

ESB 6140 - H COMM AMD

By Committee on Agriculture & Natural Resources

ADOPTED AND ENGROSSED 3/8/18

1 Strike everything after the enacting clause and insert the
2 following:

3 "Sec. 1. RCW 79.125.400 and 2005 c 155 s 506 are each amended to
4 read as follows:

5 (1) (~~Upon platting and appraisal of first-class tidelands or~~
6 ~~shorelands as provided in this chapter~~) Except when the department
7 is re-leasing first-class tidelands or shorelands under subsection
8 (4) of this section, if the department deems it for the best public
9 interest to offer ((the)) first-class tidelands or shorelands for
10 lease, the department shall notify the owner of record of ((~~uplands~~))
11 the lands fronting upon the tidelands or shorelands to be offered for
12 lease ((~~if the upland owner is a resident of the state, or the upland~~
13 ~~owner is a nonresident of the state, shall mail~~)) by mailing to the
14 ((~~upland~~)) land owner's last known post office address, as reflected
15 in the county records, a copy of the notice notifying the owner that
16 the state is offering the tidelands or shorelands for lease, giving a
17 description of those lands ((~~and the department's appraised fair~~
18 ~~market value of the tidelands or shorelands for lease~~)), and
19 notifying the owner that the ((~~upland~~)) owner has a preference right
20 to apply to lease the tidelands or shorelands ((~~at the appraised~~
21 ~~value for the lease for~~)). The owner has a period of sixty days from
22 the date of service of mailing of the notice to exercise the
23 preference by applying to lease the tidelands or shorelands.

24 (2) If at the expiration of sixty days from the service or
25 mailing of the notice, as provided in subsection (1) of this section,
26 there being no conflicting applications filed, and the owner of the
27 ((~~uplands~~)) lands fronting upon the tidelands or shorelands offered
28 for lease, has failed to avail themselves of their preference right
29 to apply to lease ((~~or to pay to the department the appraised value~~
30 ~~for lease of the tidelands or shorelands described in the notice~~)),
31 the tidelands or shorelands may be offered for lease to any person

1 and may be leased in the manner provided for in the case of lease of
2 state-owned aquatic lands.

3 (3) If at the expiration of sixty days two or more claimants
4 asserting a preference right to lease have filed applications to
5 lease any tract, conflicting with each other, the conflict between
6 the claimants shall be equitably resolved by the department as the
7 best interests of the state require (~~in accord with the procedures~~
8 ~~prescribed by chapter 34.05 RCW~~). However, any contract purchaser of
9 lands or rights therein, which (~~upland~~) land qualifies the owner
10 for a preference right under this section, shall have first priority
11 for the preference right.

12 (4) At the expiration of any lease of first-class tidelands or
13 shorelands, the lessee or the lessee's successors or assigns has the
14 preference right to re-lease all or part of the area covered by the
15 original lease or any portion of the lease, if the department deems
16 it to be in the best interests of the state to re-lease the area.
17 Such a re-lease must be upon the terms and conditions as may be
18 prescribed by the department. This preference right to re-lease is
19 superior to any preference right given to the land owner fronting the
20 tidelands and shorelands under subsection (1) of this section.

21 (5) In case the fronting uplands are not improved and occupied
22 for residential purposes and the fronting land owner has not filed an
23 application for the lease of the lands, the department may lease the
24 lands to any person for booming purposes. However, failure to use for
25 booming purposes any lands leased under this section for such
26 purposes for a period of one year shall work a forfeiture of the
27 lease and the land shall revert to the state without any notice to
28 the lessee upon the entry of a declaration of forfeiture in the
29 records of the department.

30 **Sec. 2.** RCW 79.130.020 and 2005 c 155 s 602 are each amended to
31 read as follows:

32 (1) The department shall, prior to the issuance of any lease
33 under the provisions of this chapter, fix the annual (~~rental~~) rent
34 and prescribe the terms and conditions of the lease. However, in
35 fixing the (~~rental~~) rent, the department shall not take into
36 account the value of any improvements placed upon the lands by the
37 lessee.

