

---

HOUSE BILL 1692

---

State of Washington

55th Legislature

1997 Regular Session

By Representatives Sehlin, Morris, Anderson, Honeyford, Huff, Lantz and Chopp

Read first time 02/05/97. Referred to Committee on Capital Budget.

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 wharf, dock, or other structure or  
18 improvement, or combination thereof, intended to be used and used for  
19 landing or temporary or long-term moorage of watercraft, water-based  
20 aircraft, or other waterborne vessels used for recreation or commerce  
21 and navigation.

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. If a port district operates a marine  
33 facility within a bay where the distance between the headlands at the  
34 entrance to the bay is two miles or less, then, in addition to the  
35 aquatic lands previously described, all or any portion of the state-  
36 owned aquatic lands located within the bay and lying beneath the marine  
37 facility shall be eligible to be managed under a port district aquatic  
38 lands management agreement without regard to whether the aquatic lands

1 abut or are used in conjunction with or are contiguous to uplands  
2 owned, leased, or otherwise managed by the port district. All state-  
3 owned aquatic lands beneath public marina facilities developed or  
4 maintained by a port district are eligible for management by the port  
5 district under a management agreement.

6 ((Such)) A port district aquatic lands management agreement shall  
7 include, but not be limited to, provisions defining the specific area  
8 to be managed, the term, conditions of occupancy, reservations,  
9 periodic review, and other conditions to ensure consistency with the  
10 state Constitution and the policies of this chapter. If a port  
11 district acquires operating management, lease, or ownership of real  
12 property which abuts state-owned aquatic lands currently under lease  
13 from the state to a person other than the port district, the port  
14 district shall manage such aquatic lands if: (1) The port district  
15 acquires the leasehold interest in accordance with state law, or (2)  
16 the current lessee and the department agree to termination of the  
17 current lease to accommodate management by the port. The  
18 administration of aquatic lands covered by a port district aquatic  
19 lands management agreement shall be consistent with the aquatic land  
20 policies of chapters 79.90 through 79.96 RCW and the implementing  
21 ((regulations)) rules adopted by the department. The administrative  
22 procedures for management of the lands shall be those of Title 53 RCW.

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

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

1 The department and representatives of the port industry shall  
2 develop a proposed model management agreement which shall be used as  
3 the basis for negotiating the management agreements required by this  
4 section. The model management agreement shall be reviewed and approved  
5 by the board of natural resources.

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

8 Upon request of a city, the department and city may enter into an  
9 agreement authorizing the city to manage state-owned aquatic lands for  
10 the purpose of operating a publicly owned marina. The lands that may  
11 be included in a city aquatic lands management agreement are those  
12 state-owned aquatic lands abutting or used in conjunction with and  
13 contiguous to uplands owned, leased, or otherwise managed by a city.  
14 If a city operates a publicly owned marina facility within a bay where  
15 the distance between the headlands at the entrance of the bay is two  
16 miles or less, then, in addition to the aquatic lands previously  
17 described, all or any portion of the state-owned aquatic lands located  
18 within the bay and lying beneath the publicly owned marina facility are  
19 eligible to be managed under a city aquatic lands management agreement  
20 without regard to whether the aquatic lands abut or are used in  
21 conjunction with or are contiguous to uplands owned, leased, or  
22 otherwise managed by the city. All state-owned aquatic lands beneath  
23 any publicly owned marina developed or maintained by a city are  
24 eligible for management by the city under a management agreement.

25 A city aquatic lands management agreement shall include, but not be  
26 limited to, provisions defining the specific area to be managed, the  
27 term, conditions of occupancy, reservations, periodic review, and other  
28 conditions to ensure consistency with the state Constitution and the  
29 policies of this chapter. If a city acquires operating management,  
30 lease, or ownership of real property that abuts state-owned aquatic  
31 lands currently under lease from the state to a person other than the  
32 city, the city shall manage the aquatic lands if: (1) The city  
33 acquires the leasehold interest in accordance with state law, or (2)  
34 the current lessee and the department agree to termination of the  
35 current lease to accommodate management by the city. The  
36 administration of aquatic lands covered by a city aquatic lands  
37 management agreement shall be consistent with the aquatic land policies  
38 of chapters 79.90 through 79.96 RCW and the implementing rules adopted

1 by the department. The administrative procedures for management of the  
2 lands shall be those of Title 35 or 35A RCW, whichever is appropriate.

