b)
19 the current lessee and the department agree to termination of the
20 current lease to accommodate management by the city. The
21 administration of aquatic lands covered by a city aquatic lands
22 management agreement shall be consistent with the aquatic land policies
23 of chapters 79.90 through 79.96 RCW and the implementing rules adopted
24 by the department. The administrative procedures for management of the
25 lands shall be those of Title 35 or 35A RCW, whichever is appropriate.

26 No rent is due the state for the use of state-owned aquatic lands
27 managed under this section for water-dependent or water-oriented uses.
28 If a city manages state-owned aquatic lands under this section and
29 either leases or otherwise permits any person to use the lands, the
30 rental fee attributable to the aquatic land only shall be comparable to
31 the rent charged lessees for the same or similar uses by the
32 department. If a city leases state-owned aquatic lands to any person
33 for nonwater-dependent use, eighty-five percent of the revenue
34 attributable to the rent of the state-owned aquatic land only shall be
35 paid to the state.

36 Upon application for a management agreement, and so long as the
37 application is pending and being diligently pursued, no rent is due the
38 department for the lease by the city of state-owned aquatic lands

1 included within the application for water-dependent or water-oriented
2 uses.

3 The department and representatives of the association of Washington
4 cities shall develop a proposed model management agreement that shall
5 be used as the basis for negotiating the management agreements required
6 by this section. The model management agreement shall be reviewed and
7 approved by the board of natural resources.

8 (2) A city that operates a publicly owned marina within the
9 territorial limits of a port district shall obtain the approval of the
10 port commission prior to applying to the department for a management
11 agreement. A city with marina facilities in existence on the effective
12 date of this act may enter into a management agreement for those
13 facilities without port commission approval.

14 **Sec. 4.** RCW 79.90.520 and 1991 c 64 s 1 are each amended to read
15 as follows:

16 The manager shall, by rule, provide for an administrative review of
17 any aquatic land rent proposed to be charged. The rules shall require
18 that the lessee or applicant for release file a request for review
19 within thirty days after the manager has notified the lessee or
20 applicant of the rent due. For leases issued by the department, the
21 final authority for the review rests with the board of natural
22 resources. For leases managed under RCW 79.90.475, the final authority
23 for the review rests with the appropriate port commission. For leases
24 managed under section 3 of this act, the final authority for the review
25 rests with the appropriate city legislative authority. If the request
26 for review is made within thirty days after the manager's final
27 determination as to the rental, the lessee may pay rent at the
28 preceding year's rate pending completion of the review, and shall pay
29 any additional rent or be entitled to a refund, with interest thirty
30 days after announcement of the decision. The interest rate shall be
31 fixed, from time to time, by rule adopted by the board of natural
32 resources and shall not be less than six percent per annum. Nothing in
33 this section abrogates the right of an aggrieved party to pursue legal
34 remedies. For purposes of this section, "manager" is the department
35 except where state-owned aquatic lands are managed by a port district
36 or a city, in which case "manager" is the appropriate port district or
37 city.

1 **Sec. 5.** RCW 79.93.040 and 1984 c 221 s 21 are each amended to read
2 as follows:

3 If the United States government has established pierhead lines
4 within a waterway created under the laws of this state at any distance
5 from the boundaries established by the state, structures may be
6 constructed in that strip of waterway between the waterway boundary and
7 the nearest pierhead line only with the consent of the department of
8 natural resources and upon such plans, terms, and conditions and for
9 such term as determined by the department. However, no permit shall
10 extend for a period longer than thirty years.

11 The department may cancel any permit upon sixty days' notice for a
12 substantial breach by the permittee of any of the permit conditions.

13 If a waterway is within the territorial limits of a port district,
14 the duties assigned by this section to the department may be exercised
15 by the port commission of such port district as provided in RCW
16 79.90.475. If a waterway is within the territorial limits of a city,
17 the duties assigned by this section to the department may be exercised
18 by the city as provided in section 3 of this act.

19 Nothing in this section shall confer upon, create, or recognize in
20 any abutting owner any right or privilege in or to any strip of
21 waterway abutting any street and between prolongations of the lines of
22 such street, but the control of and the right to use such strip is
23 hereby reserved to the state of Washington, except as authorized by RCW
24 79.90.475 and section 3 of this act.

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