38 (2) No lease issued under the provisions of this chapter shall be
39 for a term longer than thirty years (~~from the date thereof if in~~

1 ~~front of second class tidelands or shorelands; or a term longer than~~
2 ~~ten years if in front of unplatted first class tidelands or~~
3 ~~shorelands leased under the provisions of RCW 79.125.410, in which~~
4 ~~case the lease shall be subject to the same terms and conditions as~~
5 ~~provided for in the lease of the unplatted first class tidelands or~~
6 ~~shorelands)). Failure to use those beds leased under the provisions~~
7 ~~of this chapter for booming purposes, for a period of two years shall~~
8 ~~work a forfeiture of the lease and the land shall revert to the state~~
9 ~~without notice to the lessee upon the entry of a declaration of~~
10 ~~forfeiture in the records of the department.~~

11 **Sec. 3.** RCW 79.125.030 and 2005 c 155 s 502 are each amended to
12 read as follows:

13 The department may survey and plat any (~~second class~~) tidelands
14 and shorelands not previously platted.

15 **Sec. 4.** RCW 79.11.340 and 2003 c 334 s 399 are each amended to
16 read as follows:

17 (1) Except as provided in RCW 79.10.030(2), the department shall
18 manage and control all lands acquired by the state by escheat, deed
19 of sale, gift, devise, or under RCW 79.19.010 through 79.19.110,
20 except such lands that are conveyed or devised to the state for a
21 particular purpose.

22 (2) When the department determines to sell the lands, they
23 (~~shall initially be~~) must be either: (a) Offered for sale
24 (~~either~~) at public auction (~~or direct sale to public agencies~~) as
25 provided in this chapter(~~-~~

26 ~~(3) If the lands are not sold at public auction, the department~~
27 ~~may,);~~ (b) offered for direct sale to public agencies as provided in
28 RCW 79.17.200; or (c) with approval of the board, (~~market the~~
29 ~~lands~~) marketed through persons licensed under chapter 18.85 RCW or
30 through other commercially feasible means at a price not lower than
31 the land's appraised value.

32 (~~(4)~~) (3) Necessary marketing costs may be paid from the sale
33 proceeds. For the purpose of this subsection, necessary marketing
34 costs include reasonable costs associated with advertising the
35 property and paying commissions.

36 (~~(5)~~) (4) Proceeds of the sale shall be deposited into the
37 appropriate fund in the state treasury unless the grantor in any deed

1 or the testator in case of a devise specifies that the proceeds of
2 the sale be devoted to a particular purpose.

3 **Sec. 5.** RCW 79.17.200 and 1992 c 167 s 2 are each amended to
4 read as follows:

5 (1) For the purposes of this section, "public agency" means any
6 agency, political subdivision, or unit of local government of this
7 state including, but not limited to, municipal corporations, quasi-
8 municipal corporations, special purpose districts, and local service
9 districts; any agency of the state government; any agency of the
10 United States; and any Indian tribe recognized as such by the federal
11 government.

12 (2) With the approval of the board of natural resources, the
13 department of natural resources may directly transfer or dispose of
14 real property, without public auction, in the following
15 circumstances:

16 (a) Transfers in lieu of condemnations;

17 (b) Transfers to public agencies; (~~and~~)

18 (c) Transfers to resolve trespass and property ownership
19 disputes; and

20 (d) Transfers of real property to a lessee that has continuously
21 leased the real property directly from the department of natural
22 resources for purposes of a home site since prior to the effective
23 date of this section. This subsection (2)(d) does not apply to
24 aquatic lands as defined by RCW 79.105.060, or to lessees that do not
25 hold a lease for the real property directly with the department of
26 natural resources.

27 (3) Real property to be transferred or disposed of under this
28 section shall be transferred or disposed of only after appraisal and
29 for at least fair market value, and only if such transaction is in
30 the best interest of the state or affected trust.

