

HOUSE BILL REPORT

SHB 1250

As Amended by the Senate

Title: An act relating to lease rates for marinas on state-owned aquatic lands that provide public moorage.

Brief Description: Determining annual rental rates for the lease of state-owned aquatic lands for qualifying marinas.

Sponsors: By House Committee on Agriculture & Natural Resources (originally sponsored by Representatives Eickmeyer, Schoesler, Linville, Sump, Quall and Mielke; by request of Commissioner of Public Lands).

Brief History:

Committee Activity:

Agriculture & Natural Resources: 1/31/03, 2/25/03 [DPS];
Appropriations: 3/5/03, 3/6/03 [DPS(AGNR)].

Floor Activity:

Passed House: 3/13/03, 94-2.
Senate Amended.
Passed Senate: 4/16/03, 48-0.

Brief Summary of Substitute Bill

- Establishes the rent formula as a percentage of a marina's gross revenues, as set by the Department of Natural Resources.

HOUSE COMMITTEE ON AGRICULTURE & NATURAL RESOURCES

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 13 members: Representatives Linville, Chair; Rockefeller, Vice Chair; Schoesler, Ranking Minority Member; Holmquist, Assistant Ranking Minority Member; Kristiansen, Assistant Ranking Minority Member; Chandler, Eickmeyer, Grant, Hunt, McDermott, Orcutt, Quall and Sump.

Staff: Jason Callahan (786-7117).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The substitute bill by Committee on Agriculture & Natural Resources be substituted therefor and the substitute bill do pass. Signed by 25 members: Representatives Sommers, Chair; Fromhold, Vice Chair; Sehlin, Ranking Minority Member; Pearson, Assistant Ranking Minority Member; Alexander, Buck, Clements, Cody, Conway, Cox, Dunshee, Grant, Hunter, Kagi, Kenney, Kessler, Linville, McDonald, McIntire, Miloscia, Pflug, Ruderman, Schual-Berke, Sump and Talcott.

Staff: Patricia Linehan (786-7178).

Background:

The Legislature has delegated the management of state-owned aquatic lands to the Department of Natural Resources (DNR), with directions to encourage public use and access, foster water-dependent uses, ensure environmental protection, and utilize renewable resources. The DNR is further instructed to charge a rent to the users of state-owned aquatic lands, with different standards applying to different use types. Non-water dependent uses are charged the fair market value for the use of the land. Water dependent uses are charged rent according to a statutory formula.

Water dependent uses, defined as uses that cannot logically exist except on water, are assessed a rent that is associated with upland values. Generally, water dependent uses must pay a rent that is 30 percent of the assessed value of the adjacent upland parcel, plus a real capitalization rate.

The Legislature suspended rent increases for marinas located on state-owned aquatic lands between June 11, 1998 and July 1, 1999. The rent freeze was implemented while the DNR conducted a legislatively-mandated study into other possible rent formulas. The conclusions of the Final Rent Study Report to the Legislature, delivered by the DNR in February of 1999, indicated that at that time there was no consensus for change reached.

Summary of Substitute Bill:

The rent formula for qualifying marinas is established as a percentage of a marina's gross revenues. The percentage rate, along with the portions of a marina's revenues that serve as a basis for that rate, will be determined by the DNR and recalculated on an annual basis. The percentage set by the DNR must cover their administrative costs and ensure that the state does not see a revenue loss from current levels. In developing a rent formula, the DNR must account for the income of subleases and concessionaires. The new rent formula will be phased in over 2004, so all marinas will be operating under the new rent formula by January 1, 2005.

By July 1, 2003, and again annually, all marina lessees must submit tax documentation and an income reporting form to the DNR for lease calculation purposes. All income reports are subject to audit and review. If a marina fails to submit appropriate

documentation, the DNR may conduct an audit at the marina's expense or cancel the lease.

The minimum amount for a marina lease is set at \$500, plus any administrative costs.

EFFECT OF SENATE AMENDMENT(S):

The Senate amendment moves the date that lease rates will be recalculated to reflect a percentage of a marina's gross revenue from January 2004 to July 2004, changes provisions that provide direction to the Department of Natural Resources in developing the new rent formula into components of a recommendation to the Legislature that is due by the end of 2003, requires the Department to conduct a work session with stakeholders, provides the department with greater discretion in calculating the new rent formula unless the assumption that the Legislature will enact legislation in 2004 to provide direction to the department is fulfilled, alters the provision that allows the Department to calculate the base rent of marinas if 90 percent of surveys are not returned by requiring the Department to use the rent calculation method in place before the bill was passed if 75 percent of the surveys are not returned, requires administrative costs to be deposited into the Resource Management Cost Account.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill contains an emergency clause and takes effect immediately.

