

HOUSE BILL REPORT

HB 2166

As Reported By House Committee On:
Natural Resources

Title: An act relating to management of state-owned aquatic lands.

Brief Description: Describing those lands eligible to be included in a port district aquatic lands management agreement.

Sponsors: Representatives Anderson, Barlean, Hatfield, Keiser, Morris and Doumit.

Brief History:

Committee Activity:

Natural Resources: 3/1/99, 3/2/99 [DP].

Brief Summary of Bill

- Authorizes cities or towns to manage state-owned aquatic lands for the purpose of operating a publicly owned marina.

HOUSE COMMITTEE ON NATURAL RESOURCES

Majority Report: Do pass. Signed by 8 members: Representatives Buck, Republican Co-Chair; Anderson, Democratic Vice Chair; Sump, Republican Vice Chair; G. Chandler; Clements; Doumit; Ericksen and Pennington.

Minority Report: Do not pass. Signed by 4 members: Representatives Regala, Democratic Co-Chair; Eickmeyer; Rockefeller and Stensen.

Staff: Carole Richmond (786-7114).

Background:

State-owned aquatic lands are comprised of the bedlands, tidelands, and shorelands of navigable waters and are the lands transferred to the state from the federal government at statehood. The Department of Natural Resources (DNR) manages over 2 million acres of state-owned aquatic lands. In defining the purpose of aquatic land management in 1984, the Legislature found that these lands should be managed for the benefit of the

public; the revenues from the lease of state-owned aquatic lands should be used to enhance opportunities for shoreline access, public recreation, and environmental protection; and standards should be established for determining equitable and predictable lease rates for users of aquatic lands.

The management of state-owned aquatic lands favors water-dependent uses; that is, those uses which cannot logically exist in any location but on the water, such as ferry terminals, docks, and marinas. Nonwater-dependent uses are a low priority use and mean those uses that can exist in areas other than on the waterfront, such as condominiums and restaurants.

Lease rates are charged for most, but not all uses of state-owned aquatic lands, and vary depending upon the kind of use to be made of the lands. Water-dependent lease rates are charged at one-third of the full market value of the adjacent upland parcel, while nonwater-dependent rates are charged the full market value of adjacent upland parcels. The department is authorized to adjust annual rents paid under leases and must provide by rule for an administrative review of any rent if a lessee requests such a review.

Certain state-owned aquatic lands may be managed by port districts under port management agreements. At the request of a port district, the department and port may enter into an agreement authorizing the port district to manage state-owned aquatic lands abutting or used in conjunction with and contiguous to uplands owned, leased, or otherwise managed by a port district for port purposes. When a port management agreement goes into effect, the port generally assumes the rights and responsibilities of the department. The administration of aquatic lands covered by a management agreement must be consistent with aquatic land policies provided under statute and the rent collected by port districts for the lease of state-owned aquatic lands is retained by the port in the case of water-dependent uses. For nonwater-dependent uses, however, the port pays the state 85 percent of the rent it receives.

Pierhead lines are established by the United States government to delineate where piers may be located so as to assist navigation. Waterways are established by the state as a public highway for watercraft that must be reserved from sale or lease. Pierhead lines may be found within waterway boundaries. The strip of waterway between pierhead lines and waterways may not contain any structures unless authorized by the department, or by a port district, if the area is covered under a port management agreement.

Summary of Bill:

Upon request of a city, the department and city may enter into an agreement authorizing the city to manage state-owned aquatic lands for the purpose of operating a publicly owned marina. The provisions for the management of state-owned aquatic lands by a city are the same as the provisions for management by port districts:

- The lands that may be included in such an agreement are those state-owned aquatic lands abutting or used in conjunction with and contiguous with uplands owned, leased, or otherwise managed by a city.
- A city aquatic lands management agreement shall include, but not be limited to provisions defining the specific area to be managed, the term, conditions of occupancy, reservations, periodic review, and other conditions to ensure consistency with the state constitution and other policies of Chapter 79.90 RCW.
- The administration of state-owned aquatic lands covered by a management agreement must be consistent with the aquatic land policies of Chapter 79.90 through 79.96 RCW and the implementing rules adopted by the department.

The rent policies for lands managed under city aquatic lands management agreements are the same as those for port districts; that is, cities retain all of the rent from the lease of aquatic lands for water-dependent uses and retain 15 percent of the rent for nonwater-dependent uses.

The city and the Association of Washington Cities are directed to develop a proposed model management agreement that will be used as the basis for negotiating all city aquatic lands management agreements.

Cities have the final authority for review of any leases for which they are provided responsibility under a city aquatic lands management agreement.

The strip of waterway between a pierhead line and a waterway boundary may not contain structures unless a city authorizes such structures in an area covered under a city aquatic land management area.

Appropriation: None.

Fiscal Note: Available.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: Cities currently pay rent to the state. The management agreement model seems more appropriate for cities than commercial leases. Cities use the land in the same way as port districts, and for the same purposes. Cities provide public access, yet cities are also required to pay rents that go into the Aquatic Lands Enhancement Account (ALEA) for public access. A bill in the 1998 session of the Legislature would have authorized city management agreements, but it was vetoed because DNR wanted to finish the land rent study mandated by the Legislature. Cities with aquatic land leases

are a special case. Legislation would provide the easiest way to rectify the problem. We doubled moorage rates and still can't afford DNR's lease rates.

Testimony Against: These lands are managed as a public trust. This bill further breaks up the authority of DNR over state-owned aquatic lands. A coordinated approach to management is needed. Under port management agreements, ports keep all the revenue for water-dependent leases. This was in exchange for giving up claims to the Harbor Improvement Fund. It isn't clear that cities can provide the same kind of management as ports or the state; for example, compliance with the Endangered Species Act or with sediment cleanup requirements. Ports can accept liability and purchase insurance. Ports are water-oriented managers. This bill amounts to a giveaway to cities. Even if rents were reduced to zero, some cities would still run a deficit. DNR has always provided credit for public access and environmentally sensitive management. Oak Harbor is already provided with the maximum credit for these activities. The impact to the state will be a reduction of \$200,000 to \$300,000 a year in revenues. This will affect ALEA, as well as the management of state-owned aquatic lands.

Testified: (In support) Joe Duesenberg, City of Des Moines; and Nick Thompson, City of South Bend.

(Opposed) Paul Silver, Department of Natural Resources.