

# SENATE BILL REPORT

## SSB 5585

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As Passed Senate, March 16, 2005

**Title:** An act relating to land acquired from a commercial waterway district.

**Brief Description:** Requiring a report from port districts regarding management of former commercial waterway district property.

**Sponsors:** Senate Committee on Government Operations & Elections (originally sponsored by Senators Poulsen, Esser and Prentice).

**Brief History:**

**Committee Activity:** Government Operations & Elections: 2/7/05, 3/1/05 [DPS].  
Passed Senate: 3/16/05, 47-1.

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### SENATE COMMITTEE ON GOVERNMENT OPERATIONS & ELECTIONS

**Majority Report:** That Substitute Senate Bill No. 5585 be substituted therefor, and the substitute bill do pass.

Signed by Senators Kastama, Chair; Berkey, Vice Chair; Roach, Ranking Minority Member; Benton, Fairley, Haugen, Kline, McCaslin, Mulliken and Pridemore.

**Staff:** Genevieve Pisarski (786-7488)

**Background:** Through laws adopted between 1909 and 1917, the state authorized creation and operation of commercial waterway districts for the purpose of constructing waterways for commercial navigation by straightening and deepening existing river channels. The state conveyed to such districts by statute the state's title to the portions of riverbeds that were drained as a result of waterway construction, so that these could be sold to finance the waterway. The districts were also authorized to acquire the additional lands that were not existing riverbed through which a waterway would be excavated.

In 1963, a state supreme court case concerning the Duwamish Waterway, ruled that Commercial Waterway District #1 of King County had title to lands within the constructed waterway only in its governmental capacity for the purpose of maintaining a waterway. The court also ruled that the district could neither remove nor charge rent to a facility constructed in the edge of the waterway for the purpose of connecting the adjoining upland with the navigable channel.

In 1963, the state authorized commercial waterway districts to transfer their functions and property to port districts. In 1971, the commercial waterway district laws were repealed.

**Summary of Bill:** The legislature finds that it is in the best interests of the public for the public owner to have administrative oversight authority over private use of former commercial waterway district lands. Management under port district authority must maintain economic vitality, protect the environment, and preserve the public interest.

By December 1, 2005, a port district to which commercial waterway district property was transferred must report to the legislature regarding existing uses, potential future uses, status of environmental mitigation and cleanup, communication with users, and general terms and conditions of leases and continued access.

These findings and provisions are uncodified and expire December 31, 2005.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Committee/Commission/Task Force Created:** No.

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

**Testimony For:** The court case has created confusion over the Port of Seattle's authority to manage the Duwamish Waterway. This bill will allow the port to be more effective and efficient and benefit taxpayers. Some occupants of the waterway oppose the bill, but many favor it. It's clear that the port owns the channel and the edges of the waterway, but, because of this case, it can't issue leases or permits or control bad practices that cause pollution, prevent clean-up, or encroach on public property. This bill gives the port the same authority over the waterway as it has over its other property. The port plans to phase-in rents and deal with special circumstances case by case. The designation of this area as a Superfund site in 2001 is the reason why the port is pursuing this authority now. Express legal control of the waterway is necessary to finance and carry out Superfund obligations. Leasing is consistent with the intent behind waterways, but selling is not. The bill should be limited to leasing authority that is consistent with maintaining a waterway and navigation channel.

**Testimony Against:** The court case clearly established that the waterway occupants have a right of access which the port can't deny or charge for. The port does not have legal control; there are riparian rights. The Corps of Engineers has control of the waterway channel, and the city controls the rest. The port already collects taxes. This bill doesn't put a limit on what else the port could charge. Waterway occupants have made large investments and taken care of the property, including clean-ups. The port isn't crediting these improvements. Charging rent is unjust. Some businesses will be unable to continue.

**Who Testified:** PRO: Sen. Poulsen, prime sponsor; Linda Strout, Wayne Grotheer, and Tom Tanaka, Port of Seattle; Fran McNair, Department of Natural Resources.

CON: M.C. Halvorsen; Cliff Webster and Boyer Halvorsen, Boyer Towing, Inc.; James Gilmur, Duwamish Marine Center.

Signed in, Unable to Testify & Submitted Written Testimony: CON: Ed Spaunhurst.