3 No rent is due the state for the use of state-owned aquatic lands  
4 managed under this section for water-dependent or water-oriented uses.  
5 If a city manages state-owned aquatic lands under this section and  
6 either leases or otherwise permits any person to use the lands, the  
7 rental fee attributable to the aquatic land only shall be comparable to  
8 the rent charged lessees for the same or similar uses by the  
9 department. However, a city need not itemize for the lessee any  
10 charges for state-owned aquatic lands improved by the city for use by  
11 carriers by water. If a city leases state-owned aquatic lands to any  
12 person for nonwater-dependent use, eighty-five percent of the revenue  
13 attributable to the rent of the state-owned aquatic land only shall be  
14 paid to the state.

15 Upon application for a management agreement, and so long as the  
16 application is pending and being diligently pursued, no rent is due the  
17 department for the lease by the city of state-owned aquatic lands  
18 included within the application for water-dependent or water-oriented  
19 uses.

20 The department and representatives of the association of Washington  
21 cities shall develop a proposed model management agreement that shall  
22 be used as the basis for negotiating the management agreements required  
23 by this section. The model management agreement shall be reviewed and  
24 approved by the board of natural resources.

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

27 The manager shall, by rule, provide for an administrative review of  
28 any aquatic land rent proposed to be charged. The rules shall require  
29 that the lessee or applicant for release file a request for review  
30 within thirty days after the manager has notified the lessee or  
31 applicant of the rent due. For leases issued by the department, the  
32 final authority for the review rests with the board of natural  
33 resources. For leases managed under RCW 79.90.475, the final authority  
34 for the review rests with the appropriate port commission. For leases  
35 managed under section 3 of this act, the final authority for the review  
36 rests with the appropriate city legislative authority. If the request  
37 for review is made within thirty days after the manager's final  
38 determination as to the rental, the lessee may pay rent at the

1 preceding year's rate pending completion of the review, and shall pay  
2 any additional rent or be entitled to a refund, with interest thirty  
3 days after announcement of the decision. The interest rate shall be  
4 fixed, from time to time, by rule adopted by the board of natural  
5 resources and shall not be less than six percent per annum. Nothing in  
6 this section abrogates the right of an aggrieved party to pursue legal  
7 remedies. For purposes of this section, "manager" is the department  
8 except where state-owned aquatic lands are managed by a port district  
9 or a city, in which case "manager" is the appropriate port district or  
10 city.

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

13 If the United States government has established pierhead lines  
14 within a waterway created under the laws of this state at any distance  
15 from the boundaries established by the state, structures may be  
16 constructed in that strip of waterway between the waterway boundary and  
17 the nearest pierhead line only with the consent of the department of  
18 natural resources and upon such plans, terms, and conditions and for  
19 such term as determined by the department. However, no permit shall  
20 extend for a period longer than thirty years.

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

23 If a waterway is within the territorial limits of a port district,  
24 the duties assigned by this section to the department may be exercised  
25 by the port commission of such port district as provided in RCW  
26 79.90.475. If a waterway is within the territorial limits of a city,  
27 the duties assigned by this section to the department may be exercised  
28 by the city as provided in section 3 of this act.

29 Nothing in this section shall confer upon, create, or recognize in  
30 any abutting owner any right or privilege in or to any strip of  
31 waterway abutting any street and between prolongations of the lines of  
32 such street, but the control of and the right to use such strip is  
33 hereby reserved to the state of Washington, except as authorized by RCW  
34 79.90.475 and section 3 of this act.

--- END ---