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SENATE BILL 5550

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State of Washington

62nd Legislature

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By Senators Regala, Ranker, Swecker, Hargrove, Morton, Stevens, Fraser, Shin, and Kohl-Welles; by request of Department of Natural Resources

Read first time 01/28/11. Referred to Committee on Natural Resources & Marine Waters.

1 AN ACT Relating to annual rent rates for marina; amending RCW  
2 79.105.060 and 79.105.240; adding a new section to chapter 79.105 RCW;  
3 and creating a new section.

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

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

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

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

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

15 (3) "First-class shorelands" means the shores of a navigable lake  
16 or river belonging to the state, not subject to tidal flow, lying  
17 between the line of ordinary high water and the line of navigability,  
18 or inner harbor line where established and within or in front of the  
19 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; and public  
20 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, log  
26 storage, and house boats. For the purposes of determining rent under  
27 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.

37 (26) "Marina" means any entity occupying state-owned aquatic lands  
38 that provides vessel moorage for a fee or includes marina slips within

1 the definition of a unit for condominium purposes, excluding homeowner  
2 associations, facilities that provide moorage exclusively for floating  
3 homes, and facilities that are entirely dedicated to providing public  
4 use and access under a no-fee public use and access agreement.

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

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

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

15 (b) ~~((The upland value times the area of leased aquatic lands times~~  
16 ~~thirty percent equals the aquatic land value.)) For marinas only, the  
17 upland value used to calculate rent shall be as determined in (a) of  
18 this subsection except if the upland value is not within forty-five  
19 percent of the geographic average upland value. The geographic average  
20 upland value for each marina is the average of the upland values as  
21 determined in (a) of this subsection of all the marinas within a five  
22 mile radius centered on each marina.~~

23 (i) If the value of the adjacent upland property used to calculate  
24 a marina's rent is more than forty-five percent above the average of  
25 the adjacent upland property values of the marinas within the  
26 geographic averaging area, then the upland value used to calculate the  
27 marina's rent will be a value that is forty-five percent above the  
28 average of the adjacent upland property values.

29 (ii) If the value of the adjacent upland property used to calculate  
30 a marina's rent is more than forty-five percent below the average of  
31 the adjacent upland property values of the marinas within the  
32 geographic averaging area, then the upland value used to calculate the  
33 marina's rent will be a value that is forty-five percent of the average  
34 of the adjacent upland property values.

35 (c) The upland value times the area of leased aquatic lands times  
36 thirty percent equals the aquatic land value.

1 (2) As of July 1, 1989, and each July 1st thereafter, the  
2 department shall determine the real capitalization rate to be applied  
3 to water-dependent aquatic land leases commencing or being adjusted  
4 under subsection (3)(a)(i) of this section in that fiscal year. The  
5 real capitalization rate shall be the real rate of return, except that  
6 until June 30, 1989, the real capitalization rate shall be five percent  
7 and thereafter it shall not change by more than one percentage point in  
8 any one year or be more than seven percent or less than three percent.

9 (3)(a) The annual rent shall be:

10 ((+a)) (i) Determined initially, and redetermined every four years  
11 or as otherwise provided in the lease, by multiplying the aquatic land  
12 value times the real capitalization rate; and

13 ((+b)) (ii) Adjusted by the inflation rate each year in which the  
14 rent is not determined under (a)(i) of this subsection.

15 (b) For marinas only, on years when rent is initially or  
16 redetermined under (a) of this subsection, the rent determined under  
17 (a) of this subsection must be added to a base rent of two hundred  
18 fifty dollars. The base rent must be deposited into the resource  
19 management cost account created in RCW 79.64.020.

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

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

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

34 ~~((7) For all new leases for other water dependent uses, issued~~  
35 ~~after December 31, 1997, the initial annual water dependent rent shall~~  
36 ~~be determined by the methods in subsections (1) through (6) of this~~  
37 ~~section.))~~

1        NEW SECTION.   **Sec. 3.**   A new section is added to chapter 79.105 RCW  
2   to read as follows:

3        If the initial annual rent for a marina established using RCW  
4   79.105.240(1)(b) to calculate upland value results in an increase in  
5   rent, the initial annual rent will be increased by twenty-five percent  
6   of the difference of the initial annual rent and the previous rent. On  
7   each anniversary date before the following revaluation, the annual rent  
8   must be increased an additional twenty-five percent of the difference  
9   of the initial rent and the previous rent. The annual rent established  
10   on the following revaluation date is not subject to this section. If  
11   the initial annual rent for a marina established using RCW  
12   79.105.240(1)(b) to calculate upland value results in a decrease in  
13   rent, the initial annual rent will be decreased by twenty-five percent  
14   of the difference of the previous rent and the initial annual rent. On  
15   each anniversary date before the following revaluation, the annual rent  
16   shall be decreased an additional twenty-five percent of the difference  
17   of the previous rent and the initial rent. The annual rent established  
18   on the following revaluation date is not subject to this section. All  
19   rents determined under this section are subject to an inflation rate.

20        NEW SECTION.   **Sec. 4.**   RCW 79.105.060, 79.105.240, and section 3 of  
21   this act apply to all annual rents for marinas determined initially or  
22   redetermined on or after the effective date of this section.

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