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HOUSE BILL 2166

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State of Washington

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1999 Regular Session

By Representatives Anderson, Barlean, Hatfield, Keiser, Morris and Doumit

Read first time 02/17/1999. Referred to Committee on Natural Resources.

1 AN ACT Relating to management of state-owned aquatic lands;  
2 amending RCW 79.90.465, 79.90.520, and 79.93.040; and adding a new  
3 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 NEW SECTION. Sec. 2. A new section is added to chapter 79.90 RCW  
23 to read as follows:

24 (1) Upon request of a city, the department and city may enter into  
25 an agreement authorizing the city to manage state-owned aquatic lands  
26 for the purpose of operating a publicly owned marina. The lands that  
27 may be included in a city aquatic lands management agreement are those  
28 state-owned aquatic lands abutting or used in conjunction with and  
29 contiguous to uplands owned, leased, or otherwise managed by a city.  
30 All state-owned aquatic lands beneath any publicly owned marina  
31 developed or maintained by a city are eligible for management by the  
32 city under a management agreement.

33 A city aquatic lands management agreement shall include, but not be  
34 limited to, provisions defining the specific area to be managed, the  
35 term, conditions of occupancy, reservations, periodic review, and other  
36 conditions to ensure consistency with the state Constitution and the  
37 policies of this chapter. If a city acquires operating management,  
38 lease, or ownership of real property that abuts state-owned aquatic

1 lands currently under lease from the state to a person other than the  
2 city, the city shall manage the aquatic lands if: (a) The city  
3 acquires the leasehold interest in accordance with state law, or (b)  
4 the current lessee and the department agree to termination of the  
5 current lease to accommodate management by the city. The  
6 administration of aquatic lands covered by a city aquatic lands  
7 management agreement shall be consistent with the aquatic land policies  
8 of chapters 79.90 through 79.96 RCW and the implementing rules adopted  
9 by the department. The administrative procedures for management of the  
10 lands shall be those of Title 35 or 35A RCW, whichever is appropriate.

11 No rent is due the state for the use of state-owned aquatic lands  
12 managed under this section for water-dependent or water-oriented uses.  
13 If a city manages state-owned aquatic lands under this section and  
14 either leases or otherwise permits any person to use the lands, the  
15 rental fee attributable to the aquatic land only shall be comparable to  
16 the rent charged lessees for the same or similar uses by the  
17 department. If a city leases state-owned aquatic lands to any person  
18 for nonwater-dependent use, eighty-five percent of the revenue  
19 attributable to the rent of the state-owned aquatic land only shall be  
20 paid to the state.

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

26 The department and representatives of the association of Washington  
27 cities shall develop a proposed model management agreement that shall  
28 be used as the basis for negotiating the management agreements required  
29 by this section. The model management agreement shall be reviewed and  
30 approved by the board of natural resources.

31 (2) A city that operates a publicly owned marina within the  
32 territorial limits of a port district shall obtain the approval of the  
33 port commission prior to applying to the department for a management  
34 agreement. A city with marina facilities in existence on the effective  
35 date of this act may enter into a management agreement for those  
36 facilities without port commission approval.

37 **Sec. 3.** RCW 79.90.520 and 1991 c 64 s 1 are each amended to read  
38 as follows:

1       The manager shall, by rule, provide for an administrative review of  
2 any aquatic land rent proposed to be charged. The rules shall require  
3 that the lessee or applicant for release file a request for review  
4 within thirty days after the manager has notified the lessee or  
5 applicant of the rent due. For leases issued by the department, the  
6 final authority for the review rests with the board of natural  
7 resources. For leases managed under RCW 79.90.475, the final authority  
8 for the review rests with the appropriate port commission. For leases  
9 managed under section 2 of this act, the final authority for the review  
10 rests with the appropriate city legislative authority. If the request  
11 for review is made within thirty days after the manager's final  
12 determination as to the rental, the lessee may pay rent at the  
13 preceding year's rate pending completion of the review, and shall pay  
14 any additional rent or be entitled to a refund, with interest thirty  
15 days after announcement of the decision. The interest rate shall be  
16 fixed, from time to time, by rule adopted by the board of natural  
17 resources and shall not be less than six percent per annum. Nothing in  
18 this section abrogates the right of an aggrieved party to pursue legal  
19 remedies. For purposes of this section, "manager" is the department  
20 except where state-owned aquatic lands are managed by a port district  
21 or a city, in which case "manager" is the appropriate port district or  
22 city.

23       **Sec. 4.** RCW 79.93.040 and 1984 c 221 s 21 are each amended to read  
24 as follows:

25       If the United States government has established pierhead lines  
26 within a waterway created under the laws of this state at any distance  
27 from the boundaries established by the state, structures may be  
28 constructed in that strip of waterway between the waterway boundary and  
29 the nearest pierhead line only with the consent of the department of  
30 natural resources and upon such plans, terms, and conditions and for  
31 such term as determined by the department. However, no permit shall  
32 extend for a period longer than thirty years.

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

35       If a waterway is within the territorial limits of a port district,  
36 the duties assigned by this section to the department may be exercised  
37 by the port commission of such port district as provided in RCW  
38 79.90.475. If a waterway is within the territorial limits of a city,

1 the duties assigned by this section to the department may be exercised  
2 by the city as provided in section 2 of this act.

3       Nothing in this section shall confer upon, create, or recognize in  
4 any abutting owner any right or privilege in or to any strip of  
5 waterway abutting any street and between prolongations of the lines of  
6 such street, but the control of and the right to use such strip is  
7 hereby reserved to the state of Washington, except as authorized by RCW  
8 79.90.475 and section 2 of this act.

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