
HOUSE BILL 1493

State of Washington

59th Legislature

2005 Regular Session

By Representatives B. Sullivan, Upthegrove, Buck, Orcutt and Eickmeyer; by request of Commissioner of Public Lands

Read first time 01/25/2005. Referred to Committee on Natural Resources, Ecology & Parks.

1 AN ACT Relating to the purchase of tidelands and shorelands and
2 authorizing the sale of nonriparian state-owned filled tidelands or
3 shorelands, that are currently upland in nature and no longer provide
4 the ecological functions and public benefits normally intrinsic to
5 functioning aquatic lands as described in RCW 79.90.450 and 79.90.455;
6 amending RCW 79.90.010, 79.94.090, 79.94.150, and 79.90.245; reenacting
7 and amending RCW 43.79A.040; adding new sections to chapter 79.94 RCW;
8 adding a new section to chapter 79.90 RCW; creating a new section;
9 repealing RCW 79.90.250; and making an appropriation.

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

11 NEW SECTION. **Sec. 1.** The legislature finds that a high percentage
12 of state-owned tidelands and shorelands were sold into private
13 ownership as part of the state legislature's earliest efforts to foster
14 Washington's economic expansion. The remaining state-owned tideland
15 and shoreland ownership is fragmented and some state-owned tidelands
16 and shorelands have been altered by fill to such a degree that they
17 have the characteristics of uplands. These filled lands may no longer
18 provide public benefits as aquatic lands as described in RCW 79.90.450

1 and 79.90.455 and remain underutilized as dry land because they are
2 subject to a management philosophy dedicated to the protection of
3 submerged lands.

4 The legislature recognizes that certain state-owned filled
5 tidelands and filled shorelands should be designated as aquatic
6 investment properties and commercially managed in order to generate
7 funding for the acquisition, protection, and management of functioning
8 aquatic lands. It is the intent of this act to authorize the
9 department of natural resources to buy and sell certain filled
10 tidelands and shorelands which, if bought or sold, would not cause the
11 loss of aquatic ecological functions, public access opportunities, or
12 interfere with water-dependent activities and businesses.

13 NEW SECTION. **Sec. 2.** A new section is added to chapter 79.94 RCW
14 to read as follows:

15 (1) The legislature finds that maintaining state-owned aquatic
16 lands in public ownership is often in the public interest. However,
17 when state-owned filled tidelands and filled shorelands do not provide
18 the ecological functions and public benefits normally associated with
19 state-owned aquatic lands and are better managed to generate revenue to
20 support acquisition of functioning aquatic lands, then the sale or
21 commercial management of such lands is not contrary to the public
22 interest.

23 (2) The department shall manage aquatic investment properties for
24 the purpose of generating revenue. This includes the authority to sell
25 lands designated as aquatic investment properties. Subject to sections
26 4, 6, and 9 of this act, revenue generated from the sale or leasing of
27 aquatic investment properties must be used to fund acquisition,
28 preservation, and management of functioning aquatic lands or for
29 reinvestment in more manageable filled lands that were formerly below
30 ordinary high tide in tidal waters or ordinary high water on navigable
31 rivers and lakes. The sale of aquatic investment properties must
32 demonstrate a clear economic benefit to the state.

33 **Sec. 3.** RCW 79.90.010 and 1982 1st ex.s. c 21 s 1 are each amended
34 to read as follows:

35 (~~Whenever used in~~) The definitions in this section apply

1 throughout chapters 79.90 through 79.96 RCW (~~the term~~) unless the
2 context clearly requires otherwise.

3 (1) "Aquatic investment properties" means state-owned filled
4 tidelands and filled shorelands, designated by the board according to
5 section 4 of this act, that are currently upland in nature and no
6 longer provide the ecological functions and public benefits normally
7 intrinsic to functioning aquatic lands.

8 (2) "Aquatic lands" means all state-owned tidelands, shorelands,
9 harbor areas, and the beds of navigable waters.

10 (3) "Functioning aquatic lands" means lands that, in their current
11 condition, are below ordinary high tide in tidal waters or ordinary
12 high water on navigable rivers and lakes, and provide for important
13 ecological functions or public benefits as described in RCW 79.90.455.

14 (4) "Net acreage" means the difference between the total acres of
15 aquatic lands acquired and the total acres of aquatic lands disposed of
16 by the department under the authority of this act.

17 (5) "State-owned aquatic land base" means the amount of state-owned
18 aquatic lands managed by the department on the effective date of this
19 act or as subsequently updated through biennial reports submitted to
20 the board pursuant to section 9 of this act.

