
HOUSE BILL 2562

State of Washington

61st Legislature

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By Representatives Nelson, Chase, Simpson, and Cody

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1 AN ACT Relating to establishing more equitable lease rates for
2 industrial users of state-owned aquatic lands that more accurately
3 represent the value provided to the lessee; and amending RCW 79.105.060
4 and 79.105.240.

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

6 **Sec. 1.** RCW 79.105.060 and 2005 c 155 s 102 are each amended to
7 read as follows:

8 The definitions in this section apply throughout chapters 79.105
9 through 79.145 RCW unless the context clearly requires otherwise.

10 (1) "Aquatic lands" means all tidelands, shorelands, harbor areas,
11 and the beds of navigable waters.

12 (2) "Beds of navigable waters" means those lands lying waterward of
13 and below the line of navigability on rivers and lakes not subject to
14 tidal flow, or extreme low tide mark in navigable tidal waters, or the
15 outer harbor line where harbor area has been created.

16 (3) "First-class shorelands" means the shores of a navigable lake
17 or river belonging to the state, not subject to tidal flow, lying
18 between the line of ordinary high water and the line of navigability,

1 or inner harbor line where established and within or in front of the
2 corporate limits of any city or within two miles of either side.

3 (4) "First-class tidelands" means the shores of navigable tidal
4 waters belonging to the state, lying within or in front of the
5 corporate limits of any city, or within one mile of either side and
6 between the line of ordinary high tide and the inner harbor line; and
7 within two miles of the corporate limits on either side and between the
8 line of ordinary high tide and the line of extreme low tide.

9 (5) "Harbor area" means the area of navigable waters determined as
10 provided in Article XV, section 1 of the state Constitution, which
11 shall be forever reserved for landings, wharves, streets, and other
12 conveniences of navigation and commerce.

13 (6) "Improvements" when referring to state-owned aquatic lands
14 means anything considered a fixture in law placed within, upon, or
15 attached to aquatic lands that has changed the value of those lands, or
16 any changes in the previous condition of the fixtures that changes the
17 value of the land.

18 (7) "Inflation rate" means for a given year the percentage rate of
19 change in the previous calendar year's all commodity producer price
20 index of the bureau of labor statistics of the United States department
21 of commerce. If the index ceases to be published, the department shall
22 designate by rule a comparable substitute index.

23 (8) "Inner harbor line" means a line located and established in
24 navigable waters between the line of ordinary high tide or ordinary
25 high water and the outer harbor line, constituting the inner boundary
26 of the harbor area.

27 (9) "Log booming" means placing logs into and taking them out of
28 the water, assembling and disassembling log rafts before or after their
29 movement in water-borne commerce, related handling and sorting
30 activities taking place in the water, and the temporary holding of logs
31 to be taken directly into a processing facility. "Log booming" does
32 not include the temporary holding of logs to be taken directly into a
33 vessel.

34 (10) "Log storage" means the water storage of logs in rafts or
35 otherwise prepared for shipment in water-borne commerce, but does not
36 include the temporary holding of logs to be taken directly into a
37 vessel or processing facility.

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

6 (12) "Outer harbor line" means a line located and established in
7 navigable waters as provided in Article XV, section 1 of the state
8 Constitution, beyond which the state shall never sell or lease any
9 rights whatever to private persons.

10 (13) "Person" means any private individual, partnership,
11 association, organization, cooperative, firm, corporation, the state or
12 any agency or political subdivision thereof, any public or municipal
13 corporation, or any unit of government, however designated.

14 (14) "Port district" means a port district created under Title 53
15 RCW.

16 (15) "Public utility lines" means pipes, conduits, and similar
17 facilities for distribution of water, electricity, natural gas,
18 telephone, other electronic communication, and sewers, including sewer
19 outfall lines.

20 (16) "Real rate of return" means the average for the most recent
21 ten calendar years of the average rate of return on conventional real
22 property mortgages as reported by the federal home loan bank board or
23 any successor agency, minus the average inflation rate for the most
24 recent ten calendar years.

25 (17) "Second-class shorelands" means the shores of a navigable lake
26 or river belonging to the state, not subject to tidal flow, lying
27 between the line of ordinary high water and the line of navigability,
28 and more than two miles from the corporate limits of any city.

29 (18) "Second-class tidelands" means the shores of navigable tidal
30 waters belonging to the state, lying outside of and more than two miles
31 from the corporate limits of any city, and between the line of ordinary
32 high tide and the line of extreme low tide.

33 (19) "Shorelands," where not preceded by "first-class" or "second-
34 class," means both first-class shorelands and second-class shorelands.

35 (20) "State-owned aquatic lands" means all tidelands, shorelands,
36 harbor areas, the beds of navigable waters, and waterways owned by the
37 state and administered by the department or managed under RCW

1 79.105.420 by a port district. "State-owned aquatic lands" does not
2 include aquatic lands owned in fee by, or withdrawn for the use of,
3 state agencies other than the department.

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

8 (22) "Tidelands," where not preceded by "first-class" or "second-
9 class," means both first-class tidelands and second-class tidelands.

10 (23) "Valuable materials" when referring to state-owned aquatic
11 lands means any product or material within or upon lands, such as
12 forest products, forage, stone, gravel, sand, peat, agricultural crops,
13 and all other materials of value except mineral, coal, petroleum, and
14 gas as provided for under chapter 79.14 RCW. However, RCW 79.140.190
15 and 79.140.200 also apply to materials provided for under chapter 79.14
16 RCW.

