

SENATE BILL REPORT

ESHB 2819

As Reported By Senate Committee On:
Natural Resources, Parks & Shorelines, February 28, 2002

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

Brief History:

Committee Activity: Natural Resources, Parks & Shorelines: 2/27/02, 2/28/02 [DP].

SENATE COMMITTEE ON NATURAL RESOURCES, PARKS & SHORELINES

Majority Report: Do pass.

Signed by Senators Jacobsen, Chair; Poulsen, Vice Chair; Hargrove, McDonald, Oke, Snyder, Spanel and Stevens.

Staff: Kari Guy (786-7437)

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 tidelands to be used only for oyster planting. The laws specified that if the tidelands were used for any other purpose, the ownership would revert to the state.

In 1919 the Legislature passed what is known as the "Clam Act." The Clam Act allowed the owners of tidelands purchased under the Bush and Callow acts to cultivate clams and other edible shellfish without having the tideland 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The Bush and Callow acts were repealed in 1935; however, the Legislature included a savings clause so that individuals who had purchased aquatic lands under the acts were allowed to maintain full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 In 1949, the Clam Act was repealed during a massive rewrite of the state's Fisheries Code.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contain a savings clause, so the permission to cultivate shellfish other than oysters on Bush and Callow tidelands was repealed with the act.

Today, tidelands sold under the Bush and Callow acts are still being actively used for the cultivation of oysters. However, many acres of these tidelands are also being used for the cultivation of clams, geoduck, and other shellfish. In addition, some subtidal acres sold under the Bush and Callow acts are being used for cultivation of geoduck. 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 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 in shellfish cultivation. 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 bill is needed to resolve uncertainty regarding reversionary rights on shellfish growing lands. The shellfish industry contributes to the rural economy of the state, and shellfish growers have made significant investments in these tidelands. The bill should not open the door to new subtidal cultivation.

Testimony Against: This bill would negate existing contracts to plant and harvest geoduck on private lands. This will put some growers out of business. There are dozens of uses other than oyster growing on these tidelands, and it is unreasonable to limit the bill to only protect a portion of the shellfish industry.

Testified: PRO: Representative Mark Doumit, prime sponsor; Representative Phil Rockefeller; Bill Dewey, Pacific Coast Shellfish Growers Assn.; Kelly Croman, Squaxin Island Tribe; Leigh Espy, WA DNR; Chris Cheney, Doug McRae, WA Shellfish Inc.; Jim Gibbons, Seattle Shellfish.