

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 1250

Chapter 310, Laws of 2003

58th Legislature
2003 Regular Session

MARINAS--STATE-OWNED AQUATIC LANDS--LEASES

EFFECTIVE DATE: 5/14/03

Passed by the House April 22, 2003
Yeas 97 Nays 0

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate April 16, 2003
Yeas 48 Nays 0

BRAD OWEN

President of the Senate

Approved May 14, 2003.

GARY LOCKE

Governor of the State of Washington

CERTIFICATE

I, Cynthia Zehnder, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1250** as passed by the House of Representatives and the Senate on the dates hereon set forth.

CYNTHIA ZEHNDER

Chief Clerk

FILED

May 14, 2003 - 3:40 p.m.

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 1250

AS AMENDED BY THE SENATE

Passed Legislature - 2003 Regular Session

State of Washington 58th Legislature 2003 Regular Session

By House Committee on Agriculture & Natural Resources (originally sponsored by Representatives Eickmeyer, Schoesler, Linville, Sump, Quall and Mielke; by request of Commissioner of Public Lands)

READ FIRST TIME 3/10/03.

1 AN ACT Relating to lease rates for marinas on state-owned aquatic
2 lands that provide public moorage; amending RCW 79.90.480; and
3 declaring an emergency.

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

5 **Sec. 1.** RCW 79.90.480 and 1998 c 185 s 2 are each amended to read
6 as follows:

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

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

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

17 (2) As of July 1, 1989, and each July 1 thereafter, the department
18 shall determine the real capitalization rate to be applied to water-
19 dependent aquatic land leases commencing or being adjusted under

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

6 (3) The annual rent shall be:

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

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

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

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

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

26 (7)(a) For leases for marina uses only, (~~beginning on June 11,~~
27 ~~1998)) as of July 1, 2004, (~~the annual rental rates in effect on~~
28 ~~December 31, 1997, shall remain in effect until July 1, 1999, at which~~
29 ~~time the annual water dependent rent shall be determined by the method~~
30 ~~in effect at that time. In order to be eligible for the rate to remain~~
31 ~~at this level, a marina lease must be in good standing, meaning that~~
32 ~~the lessee must be current with payment of rent, the lease not expired~~
33 ~~or in approved holdover status, and the lessee not in breach of other~~
34 ~~terms of the agreement)) lease rates will be a percentage of the annual
35 gross revenues generated by that marina. It is the intent of the
36 legislature that additional legislation be enacted prior to July 1,
37 2004, to establish the percentage of gross revenues that will serve as
38 the basis for a marina's rent and a definition of gross revenues.~~~~

1 Annual rent must be recalculated each year based upon the marina's
2 gross revenues from the previous year, as reported to the department
3 consistent with this subsection (7).

4 (b) By December 31, 2003, the department will develop a
5 recommended formula for calculating marina rents consistent with this
6 subsection (7) and report the recommendation to the legislature. The
7 formula recommended by the department must include a percentage or a
8 range of percentages of gross revenues, a system for implementing such
9 percentages, and the designation of revenue sources to be considered
10 for rent calculation purposes. The department must also ensure, given
11 the available information, that the rent formula recommended by the
12 department is initially calculated to maintain state proceeds from
13 marina rents as of July 1, 2003, and that if the department does not
14 receive income reporting forms representing at least ninety percent of
15 the projected annual marina revenue and at least seventy-five percent
16 of all marinas, the current model for calculating marina rents, as
17 described in subsections (1) through (6) of this section, will continue
18 to be the method used to calculate marina rents, and the income method,
19 as described in (a) of this subsection, will not be applied. In
20 addition to the percent of marina income, the department shall
21 determine its direct administrative costs (cost of hours worked
22 directly on applications and leases, based on salaries and benefits,
23 plus travel reimbursement and other actual out-of-pocket costs) to
24 calculate, audit, execute, and monitor marina leases, and shall recover
25 these costs from lessees. All administrative costs recovered by the
26 department must be deposited into the resource management cost account
27 created in RCW 79.64.020. Prior to making recommendations to the
28 legislature, a work session consisting of the department, marina
29 owners, and stakeholders must be convened to discuss the rate-setting
30 criteria. The legislature directs the department to deliver
31 recommendations to the legislature by December 2003, including any
32 minority reports by the participating parties.

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

1 (d) All marina operators under lease with the department must
2 return to the department an income reporting form, provided by the
3 department, and certified by a licensed certified public accountant,
4 before July 1, 2003, and again annually on a date set by the
5 department. On the income reporting form, the department may require
6 a marina to disclose to the department any information about income
7 from all marina-related sources, excluding restaurants and bars. All
8 income reports submitted to the department are subject to either audit
9 or verification, or both, by the department, and the department may
10 inspect all of the lessee's books, records, and documents, including
11 state and federal income tax returns relating to the operation of the
12 marina and leased aquatic lands at all reasonable times. If the lessee
13 fails to submit the required income reporting form once the new method
14 for calculating marina rents is effective, the department may conduct
15 an audit at the lessee's expense or cancel the lease.

16 (e) Initially, the marina rent formula developed by the department
17 pursuant to (b) of this subsection will be applied to each marina on
18 its anniversary date, beginning on July 1, 2004, and will be based on
19 that marina's 2003 income information. Thereafter, rents will be
20 recalculated each year, based on the marina's gross revenue from the
21 previous year.

22 (f) No marina lease may be for less than five hundred dollars plus
23 direct administrative costs.

24 (8) For all new leases for (~~marinas, or any~~) other water-
25 dependent uses, issued after December 31, 1997, the initial annual
26 water-dependent rent shall be determined by the methods in subsections
27 (1) through (6) of this section.

28 NEW SECTION. Sec. 2. This act is necessary for the immediate
29 preservation of the public peace, health, or safety, or support of the
30 state government and its existing public institutions, and takes effect
31 immediately.

Passed by the House April 22, 2003.

Passed by the Senate April 16, 2003.

Approved by the Governor May 14, 2003.

Filed in Office of Secretary of State May 14, 2003.