21 NEW SECTION. Sec. 4. A new section is added to chapter 79.94 RCW
22 to read as follows:

23 (1) The department may, with approval of the board, purchase
24 functioning aquatic lands. Once acquired, these lands shall become a
25 permanent part of the state-owned aquatic land base and subject to the
26 provisions of chapters 79.90 through 79.96 RCW.

27 (2) The department may, with approval of the board, purchase filled
28 lands that were formerly below ordinary high tide in tidal waters or
29 ordinary high water on navigable rivers and lakes, and improvements
30 associated with any of these lands, that have the potential to generate
31 revenues to fund the acquisition, protection, and management of
32 functioning aquatic lands.

33 NEW SECTION. Sec. 5. A new section is added to chapter 79.94 RCW
34 to read as follows:

35 (1) Upon request by the department, the board may designate certain
36 state-owned filled tidelands and filled shorelands as aquatic

1 investment properties. At the time it approves the purchase of filled
2 lands that were formerly below ordinary high tide in tidal waters or
3 ordinary high water on navigable rivers and lakes, and improvements
4 associated with any of these lands, the board may direct that a
5 property will be designated as an aquatic investment property. Only
6 property meeting all of the following criteria is eligible for
7 designation as an aquatic investment property:

8 (a) The property is state-owned tidelands or shorelands that are
9 filled to an elevation above ordinary high tide or ordinary high water.
10 Tidelands and shorelands that are not filled, but simply diked and
11 therefore more easily returned to their natural, inundated state may
12 not be designated as aquatic investment properties. Nothing in this
13 section authorizes the filling of state-owned aquatic lands subsequent
14 to this act for the purpose of making them available for designation as
15 aquatic investment properties;

16 (b) Except for the capacity to generate revenue, the property is
17 incapable of providing the public benefits described under RCW
18 79.90.455; and

19 (c) The property has greater potential capacity for long-term
20 economic gain, if designated as an aquatic investment property, than it
21 would if not designated. Capacity for long-term economic gain is
22 determined in accordance with techniques specified by rule.

23 (2) Designated aquatic investment properties are not subject to RCW
24 79.90.245, 79.94.070, 79.94.175, 79.94.181, or 79.94.260, or the free
25 use provisions for public parks or public recreational purposes in RCW
26 79.90.470.

27 NEW SECTION. **Sec. 6.** A new section is added to chapter 79.94 RCW
28 to read as follows:

29 Aquatic investment properties and improvements associated with
30 these lands may be managed primarily for revenue generation. After
31 deducting the management costs as provided in RCW 79.64.040 and
32 payments to towns under RCW 79.92.110, twenty-five percent of revenues
33 from the lease of aquatic investment properties must be deposited in
34 the aquatic sustaining investment account created in section 11 of this
35 act and the remainder deposited in the aquatic lands enhancement
36 account created in RCW 79.90.245.

1 **Sec. 7.** RCW 79.94.090 and 1982 1st ex.s. c 21 s 94 are each
2 amended to read as follows:

3 All tidelands, other than first class, shall be offered for sale,
4 when otherwise permitted under RCW 79.94.150 to be sold, and sold in
5 the same manner as state lands, other than capitol building lands, but
6 for not less than five dollars per lineal chain, measured on the United
7 States meander line bounding the inner shore limit of such tidelands,
8 and each applicant shall furnish a copy of the United States field
9 notes, certified to by the officer in charge thereof, of said meander
10 line with his or her application(~~(, and shall pay one-tenth of the~~
11 ~~purchase price on the date of sale)~~).

12 **Sec. 8.** RCW 79.94.150 and 1982 1st ex.s. c 21 s 100 are each
13 amended to read as follows:

14 (1) This section shall apply to:

15 (a) First class tidelands as defined in RCW 79.90.030;

16 (b) Second class tidelands as defined in RCW 79.90.035;

17 (c) First class shorelands as defined in RCW 79.90.040;

18 (d) Second class shorelands as defined in RCW 79.90.045, except as
19 included within RCW 79.94.210;

20 (e) Waterways as described in RCW 79.93.010.

21 (2) Notwithstanding any other provision of law, from and after
22 August 9, 1971, all tidelands and shorelands enumerated in subsection
23 (1) of this section owned by the state of Washington shall not be sold
24 except to public entities as may be authorized by law and they shall
25 not be given away.

26 (3) Tidelands and shorelands enumerated in subsection (1) of this
27 section may be leased for a period not to exceed fifty-five years:
28 PROVIDED, That nothing in this section shall be construed as modifying
29 or canceling any outstanding lease during its present term.

