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SENATE BILL 5928

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State of Washington

55th Legislature

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By Senators Oke, Snyder, Jacobsen, Swecker, Prentice, Horn and Anderson

Read first time 02/20/97. Referred to Committee on Natural Resources & Parks.

1 AN ACT Relating to port district management of state-owned aquatic  
2 lands; and amending RCW 79.90.465, 79.90.475, and 79.90.500.

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. Facilities and uses that exist in order to  
15 support a water-dependent use, such as parking areas for marinas and  
16 boat launches, and support services for marine terminals and ferry  
17 terminals, are considered water-dependent uses for the purposes of rent  
18 calculation under RCW 79.90.480.

1           (2) "Water-oriented use" means a use which historically has been  
2 dependent on a waterfront location, but with existing technology could  
3 be located away from the waterfront. Examples include, but are not  
4 limited to, wood products manufacturing, watercraft sales, fish  
5 processing, petroleum refining, sand and gravel processing, log  
6 storage, port district offices, and house boats. For the purposes of  
7 determining rent under this chapter, water-oriented uses shall be  
8 classified as water-dependent uses if the activity either is conducted  
9 on state-owned aquatic lands leased on October 1, 1984, or was actually  
10 conducted on the state-owned aquatic lands for at least three years  
11 before October 1, 1984. If, after October 1, 1984, the activity is  
12 changed to a use other than a water-dependent use, the activity shall  
13 be classified as a nonwater-dependent use. If continuation of the  
14 existing use requires leasing additional state-owned aquatic lands and  
15 is permitted under the shoreline management act of 1971, chapter 90.58  
16 RCW, the department may allow reasonable expansion of the water-  
17 oriented use.

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

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

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

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

35           (7) "Port district" means a port district created under Title 53  
36 RCW.

37           (8) The "real rate of return" means the average for the most recent  
38 ten calendar years of the average rate of return on conventional real  
39 property mortgages as reported by the federal home loan bank board or

1 any successor agency, minus the average inflation rate for the most  
2 recent ten calendar years.

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

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

12 (11) "Terminal" means a point of interchange between land and water  
13 carriers, such as a pier, wharf, or group of such, equipped with  
14 facilities for care and handling of either cargo ((and/or)), or  
15 passengers, or both.

16 (12) "State-owned aquatic lands" means those aquatic lands and  
17 waterways administered by the department of natural resources or  
18 managed under RCW 79.90.475 by a port district. "State-owned aquatic  
19 lands" does not include aquatic lands owned in fee by, or withdrawn for  
20 the use of, state agencies other than the department of natural  
21 resources.

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

24 (1) Upon request of a port district, the department and port  
25 district ((may)) shall enter into an agreement authorizing the port  
26 district to manage state-owned aquatic lands that are: (a) Abutting or  
27 used in conjunction with and contiguous to uplands owned, leased, or  
28 otherwise managed by a port district, for port purposes as provided in  
29 Title 53 RCW; or (b) beneath public marina facilities developed or  
30 maintained by a port district. Such agreement shall include, but not  
31 be limited to, provisions defining the specific area to be managed, the  
32 term, conditions of occupancy, reservations, periodic review, and other  
33 conditions to ensure consistency with the state Constitution and the  
34 policies of this chapter.

35 (2) If a port district acquires operating management, lease, or  
36 ownership of real property which abuts state-owned aquatic lands  
37 currently under lease from the state to a person other than the port  
38 district, the port district shall manage such aquatic lands if:

1 ((+1)) (a) The port district acquires the leasehold interest in  
2 accordance with state law((7))i or ((+2)) (b) the current lessee and  
3 the department agree to termination of the current lease to accommodate  
4 management by the port. The administration of aquatic lands covered by  
5 a management agreement shall be consistent with the aquatic land  
6 policies of chapters 79.90 through 79.96 RCW and the implementing  
7 regulations adopted by the department. The administrative procedures  
8 for management of the lands shall be those of Title 53 RCW.

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

21 (4) Upon application for a management agreement, and so long as the  
22 application is pending and being diligently pursued, no rent shall be  
23 due the department for the lease by the port district of state-owned  
24 aquatic lands included within the application for water-dependent or  
25 water-oriented uses.

26 (5) If a port district acquires property subsequent to entering  
27 into a management agreement with the department, then the state-owned  
28 aquatic land abutting or used in conjunction with and contiguous to the  
29 acquired property shall, at the request of the port, be included in the  
30 management agreement.

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

36 **Sec. 3.** RCW 79.90.500 and 1984 c 221 s 11 are each amended to read  
37 as follows:

1       Leases for nonwater-dependent uses of state-owned aquatic lands  
2 shall be charged the fair market rental value of the leased lands,  
3 determined in accordance with appraisal techniques specified by rule.  
4 In no case shall the fair market rental value include the value of any  
5 improvements or fill to the state-owned aquatic land, unless the state  
6 owns the improvements or fill, and has a right to charge for the  
7 improvements or fill. However, rents for nonwater-dependent uses shall  
8 always be more than the amount that would be charged as rent for a  
9 water-dependent use of the same parcel. Rents and fees for the mining  
10 or other recovery of mineral or geothermal resources shall be  
11 established through competitive bidding, negotiations, or as otherwise  
12 provided by statute.

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