
SENATE BILL 5041

State of Washington

58th Legislature

2003 Regular Session

By Senators Morton, T. Sheldon, B. Sheldon and Oke; by request of
Commissioner of Public Lands

Read first time 01/13/2003. Referred to Committee on Natural
Resources, Energy & Water.

1 AN ACT Relating to lease rates for marinas on state-owned aquatic
2 lands that provide public moorage; and amending RCW 79.90.480.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 **Sec. 1.** RCW 79.90.480 and 1998 c 185 s 2 are each amended to read
5 as follows:

6 Except as otherwise provided by this chapter, annual rent rates for
7 the lease of state-owned aquatic lands for water-dependent uses shall
8 be determined as follows:

9 (1)(a) The assessed land value, exclusive of improvements, as
10 determined by the county assessor, of the upland tax parcel used in
11 conjunction with the leased area or, if there are no such uplands, of
12 the nearest upland tax parcel used for water-dependent purposes divided
13 by the parcel area equals the upland value.

14 (b) The upland value times the area of leased aquatic lands times
15 thirty percent equals the aquatic land value.

16 (2) As of July 1, 1989, and each July 1st thereafter, the
17 department shall determine the real capitalization rate to be applied
18 to water-dependent aquatic land leases commencing or being adjusted
19 under subsection (3)(a) of this section in that fiscal year. The real

1 capitalization rate shall be the real rate of return, except that until
2 June 30, 1989, the real capitalization rate shall be five percent and
3 thereafter it shall not change by more than one percentage point in any
4 one year or be more than seven percent or less than three percent.

5 (3) The annual rent shall be:

6 (a) Determined initially, and redetermined every four years or as
7 otherwise provided in the lease, by multiplying the aquatic land value
8 times the real capitalization rate; and

9 (b) Adjusted by the inflation rate each year in which the rent is
10 not determined under subsection (3)(a) of this section.

11 (4) If the upland parcel used in conjunction with the leased area
12 is not assessed or has an assessed value inconsistent with the purposes
13 of the lease, the nearest comparable upland parcel used for similar
14 purposes shall be substituted and the lease payment determined in the
15 same manner as provided in this section.

16 (5) For the purposes of this section, "upland tax parcel" is a tax
17 parcel, some portion of which has upland characteristics. Filled
18 tidelands or shorelands with upland characteristics which abut state-
19 owned aquatic land shall be considered as uplands in determining
20 aquatic land values.

21 (6) The annual rent for filled state-owned aquatic lands that have
22 the characteristics of uplands shall be determined in accordance with
23 RCW 79.90.500 in those cases in which the state owns the fill and has
24 a right to charge for the fill.

25 ~~(7) ((For leases for marina uses only, beginning on June 11, 1998,~~
26 ~~the annual rental rates in effect on December 31, 1997, shall remain in~~
27 ~~effect until July 1, 1999, at which time the annual water dependent~~
28 ~~rent shall be determined by the method in effect at that time. In~~
29 ~~order to be eligible for the rate to remain at this level, a marina~~
30 ~~lease must be in good standing, meaning that the lessee must be current~~
31 ~~with payment of rent, the lease not expired or in approved holdover~~
32 ~~status, and the lessee not in breach of other terms of the agreement.))~~
33 Annual rent rates for the lease of state-owned aquatic lands for
34 qualifying marinas must be determined in the following manner:

35 (a) For the purposes of this section, a qualifying marina is
36 defined as a facility that is principally designed and operated to
37 provide in-water vessel moorage that is available for lease or rent to
38 the general public. It may include mixed commercial and general public

1 uses, provided that at least seventy-five percent of the lineal feet of
2 moorage is available for use by the general public to moor vessels. It
3 does not include moorage facilities that allocate slip spaces to
4 members or owners rather than the general public. Unqualified
5 facilities include, but are not limited to, moorage associated with
6 apartments, yacht clubs, moorage condominiums, and associations formed
7 to provide moorage to a limited or defined group. Marinas must have
8 leases that are in good standing in order to qualify.

9 (b)(i) Annual rent for qualified marinas must be determined
10 initially using a base rent. Thereafter, base rent shall be adjusted
11 as provided in (c) of this subsection.