30 (4) Nothing in this section shall:

31 (a) Be construed to cancel an existing sale contract;

32 (b) Prohibit sale or exchange of beds and shorelands where the
33 water course has changed and the area now has the characteristics of
34 uplands;

35 (c) Prevent exchange involving state-owned tide and shore lands;

36 (d) Prohibit the sale of aquatic investment properties as defined
37 in RCW 79.90.010.

1 NEW SECTION. **Sec. 9.** A new section is added to chapter 79.94 RCW
2 to read as follows:

3 (1) Aquatic investment properties and improvements associated with
4 these lands may be sold for no less than fair market value if they meet
5 the criteria in subsection (2) of this section.

6 (2) Only an aquatic investment property meeting all of the
7 following criteria is eligible for sale:

8 (a) The property does not abut functioning aquatic lands; and

9 (b) The proposed minimum bid for sale of the property is equal to
10 or greater than the net present value of the property if retained and
11 managed by the department, as determined by the department through
12 economic analysis.

13 (3) Proceeds from the sale of aquatic investment properties shall
14 be deposited into the aquatic sustaining investment account created in
15 section 11 of this act. In addition, the department may charge the
16 reasonable direct administrative costs incurred in processing the sale.
17 For the purposes of this subsection, direct administrative costs
18 include, but are not limited to, the cost of hours worked directly on
19 the transaction, based on salaries and benefits, plus travel
20 reimbursement and other actual out-of-pocket costs, plus cost of
21 contracted services such as appraisals and environmental site
22 assessments. Direct administrative costs recovered by the department
23 must be deposited into the resource management cost account.

24 (4)(a) The department must maintain or increase the state-owned
25 aquatic land base over time.

26 (b) By December 31st of each even-numbered year, the department
27 must provide a report to the board on the acquisitions and disposals
28 completed under this act. If the report shows that a net acreage
29 reduction to the state-owned aquatic land base has occurred from
30 acquisitions and disposals completed under this act, the authority to
31 sell aquatic investment properties is suspended until such a time as
32 the state-owned aquatic land base is restored through acquisitions to
33 the level of the previous report to the board.

34 (c) Nothing in this section prohibits sales, exchanges, or
35 transfers of aquatic lands to public entities as permitted under RCW
36 79.94.150 or sales of second class shorelands on lakes as permitted
37 under RCW 79.94.210. These conveyances do not count toward a reported
38 increase or reduction to the state-owned aquatic land base.

1 **Sec. 10.** RCW 79.90.245 and 2004 c 276 s 914 are each amended to
2 read as follows:

3 After deduction for management costs as provided in RCW 79.64.040
4 and payments to towns under RCW 79.92.110(2), all moneys received by
5 the state from the ((~~sale or~~)) lease of state-owned aquatic lands and
6 from the sale of valuable material from state-owned aquatic lands shall
7 be deposited in the aquatic lands enhancement account which is hereby
8 created in the state treasury. After appropriation, these funds shall
9 be used solely for aquatic lands enhancement projects; for the
10 purchase, improvement, or protection of aquatic lands for public
11 purposes; for providing and improving access to such lands; and for
12 volunteer cooperative fish and game projects.

13 In providing grants for aquatic lands enhancement projects, the
14 department shall require grant recipients to incorporate the
15 environmental benefits of the project into their grant applications,
16 and the department shall utilize the statement of environmental
17 benefits in its prioritization and selection process. The department
18 shall also develop appropriate outcome-focused performance measures to
19 be used both for management and performance assessment of the grants.
20 To the extent possible, the department should coordinate its
21 performance measure system with other natural resource-related agencies
22 as defined in RCW 43.41.270. The department shall consult with
23 affected interest groups in implementing this section.

24 During the fiscal biennium ending June 30, 2005, the funds may be
25 appropriated for boating safety, settlement costs for aquatic lands
26 cleanup, and shellfish management, enforcement, and enhancement.

27 NEW SECTION. **Sec. 11.** A new section is added to chapter 79.90 RCW
28 to read as follows:

29 The aquatic sustaining investment account is created in the state
30 treasury. All receipts from money received by the department from the
31 sale or lease of aquatic investment properties and money received by
32 the state from the sale of state-owned aquatic lands permitted to be
33 sold under RCW 79.94.150 or 79.94.210 must be deposited into the
34 account. Moneys in the account may be spent only after appropriation.
35 Expenditures from the account may be used only for the acquisition of
36 functioning aquatic lands, filled lands that were formerly below

1 ordinary high tide in tidal waters or ordinary high water on navigable
2 rivers and lakes, and improvements associated with any of these lands.

