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SENATE BILL 5623

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State of Washington

62nd Legislature

2011 Regular Session

By Senators Murray and Kohl-Welles

Read first time 02/01/11. Referred to Committee on Natural Resources & Marine Waters.

1 AN ACT Relating to houseboats and houseboat moorages; and amending  
2 RCW 79.105.060; and 90.58.270.

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

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

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

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

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

14 (3) "First-class shorelands" means the shores of a navigable lake  
15 or river belonging to the state, not subject to tidal flow, lying  
16 between the line of ordinary high water and the line of navigability,  
17 or inner harbor line where established and within or in front of the  
18 corporate limits of any city or within two miles of either side.

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

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

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

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

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

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

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

36 (11) "Nonwater-dependent use" means a use that can operate in a  
37 location other than on the waterfront. Examples include, but are not

1 limited to, hotels, condominiums, apartments, restaurants, retail  
2 stores, and warehouses not part of a marine terminal or transfer  
3 facility.

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

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

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

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

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

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

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

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

33 (20) "State-owned aquatic lands" means all tidelands, shorelands,  
34 harbor areas, the beds of navigable waters, and waterways owned by the  
35 state and administered by the department or managed under RCW  
36 79.105.420 by a port district. "State-owned aquatic lands" does not  
37 include aquatic lands owned in fee by, or withdrawn for the use of,  
38 state agencies other than the department.

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

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

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

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

21 (25) "Water-oriented use" means a use that historically has been  
22 dependent on a waterfront location, but with existing technology could  
23 be located away from the waterfront. Examples include, but are not  
24 limited to, wood products manufacturing, watercraft sales, fish  
25 processing, petroleum refining, sand and gravel processing, and log  
26 storage(~~(, and house boats)~~). For the purposes of determining rent  
27 under this chapter, water-oriented uses shall be classified as water-  
28 dependent uses if the activity either is conducted on state-owned  
29 aquatic lands leased on October 1, 1984, or was actually conducted on  
30 the state-owned aquatic lands for at least three years before October  
31 1, 1984. If, after October 1, 1984, the activity is changed to a use  
32 other than a water-dependent use, the activity shall be classified as  
33 a nonwater-dependent use. If continuation of the existing use requires  
34 leasing additional state-owned aquatic lands and is permitted under the  
35 shoreline management act of 1971, chapter 90.58 RCW, the department may  
36 allow reasonable expansion of the water-oriented use.

1       **Sec. 2.** RCW 90.58.270 and 1971 ex.s. c 286 s 27 are each amended  
2 to read as follows:

3       (1) Nothing in this statute shall constitute authority for  
4 requiring or ordering the removal of any structures, improvements,  
5 docks, fills, or developments placed in navigable waters prior to  
6 December 4, 1969, and the consent and authorization of the state of  
7 Washington to the impairment of public rights of navigation, and  
8 corollary rights incidental thereto, caused by the retention and  
9 maintenance of said structures, improvements, docks, fills or  
10 developments are hereby granted: PROVIDED, That the consent herein  
11 given shall not relate to any structures, improvements, docks, fills,  
12 or developments placed on tidelands, shorelands, or beds underlying  
13 said waters which are in trespass or in violation of state statutes.

14       (2) Nothing in this section shall be construed as altering or  
15 abridging any private right of action, other than a private right which  
16 is based upon the impairment of public rights consented to in  
17 subsection (1) hereof.

18       (3) Nothing in this section shall be construed as altering or  
19 abridging the authority of the state or local governments to suppress  
20 or abate nuisances or to abate pollution.

21       (4) Subsection (1) of this section shall apply to any case pending  
22 in the courts of this state on June 1, 1971, relating to the removal of  
23 structures, improvements, docks, fills, or developments based on the  
24 impairment of public navigational rights.

25       (5) Nothing in this statute shall be construed as pertaining to  
26 houseboats or houseboat moorages placed in aquatic lands located within  
27 the city of Seattle prior to January 1, 2011. These houseboats and  
28 houseboat moorages shall be considered as preferred water-dependent  
29 uses and not treated as nonconforming uses under this statute.

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