
SENATE BILL 6249

State of Washington

55th Legislature

1998 Regular Session

By Senator Swecker

Read first time . Referred to Committee on .

1 AN ACT Relating to geoduck harvesting agreements; and amending RCW
2 34.05.010 and 79.96.080.

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

4 **Sec. 1.** RCW 34.05.010 and 1997 c 126 s 2 are each amended to read
5 as follows:

6 The definitions set forth in this section shall apply throughout
7 this chapter, unless the context clearly requires otherwise.

8 (1) "Adjudicative proceeding" means a proceeding before an agency
9 in which an opportunity for hearing before that agency is required by
10 statute or constitutional right before or after the entry of an order
11 by the agency. Adjudicative proceedings also include all cases of
12 licensing and rate making in which an application for a license or rate
13 change is denied except as limited by RCW 66.08.150, or a license is
14 revoked, suspended, or modified, or in which the granting of an
15 application is contested by a person having standing to contest under
16 the law.

17 (2) "Agency" means any state board, commission, department,
18 institution of higher education, or officer, authorized by law to make
19 rules or to conduct adjudicative proceedings, except those in the

1 legislative or judicial branches, the governor, or the attorney general
2 except to the extent otherwise required by law and any local
3 governmental entity that may request the appointment of an
4 administrative law judge under chapter 42.41 RCW.

5 (3) "Agency action" means licensing, the implementation or
6 enforcement of a statute, the adoption or application of an agency rule
7 or order, the imposition of sanctions, or the granting or withholding
8 of benefits. Agency action includes the termination or imposition of
9 sanctions under geoduck harvesting agreements entered into under RCW
10 79.96.080 based on enforcement of a statute or rule.

11 Agency action does not include an agency decision regarding (a)
12 contracting or procurement of goods, services, public works, and the
13 purchase, lease, or acquisition by any other means, including eminent
14 domain, of real estate, as well as all activities necessarily related
15 to those functions, or (b) determinations as to the sufficiency of a
16 showing of interest filed in support of a representation petition, or
17 mediation or conciliation of labor disputes or arbitration of labor
18 disputes under a collective bargaining law or similar statute, or (c)
19 any sale, lease, contract, or other proprietary decision in the
20 management of public lands or real property interests, other than
21 geoduck harvesting agreements, or (d) the granting of a license,
22 franchise, or permission for the use of trademarks, symbols, and
23 similar property owned or controlled by the agency.

24 (4) "Agency head" means the individual or body of individuals in
25 whom the ultimate legal authority of the agency is vested by any
26 provision of law. If the agency head is a body of individuals, a
27 majority of those individuals constitutes the agency head.

28 (5) "Entry" of an order means the signing of the order by all
29 persons who are to sign the order, as an official act indicating that
30 the order is to be effective.

31 (6) "Filing" of a document that is required to be filed with an
32 agency means delivery of the document to a place designated by the
33 agency by rule for receipt of official documents, or in the absence of
34 such designation, at the office of the agency head.

35 (7) "Institutions of higher education" are the University of
36 Washington, Washington State University, Central Washington University,
37 Eastern Washington University, Western Washington University, The
38 Evergreen State College, the various community colleges, and the
39 governing boards of each of the above, and the various colleges,

1 divisions, departments, or offices authorized by the governing board of
2 the institution involved to act for the institution, all of which are
3 sometimes referred to in this chapter as "institutions."

4 (8) "Interpretive statement" means a written expression of the
5 opinion of an agency, entitled an interpretive statement by the agency
6 head or its designee, as to the meaning of a statute or other provision
7 of law, of a court decision, or of an agency order.

8 (9)(a) "License" means a franchise, permit, certification,
9 approval, registration, charter, or similar form of authorization
10 required by law, but does not include (i) a license required solely for
11 revenue purposes, or (ii) a certification of an exclusive bargaining
12 representative, or similar status, under a collective bargaining law or
13 similar statute, or (iii) a license, franchise, or permission for use
14 of trademarks, symbols, and similar property owned or controlled by the
15 agency.

16 (b) "Licensing" includes the agency process respecting the
17 issuance, denial, revocation, suspension, or modification of a license.

18 (10) "Mail" or "send," for purposes of any notice relating to rule
19 making or policy or interpretive statements, means regular mail or
20 electronic distribution, as provided in RCW ---.---.--- (section 1,
21 chapter 126 (Substitute House Bill No. 1323), Laws of 1997).
22 "Electronic distribution" or "electronically" means distribution by
23 electronic mail or facsimile mail.

24 (11)(a) "Order," without further qualification, means a written
25 statement of particular applicability that finally determines the legal
26 rights, duties, privileges, immunities, or other legal interests of a
27 specific person or persons.

28 (b) "Order of adoption" means the official written statement by
29 which an agency adopts, amends, or repeals a rule.

30 (12) "Party to agency proceedings," or "party" in a context so
31 indicating, means:

32 (a) A person to whom the agency action is specifically directed; or

33 (b) A person named as a party to the agency proceeding or allowed
34 to intervene or participate as a party in the agency proceeding.

