

HOUSE BILL REPORT

ESHB 2819

As Passed Legislature

Title: An act relating to Bush act and Callow act lands.

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).

Brief History:

Committee Activity:

Natural Resources: 2/5/02, 2/6/02 [DPS].

Floor Activity:

Passed House: 2/18/02, 94-0.

Passed Senate: 3/5/02, 48-0.

Passed Legislature.

Brief Summary of Engrossed Substitute Bill

- Allows the owners of Bush and Callow Act tidelands to cultivate clams and other shellfish without the title to the property reverting back to the state.
- Requires that private geoduck beds be surveyed and recorded.

HOUSE COMMITTEE ON NATURAL RESOURCES

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Doumit, Chair; Rockefeller, Vice Chair; Sump, Ranking Minority Member; Buck, Eickmeyer, Ericksen, Jackley, McDermott, Orcutt, Pearson and Upthegrove.

Staff: Jason Callahan (786-7117).

Background:

Upon statehood, Washington had conferred to it 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 not subject to trust restrictions for specific beneficiaries. Since

that time, the state has sold off 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 piece of 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 for 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The Bush and Callow acts were repealed in 1935; however, the Legislature included a savings clause so that individuals who had purchased aquatic lands under the acts were allowed to maintain full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 In 1949 the Clam Act was repealed during a massive rewrite of the state's Fisheries Code. The repeal of the Clam Act did not contain a savings clause, so the permission to cultivate shellfish other than oysters on Bush and Callow lands was repealed with the act.

Today, 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 today, that were not doing so prior to the Clam Act's repeal, are subject to the state's reversionary rights.

Summary of Engrossed Substitute Bill:

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, and it does not impair any currently vested rights. Cultivation is not deemed to have commenced unless shellfish planting has begun prior to December 31, 2001.

Aquatic lands that are under deed or contract from the state that are currently 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.

Appropriation: None.

Fiscal Note: Not Requested.

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

Testimony For: This is a very complex issue of great significance to the state's shellfish industry. The ownership cloud surrounding Bush and Callow Act lands needs to be cleared so that shellfish growers can have the certainty they need to invest in the land. The surveys of the private geoduck beds assure that the public is being compensated for the expansion of rights on the Bush and Callow lands.

Testimony Against: None.

Testified: Bill Dewey and Brett Bishop, Pacific Coast Shellfish Growers Association; Loren Stern, Department of Natural Resources; and Jim Gibbons, Seattle Shellfish.