

# SENATE BILL REPORT

## ESB 6140

---

As Amended by House, March 8, 2018

**Title:** An act relating to promoting the efficient and effective management of state-managed lands.

**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 History:**

**Committee Activity:** Agriculture, Water, Natural Resources & Parks: 1/15/18, 1/18/18 [DP].

**Floor Activity:**

Passed Senate: 2/12/18, 43-4.

Passed House: 3/08/18, 98-0.

### Brief Summary of Engrossed Bill

- Aligns lease terms for certain state-owned aquatic lands.
- Makes the requirement for the Department of Natural Resources (DNR) to survey and plat certain aquatic lands permissive.
- Authorizes a process for DNR to directly transfer land to a current home site lessee.
- Provides additional authority for DNR to market uplands through a real estate broker.
- Directs DNR to conduct an analysis on specified aspects of its uplands portfolio, revenue streams, management practices, and transaction processes.
- Requires DNR to evaluate certain industrial and commercial leases and easements on state-owned aquatic lands relating to matters including terms, revenue, and inspection and compliance.

---

### SENATE COMMITTEE ON AGRICULTURE, WATER, NATURAL RESOURCES & PARKS

*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.*

**Majority Report:** Do pass.

Signed by Senators Van De Wege, Chair; McCoy, Vice Chair; Warnick, Ranking Member; Honeyford and Nelson.

**Staff:** Curt Gavigan (786-7437)

**Background:** Lease Terms for Certain State-Owned Aquatic Lands. The Legislature has designated DNR as the manager of state-owned aquatic lands. In managing these lands, DNR must support a balance of statutory goals including encouraging public access, fostering water-dependent uses, utilizing renewable resources, protecting the environment, and generating revenue. There are several different types of aquatic land, 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.

Maximum lease terms for first class tidelands and shorelands differ depending on whether or not the land is platted. For example, generally tidelands and shorelands can be leased for 55-years, but this is limited to 10-years for unplatted first class tidelands and shorelands and 5-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 and shorelands.

Current statute directs DNR to plat all first class tidelands and shorelands not previously platted.

State Upland Sales and Transfers. The state Constitution and statute generally require DNR uplands to be sold at public auction to the highest bidder. In certain circumstances, statute allows the Board of Natural Resources (Board) to approve transfers that are for at least fair market value and are in the best interest of the state or affected trust. These include:

- transfers in lieu of condemnation;
- transfers to public agencies; and
- transfers to resolve trespass and ownership disputes.

If lands are not sold at public auction, the Board may authorize DNR to market the lands through a real estate broker or other commercially feasible means at a price not lower than the appraised value.

Additionally, DNR currently manages a number of special leases that contain home sites. These home sites are generally adjacent to DNR-managed agricultural lands.

State Granted Lands. Upon statehood, the United States granted the State of Washington over 3 million acres to support various public institutions. DNR now manages over 2 million

acres of federally granted trust lands to provide revenue for public schools, state universities, buildings on the capitol campus, and correctional facilities. The largest acreage category is for common schools, with almost 1.8 million acres.

State Forest Lands. DNR also manages more than 600,000 acres of state forest lands, 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 forest lands are managed for the benefit of the counties in which the lands are located.

**Summary of Engrossed Bill:** Lease Terms for Certain State-Owned Aquatic Lands. Leases for both platted and unplatted first class tidelands and shorelands are aligned under the same terms and processes. Maximum statutory lease terms are 55 years for first class tidelands and shorelands, and 30 years for bedlands in front of them. DNR's surveying and platting of tidelands and shorelands is made permissive. Technical changes are made.

State Upland Sales and Transfers. DNR may directly transfer land to a current home site lessee without the need for a public auction. These transfers must meet the same requirements as for other direct land transfers, such as the requirement for Board approval and sale for at least fair market value.

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

DNR Upland Management Direction and Analysis. Subject to the availability of appropriations, DNR must analyze its state lands and state forestlands portfolios, management practices, and transaction processes for purposes including to:

- develop options and recommendations to ensure the state's fiduciary obligations are met and increase the amount and stability of revenue over time;
- review options to leverage high value, low performing lands to include land sales;
- develop alternatives and recommendations relating to arrearage volume;
- for state forestlands, include an analysis and options for creating a unitary trust and alternative management structures; and
- develop methods or tools to estimate the current asset value of state lands and state forestlands.

DNR may use the services of a contractor for any portion of this work. A final report to the Legislature is due by June 30, 2020, with progress reports due by December 2018 and 2019.

DNR Aquatic Lands Lease and Easement Evaluation. Within existing appropriations, DNR must evaluate use leases and easements for industrial and commercial uses on state-owned aquatic lands. The evaluation does not include leases for purposes of marinas or moorage. DNR must complete the evaluation by December 1, 2018. It must cover matters such as:

- a summary of each lease and easement, including lease terms;
- revenue from each lease and easement, including a summary of the method or formula used;
- a summary of inspection and monitoring efforts completed over a ten-year period relating to lease and easement terms and environmental, health, and safety standards; and

- a summary of compliance activities conducted by DNR.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Staff Summary of Public Testimony:** PRO: This is a small bill but will have important impacts. It will help DNR with administrative efficiency, help improve management outcomes, and help those dealing with potentially ending home site leases. The aquatic lands changes are focused on modernizing the statute and allowing lessees to have sufficient lease terms to recoup investments in property improvements. The upland changes are built around allowing DNR to utilize professional marking services for complicated real estate transactions, and providing flexibility to conduct direct transfers to home site lessees when that transaction is in the best interest of the trust.

**Persons Testifying:** PRO: Senator Curtis King, Prime Sponsor; Kristin Swenddal, DNR; Brock Milern, DNR; Joe Dacca, University of Washington.

**Persons Signed In To Testify But Not Testifying:** No one.

**EFFECT OF HOUSE AMENDMENT(S):**

- Modifies language providing for a DNR review of state trust land and state forestland asset valuation.
- Specifies that a county may distribute specified payments for exchanged former trust lands under the capital budget approved in January 2018, in the same manner as general taxes are distributed.