
**Agriculture & Natural Resources
Committee**

ESB 6140

Brief Description: Promoting the efficient and effective management of state-managed lands.

Sponsors: Senators King, Van De Wege and Sheldon; by request of Department of Natural Resources.

Brief Summary of Engrossed Bill

- Brings into alignment the maximum length of leases for certain state-owned aquatic lands.
- Modifies the order of priority for lease preferences for platted tidelands and shorelands.
- Provides that the Department of Natural Resources (DNR) may, rather than must, plat certain aquatic lands.
- Authorizes the DNR to market certain uplands through a real estate broker without first offering them for sale at public auction.
- Authorizes the DNR to transfer certain real property directly, without public auction, to lessees who are currently leasing the property for a home site.
- Directs the DNR to conduct an analysis on certain aspects of its uplands portfolio, revenue streams, management practices, and transaction processes, in order to ensure that its fiduciary duty is being met.
- Directs the DNR to evaluate certain industrial and commercial leases and easements on state-owned aquatic lands relating to certain matters including lease terms, annual revenues, and inspection and compliance efforts.

Hearing Date: 2/20/18

Staff: Robert Hatfield (786-7117).

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.

Background:

Department of Natural Resources.

The Department of Natural Resources (DNR) manages a number of different categories of land on behalf of the State of Washington, each for a specific purpose and under different management requirements.

These include approximately 3 million acres of federally granted lands and state forestlands, which the DNR manages to support common schools, counties, and other public institutions. These lands were granted to the United States upon statehood.

The DNR also manages more than 600,000 acres of state forestlands, which were acquired primarily through tax foreclosures in the 1920s and 1930s, and to a lesser extent through purchases by the state or gifts to the state. State forestlands are managed for the benefit of the counties in which the lands are located.

The DNR also manages over 2 million acres of tidelands, shorelands, and bedlands. This includes the beds of all navigable rivers and lakes, along with the beds below the Puget Sound.

Board of Natural Resources.

The Board of Natural Resources (Board) sets policies to guide how the DNR manages the state's lands and resources. The Board has several responsibilities: (1) approve or disapprove trust land timber and mineral sales; (2) establish the sustainable harvest level for forested trust lands; (3) approve or disapprove sales or exchanges of trust lands; and (4) guide the DNR's stewardship of state Natural Area Preserves, Natural Resources Conservation Areas, and aquatic or submerged lands.

Types of Aquatic Lands.

There are several different types of aquatic lands, including:

- tidelands, which are generally the shores of tidal waters between the line of ordinary high tide and the line of extreme low tide;
- shorelands, which are generally the shores of a navigable lake or river lying between the line of ordinary high water and the line of navigability; and
- bedlands, which are generally aquatic lands waterward of the line of navigability in rivers and lakes, and waterward of extreme low tide in tidal waters.

Tidelands and shorelands that are in front of or within two miles of a city are considered first class, and those more than two miles from a city are considered second class.

DNR must plat all first class tidelands and shorelands that have not been previously platted.

Lease Terms for Aquatic Lands.

First class tidelands and shorelands that have been platted may be offered for lease by the DNR, but the DNR is required to provide the owner of adjoining uplands a preferential right to apply to lease such tidelands or shorelands.

Maximum lease terms for first class tidelands and shorelands differ depending on whether or not the land is platted. For example, tidelands and shorelands generally can be leased for 55 years,

but this is limited to 10 years for unplatted first class tidelands and shorelands and five years for a re-lease of the land. Bedlands may generally be leased for 30 years, but this is limited to 10 years if the bedlands are in front of unplatted first class tidelands or shorelands.

Constitutional Requirements Concerning the Sale of Public Lands.

All of the lands granted by the United States to the State of Washington upon statehood are held in trust for the people of Washington, and such lands may not be disposed of unless the state obtains full market value for the property.

Article XVI, Section 2 of the Washington State Constitution provides that none of the land granted to the state for educational purposes may be sold other than at public auction to the highest bidder, and for no less than the appraised value of the land.

Statutory Requirements Concerning Land Transfers.

With the approval of the Board of Natural Resources, the DNR may transfer or dispose of real property, without public auction, in the following circumstances: transfers in lieu of condemnation; transfers to public agencies; and transfers to resolve trespass and property ownership disputes. Such transfers or disposals may occur only after appraisal, for no less than fair market value, and only if such transaction is in the best interest of the state or the affected trust.