17 (24) "Water-dependent use" means a use that cannot logically exist
18 in any location but on the water. Examples include, but are not
19 limited to: Water-borne commerce; terminal and transfer facilities;
20 ferry terminals; watercraft sales in conjunction with other water-
21 dependent uses; watercraft construction, repair, and maintenance;
22 moorage and launching facilities; aquaculture; log booming; and public
23 fishing piers and parks.

24 (25) "Water-oriented use" means a use that historically has been
25 dependent on a waterfront location, but with existing technology could
26 be located away from the waterfront. Examples include, but are not
27 limited to, wood products manufacturing, watercraft sales, fish
28 processing, petroleum refining, sand and gravel processing, log
29 storage, and house boats. For the purposes of determining rent under
30 this chapter, water-oriented uses shall be classified as water-
31 dependent uses if the activity either is conducted on state-owned
32 aquatic lands leased on October 1, 1984, or was actually conducted on
33 the state-owned aquatic lands for at least three years before October
34 1, 1984. If, after October 1, 1984, the activity is changed to a use
35 other than a water-dependent use, the activity shall be classified as
36 a nonwater-dependent use. If continuation of the existing use requires
37 leasing additional state-owned aquatic lands and is permitted under the

1 shoreline management act of 1971, chapter 90.58 RCW, the department may
2 allow reasonable expansion of the water-oriented use.

3 (26)(a) "Significant industrial facility" means a land use either
4 located on state-owned aquatic lands, located adjacent to state-owned
5 aquatic lands, or that relies on access to state-owned aquatic lands to
6 facilitate operations that involve manufacturing, mining, oil storage,
7 processing, refining, or transport, vessel manufacturing or repair,
8 cargo shipping, warehousing, seafood processing, barge loading and
9 unloading, or similar commercial activities.

10 (b) The term "significant industrial facility" does not include the
11 following:

12 (i) Facilities located on state-owned aquatic lands subject to a
13 port management district entered into under RCW 79.105.420;

14 (ii) Facilities where the primary purpose of the site, and a
15 majority of its area, provides recreational opportunities for the
16 general public; or

17 (iii) Facilities operating substantially to support the commercial
18 fishing industry.

19 **Sec. 2.** RCW 79.105.240 and 2005 c 155 s 147 are each amended to
20 read as follows:

21 Except as otherwise provided by this chapter, annual rent rates for
22 the lease of state-owned aquatic lands for water-dependent uses shall
23 be determined as follows:

24 (1)(a) The assessed land value, exclusive of improvements, as
25 determined by the county assessor, of the upland tax parcel used in
26 conjunction with the leased area or, if there are no such uplands, of
27 the nearest upland tax parcel used for water-dependent purposes divided
28 by the parcel area equals the upland value.

29 (b) The upland value times the area of leased aquatic lands times
30 thirty percent equals the aquatic land value.

31 (2) As of July 1, 1989, and each July 1st thereafter, the
32 department shall determine the real capitalization rate to be applied
33 to water-dependent aquatic land leases commencing or being adjusted
34 under subsection (3)(a) of this section in that fiscal year. The real
35 capitalization rate shall be the real rate of return, except that until
36 June 30, 1989, the real capitalization rate shall be five percent and

1 thereafter it shall not change by more than one percentage point in any
2 one year or be more than seven percent or less than three percent.

3 (3) The annual rent shall be:

4 (a) Determined initially, and redetermined every four years or as
5 otherwise provided in the lease, by multiplying the aquatic land value
6 times the real capitalization rate; and

7 (b) Adjusted by the inflation rate each year in which the rent is
8 not determined under (a) of this subsection.

9 (4) If the upland parcel used in conjunction with the leased area
10 is not assessed or has an assessed value inconsistent with the purposes
11 of the lease, the nearest comparable upland parcel used for similar
12 purposes shall be substituted and the lease payment determined in the
13 same manner as provided in this section.

14 (5) For the purposes of this section, "upland tax parcel" is a tax
15 parcel, some portion of which has upland characteristics. Filled
16 tidelands or shorelands with upland characteristics which abut state-
17 owned aquatic land shall be considered as uplands in determining
18 aquatic land values.

19 (6) The annual rent for filled state-owned aquatic lands that have
20 the characteristics of uplands shall be determined in accordance with
21 RCW 79.105.270 in those cases in which the state owns the fill and has
22 a right to charge for the fill.

23 (7)(a) For all new leases for other water-dependent uses other than
24 for significant industrial facilities, issued after December 31, 1997,
25 the initial annual water-dependent rent shall be determined by the
26 methods in subsections (1) through (6) of this section.

27 (b) For all new leases, renewed leases, and quadrennial lease
28 redeterminations for leases with or that accommodate significant
29 industrial facilities that withdraw state-owned aquatic lands from
30 public use, the annual water-dependant rent must be based on a market
31 rental determination. The market rental determination must be
32 calculated based on one of the processes listed in (b)(i) through (iii)
33 of this subsection. However, in no event may the rent be less than
34 three times the nonwater-dependant rental as would be calculated under
35 RCW 79.105.270:

36 (i) Comparable market rents for similar leases not involving the
37 department as a lessor;

1 (ii) The value of the commodities passing over the state-owned
2 aquatic lands comprising the leasehold; or
3 (iii) The full market value of the state-owned aquatic lands
4 comprising the leasehold, considering the contributory value of the
5 leasehold to the significant industrial facility, multiplied by the
6 real rate of return.

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