
HOUSE BILL 1306

State of Washington 64th Legislature 2015 Regular Session

By Representatives Hayes, Orwall, Smith, Gregerson, and Kochmar

Read first time 01/19/15. Referred to Committee on Environment.

1 AN ACT Relating to the management of state-owned aquatic lands by
2 cities for the purposes of operating a publicly owned marina;
3 amending RCW 79.105.060, 79.105.320, 79.105.360, and 79.120.040; and
4 adding a new section to chapter 79.105 RCW.

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

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

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

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

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

16 (3) "First-class shorelands" means the shores of a navigable lake
17 or river belonging to the state, not subject to tidal flow, lying
18 between the line of ordinary high water and the line of navigability,
19 or inner harbor line where established and within or in front of the
20 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
6 the line of ordinary high tide and the line of extreme low tide.

7 (5) "Harbor area" means the area of navigable waters determined
8 as 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,
14 or any changes in the previous condition of the fixtures that changes
15 the value of the land.

16 (7) "Inflation rate" means for a given year the percentage rate
17 of change in the previous calendar year's all commodity producer
18 price index of the bureau of labor statistics of the United States
19 department of commerce. If the index ceases to be published, the
20 department shall 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
27 their movement in waterborne commerce, related handling and sorting
28 activities taking place in the water, and the temporary holding of
29 logs to be taken directly into a processing facility. "Log booming"
30 does not include the temporary holding of logs to be taken directly
31 into a vessel.

32 (10) "Log storage" means the water storage of logs in rafts or
33 otherwise prepared for shipment in waterborne 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
38 limited to, hotels, condominiums, apartments, restaurants, retail
39 stores, and warehouses not part of a marine terminal or transfer
40 facility.

1 (12) "Outer harbor line" means a line located and established in
2 navigable waters as provided in Article XV, section 1 of the state
3 Constitution, beyond which the state shall never sell or lease any
4 rights whatever to private persons.

5 (13) "Person" means any private individual, partnership,
6 association, organization, cooperative, firm, corporation, the state
7 or any agency or political subdivision thereof, any public or
8 municipal corporation, or any unit of government, however designated.

9 (14) "Port district" means a port district created under Title 53
10 RCW.

11 (15) "Public utility lines" means pipes, conduits, and similar
12 facilities for distribution of water, electricity, natural gas,
13 telephone, other electronic communication, and sewers, including
14 sewer outfall lines.

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

20 (17) "Second-class shorelands" means the shores of a navigable
21 lake or river belonging to the state, not subject to tidal flow,
22 lying between the line of ordinary high water and the line of
23 navigability, and more than two miles from the corporate limits of
24 any city.

25 (18) "Second-class tidelands" means the shores of navigable tidal
26 waters belonging to the state, lying outside of and more than two
27 miles from the corporate limits of any city, and between the line of
28 ordinary high tide and the line of extreme low tide.

29 (19) "Shorelands," where not preceded by "first-class" or
30 "second-class," means both first-class shorelands and second-class
31 shorelands.

32 (20) "State-owned aquatic lands" means all tidelands, shorelands,
33 harbor areas, the beds of navigable waters, and waterways owned by
34 the state and administered by the department or managed under RCW
35 79.105.420 by a port district or managed under section 2 of this act
36 by a city. "State-owned aquatic lands" does not include aquatic lands
37 owned in fee by, or withdrawn for the use of, state agencies other
38 than the department.

39 (21) "Terminal" means a point of interchange between land and
40 water carriers, such as a pier, wharf, or group of such, equipped

1 with facilities for care and handling of either cargo or passengers,
2 or both.

3 (22) "Tidelands," where not preceded by "first-class" or "second-
4 class," means both first-class tidelands and second-class tidelands.

5 (23) "Valuable materials" when referring to state-owned aquatic
6 lands means any product or material within or upon lands, such as
7 forest products, forage, stone, gravel, sand, peat, agricultural
8 crops, and all other materials of value except mineral, coal,
9 petroleum, and gas as provided for under chapter 79.14 RCW. However,
10 RCW 79.140.190 and 79.140.200 also apply to materials provided for
11 under chapter 79.14 RCW.

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

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

36 (26) "City" means a city or town created under Title 35 or 35A
37 RCW.

38 NEW SECTION. Sec. 2. A new section is added to chapter 79.105
39 RCW to read as follows:

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

11 (2) A city aquatic lands management agreement must include, but
12 is not limited to, provisions defining the specific area to be
13 managed, the term, conditions of occupancy, reservations, periodic
14 review, and other conditions to ensure consistency with the state
15 Constitution and the policies of this chapter. The administration of
16 aquatic lands covered by a city aquatic lands management agreement
17 must be consistent with the aquatic land policies of this chapter and
18 chapters 79.110 through 79.140 RCW and the implementing rules adopted
19 by the department. The administrative procedures for management of
20 the lands are those of Title 35 or 35A RCW, whichever is appropriate.