35 (13) "Party to judicial review or civil enforcement proceedings,"
36 or "party" in a context so indicating, means:

37 (a) A person who files a petition for a judicial review or civil
38 enforcement proceeding; or

1 (b) A person named as a party in a judicial review or civil
2 enforcement proceeding, or allowed to participate as a party in a
3 judicial review or civil enforcement proceeding.

4 (14) "Person" means any individual, partnership, corporation,
5 association, governmental subdivision or unit thereof, or public or
6 private organization or entity of any character, and includes another
7 agency.

8 (15) "Policy statement" means a written description of the current
9 approach of an agency, entitled a policy statement by the agency head
10 or its designee, to implementation of a statute or other provision of
11 law, of a court decision, or of an agency order, including where
12 appropriate the agency's current practice, procedure, or method of
13 action based upon that approach.

14 (16) "Rule" means any agency order, directive, or regulation of
15 general applicability (a) the violation of which subjects a person to
16 a penalty or administrative sanction; (b) which establishes, alters, or
17 revokes any procedure, practice, or requirement relating to agency
18 hearings; (c) which establishes, alters, or revokes any qualification
19 or requirement relating to the enjoyment of benefits or privileges
20 conferred by law; (d) which establishes, alters, or revokes any
21 qualifications or standards for the issuance, suspension, or revocation
22 of licenses to pursue any commercial activity, trade, or profession; or
23 (e) which establishes, alters, or revokes any mandatory standards for
24 any product or material which must be met before distribution or sale.
25 The term includes the amendment or repeal of a prior rule, but does not
26 include (i) statements concerning only the internal management of an
27 agency and not affecting private rights or procedures available to the
28 public, (ii) declaratory rulings issued pursuant to RCW 34.05.240,
29 (iii) traffic restrictions for motor vehicles, bicyclists, and
30 pedestrians established by the secretary of transportation or his
31 designee where notice of such restrictions is given by official traffic
32 control devices, or (iv) rules of institutions of higher education
33 involving standards of admission, academic advancement, academic
34 credit, graduation and the granting of degrees, employment
35 relationships, or fiscal processes.

36 (17) "Rules review committee" or "committee" means the joint
37 administrative rules review committee created pursuant to RCW 34.05.610
38 for the purpose of selectively reviewing existing and proposed rules of
39 state agencies.

1 (18) "Rule making" means the process for formulation and adoption
2 of a rule.

3 (19) "Service," except as otherwise provided in this chapter, means
4 posting in the United States mail, properly addressed, postage prepaid,
5 or personal service. Service by mail is complete upon deposit in the
6 United States mail. Agencies may, by rule, authorize service by
7 electronic telefacsimile transmission, where copies are mailed
8 simultaneously, or by commercial parcel delivery company.

9 **Sec. 2.** RCW 79.96.080 and 1990 c 163 s 4 are each amended to read
10 as follows:

11 (1) Geoducks shall be sold as valuable materials under the
12 provisions of chapter 79.90 RCW. After confirmation of the sale, the
13 department of natural resources may enter into an agreement with the
14 purchaser for the harvesting of geoducks. The department of natural
15 resources may place terms and conditions in the harvesting agreements
16 as the department deems necessary. The department of natural resources
17 may enforce the provisions of any harvesting agreement by suspending or
18 canceling the harvesting agreement or through any other means contained
19 in the harvesting agreement. Enforcement actions based on a violation
20 of a law or rule are an agency action subject to chapter 34.05 RCW.
21 Any geoduck harvester may terminate a harvesting agreement entered into
22 pursuant to this subsection if actions of a governmental agency, beyond
23 the control of the harvester, its agents, or its employees, prohibit
24 harvesting, for a period exceeding thirty days during the term of the
25 harvesting agreement, except as provided within the agreement. Upon
26 such termination of the agreement by the harvester, the harvester shall
27 be reimbursed by the department of natural resources for the cost paid
28 to the department on the agreement, less the value of the harvest
29 already accomplished by the harvester under the agreement.

30 (2) Harvesting agreements under this title for the purpose of
31 harvesting geoducks shall require the harvester and the harvester's
32 agent or representatives to comply with all applicable commercial
33 diving safety standards and regulations promulgated and implemented by
34 the federal occupational safety and health administration established
35 under the federal Occupational Safety and Health Act of 1970 as such
36 law exists or as hereafter amended (84 Stat. 1590 et seq.; 29 U.S.C.
37 Sec. 651 et seq.)(~~PROVIDED, That~~). However, for the purposes of
38 this section and RCW 75.24.100 (~~as now or hereafter amended~~), all

1 persons who dive for geoducks are deemed to be employees as defined by
2 the federal Occupational Safety and Health Act. All harvesting
3 agreements shall provide that failure to comply with these standards is
4 cause for suspension or cancellation of the harvesting agreement(~~(+~~
5 ~~PROVIDED FURTHER, That~~)). However, for the purposes of this subsection
6 if the harvester contracts with another person or entity for the
7 harvesting of geoducks, the harvesting agreement shall not be suspended
8 or canceled if the harvester terminates its business relationship with
9 such entity until compliance with this subsection is secured.

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