
SENATE BILL 5959

State of Washington

59th Legislature

2005 Regular Session

By Senator Jacobsen

Read first time 02/16/2005. Referred to Committee on Natural Resources, Ocean & Recreation.

1 AN ACT Relating to use of state-owned aquatic lands by a
2 governmental entity; and amending RCW 79.90.460, 79.90.465, and
3 79.90.470.

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

5 **Sec. 1.** RCW 79.90.460 and 1984 c 221 s 3 are each amended to read
6 as follows:

7 (1) The management of state-owned aquatic lands shall preserve and
8 enhance water-dependent uses. Water-dependent uses shall be favored
9 over other uses in aquatic land planning and in resolving conflicts
10 between competing lease applications except that a use by a
11 governmental entity for a public benefit, including, but not limited to
12 public parks, uses for public recreation purposes, water-related public
13 safety uses, and governmentally owned public utility lines, shall have
14 top priority. In cases of conflict between water-dependent uses,
15 priority shall be given to uses which enhance renewable resources,
16 water-borne commerce, and the navigational and biological capacity of
17 the waters, and to statewide interests as distinguished from local
18 interests.

1 (2) Nonwater-dependent use of state-owned aquatic lands is a low-
2 priority use providing minimal public benefits and shall not be
3 permitted to expand or be established in new areas except in
4 exceptional circumstances where it is compatible with water-dependent
5 uses occurring in or planned for the area.

6 (3) The department shall consider the natural values of state-owned
7 aquatic lands as wildlife habitat, natural area preserve,
8 representative ecosystem, or spawning area prior to issuing any initial
9 lease or authorizing any change in use. The department may withhold
10 from leasing lands which it finds to have significant natural values,
11 or may provide within any lease for the protection of such values.

12 (4) The power to lease state-owned aquatic lands is vested in the
13 department of natural resources, which has the authority to make leases
14 upon terms, conditions, and length of time in conformance with the
15 state Constitution and chapters 79.90 through 79.96 RCW.

16 (5) State-owned aquatic lands shall not be leased to persons or
17 organizations which discriminate on the basis of race, color, creed,
18 religion, sex, age, or physical or mental handicap.

19 **Sec. 2.** RCW 79.90.465 and 1984 c 221 s 4 are each amended to read
20 as follows:

21 The definitions in this section apply throughout chapters 79.90
22 through 79.96 RCW.

23 (1) "Water-dependent use" means a use which cannot logically exist
24 in any location but on the water. Examples include, but are not
25 limited to, water-borne commerce; terminal and transfer facilities;
26 ferry terminals; watercraft sales in conjunction with other water-
27 dependent uses; watercraft construction, repair, and maintenance;
28 moorage and launching facilities; aquaculture; log booming; and public
29 fishing piers and parks.

30 (2) "Water-oriented use" means a use which historically has been
31 dependent on a waterfront location, but with existing technology could
32 be located away from the waterfront. Examples include, but are not
33 limited to, wood products manufacturing, watercraft sales, fish
34 processing, petroleum refining, sand and gravel processing, log
35 storage, and house boats. For the purposes of determining rent under
36 this chapter, water-oriented uses shall be classified as water-
37 dependent uses if the activity either is conducted on state-owned

1 aquatic lands leased on October 1, 1984, or was actually conducted on
2 the state-owned aquatic lands for at least three years before October
3 1, 1984. If, after October 1, 1984, the activity is changed to a use
4 other than a water-dependent use, the activity shall be classified as
5 a nonwater-dependent use. If continuation of the existing use requires
6 leasing additional state-owned aquatic lands and is permitted under the
7 shoreline management act of 1971, chapter 90.58 RCW, the department may
8 allow reasonable expansion of the water-oriented use.

9 (3) "Nonwater-dependent use" means a use which can operate in a
10 location other than on the waterfront. Examples include, but are not
11 limited to, hotels, condominiums, apartments, restaurants, retail
12 stores, and warehouses not part of a marine terminal or transfer
13 facility.

14 (4) "Log storage" means the water storage of logs in rafts or
15 otherwise prepared for shipment in water-borne commerce, but does not
16 include the temporary holding of logs to be taken directly into a
17 vessel or processing facility.

18 (5) "Log booming" means placing logs into and taking them out of
19 the water, assembling and disassembling log rafts before or after their
20 movement in water-borne commerce, related handling and sorting
21 activities taking place in the water, and the temporary holding of logs
22 to be taken directly into a processing facility. "Log booming" does
23 not include the temporary holding of logs to be taken directly into a
24 vessel.

25 (6) "Department" means the department of natural resources.

26 (7) "Port district" means a port district created under Title 53
27 RCW.

