

SENATE BILL REPORT

SB 5460

As of February 1, 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: Senators Swecker, Fraser, Jacobsen, Morton and Hargrove; by request of Department of Natural Resources.

Brief History:

Committee Activity: Natural Resources, Ocean & Recreation: 1/29/07.

SENATE COMMITTEE ON NATURAL RESOURCES, OCEAN & RECREATION

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, 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.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

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.

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: The purpose of this bill is to clarify DNR's leasing authority to include use authorizations such as easements, rights of entry, and use permits. This bill also brings the RCW's up to date by getting rid of a reference to an old federal practice of designating pierhead lines that is no longer used.

Persons Testifying: PRO: Fran McNair and Joe Panesko, DNR.