Testimony For: (Agriculture & Natural Resources) (Original bill) Lease rates for aquatic lands is a returning issue, and this bill clarifies some past objections and offers a fair basis for rent formulation. Over the years, the current rent formulation has increased rent far quicker than the value of marina rent slips has climbed.

This bill is a collaborative effort of many stakeholders that has taken over 12 years to develop. The drafters looked at five different rent formulation models, and given the lack of available information, the model outlined in the bill proved to be the best one for all involved. It provides a clear formula for overworked land managers to help expedite leases.

The bill is a compromise that initially provides revenue neutrality to the state, while providing a financial break to the marina owners over time, allowing them to save and pay their bills into the future.

Boating is an integral part of life in the Northwest and should be supported. By providing lower rent increases, the bill helps to keep moorage affordable for middle-class boaters in the state. No new marinas are being built because it is not a profitable

business. A piece of aquatic land has no value without access, and the marinas provide that access.

A decrease in revenue to the state is not a high price to pay for financial predictability to the marina owners. The financial help to rural communities makes up for the decreases in state revenue. Predictability is important for marina owners because marinas cannot be moved and the owners have no control over the valuation and use of the adjacent upland.

Testimony For: (Appropriations) This bill is very different from the original agency request legislation. It improves upon the current rent method, addresses inequities among certain marina lessees, and requires a minimum rent amount. The new approach to calculating marina rents will cost more to implement, both initially and in the long-term. The DNR strongly supports the administrative cost recovery aspect of this bill and has suggestions to alter the proposed implementation dates. On-going costs will include the cost of audits, securing and reviewing the annual income information from the lessees. Rents will be recalculated annually.

The current problem is the entanglement of different property valuations that are involved in establishing aquatic lands' value and leases. The old system will be abandoned and replaced with a system that will eliminate the land value part of the equation. Some marinas will pay more and others will pay less; it will be calculated on a percentage of whatever amount each marina receives in revenue.

Depending on the zoning and the size of the upland parcels, the current method impacts the marina leases disproportionately. The bill corrects longstanding inequities in the valuation of aquatic land leases by the DNR. This bill puts the valuation of lands leased for marina purposes into an acceptable appraisal and valuation format. The state revenue generated from marina leases goes into the Aquatic Lands Enhancement Account and the Resource Management Cost Account and is used for restoration and environmental projects and support of the DNR staff, respectively. There would be concerns if the DNR's ability to adjust the rates is limited, or restricted.

Testimony Against: (Agriculture & Natural Resources) (Original bill) Before marina rents are reduced, such action should be justified. There is a huge demand for boat slips in Washington that exceeds the supply. The cost of a moorage could be high and still be supported by the boating community. The marinas have not shown that they are in the trouble that they suggest. The DNR asked many marina owners to disclose information about revenue and expenditures, and none of them were willing to open their books to justify their economic hardship.

Public lands should not be valued any different from private lands. Market forces should be allowed to control, and the Legislature should not implement artificial controls.

County assessors face complications with using adjacent uplands to establish a base rent. Neighboring communities can have drastically different values, and the value can be affected by the zoning, size, and type of use applied to the upland parcel. No other land is valued in this manner, and the bill does not address inequity in rent formulas.

The bill could result in less state revenue, which could lead to less money being generated for grant programs that provide funds for public recreational access, aquatic land management, and aquatic land enhancement. Given the state of the state's finances, it is a mistake to take away a revenue source. The bill also reduces funds to local governments that rely on leasehold taxes. The loss of revenue is immediate, and it also will magnify over time.

Testimony Against: (Appropriations) None.

Testified: (Agriculture & Natural Resources) (In support) Representative Eickmeyer, prime sponsor; Fran McNair, Department of Natural Resources; Cliff Webster, Northwest Marine Trade Association; Margie Freeman, Association of Independent Moorages; and Neil Falkenburg, Puget Sound Marina Operators;

(Opposed) Michelle Hagen, Washington Association of County Officials; and Bruce Wishart, People for Puget Sound.

(Concerns) Dan Budd, Department of Fish and Wildlife.

Testified: (Appropriations) Representative Eikmeyer, prime sponsor; Michelle Hagen, Washington Association of County Officials; Thomas A. Baenen, Washington State Association of City Assessors; and Loren Stern, Department of Natural Resources.