

CERTIFICATION OF ENROLLMENT
SUBSTITUTE HOUSE BILL 1692

55th Legislature
1998 Regular Session

Passed by the House March 10, 1998
Yeas 95 Nays 2

Speaker of the
House of Representatives

Passed by the Senate March 6, 1998
Yeas 40 Nays 7

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Timothy A. Martin, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1692** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

Secretary of State
State of Washington

SUBSTITUTE HOUSE BILL 1692

AS AMENDED BY THE SENATE

Passed Legislature - 1998 Regular Session

State of Washington 55th Legislature 1997 Regular Session

By House Committee on Capital Budget (originally sponsored by Representatives Sehlin, Morris, Anderson, Honeyford, Huff, Lantz and Chopp)

Read first time 03/05/97.

1 AN ACT Relating to management of state-owned aquatic lands;
2 amending RCW 79.90.465, 79.90.475, 79.90.520, and 79.93.040; and adding
3 a new section to chapter 79.90 RCW.

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

5 **Sec. 1.** RCW 79.90.465 and 1984 c 221 s 4 are each amended to read
6 as follows:

7 The definitions in this section apply throughout chapters 79.90
8 through 79.96 RCW.

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

16 (2) "Water-oriented use" means a use which historically has been
17 dependent on a waterfront location, but with existing technology could
18 be located away from the waterfront. Examples include, but are not
19 limited to, wood products manufacturing, watercraft sales, fish

1 processing, petroleum refining, sand and gravel processing, log
2 storage, and house boats. For the purposes of determining rent under
3 this chapter, water-oriented uses shall be classified as water-
4 dependent uses if the activity either is conducted on state-owned
5 aquatic lands leased on October 1, 1984, or was actually conducted on
6 the state-owned aquatic lands for at least three years before October
7 1, 1984. If, after October 1, 1984, the activity is changed to a use
8 other than a water-dependent use, the activity shall be classified as
9 a nonwater-dependent use. If continuation of the existing use requires
10 leasing additional state-owned aquatic lands and is permitted under the
11 shoreline management act of 1971, chapter 90.58 RCW, the department may
12 allow reasonable expansion of the water-oriented use.

13 (3) "Nonwater-dependent use" means a use which can operate in a
14 location other than on the waterfront. Examples include, but are not
15 limited to, hotels, condominiums, apartments, restaurants, retail
16 stores, and warehouses not part of a marine terminal or transfer
17 facility.

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

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

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

30 (7) "Port district" means a port district created under Title 53
31 RCW.

32 (8) The "real rate of return" means the average for the most recent
33 ten calendar years of the average rate of return on conventional real
34 property mortgages as reported by the federal home loan bank board or
35 any successor agency, minus the average inflation rate for the most
36 recent ten calendar years.

37 (9) The "inflation rate" for a given year is the percentage rate of
38 change in the previous calendar year's all commodity producer price
39 index of the bureau of labor statistics of the United States department

1 of commerce. If the index ceases to be published, the department shall
2 designate by rule a comparable substitute index.

3 (10) "Public utility lines" means pipes, conduits, and similar
4 facilities for distribution of water, electricity, natural gas,
5 telephone, other electronic communication, and sewers, including sewer
6 outfall lines.

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

10 (12) "State-owned aquatic lands" means those aquatic lands and
11 waterways administered by the department of natural resources or
12 managed under RCW 79.90.475 by a port district. "State-owned aquatic
13 lands" does not include aquatic lands owned in fee by, or withdrawn for
14 the use of, state agencies other than the department of natural
15 resources.

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

17 (14) "Marina" means a waterfront facility that provides moorage for
18 recreation vessels, charter vessels, commercial fishing vessels, and
19 water-based aircraft. A marina facility may include fuel docks and
20 associated chandlery activities designed to serve recreational vessels,
21 charter vessels, commercial fishing vessels, and water-based aircraft.

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

24 Upon request of a port district, the department and port district
25 may enter into an agreement authorizing the port district to manage
26 state-owned aquatic lands (~~(abutting or used in conjunction with and~~
27 ~~contiguous to uplands owned, leased, or otherwise managed by a port~~
28 ~~district,)) for port purposes as provided in Title 53 RCW. The lands
29 that may be included in a port district aquatic lands management
30 agreement are those state-owned aquatic lands abutting or used in
31 conjunction with and contiguous to uplands owned, leased, or otherwise
32 managed by a port district. If a port district owns or operates a
33 public marina facility within a bay where the distance between the
34 headlands at the entrance to the bay is two miles or less, the state-
35 owned aquatic lands beneath the marina facility shall also be eligible
36 for management by the port district under a management agreement.~~

37 ~~((Such))~~ A port district aquatic lands management agreement shall
38 include, but not be limited to, provisions defining the specific area

1 to be managed, the term, conditions of occupancy, reservations,
2 periodic review, and other conditions to ensure consistency with the
3 state Constitution and the policies of this chapter. If a port
4 district acquires operating management, lease, or ownership of real
5 property which abuts state-owned aquatic lands currently under lease
6 from the state to a person other than the port district, the port
7 district shall manage such aquatic lands if: (1) The port district
8 acquires the leasehold interest in accordance with state law, or (2)
9 the current lessee and the department agree to termination of the
10 current lease to accommodate management by the port. The
11 administration of aquatic lands covered by a port district aquatic
12 lands management agreement shall be consistent with the aquatic land
13 policies of chapters 79.90 through 79.96 RCW and the implementing
14 (~~regulations~~) rules adopted by the department. The administrative
15 procedures for management of the lands shall be those of Title 53 RCW.