12 (ii) For the purposes of this section, the base year's rent is the
13 water-dependent rent in effect for the year the marina qualifies. For
14 qualifying marinas in existence as of the effective date of this
15 section, the base year's rent is the rent that was charged by the
16 department on June 30, 2002, adjusted from that date in the manner
17 provided in (c) of this subsection. For qualifying marinas that are
18 first constructed after the effective date of this section, the base
19 year's rent per square foot must be computed as the average rent per
20 square foot of the five closest qualifying marinas. Rent computed
21 under this section shall be applied on the first anniversary date of
22 the lease after the marina qualifies or at the start of any new lease
23 for a qualifying marina.

24 (iii) Any qualifying marinas that cease to qualify by allowing
25 their lease to fall out of good standing, or by otherwise failing to
26 operate as described in (a) of this subsection, must have their rent
27 computed in accordance with the provisions of subsections (1) and (3)
28 of this section, or RCW 79.90.500, as applicable, beginning with the
29 next billing period for the lease. A marina that subsequently
30 requalifies must use a new base rent equal to the water-dependent rent
31 computed under subsection (1) of this section at that date.

32 (c)(i) The department must adjust the rent for qualifying marinas
33 on the anniversary date established by the lease based upon any
34 increase in the consumer price index for Seattle-Tacoma-Bremerton as
35 published by the United States department of labor. If the United
36 States department of labor ceases to publish the Seattle-Tacoma-
37 Bremerton index the department must use the most appropriate price
38 index available.

1 (ii) The annual adjustment to rent is capped at five percent in any
2 given year. Any percentage increase in the consumer price index that
3 exceeds five percent must be carried forward and added to the consumer
4 price index in subsequent years when the consumer price index increase
5 is less than five percent until the rental rate charged incorporates
6 all potential adjustments arising from increases in the consumer price
7 index.

8 (d) In those cases where a portion of an otherwise qualified marina
9 is utilized for nonwater-dependent purposes, or is used for some
10 purpose not directly related to qualified vessel moorage, the portion
11 of the leased premises associated with this activity must be
12 apportioned and rent must be computed in accordance with RCW 79.90.500,
13 or with subsections (1) and (3) of this section, as applicable.

14 (e) For the purposes of this section, a marina lease is in good
15 standing if it is within its term or under a holdover agreement, the
16 rent has been properly revalued in accordance with subsections (1) and
17 (3) of this section, the rental computations are current, all lease
18 payments due under the properly valued lease have been paid, and there
19 are no other outstanding defaults under the lease.

20 (f) The provisions of this subsection (7) are intended to apply
21 where the department's direct lessee operates the qualifying marina to
22 provide moorage to the general public. In those cases where the
23 department's direct lessee subleases the leased premises to another
24 entity, or otherwise contracts with a concessionaire, to operate the
25 qualified marina, rent for that facility is the rent computed in
26 accordance with (b) and (c) of this subsection, and thirty percent of
27 the portion of the gross rents or fees that the department's direct
28 lessee charges to the sublessee or concessionaire that is greater than
29 the computed rent.

30 (g) To maintain the public benefit of generating revenue consistent
31 with RCW 79.90.455, at a rate greater than the cost of management of
32 these lands, qualifying marinas must pay a rent of no less than five
33 hundred dollars. This minimum amount must be adjusted annually in the
34 manner described in (c) of this subsection.

35 (h) If the rent of a qualifying marina is revalued between July 1,
36 2002, and the effective date of this section pursuant to subsection
37 (3)(a) of this section, and if that revaluation results in an increase
38 in the rental rate by more than ten percent, the amount of the rental

1 increase that is in excess of ten percent must be computed and applied
2 as a rental credit against future rental payments. The rental credit
3 must be applied against any future rental amounts billed by the
4 department in equal amounts over the next ten years of the lease for so
5 long as the lease is in good standing. If the lease terminates without
6 renewal, if the lease terminates early for cause, if the marina no
7 longer qualifies under (a) of this subsection, or if the lease is not
8 maintained in good standing, any unused rent credit lapses.

9 (i) The rate and annual adjustments provided in this subsection (7)
10 must be used to determine the change in rent between the end of a lease
11 term and the beginning of a renewed lease. If the lease is not in good
12 standing at the time of renewal the base rent upon renewal shall be
13 computed in accordance with the provisions of subsection (1) of this
14 section.

15 (8) For all new leases for marinas, or any other water-dependent
16 use, issued after December 31, 1997, the initial annual water-dependent
17 rent shall be determined by the methods in subsections (1) through (6)
18 of this section.

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