31 NEW SECTION. **Sec. 6.** A new section is added to chapter 79.10
32 RCW to read as follows:

33 (1) Subject to the availability of funds appropriated for this
34 specific purpose, the department of natural resources must conduct an
35 asset valuation of state lands and state forestlands held in trust
36 and managed by the department. The asset valuation required in
37 subsections (3) and (4) may be provided through contracted services.

1 (2) The department must describe all trust lands, by trust,
2 including timber lands, agricultural lands, commercial lands, and
3 other lands, and identify revenues from leases or other sources for
4 those lands. The department must briefly describe the income from
5 these trust lands, and potential enhancements to income, including
6 intergenerational income, from the asset bases of these trusts.

7 (3) The asset valuation must estimate the current fair market
8 value of these lands for each trust beneficiary, including the
9 separate beneficiaries of state lands as defined in RCW 79.02.010,
10 and the beneficiaries of state forestlands as specified in chapter
11 79.22 RCW. The estimation of current fair market values must specify
12 the values by the various asset classes, including but not limited
13 to: Timber lands; irrigated agriculture; dryland agriculture,
14 including grazing lands; commercial real estate; mining, and; other
15 income production. The asset valuation must also estimate the value
16 of ecosystem services and recreation benefits for asset classes that
17 produce these benefits. The legislature encourages the department and
18 its contractors to develop methods and tools to allow tracking of the
19 estimated fair market values over time.

20 (4) For each of the different asset classes and for each of the
21 various trusts, the asset valuation must calculate the average annual
22 gross and net income as a percentage of estimated current asset
23 value.

24 (5) The department must provide a progress report by December 1,
25 2018. A follow-up progress report must be provided by December 1,
26 2019 and may include any initial recommendations. The final report
27 must be submitted by June 30, 2020 and must include options to:

28 (a) Improve the net rates of return on different classes of
29 assets;

30 (b) Increase the reliability of, and enhance if possible, revenue
31 for trust beneficiaries; and

32 (c) Present and explain factors that either (i) define, (ii)
33 constrict, or (iii) define and constrict the department's management
34 practices and revenue production. The factors to be considered
35 include, but are not limited to: Statutory, constitutional,
36 operational, and social.

37 NEW SECTION. **Sec. 7.** (1) Within existing appropriations, the
38 department of natural resources must prepare an evaluation of leases
39 and easements of state-owned aquatic lands for industrial and

1 commercial uses in existence on January 1, 2018, except leases for
2 purposes of marinas and moorage. The evaluation must include:

3 (a) A summary of each lease and easement, including lease term,
4 rental rate, and use conditions;

5 (b) A listing of annual revenues obtained from each lease and
6 easement;

7 (c) A summary of the methods or formula used to value and
8 establish payment for each type of lease and easement;

9 (d) A summary description of inspection and monitoring efforts
10 completed over the previous ten years relating to compliance with the
11 terms of the lease or easement as well as compliance with all
12 applicable water quality and other local, state, or federal
13 environmental, public health, and safety standards;

14 (e) A summary description of the applicable requirements for
15 inspection and monitoring under the terms of the leases and easements
16 as well as other applicable local, state, and federal regulatory
17 requirements;

18 (f) A summary description of the lease and easement compliance
19 activities performed by the department to ensure the protection of
20 the state's aquatic resources, consistent with RCW 79.105.010, is
21 maintained.

22 (2) The department of natural resources must submit the
23 evaluation, including any recommendations for legislative or
24 administrative actions, to the appropriate policy and fiscal
25 committees of the senate and house of representatives by December 1,
26 2018.