Statutory Requirements Concerning Land Sales.

With specified exceptions, all sales of public lands that are administered by the DNR must be at public auction, to the highest bidder, and for no less than the appraised value. There is an exception for land that the state has acquired other than through grant by the United States, such as through escheat, deed of sale, gift, devise, or property tax foreclosure. Such land must initially be offered for sale either at public auction, or by direct sale to public agencies. If such lands are not sold at public auction, the DNR may, with the approval of the Board of Natural Resources, market such lands through a licensed real estate broker or other commercially feasible means, at a price not lower than the land's appraised value.

Sustained Yield.

The DNR is required to manage forested state trust lands on a sustained yield basis. To achieve a sustained yield, the DNR must manage the state's forests to provide a continuing harvest level without any prolonged curtailments or cessation of harvests. As part of this obligation, the DNR must periodically adjust the tracts of land that are included in the sustained yield management program, and calculate a sustainable harvest level accordingly.

Arrearage.

Arrearage constitutes the volume of timber that was expected to be sold over the course of a planning decade based on the DNR's sustained yield calculations, but was not. That shortage may then result in lower than expected revenues for trust beneficiaries, which can then in turn impact the ability of the trust beneficiaries to meet their financial obligations.

If an arrearage exists at the end of a planning decade, the DNR must conduct an analysis of the arrearage to determine the course of action regarding the arrearage that provides the greatest return to the trusts, based both upon economic conditions and upon the impacts to the environment that would result from harvesting the additional timber. The DNR must offer for

sale the arrearage volume of timber in addition to the sustainable harvest level volume of timber for the next planning decade, if the DNR's analysis determines that doing so will provide the greatest return to the trusts.

Summary of Bill:

State-Owned Aquatic Lands.

The order of priority for lease preference for platted tidelands and shorelands is modified to apply first to current lessees of such tidelands and shorelands, and then to adjoining upland owners.

The maximum term of lease for all bedlands is 30 years.

The maximum term of lease for all first class tidelands and shorelands is 55 years.

The DNR may, but is not required to, survey and plat unplatted tidelands and shorelands.

State Upland Sales and Transfers.

The requirement that lands not be sold at public auction before the DNR may market the property through a real estate broker is removed.

The DNR is authorized to transfer directly to a lessee, without going through public auction, land that the lessee is currently leasing from the DNR for purposes of a home site.

Department of Natural Resources Uplands Evaluation.

Within existing appropriations, the DNR must evaluate its lands portfolio and revenue streams, among other things, and must develop options and recommendations to ensure the state's fiduciary duty is being met and to increase the amount and stability of revenue from state lands and state forestlands over time.

The evaluation must address, among other topics:

- an analysis of options that would leverage the earning potential for high value, low performing portions of state lands;
- alternatives and recommendations relating to calculating and addressing the existing arrearage volume; and
- an assessment of factors that restrict the DNR from prudent management and revenue production.

Regarding state forestlands, the evaluation must address, among other topics:

- an analysis of options and recommendations for the creation of a unitary trust for the revenue derived from state forestlands;
- any alternative management focus, such as returning the lands to the counties for management, leasing the lands to private timber management organizations, and transition of lands into higher revenue producing assets; and
- any other options for legislative consideration.

The DNR must also develop methods or tools to estimate the current asset value of state lands and state forestlands.

The DNR must provide a final report to the appropriate committees of the Legislature by June 30, 2020, and must provide progress reports by December 1, 2018 and December 1, 2019.

Department of Natural Resources Aquatic Lands Lease Evaluation.

Within existing appropriations, the DNR must evaluate leases and easements of state-owned aquatic lands for industrial and commercial uses. The evaluation must address, among other topics:

- a summary of each lease and easement, including lease term, rental rate, and use conditions;
- a summary of the methods used to value each lease and easement;
- a description of inspection and monitoring efforts completed over the previous ten years relating to compliance with the terms of the leases and easements, as well as compliance with water quality and other environmental, public health, and safety standards;
- a description of inspection and monitoring requirements under the terms of the leases and easements, as well as under local, state, and federal law; and
- a description of the lease and easement compliance activities performed by the DNR to ensure protection of the state's aquatic resources.

The DNR must submit the evaluation, along with any recommendations for legislative or administrative actions, to the appropriate policy and fiscal committees of the Legislature by December 1, 2018.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 16, 2018.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.