3 NEW SECTION. **Sec. 12.** A new section is added to chapter 79.94 RCW
4 to read as follows:

5 The department must adopt rules as necessary to carry out the
6 purposes of this act, specifically including:

7 (1) Evaluation criteria for determining when state-owned aquatic
8 land may be designated as aquatic investment properties, as described
9 in sections 5 and 9 of this act; and

10 (2) Evaluation criteria for determining whether an aquatic
11 investment property should be retained and managed for revenue
12 generation or sold at no less than fair market value, as described in
13 sections 5 and 9 of this act.

14 **Sec. 13.** RCW 43.79A.040 and 2004 c 246 s 8 and 2004 c 58 s 10 are
15 each reenacted and amended to read as follows:

16 (1) Money in the treasurer's trust fund may be deposited, invested,
17 and reinvested by the state treasurer in accordance with RCW 43.84.080
18 in the same manner and to the same extent as if the money were in the
19 state treasury.

20 (2) All income received from investment of the treasurer's trust
21 fund shall be set aside in an account in the treasury trust fund to be
22 known as the investment income account.

23 (3) The investment income account may be utilized for the payment
24 of purchased banking services on behalf of treasurer's trust funds
25 including, but not limited to, depository, safekeeping, and
26 disbursement functions for the state treasurer or affected state
27 agencies. The investment income account is subject in all respects to
28 chapter 43.88 RCW, but no appropriation is required for payments to
29 financial institutions. Payments shall occur prior to distribution of
30 earnings set forth in subsection (4) of this section.

31 (4)(a) Monthly, the state treasurer shall distribute the earnings
32 credited to the investment income account to the state general fund
33 except under (b) and (c) of this subsection.

34 (b) The following accounts and funds shall receive their
35 proportionate share of earnings based upon each account's or fund's
36 average daily balance for the period: The Washington promise

1 scholarship account, the college savings program account, the
2 Washington advanced college tuition payment program account, the
3 agricultural local fund, the American Indian scholarship endowment
4 fund, the students with dependents grant account, the basic health plan
5 self-insurance reserve account, the contract harvesting revolving
6 account, the Washington state combined fund drive account, the
7 Washington international exchange scholarship endowment fund, the
8 developmental disabilities endowment trust fund, the energy account,
9 the fair fund, the fruit and vegetable inspection account, the future
10 teachers conditional scholarship account, the game farm alternative
11 account, the grain inspection revolving fund, the juvenile
12 accountability incentive account, the law enforcement officers' and
13 fire fighters' plan 2 expense fund, the local tourism promotion
14 account, the produce railcar pool account, the rural rehabilitation
15 account, the stadium and exhibition center account, the youth athletic
16 facility account, the self-insurance revolving fund, the sulfur dioxide
17 abatement account, the children's trust fund, the Washington horse
18 racing commission Washington bred owners' bonus fund account, the
19 Washington horse racing commission class C purse fund account, ((and))
20 the Washington horse racing commission operating account (earnings from
21 the Washington horse racing commission operating account must be
22 credited to the Washington horse racing commission class C purse fund
23 account), and the aquatic sustaining investment account. However, the
24 earnings to be distributed shall first be reduced by the allocation to
25 the state treasurer's service fund pursuant to RCW 43.08.190.

26 (c) The following accounts and funds shall receive eighty percent
27 of their proportionate share of earnings based upon each account's or
28 fund's average daily balance for the period: The advanced right of way
29 revolving fund, the advanced environmental mitigation revolving
30 account, the city and county advance right-of-way revolving fund, the
31 federal narcotics asset forfeitures account, the high occupancy vehicle
32 account, the local rail service assistance account, and the
33 miscellaneous transportation programs account.

34 (5) In conformance with Article II, section 37 of the state
35 Constitution, no trust accounts or funds shall be allocated earnings
36 without the specific affirmative directive of this section.

1 NEW SECTION. **Sec. 14.** The sum of five hundred thousand dollars,
2 or as much thereof as may be necessary, is appropriated for the
3 biennium ending June 30, 2007, from the aquatic sustaining investment
4 account to the department of natural resources for the purposes
5 described in section 4 of this act.

6 NEW SECTION. **Sec. 15.** RCW 79.90.250 (Sale procedure--Terms of
7 payment--Deferred payments, rate of interest) and 1982 1st ex.s. c 21
8 s 31 are each repealed.

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