

2 SHB 1692 - S COMM AMD

3 By Committee on Natural Resources & Parks

4 ADOPTED 3/6/98

5 Strike everything after the enacting clause and insert the
6 following:

7 "Sec. 1. RCW 79.90.465 and 1984 c 221 s 4 are each amended to read
8 as follows:

9 The definitions in this section apply throughout chapters 79.90
10 through 79.96 RCW.

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

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

34 (3) "Nonwater-dependent use" means a use which can operate in a
35 location other than on the waterfront. Examples include, but are not
36 limited to, hotels, condominiums, apartments, restaurants, retail

1 stores, and warehouses not part of a marine terminal or transfer
2 facility.

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

7 (5) "Log booming" means placing logs into and taking them out of
8 the water, assembling and disassembling log rafts before or after their
9 movement in water-borne commerce, related handling and sorting
10 activities taking place in the water, and the temporary holding of logs
11 to be taken directly into a processing facility. "Log booming" does
12 not include the temporary holding of logs to be taken directly into a
13 vessel.

14 (6) "Department" means the department of natural resources.

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

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

22 (9) The "inflation rate" for a given year is the percentage rate of
23 change in the previous calendar year's all commodity producer price
24 index of the bureau of labor statistics of the United States department
25 of commerce. If the index ceases to be published, the department shall
26 designate by rule a comparable substitute index.

27 (10) "Public utility lines" means pipes, conduits, and similar
28 facilities for distribution of water, electricity, natural gas,
29 telephone, other electronic communication, and sewers, including sewer
30 outfall lines.

31 (11) "Terminal" means a point of interchange between land and water
32 carriers, such as a pier, wharf, or group of such, equipped with
33 facilities for care and handling of cargo and/or passengers.

34 (12) "State-owned aquatic lands" means those aquatic lands and
35 waterways administered by the department of natural resources or
36 managed under RCW 79.90.475 by a port district. "State-owned aquatic
37 lands" does not include aquatic lands owned in fee by, or withdrawn for
38 the use of, state agencies other than the department of natural
39 resources.

1 (13) "City" means a city or town created under Title 35 or 35A RCW.

2 (14) "Marina" means a waterfront facility that provides moorage for
3 recreation vessels, charter vessels, commercial fishing vessels, and
4 water-based aircraft. A marina facility may include fuel docks and
5 associated chandlery activities designed to serve recreational vessels,
6 charter vessels, commercial fishing vessels, and water-based aircraft.

7 **Sec. 2.** RCW 79.90.475 and 1984 c 221 s 6 are each amended to read
8 as follows:

9 Upon request of a port district, the department and port district
10 may enter into an agreement authorizing the port district to manage
11 state-owned aquatic lands (~~(abutting or used in conjunction with and~~
12 ~~contiguous to uplands owned, leased, or otherwise managed by a port~~
13 ~~district,~~)) for port purposes as provided in Title 53 RCW. The lands
14 that may be included in a port district aquatic lands management
15 agreement are those state-owned aquatic lands abutting or used in
16 conjunction with and contiguous to uplands owned, leased, or otherwise
17 managed by a port district. If a port district owns or operates a
18 public marina facility within a bay where the distance between the
19 headlands at the entrance to the bay is two miles or less, the state-
20 owned aquatic lands beneath the marina facility shall also be eligible
21 for management by the port district under a management agreement.

22 ~~((Such))~~ A port district aquatic lands management agreement shall
23 include, but not be limited to, provisions defining the specific area
24 to be managed, the term, conditions of occupancy, reservations,
25 periodic review, and other conditions to ensure consistency with the
26 state Constitution and the policies of this chapter. If a port
27 district acquires operating management, lease, or ownership of real
28 property which abuts state-owned aquatic lands currently under lease
29 from the state to a person other than the port district, the port
30 district shall manage such aquatic lands if: (1) The port district
31 acquires the leasehold interest in accordance with state law, or (2)
32 the current lessee and the department agree to termination of the
33 current lease to accommodate management by the port. The
34 administration of aquatic lands covered by a port district aquatic
35 lands management agreement shall be consistent with the aquatic land
36 policies of chapters 79.90 through 79.96 RCW and the implementing
37 ~~((regulations))~~ rules adopted by the department. The administrative
38 procedures for management of the lands shall be those of Title 53 RCW.

1 No rent shall be due the state for the use of state-owned aquatic
2 lands managed under this section for water-dependent or water-oriented
3 uses. If a port district manages state-owned aquatic lands under this
4 section and either leases or otherwise permits any person to use such
5 lands, the rental fee attributable to such aquatic land only shall be
6 comparable to the rent charged lessees for the same or similar uses by
7 the department: PROVIDED, That a port district need not itemize for
8 the lessee any charges for state-owned aquatic lands improved by the
9 port district for use by carriers by water. If a port leases state-
10 owned aquatic lands to any person for nonwater-dependent use, eighty-
11 five percent of the revenue attributable to the rent of the state-owned
12 aquatic land only shall be paid to the state.

13 Upon application for a management agreement, and so long as the
14 application is pending and being diligently pursued, no rent shall be
15 due the department for the lease by the port district of state-owned
16 aquatic lands included within the application for water-dependent or
17 water-oriented uses.

18 The department and representatives of the port industry shall
19 develop a proposed model management agreement which shall be used as
20 the basis for negotiating the management agreements required by this
21 section. The model management agreement shall be reviewed and approved
22 by the board of natural resources.

