

SENATE BILL REPORT

SSB 6777

As Passed Senate, February 18, 2008

Title: An act relating to clarifying interests in certain state lands.

Brief Description: Clarifying interests in certain state lands.

Sponsors: Senate Committee on Water, Energy & Telecommunications (originally sponsored by Senators McDermott, Brown, Murray, Kohl-Welles and Pridemore).

Brief History:

Committee Activity: Water, Energy & Telecommunications: 2/05/08, 2/08/08 [DPS, DNP].
Failed Senate: 2/16/08, 23-26 (Notice given to re-consider); 2/18/08, 25-23.

SENATE COMMITTEE ON WATER, ENERGY & TELECOMMUNICATIONS

Majority Report: That Substitute Senate Bill No. 6777 be substituted therefor, and the substitute bill do pass.

Signed by Senators Rockefeller, Chair; Fraser, Hatfield, Oemig, Pridemore and Regala.

Minority Report: Do not pass.

Signed by Senators Honeyford, Ranking Minority Member; Delvin, Holmquist and Morton.

Staff: Jan Odano (786-7486)

Background: At statehood, Washington received approximately 3.2 million acres from the United States when it joined the Union in 1889. Just under 1 million acres of granted land has been sold. By statute, current state policy is to preserve the public land base, including the remaining granted lands.

The Legislature serves as the trustee of the granted lands and has delegated land management duties to the Department of Natural Resources (DNR). DNR manages nearly 3 million acres of upland state trust lands to benefit specific public institutions. Beneficiaries of these lands include the state's public schools and higher education institutions.

The current laws regarding the sale of state trust lands have been significantly altered over the years, however, many aspects of land sales that occurred in the past are affected by the state law that was in place at the time of the actual transaction. At one time, state law required mineral reservations for state land sales.

In the past, all land sales offered by DNR were required to have a mineral reservation with exact language specified by the Legislature. This language required DNR to reserve from the

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property rights conveyed "all oils, gases, coal, ores, minerals, and fossils of every name, kind or description, and which may be in or upon said lands."

This language was incorporated in the deeds executed during the time that the law was in effect, including parcels of former state lands located on Maury Island. There has not been a binding judicial determination interpreting whether the language of the mineral reservation retained in state ownership sand and gravel resources located on the land, or whether the sand and gravel resources were transferred to the buyer.

The Legislature has delegated to DNR the responsibility of managing the state's nearly 2.4 million acres of aquatic lands for the benefit of the public. Aquatic reserves are established by DNR to protect important native ecosystems on state-owned aquatic lands and to promote preservation, restoration, and enhancement of state-owned aquatic lands. The management of aquatic lands must support a balance of goals, including the encouragement of public access, the fostering of water-dependent uses, the utilization of renewable resources, and the generation of revenue. Revenues generated from the state's aquatic lands are generally directed to be used for public benefits, such as shoreline access, environmental protection, and recreational opportunities, but unlike trust lands, the land is not held in trust for a specific beneficiary.

The Maury Island Aquatic Reserve was created in 2004 by the Commissioner of Public Lands (Commissioner), and includes the bedlands and tidelands surrounding Maury Island and Quartermaster Harbor. In the order establishing the aquatic reserve, the Commissioner identified unique and significant natural values of the impacted aquatic lands and withdrew the lands from general leasing.

Summary of Substitute Bill: The DNR is prohibited from leasing any state-owned aquatic lands located within the Maury Island Aquatic Reserve until a Washington appellate court enters a judgment as to who owns the proper title to the sand, gravel, and rock resources located on identified parcels of Maury Island. The prohibition on leasing applies only to leases for industrial uses or for the transportation of materials from a surface mine or other mining operation.

The Joint Legislative Audit and Review Committee must contract with an appropriate entity to review and analyze the conveyance documents from the original grant to the state and subsequent conveyance documents, for compliance with applicable statutory requirements in effect at the time of each sale for the use and the reservation of mineral rights and the title to sand and gravel.

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 on Original Bill: PRO: There remain questions as to whether or not the minerals on these lands belong to the state. As trustees of the land and as part of our fiduciary responsibility to the beneficiaries, we need to ascertain clear ownership of these minerals. The intent at the time of sale clearly reserved the mineral of "every name,

kind, and description" which included sand and gravel in 1907 and 1923. The intent at the time was for the state not to divest itself of the mineral rights including gravel and sand.

CON: There are two deeds equaling 77 of the 235-acre site where the mineral rights are in question of ownership. This bill restricts the entire mining site, including the parcels not in question. The historical sale documents show that sand and gravel can be and were sold with the land and not reserved as minerals.

OTHER: The sale of stone and gravel appear to be in the notice of sale documents and sold with the parcels. There are statutes that provide for the sale of trust lands and mineral reservation and valuable materials. This dichotomy has been in place since 1907, which implies that if it is in the best interest of the state to sell valuable materials such as hay, timber, gravel, separately, it could. The mineral interests do not include gravel, stone or sand.

Persons Testifying: PRO: Senator Joe McDermott, prime sponsor; David Mann, Preserve Our Islands.

CON: Steve Gano, Glacier Northwest; Peter Stoltz, Glacier Northwest; Steve Roos, Glacier Northwest.

OTHER: Bonnie Bunning, DNR; Joe Panesko, AGO.