21 (3) No rent is due the state for the use of state-owned aquatic
22 lands managed under this section for water-dependent or water-
23 oriented uses. If a city manages state-owned aquatic lands under this
24 section and either leases or otherwise permits any person to use the
25 lands, the rental fee attributable to the aquatic land only must be
26 comparable to the rent charged lessees for the same or similar uses
27 by the department. If a city leases state-owned aquatic lands to any
28 person for nonwater-dependent use, eighty-five percent of the revenue
29 attributable to the rent of the state-owned aquatic land only must be
30 paid to the state.

31 (4) Upon application for a city aquatic lands management
32 agreement, and as long as the application is pending and being
33 diligently pursued, no rent is due the department for the lease by
34 the city of state-owned aquatic lands included within the application
35 for water-dependent or water-oriented uses.

36 (5) A city that operates a publicly owned marina within the
37 territorial limits of a port district must obtain the approval of the
38 port commission prior to applying to the department for a city
39 aquatic lands management agreement. A city with marina facilities in
40 existence on the effective date of this section may enter into a city

1 aquatic lands management agreement for those facilities without port
2 commission approval.

3 (6) For the purposes of this section, "marina" means a waterfront
4 facility that provides moorage for one or more of the following:
5 Recreational vessels; charter vessels; commercial fishing vessels;
6 and water-based aircraft. A marina facility may include fuel docks
7 and associated maritime supply activities designed to serve
8 recreational vessels, charter vessels, commercial fishing vessels,
9 and water-based aircraft.

10 **Sec. 3.** RCW 79.105.320 and 2005 c 155 s 154 are each amended to
11 read as follows:

12 The manager shall, by rule, provide for an administrative review
13 of any state-owned aquatic land rent proposed to be charged. The
14 rules shall require that the lessee or applicant for release file a
15 request for review within thirty days after the manager has notified
16 the lessee or applicant of the rent due. For leases issued by the
17 department, the final authority for the review rests with the board.
18 For leases managed under RCW 79.105.420, the final authority for the
19 review rests with the appropriate port commission. For leases managed
20 under section 2 of this act, the final authority for the review rests
21 with the legislative authority of the city. If the request for review
22 is made within thirty days after the manager's final determination as
23 to the rental, the lessee may pay rent at the preceding year's rate
24 pending completion of the review, and shall pay any additional rent
25 or be entitled to a refund, with interest thirty days after
26 announcement of the decision. The interest rate shall be fixed by
27 rule adopted by the board and shall not be less than six percent per
28 annum. Nothing in this section abrogates the right of an aggrieved
29 party to pursue legal remedies. For purposes of this section,
30 "manager" is the department except where state-owned aquatic lands
31 are managed by a port district or a city, in which case "manager" is
32 the appropriate port district or city.

33 **Sec. 4.** RCW 79.105.360 and 2005 c 155 s 156 are each amended to
34 read as follows:

35 The department shall adopt such rules as are necessary to carry
36 out the purposes of RCW 79.105.010, 79.105.030, 79.105.050,
37 79.105.210, 79.105.220, 79.105.240 through 79.105.260, 79.105.270,
38 79.105.290 through 79.105.350, 79.105.400, 79.105.420, section 2 of

1 this act, 79.130.070, and 79.135.100, specifically including criteria
2 for determining under RCW 79.105.240(4) when an abutting upland
3 parcel has been inappropriately assessed and for determining the
4 nearest comparable upland parcel used for water-dependent uses.

5 **Sec. 5.** RCW 79.120.040 and 2005 c 155 s 404 are each amended to
6 read as follows:

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

15 (2) The department may cancel any permit upon sixty days' notice
16 for a substantial breach by the permittee of any of the permit
17 conditions.

18 (3) If a waterway is within the territorial limits of a port
19 district, the duties assigned by this section to the department may
20 be exercised by the port commission of the port district as provided
21 in RCW 79.105.420. If a waterway is within the territorial limits of
22 a city, the duties assigned to the department under this section may
23 be exercised by a city as provided in section 2 of this act.

24 (4) Nothing in this section shall confer upon, create, or
25 recognize in any abutting owner any right or privilege in or to any
26 strip of waterway abutting any street and between prolongations of
27 the lines of the street, but the control of and the right to use the
28 strip is reserved to the state of Washington, except as authorized by
29 RCW 79.105.420 and section 2 of this act.

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