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SENATE BILL 5548

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State of Washington

55th Legislature

1997 Regular Session

By Senators Oke, Prentice, Swecker and Haugen

Read first time 01/31/97. Referred to Committee on Natural Resources & Parks.

1 AN ACT Relating to water-dependent uses; amending RCW 79.90.465,  
2 79.90.480, and 79.90.495; and repealing RCW 79.90.485 and 79.90.490.

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

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

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

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

15 (2) "Water-oriented use" means a use which historically has been  
16 dependent on a waterfront location, but with existing technology could  
17 be located away from the waterfront. Examples include, but are not  
18 limited to, wood products manufacturing, watercraft sales, fish  
19 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  
2 shall 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) "Aquatic land value" means the assessed land value, exclusive  
17 of improvements, as determined by the county assessor, of the upland  
18 tax parcel used in conjunction with the leased area or, if there are no  
19 such uplands, of the nearest upland tax parcel used for water-dependent  
20 purposes divided by the parcel area equals the upland value. The  
21 upland value times the area of leased aquatic lands times thirty  
22 percent equals the aquatic land value.

23 **Sec. 2.** RCW 79.90.480 and 1984 c 221 s 7 are each amended to read  
24 as follows:

25 Except as otherwise provided by this chapter, as of the effective  
26 date of this act, annual rent rates for the lease of state-owned  
27 aquatic lands for water-dependent uses to include log storage leases  
28 shall be determined as follows:

29 ~~(1)((a) The assessed land value, exclusive of improvements, as~~  
30 ~~determined by the county assessor, of the upland tax parcel used in~~  
31 ~~conjunction with the leased area or, if there are no such uplands, of~~  
32 ~~the nearest upland tax parcel used for water-dependent purposes divided~~  
33 ~~by the parcel area equals the upland value.~~

34 ~~(b) The upland value times the area of leased aquatic lands times~~  
35 ~~thirty percent equals the aquatic land value.~~

36 ~~(2) As of July 1, 1989, and each July 1 thereafter, the department~~  
37 ~~shall determine the real capitalization rate to be applied to water-~~  
38 ~~dependent aquatic land leases commencing or being adjusted under~~

1 subsection (3)(a) of this section in that fiscal year. The real  
2 capitalization rate shall be the real rate of return, except that until  
3 June 30, 1989, the real capitalization rate shall be five percent and  
4 thereafter it shall not change by more than one percentage point in any  
5 one year or be more than seven percent or less than three percent.

6 (3) The annual rent shall be:

7 (a) Determined initially, and redetermined every four years or as  
8 otherwise provided in the lease, by multiplying the aquatic land value  
9 times the real capitalization rate; and

10 (b) Adjusted by the inflation rate each year in which the rent is  
11 not determined under subsection (3)(a) of this section.

12 (4) If the upland parcel used in conjunction with the leased area  
13 is not assessed or has an assessed value inconsistent with the purposes  
14 of the lease, the nearest comparable upland parcel used for similar  
15 purposes shall be substituted and the lease payment determined in the  
16 same manner as provided in this section.

17 (5) For the purposes of this section, "upland tax parcel" is a tax  
18 parcel, some portion of which has upland characteristics. Filled  
19 tidelands or shorelands with upland characteristics which abut state-  
20 owned aquatic land shall be considered as uplands in determining  
21 aquatic land values.

22 (6)) The initial rent for an existing lease as of the effective  
23 date of this act is the last rent valuation in the lease established by  
24 multiplying the aquatic land value times the real rate of return and  
25 applying, if applicable, a maximum fifty percent increase in the rent  
26 from the last year's rent prior to the last rent valuation.

27 (2) The initial rent for any renewal lease where rent was initially  
28 determined under subsection (1) of this section is the rent charged in  
29 the year prior to the lease being renewed.

30 (3) The initial rent for a new lease entered into after the  
31 effective date of this act is the lease valuation as of the effective  
32 date of this act established by multiplying its aquatic land value  
33 times the real rate of return.

34 (4) After establishing the initial rent under subsections (1)  
35 through (3) of this section, the rent shall increase or decrease each  
36 year based on the inflation rate as defined in RCW 79.90.465(9).

37 (5) In the alternative, the lease rate may be based on a negotiated  
38 percentage of the gross or net income exclusively from the water-  
39 dependent use the lessee is conducting on the leased aquatic lands. No

1 rent may be derived from gross or net income from aquatic lands or  
2 uplands not under the lease.

3 (6) The annual rent established under this section may not increase  
4 more than fifty percent in one year.

5 (7) The annual rent for filled state-owned aquatic lands that have  
6 the characteristics of uplands shall be determined in accordance with  
7 RCW 79.90.500 in those cases in which the state owns the fill and has  
8 a right to charge for the fill.

9 **Sec. 3.** RCW 79.90.495 and 1984 c 221 s 10 are each amended to read  
10 as follows:

11 If state-owned aquatic lands are used for aquaculture production or  
12 harvesting, rents and fees shall be established through competitive  
13 bidding or negotiation. However, aquatic lands leased for finfish net-  
14 pen aquaculture may have rents established under RCW 79.90.480 at the  
15 sole discretion of the lessee.

16 NEW SECTION. **Sec. 4.** The following acts or parts of acts are each  
17 repealed:

18 (1) RCW 79.90.485 and 1984 c 221 s 8; and

19 (2) RCW 79.90.490 and 1984 c 221 s 9.

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