
HOUSE BILL 2690

State of Washington

58th Legislature

2004 Regular Session

By Representatives Eickmeyer, Sehlin, Haigh, Armstrong, Linville and Rockefeller

Read first time 01/19/2004. Referred to Committee on Agriculture & Natural Resources.

1 AN ACT Relating to marina lease rates; amending RCW 79.90.480;
2 creating a new section; and declaring an emergency.

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

4 **Sec. 1.** RCW 79.90.480 and 2003 c 310 s 1 are each amended to read
5 as follows:

6 Except as otherwise provided by this chapter, annual rent rates for
7 the lease of state-owned aquatic lands for water-dependent uses shall
8 be determined as follows:

9 (1)(a) The assessed land value, exclusive of improvements, as
10 determined by the county assessor, of the upland tax parcel used in
11 conjunction with the leased area or, if there are no such uplands, of
12 the nearest upland tax parcel used for water-dependent purposes divided
13 by the parcel area equals the upland value.

14 (b) The upland value times the area of leased aquatic lands times
15 thirty percent equals the aquatic land value.

16 (2) As of July 1, 1989, and each July 1st thereafter, the
17 department shall determine the real capitalization rate to be applied
18 to water-dependent aquatic land leases commencing or being adjusted
19 under subsection (3)(a) of this section in that fiscal year. The real

1 capitalization rate shall be the real rate of return, except that until
2 June 30, 1989, the real capitalization rate shall be five percent and
3 thereafter it shall not change by more than one percentage point in any
4 one year or be more than seven percent or less than three percent.

5 (3) The annual rent shall be:

6 (a) Determined initially, and redetermined every four years or as
7 otherwise provided in the lease, by multiplying the aquatic land value
8 times the real capitalization rate; and

9 (b) Adjusted by the inflation rate each year in which the rent is
10 not determined under subsection (3)(a) of this section.

11 (4) If the upland parcel used in conjunction with the leased area
12 is not assessed or has an assessed value inconsistent with the purposes
13 of the lease, the nearest comparable upland parcel used for similar
14 purposes shall be substituted and the lease payment determined in the
15 same manner as provided in this section.

16 (5) For the purposes of this section, "upland tax parcel" is a tax
17 parcel, some portion of which has upland characteristics. Filled
18 tidelands or shorelands with upland characteristics which abut state-
19 owned aquatic land shall be considered as uplands in determining
20 aquatic land values.

21 (6) The annual rent for filled state-owned aquatic lands that have
22 the characteristics of uplands shall be determined in accordance with
23 RCW 79.90.500 in those cases in which the state owns the fill and has
24 a right to charge for the fill.

25 (7)(a) For leases for marina uses only, as of July 1, ~~((2004))~~
26 2005, lease rates will be a percentage of the annual gross revenues
27 generated by that marina. ~~((It is the intent of the legislature that
28 additional legislation be enacted prior to July 1, 2004, to establish
29 the percentage of gross revenues that will serve as the basis for a
30 marina's rent and a definition of gross revenues.))~~ Annual rent must
31 be recalculated each year based upon the marina's gross revenues from
32 the previous year, as reported to the department consistent with this
33 subsection (7).

34 (b) ~~((By December 31, 2003, the department will develop a
35 recommended formula for calculating marina rents consistent with this
36 subsection (7) and report the recommendation to the legislature. The
37 formula recommended by the department must include a percentage or a
38 range of percentages of gross revenues, a system for implementing such~~

1 percentages, and the designation of revenue sources to be considered
2 for rent calculation purposes. The department must also ensure, given
3 the available information, that the rent formula recommended by the
4 department is initially calculated to maintain state proceeds from
5 marina rents as of July 1, 2003, and that if the department does not
6 receive income reporting forms representing at least ninety percent of
7 the projected annual marina revenue and at least seventy five percent
8 of all marinas, the current model for calculating marina rents, as
9 described in subsections (1) through (6) of this section, will continue
10 to be the method used to calculate marina rents, and the income method,
11 as described in (a) of this subsection, will not be applied. In
12 addition to the percent of marina income, the department shall
13 determine its direct administrative costs (cost of hours worked
14 directly on applications and leases, based on salaries and benefits,
15 plus travel reimbursement and other actual out of pocket costs) to
16 calculate, audit, execute, and monitor marina leases, and shall recover
17 these costs from lessees. All administrative costs recovered by the
18 department must be deposited into the resource management cost account
19 created in RCW 79.64.020. Prior to making recommendations to the
20 legislature, a work session consisting of the department, marina
21 owners, and stakeholders must be convened to discuss the rate setting
22 criteria. The legislature directs the department to deliver
23 recommendations to the legislature by December 2003, including any
24 minority reports by the participating parties.