28 (8) The "real rate of return" means the average for the most recent
29 ten calendar years of the average rate of return on conventional real
30 property mortgages as reported by the federal home loan bank board or
31 any successor agency, minus the average inflation rate for the most
32 recent ten calendar years.

33 (9) The "inflation rate" for a given year is the percentage rate of
34 change in the previous calendar year's all commodity producer price
35 index of the bureau of labor statistics of the United States department
36 of commerce. If the index ceases to be published, the department shall
37 designate by rule a comparable substitute index.

1 (10) "Public utility lines" means pipes, conduits, and similar
2 facilities for distribution of water, electricity, natural gas,
3 telephone, other electronic communication, and sewers, including sewer
4 outfall lines.

5 (11) "Terminal" means a point of interchange between land and water
6 carriers, such as a pier, wharf, or group of such, equipped with
7 facilities for care and handling of cargo and/or passengers.

8 (12) "State-owned aquatic lands" means those aquatic lands and
9 waterways administered by the department of natural resources or
10 managed under RCW 79.90.475 by a port district. "State-owned aquatic
11 lands" does not include aquatic lands owned in fee by, or withdrawn for
12 the use of, state agencies other than the department of natural
13 resources.

14 (13) "Public recreation purposes" means water or shore-related
15 educational and recreational activities provided directly or indirectly
16 by a governmental agency, including, but not limited to, environmental
17 education, recreational boat maintenance and storage, berthing and
18 tours of historic boats, aquariums, marinas for recreational boats, and
19 boat launches.

20 **Sec. 3.** RCW 79.90.470 and 2002 c 152 s 2 are each amended to read
21 as follows:

22 (1) The use of state-owned aquatic lands for public utility lines
23 that exist on or before July 1, 2005, and that are owned by a
24 governmental entity shall be allowed to continue without charge and
25 without imposition of any new conditions. The use of state-owned
26 aquatic lands for public utility lines owned by a governmental entity
27 that are constructed after July 1, 2005, shall be granted by an
28 agreement, permit, or other instrument if the use is consistent with
29 the purposes of RCW 79.90.450 through 79.90.460 and does not obstruct
30 navigation or other public uses. The department may recover only its
31 reasonable direct administrative costs incurred in processing and
32 approving the request or application, and reviewing plans for
33 construction of public utility lines. For purposes of this section,
34 "direct administrative costs" means the cost of hours worked directly
35 on an application or request, based on salaries and benefits, plus
36 travel reimbursement and other actual out-of-pocket costs. Direct
37 administrative costs recovered by the department must be deposited into

1 the resource management cost account. (~~Use for public parks or public
2 recreation purposes shall be granted without charge if the aquatic
3 lands and improvements are available to the general public on a first-
4 come, first served basis and are not managed to produce a profit for
5 the operator or a concessionaire. The department may lease state-owned
6 tidelands that are in front of state parks only with the approval of
7 the state parks and recreation commission. The department may lease
8 bedlands in front of state parks only after the department has
9 consulted with the state parks and recreation commission.~~)

10 (2) The use of state-owned aquatic lands for local public utility
11 lines owned by a nongovernmental entity will be granted by easement if
12 the use is consistent with the purpose of RCW 79.90.450 through
13 79.90.460 and does not obstruct navigation or other public uses. The
14 total charge for the easement will be determined under RCW 79.90.575.

15 (3) Nothing in this section limits the ability of the department to
16 obtain payment for commodity costs, such as lost revenue from renewable
17 resources, resulting from the granted use of state-owned aquatic lands
18 for public utility lines owned by a nongovernmental entity.

19 (4) Use of state-owned aquatic lands shall be granted without
20 charge when the primary use is for water-related public safety
21 operations, including, but not limited to fire boats and harbor
22 patrols.

23 (5) Use of state-owned aquatic lands shall be granted without
24 charge if the primary use is for a public park or public recreation
25 purposes and the state-owned aquatic lands and improvements are
26 available to the general public on a first-come, first-served basis and
27 are not managed to produce a profit for the governmental operator. The
28 use shall be granted without charge whether or not a concessionaire,
29 lessee, or contractor to the governmental operator makes a profit, and
30 whether or not the public is charged a fee.

31 (6) The department may lease state-owned tidelands that are in
32 front of state parks only with the approval of the state parks and
33 recreation commission. The department may lease bedlands in front of
34 state parks only after the department has consulted with the state
35 parks and recreation commission.

36 (7) When a use is granted under this section to a governmental
37 entity, the department shall not place conditions on the use that
38 address the same subjects as a permit or other authorization issued by

1 a state agency, including, but not limited to, permits for hydraulic
2 projects, discharge permits, and authorizations for sediment caps. The
3 governmental entity that is granted use of state-owned aquatic lands is
4 not required to indemnify the department except for damages resulting
5 from the governmental entity's own fault.

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