16 No rent shall be due the state for the use of state-owned aquatic
17 lands managed under this section for water-dependent or water-oriented
18 uses. If a port district manages state-owned aquatic lands under this
19 section and either leases or otherwise permits any person to use such
20 lands, the rental fee attributable to such aquatic land only shall be
21 comparable to the rent charged lessees for the same or similar uses by
22 the department: PROVIDED, That a port district need not itemize for
23 the lessee any charges for state-owned aquatic lands improved by the
24 port district for use by carriers by water. If a port leases state-
25 owned aquatic lands to any person for nonwater-dependent use, eighty-
26 five percent of the revenue attributable to the rent of the state-owned
27 aquatic land only shall be paid to the state.

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

33 The department and representatives of the port industry shall
34 develop a proposed model management agreement which shall be used as
35 the basis for negotiating the management agreements required by this
36 section. The model management agreement shall be reviewed and approved
37 by the board of natural resources.

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

3 (1) Upon request of a city, the department and city may enter into
4 an agreement authorizing the city to manage state-owned aquatic lands
5 for the purpose of operating a publicly owned marina. The lands that
6 may be included in a city aquatic lands management agreement are those
7 state-owned aquatic lands abutting or used in conjunction with and
8 contiguous to uplands owned, leased, or otherwise managed by a city.
9 All state-owned aquatic lands beneath any publicly owned marina
10 developed or maintained by a city are eligible for management by the
11 city under a management agreement.

12 A city aquatic lands management agreement shall include, but not be
13 limited to, provisions defining the specific area to be managed, the
14 term, conditions of occupancy, reservations, periodic review, and other
15 conditions to ensure consistency with the state Constitution and the
16 policies of this chapter. If a city acquires operating management,
17 lease, or ownership of real property that abuts state-owned aquatic
18 lands currently under lease from the state to a person other than the
19 city, the city shall manage the aquatic lands if: (a) The city
20 acquires the leasehold interest in accordance with state law, or (b)
21 the current lessee and the department agree to termination of the
22 current lease to accommodate management by the city. The
23 administration of aquatic lands covered by a city aquatic lands
24 management agreement shall be consistent with the aquatic land policies
25 of chapters 79.90 through 79.96 RCW and the implementing rules adopted
26 by the department. The administrative procedures for management of the
27 lands shall be those of Title 35 or 35A RCW, whichever is appropriate.

28 No rent is due the state for the use of state-owned aquatic lands
29 managed under this section for water-dependent or water-oriented uses.
30 If a city manages state-owned aquatic lands under this section and
31 either leases or otherwise permits any person to use the lands, the
32 rental fee attributable to the aquatic land only shall be comparable to
33 the rent charged lessees for the same or similar uses by the
34 department. If a city leases state-owned aquatic lands to any person
35 for nonwater-dependent use, eighty-five percent of the revenue
36 attributable to the rent of the state-owned aquatic land only shall be
37 paid to the state.

38 Upon application for a management agreement, and so long as the
39 application is pending and being diligently pursued, no rent is due the

1 department for the lease by the city of state-owned aquatic lands
2 included within the application for water-dependent or water-oriented
3 uses.

4 The department and representatives of the association of Washington
5 cities shall develop a proposed model management agreement that shall
6 be used as the basis for negotiating the management agreements required
7 by this section. The model management agreement shall be reviewed and
8 approved by the board of natural resources.

9 (2) A city that operates a publicly owned marina within the
10 territorial limits of a port district shall obtain the approval of the
11 port commission prior to applying to the department for a management
12 agreement. A city with marina facilities in existence on the effective
13 date of this act may enter into a management agreement for those
14 facilities without port commission approval.

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

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

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

3 If the United States government has established pierhead lines
4 within a waterway created under the laws of this state at any distance
5 from the boundaries established by the state, structures may be
6 constructed in that strip of waterway between the waterway boundary and
7 the nearest pierhead line only with the consent of the department of
8 natural resources and upon such plans, terms, and conditions and for
9 such term as determined by the department. However, no permit shall
10 extend for a period longer than thirty years.

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

13 If a waterway is within the territorial limits of a port district,
14 the duties assigned by this section to the department may be exercised
15 by the port commission of such port district as provided in RCW
16 79.90.475. If a waterway is within the territorial limits of a city,
17 the duties assigned by this section to the department may be exercised
18 by the city as provided in section 3 of this act.

19 Nothing in this section shall confer upon, create, or recognize in
20 any abutting owner any right or privilege in or to any strip of
21 waterway abutting any street and between prolongations of the lines of
22 such street, but the control of and the right to use such strip is
23 hereby reserved to the state of Washington, except as authorized by RCW
24 79.90.475 and section 3 of this act.

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