

SENATE BILL REPORT

HB 1123

As Reported By Senate Committee On:
Natural Resources, Ocean & Recreation, March 22, 2007

Title: An act relating to clarifying the authority of the department of natural resources with respect to certain aquatic lands.

Brief Description: Clarifying the authority of the department of natural resources with respect to certain aquatic lands.

Sponsors: Representatives Strow, VanDeWege, Kagi, B. Sullivan, Eickmeyer, McCoy, Orcutt and Hailey.

Brief History: Passed House: 2/05/07, 95-0.

Committee Activity: Natural Resources, Ocean & Recreation: 3/21/07, 3/22/07 [DPA, w/oRec].

SENATE COMMITTEE ON NATURAL RESOURCES, OCEAN & RECREATION

Majority Report: Do pass as amended.

Signed by Senators Jacobsen, Chair; Rockefeller, Vice Chair; Fraser, Hargrove, Poulsen, Spanel and Swecker.

Minority Report: That it be referred without recommendation.

Signed by Senators Morton, Ranking Minority Member and Stevens.

Staff: Kim Johnson (786-7346)

Background: Under current law, the Department of Natural Resources (DNR) is authorized to manage and lease aquatic lands. Leases must be in conformity with all applicable laws and the state Constitution. In a July 2006 court decision (*Northlake v. DNR*, 134 Wash.App 272), an appellate court found that the DNR's leasing authority did not explicitly include lesser use authorizations, such as easements, licenses, permits, and rights-of-entry. In the Court's examination of various other DNR authorization statutes, it found that some statutes included language for lesser use agreement types while others referred only the authority to lease. The court found that since the lesser use authorizations were not included in the section governing DNR's leasing authority of aquatic lands, lesser use authorizations were outside of DNR's leasing authority. However, the Court did state that the DNR has been granted authority to manage state aquatic lands and has authority to issue use permits, generally.

Federal pierhead lines were established by the Secretary of the Army to protect harbors. A pierhead line is the authorized waterward limit of any in-water structure such as docks, piers,

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gangways, ramps, groins, jetties or any other structures projecting from the shoreline. The federal waterways are maintained by the Army Corps of Engineers under the Rivers and Harbors Acts. Regardless of pierhead lines, any plans to build in or modify waterways must receive a permit by the Army Corps of Engineers.

In addition to the permit given by the federal government, all plans must be permitted by the DNR. The permit given by the DNR determines all the terms and conditions of the project and can be for no longer than 30 years. DNR may cancel any permit upon 60 days notice if there has been a substantial breach by the permittee of any of the permit conditions.

Summary of Bill: The DNR is given express authority to issue lesser contractual agreements, such as easements, licenses, permits and rights-of-entry on leased state-owned aquatic lands.

In state waterways, the jurisdiction of the federal government over navigable waters is described without referring to pierhead lines. The DNR may cancel any permit after 60 days notice if a waterway is required for public highway purposes.

EFFECT OF CHANGES MADE BY RECOMMENDED AMENDMENT(S) AS PASSED COMMITTEE (Natural Resources, Ocean & Recreation): DNR's authority to issue lesser use authorizations is restricted or prohibited to the same extent as DNR's authority to issue a lease.

Up to nine residential landowners abutting aquatic lands are authorized to jointly install and maintain a recreational dock without charge for the use of state aquatic lands. Landowners abutting aquatic lands are limited to mooring one boat without charge at either an individual dock or a joint use dock.

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.

Staff Summary of Public Testimony: PRO: This bill is a technical bill that helps clarify language as it applies to aquatic lands. The bill expressly allows the DNR to use lesser contractual agreements. The DNR will be able to modernize the language in relation to pierheads with this bill. State agencies can only do that which is authorized by the Legislature and this bill will eliminate any confusion resulting from the *Northlake* case. The bill will allow Washington to resynchronize with the federal government.

Persons Testifying: PRO: Fran McNair, DNR; Joe Panesko, Attorney General's Office.