23 NEW SECTION. **Sec. 3.** A new section is added to chapter 79.90 RCW
24 to read as follows:

25 (1) Upon request of a city, the department and city may enter into
26 an agreement authorizing the city to manage state-owned aquatic lands
27 for the purpose of operating a publicly owned marina. The lands that
28 may be included in a city aquatic lands management agreement are those
29 state-owned aquatic lands abutting or used in conjunction with and
30 contiguous to uplands owned, leased, or otherwise managed by a city.
31 All state-owned aquatic lands beneath any publicly owned marina
32 developed or maintained by a city are eligible for management by the
33 city under a management agreement.

34 A city aquatic lands management agreement shall include, but not be
35 limited to, provisions defining the specific area to be managed, the
36 term, conditions of occupancy, reservations, periodic review, and other
37 conditions to ensure consistency with the state Constitution and the
38 policies of this chapter. If a city acquires operating management,

1 lease, or ownership of real property that abuts state-owned aquatic
2 lands currently under lease from the state to a person other than the
3 city, the city shall manage the aquatic lands if: (a) The city
4 acquires the leasehold interest in accordance with state law, or (b)
5 the current lessee and the department agree to termination of the
6 current lease to accommodate management by the city. The
7 administration of aquatic lands covered by a city aquatic lands
8 management agreement shall be consistent with the aquatic land policies
9 of chapters 79.90 through 79.96 RCW and the implementing rules adopted
10 by the department. The administrative procedures for management of the
11 lands shall be those of Title 35 or 35A RCW, whichever is appropriate.

12 No rent is due the state for the use of state-owned aquatic lands
13 managed under this section for water-dependent or water-oriented uses.
14 If a city manages state-owned aquatic lands under this section and
15 either leases or otherwise permits any person to use the lands, the
16 rental fee attributable to the aquatic land only shall be comparable to
17 the rent charged lessees for the same or similar uses by the
18 department. If a city leases state-owned aquatic lands to any person
19 for nonwater-dependent use, eighty-five percent of the revenue
20 attributable to the rent of the state-owned aquatic land only shall be
21 paid to the state.

22 Upon application for a management agreement, and so long as the
23 application is pending and being diligently pursued, no rent is due the
24 department for the lease by the city of state-owned aquatic lands
25 included within the application for water-dependent or water-oriented
26 uses.

27 The department and representatives of the association of Washington
28 cities shall develop a proposed model management agreement that shall
29 be used as the basis for negotiating the management agreements required
30 by this section. The model management agreement shall be reviewed and
31 approved by the board of natural resources.

32 (2) A city that operates a publicly owned marina within the
33 territorial limits of a port district shall obtain the approval of the
34 port commission prior to applying to the department for a management
35 agreement. A city with marina facilities in existence on the effective
36 date of this act may enter into a management agreement for those
37 facilities without port commission approval.

1 **Sec. 4.** RCW 79.90.520 and 1991 c 64 s 1 are each amended to read
2 as follows:

3 The manager shall, by rule, provide for an administrative review of
4 any aquatic land rent proposed to be charged. The rules shall require
5 that the lessee or applicant for release file a request for review
6 within thirty days after the manager has notified the lessee or
7 applicant of the rent due. For leases issued by the department, the
8 final authority for the review rests with the board of natural
9 resources. For leases managed under RCW 79.90.475, the final authority
10 for the review rests with the appropriate port commission. For leases
11 managed under section 3 of this act, the final authority for the review
12 rests with the appropriate city legislative authority. If the request
13 for review is made within thirty days after the manager's final
14 determination as to the rental, the lessee may pay rent at the
15 preceding year's rate pending completion of the review, and shall pay
16 any additional rent or be entitled to a refund, with interest thirty
17 days after announcement of the decision. The interest rate shall be
18 fixed, from time to time, by rule adopted by the board of natural
19 resources and shall not be less than six percent per annum. Nothing in
20 this section abrogates the right of an aggrieved party to pursue legal
21 remedies. For purposes of this section, "manager" is the department
22 except where state-owned aquatic lands are managed by a port district
23 or a city, in which case "manager" is the appropriate port district or
24 city.

25 **Sec. 5.** RCW 79.93.040 and 1984 c 221 s 21 are each amended to read
26 as follows:

27 If the United States government has established pierhead lines
28 within a waterway created under the laws of this state at any distance
29 from the boundaries established by the state, structures may be
30 constructed in that strip of waterway between the waterway boundary and
31 the nearest pierhead line only with the consent of the department of
32 natural resources and upon such plans, terms, and conditions and for
33 such term as determined by the department. However, no permit shall
34 extend for a period longer than thirty years.

35 The department may cancel any permit upon sixty days' notice for a
36 substantial breach by the permittee of any of the permit conditions.

37 If a waterway is within the territorial limits of a port district,
38 the duties assigned by this section to the department may be exercised

1 by the port commission of such port district as provided in RCW
2 79.90.475. If a waterway is within the territorial limits of a city,
3 the duties assigned by this section to the department may be exercised
4 by the city as provided in section 3 of this act.

5 Nothing in this section shall confer upon, create, or recognize in
6 any abutting owner any right or privilege in or to any strip of
7 waterway abutting any street and between prolongations of the lines of
8 such street, but the control of and the right to use such strip is
9 hereby reserved to the state of Washington, except as authorized by RCW
10 79.90.475 and section 3 of this act."

11 **SHB 1692** - S COMM AMD

12 By Committee on Natural Resources & Parks

13 ADOPTED 3/6/98

14 On page 1, line 1 of the title, after "lands;" strike the remainder
15 of the title and insert "amending RCW 79.90.465, 79.90.475, 79.90.520,
16 and 79.93.040; and adding a new section to chapter 79.90 RCW."

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