27 **Sec. 8.** RCW 79.64.110 and 2017 3rd sp.s. c 13 s 315, 2017 3rd
28 sp.s. c 1 s 986, and 2017 c 248 s 6 are each reenacted and amended to
29 read as follows:

30 (1) Any moneys derived from the lease of state forestlands or
31 from the sale of valuable materials, oils, gases, coal, minerals, or
32 fossils from those lands, except as provided in RCW 79.64.130, or the
33 appraised value of these resources when transferred to a public
34 agency under RCW 79.22.060, except as provided in RCW 79.22.060(4),
35 must be distributed as follows:

36 (a) For state forestlands acquired through RCW 79.22.040 or by
37 exchange for lands acquired through RCW 79.22.040:

38 (i) The expense incurred by the state for administration,
39 reforestation, and protection, not to exceed twenty-five percent,

1 which rate of percentage shall be determined by the board, must be
2 returned to the forest development account created in RCW 79.64.100.
3 During the 2015-2017 and 2017-2019 fiscal biennia, the board may
4 increase the twenty-five percent limitation up to twenty-seven
5 percent.

6 (ii) Any balance remaining must be paid to the county in which
7 the land is located or, for counties participating in a land pool
8 created under RCW 79.22.140, to each participating county
9 proportionate to its contribution of asset value to the land pool as
10 determined by the board. Payments made under this subsection are to
11 be paid, distributed, and prorated, except as otherwise provided in
12 this section, to the various funds in the same manner as general
13 taxes are paid and distributed during the year of payment. A county
14 may pay, distribute, and prorate payments made under this subsection
15 of moneys derived from state forestlands acquired by exchange
16 pursuant to section 3122, chapter 2, Laws of 2018, for the property
17 identified in the LEAP capital document No. 2017-2H acquired through
18 RCW 79.22.040 within the same county, in the same manner as general
19 taxes are paid and distributed during the year of payment for the
20 former state forestlands that were subject to the exchange.

21 (iii) Any balance remaining, paid to a county with a population
22 of less than sixteen thousand, must first be applied to the reduction
23 of any indebtedness existing in the current expense fund of the
24 county during the year of payment.

25 (iv) With regard to moneys remaining under this subsection
26 (1)(a), within seven working days of receipt of these moneys, the
27 department shall certify to the state treasurer the amounts to be
28 distributed to the counties. The state treasurer shall distribute
29 funds to the counties four times per month, with no more than ten
30 days between each payment date.

31 (b) For state forestlands acquired through RCW 79.22.010 or by
32 exchange for lands acquired through RCW 79.22.010, except as provided
33 in RCW 79.64.120:

34 (i) Fifty percent shall be placed in the forest development
35 account.

36 (ii) Fifty percent shall be prorated and distributed to the state
37 general fund, to be dedicated for the benefit of the public schools,
38 to the county in which the land is located or, for counties
39 participating in a land pool created under RCW 79.22.140, to each
40 participating county proportionate to its contribution of asset value

1 to the land pool as determined by the board, and according to the
2 relative proportions of tax levies of all taxing districts in the
3 county. The portion to be distributed to the state general fund shall
4 be based on the regular school levy rate under RCW 84.52.065 (1) and
5 (2) and the levy rate for any maintenance and operation special
6 school levies. With regard to the portion to be distributed to the
7 counties, the department shall certify to the state treasurer the
8 amounts to be distributed within seven working days of receipt of the
9 money. The state treasurer shall distribute funds to the counties
10 four times per month, with no more than ten days between each payment
11 date. The money distributed to the county must be paid, distributed,
12 and prorated to the various other funds in the same manner as general
13 taxes are paid and distributed during the year of payment.

14 (2) A school district may transfer amounts deposited in its debt
15 service fund pursuant to this section into its capital projects fund
16 as authorized in RCW 28A.320.330.

17 NEW SECTION. **Sec. 9.** The following acts or parts of acts are
18 each repealed:

19 (1) RCW 79.125.020 (First-class tidelands and shorelands to be
20 platted) and 2005 c 155 s 501 & 1982 1st ex.s. c 21 s 87; and

21 (2) RCW 79.125.410 (First-class unplatted tidelands and
22 shorelands—Lease preference right to upland owners—Lease for booming
23 purposes) and 2005 c 155 s 527 & 1982 1st ex.s. c 21 s 113."

24 Correct the title.

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