
Natural Resources Committee

HB 2819

Brief Description: Addressing the uncertainty surrounding reversionary clauses contained in Bush and Callow act deeds.

Sponsors: Representatives Doumit, Buck, Hatfield and Linville.

<p style="text-align: center;">Brief Summary of Bill</p> <ul style="list-style-type: none">· Declares the intent of the Legislature to fully resolve the uncertainty of the grant of rights for clam and other shellfish culture by the Bush and Callow Acts.
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Hearing Date: 2/5/02

Staff: Jason Callahan (786-7117).

Background:

Upon statehood, Washington had conferred to it all of the aquatic lands within the state's borders. Unlike the upland forested parcels, the aquatic lands transferred were given to the new state in fee, and not subject to trust restrictions for specific beneficiaries. Since that time, the state has sold off some of the aquatic lands in the state, and entered into leases for other parcels.

In 1895 the Legislature passed the Bush and Callow acts. These acts allowed for the sale of aquatic lands to be used only for oyster planting. The laws specified that if the aquatic lands were used for any other purpose, the ownership would revert back to the state. In 1919 the Legislature passed what is known as the "Clam Act". This piece of legislation allowed the owners of aquatic lands purchased under the Bush and Callow acts to cultivate clams and other edible shellfish without having the land revert back to the state for being used for a purpose other than growing oysters.

The Bush and Callow acts were repealed in 1935; however, the Legislature included a savings clause so that individuals who had purchased aquatic lands under the acts were allowed to maintain full ownership, subject to reversion back to the state for improper uses. In 1949 the Clam Act was repealed during a massive rewrite of the state's Fisheries Code. The repeal of the Clam Act did not contain a savings clause, so the permission to cultivate shellfish other than oysters on Bush and Callow lands was repealed with the act.

Today, aquatic lands sold under the Bush and Callow acts are still being actively used for the cultivation of oysters. However, many acres of these aquatic lands are also being used for the cultivation of clams, geoduck, and other shellfish. In 1991 the Attorney General was asked if the state could exercise its reversionary rights granted by the Bush and Callow acts and reclaim ownership of the lands being used for something other than oyster cultivation.

The Attorney General concluded that operations that were raising shellfish other than oysters prior to the 1949 repeal of the Clam Act had a vested right to continue activities consistent with the Clam Act. However, the Attorney General also opined that operations raising clams and other shellfish on Bush and Callow lands today, that were not doing so prior to the Clam Act's repeal, are subject to the state's reversionary rights.

Summary of Bill:

The intent of the Legislature is to fully resolve the uncertainty of the grant of rights for clam and other shellfish culture by the Bush and Callow Acts.

Appropriation: None.

Fiscal Note: Not Requested.

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