25 (c) When developing its recommendation for a marina lease formula
26 consistent with this subsection (7), the department shall ensure that
27 the percentage of revenue established is applied to the income of the
28 direct lessee, as well as to the income of any person or entity that
29 subleases, or contracts to operate the marina, with the direct lessee,
30 less the amount paid by the sublease to the direct lessee.

31 (d) All marina operators under lease with the department must
32 return to the department an income reporting form, provided by the
33 department, and certified by a licensed certified public accountant,
34 before July 1, 2003, and again)) To aid the department with its
35 responsibility to recalculate the rent of a marina, all marinas under
36 lease with the department must annually, on a date set by the
37 department, return to the department an income reporting form provided
38 by the department and certified by a licensed public accountant. On

1 the income reporting form, the department may require a marina to
2 disclose to the department any information about income from all
3 marina-related sources, excluding restaurants and bars. All income
4 reports submitted to the department are subject to either audit or
5 verification, or both, by the department, and the department may
6 inspect all of the lessee's books, records, and documents, including
7 state and federal income tax returns relating to the operation of the
8 marina and leased aquatic lands at all reasonable times. If the lessee
9 fails to submit the required income reporting form once the new method
10 for calculating marina rents is effective, the department may conduct
11 an audit at the lessee's expense or cancel the lease.

12 ~~((e))~~ (c) Initially, the marina rent ~~((formula developed by the~~
13 ~~department))~~ calculated pursuant to ~~((b))~~ (a) of this subsection will
14 be applied to each marina on its anniversary date, beginning on July 1,
15 ~~((2004))~~ 2005, and will be based on that marina's ~~((2003))~~ 2004 income
16 information. Thereafter, rents will be recalculated each year, based
17 on the marina's gross revenue from the previous year.

18 ~~((f))~~ (d) No marina lease may be for less than five hundred
19 dollars plus direct administrative costs.

20 (8) For all new leases for other water-dependent uses, issued after
21 December 31, 1997, the initial annual water-dependent rent shall be
22 determined by the methods in subsections (1) through (6) of this
23 section.

24 NEW SECTION. Sec. 2. (1) The legislature intends to enact
25 additional legislation prior to July 1, 2005, that establishes the
26 actual percentage of gross revenues generated by a marina that will
27 serve as the rent charged by the department of natural resources, as
28 well as a clear definition of which revenue streams will be considered
29 the gross revenue of a marina for the purposes of calculating rent.

30 (2) To aid the 2005 legislature with this task, the department of
31 natural resources shall report to the appropriate committees of the
32 legislature by December 31, 2004, with a recommended formula for
33 calculating marina rents based on a percentage of a marina's gross
34 revenues. The formula recommended by the department of natural
35 resources must include a percentage, or a range of percentages, of
36 gross revenues, a system for implementing such percentages, and the
37 designation of revenue sources to be considered for rent calculation

1 purposes. The department of natural resources must also ensure that
2 the recommended rent formula is initially calculated to maintain state
3 proceeds from marina rents as of July 1, 2004. In addition to the
4 percent of marina income, the department of natural resources's
5 recommended formula shall include a mechanism for the recovery of its
6 direct administrative costs to calculate, audit, execute, and monitor
7 marina leases from lessees. The administrative costs may include the
8 cost of travel reimbursement, other actual out-of-pocket costs, and the
9 cost of hours worked directly on applications and leases, based on the
10 salaries and benefits of employees. The department of natural
11 resources's recommended formula must also ensure that the percentage of
12 revenue established is applied to the income of the direct lessee, as
13 well as to the income of any person or entity that subleases, or
14 contracts to operate the marina, with the direct lessee, less the
15 amount paid by the sublessee to the direct lessee.

16 (3) In preparing a recommended formula for the legislature pursuant
17 to this section, the department of natural resources shall rely on
18 marina income data collected under section 1, chapter 310, Laws of
19 2003.

20 (4) Prior to making recommendations to the legislature, a work
21 session consisting of the department of natural resources, marina
22 owners, and stakeholders must be convened to discuss the rate-setting
23 criteria. The report delivered to the legislature should include any
24 minority reports by the parties participating in the work session.

25 NEW SECTION. **Sec. 3.** This act is necessary for the immediate
26 preservation of the public peace, health, or safety, or support of the
27 state government and its existing public institutions, and takes effect
28 immediately.

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