

FINAL BILL REPORT

ESHB 2819

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Synopsis as Enacted

Brief Description: Addressing the uncertainty surrounding reversionary clauses contained in Bush act and Callow act deeds.

Sponsors: By House Committee on Natural Resources (originally sponsored by Representatives Doumit, Buck, Hatfield and Linville).

House Committee on Natural Resources
Senate Committee on Natural Resources, Parks & Shorelines

Background:

Upon statehood, Washington was conferred all of the aquatic lands within the state's borders. Unlike the upland forested parcels, the aquatic lands transferred were given to the new state in fee and were not subject to trust restrictions for specific beneficiaries. Since that time, the state has sold some of the aquatic lands in the state and entered into leases for other parcels.

In 1895 the Legislature passed the Bush and Callow acts. These acts allowed for the sale of aquatic lands to be used only for oyster planting. The laws specified that if the aquatic lands were used for any other purpose, the ownership would revert back to the state. In 1919 the Legislature passed what is known as the "Clam Act." This legislation allowed the owners of aquatic lands purchased under the Bush and Callow acts to cultivate clams and other edible shellfish without having the land revert back to the state because it was being used for a purpose other than growing oysters.

The Bush and Callow acts were repealed in 1935. However, the Legislature included a savings clause so that individuals who had purchased aquatic lands under the acts were allowed to maintain full ownership, subject to reversion back to the state for improper uses. In 1949 the Clam Act was repealed during a comprehensive rewrite of the state's Fisheries Code. Because the repeal of the Clam Act did not contain a savings clause, the permission to cultivate shellfish other than oysters on Bush and Callow lands was repealed with the act.

The aquatic lands sold under the Bush and Callow acts are still being actively used for the cultivation of oysters. However, many acres of these aquatic lands are also being used for the cultivation of clams, geoduck, and other shellfish.

In 1991 the attorney general was asked if the state could exercise its reversionary rights

granted by the Bush and Callow acts and reclaim ownership of the lands being used for something other than oyster cultivation. The attorney general concluded that operations that were raising shellfish other than oysters prior to the 1949 repeal of the Clam Act had a vested right to continue activities consistent with the Clam Act. However, the attorney general also opined that operations raising clams and other shellfish on Bush and Callow lands that were not doing so prior to the Clam Act's repeal are subject to the state's reversionary rights.

Summary:

Any person who is in possession of property that was conveyed under either the Bush or Callow Act is granted the right to use that property for the cultivation of clams or other shellfish. This right does not include the right to use subtidal portions of Bush and Callow Act tidelands for the cultivation and harvest of shellfish not commencing prior to December 31, 2001. Cultivation is not deemed to have commenced unless shellfish planting has begun prior to December 31, 2001. The granting of this right does not impair any currently vested rights.

Aquatic lands that are under deed or contract from the state and being used by a private party to harvest or cultivate geoduck must be surveyed. Property corners and anchor buoys must be placed in sufficient quantities to aid in relocation of the oyster track lines occurring or extending below extreme low tide. The record of the survey must be established on the Washington coordinate system.

Votes on Final Passage:

House 94 0

Senate 48 0

Effective: June 13, 2002