

# SENATE BILL REPORT

## HB 1001

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As of March 23, 2017

**Title:** An act relating to utility easements on state-owned aquatic lands.

**Brief Description:** Concerning utility easements on state-owned aquatic lands.

**Sponsors:** Representatives Morris, Smith, Tarleton, Haler and Doglio.

**Brief History:** Passed House: 3/07/17, 97-0.

**Committee Activity:** Energy, Environment & Telecommunications: 3/21/17.

### Brief Summary of Bill

- Requires specific legislative approval before the Department of Natural Resources (DNR) may designate, establish, or enlarge an aquatic reserve.
- Directs the Commissioner of Public Lands to rescind a January 3, 2017, action relating to the Cherry Point aquatic reserve.
- Makes permanent and reduces the current statutory schedule for certain public utility easements across aquatic lands.

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### SENATE COMMITTEE ON ENERGY, ENVIRONMENT & TELECOMMUNICATIONS

**Staff:** Kimberly Cushing (786-7421)

**Background:** DNR Aquatic Lands Management. The Legislature has designated DNR as manager of state-owned aquatic lands. In managing these lands, DNR must support a balance of statutory goals including encouraging public access, fostering water-dependent uses, utilizing renewable resources, protecting the environment, and generating revenue.

DNR Aquatic Reserves. Statute provides DNR with general authority to identify and withdraw public lands from conflicting uses for purposes including observation and to utilize the natural ecosystem of the land. DNR has administratively established an aquatic reserve program for the stated purpose of promoting conservation of state-owned aquatic lands to benefit the health of native aquatic habitats and species. Under this program, DNR has established eight aquatic reserves.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

Specifically, the Cherry Point aquatic reserve was originally established by DNR in 2000. On January 3, 2017, the Commissioner of Public Lands signed a Commissioner's Order expanding the size of the reserve by approximately 45 acres.

Charges for Public Utility Line Crossings on Aquatic Lands. A statutory schedule sets the charges for local public utility line crossings on aquatic lands. For public utility lines owned by a nongovernmental entity, the charges are as follows:

- \$5,000 for easement crossings of one mile or less;
- \$12,500 for easement crossings between one and five miles;
- \$20,000 for easement crossings of five or more miles; and
- a charge for administrative cost recovery, generally totaling 20 percent of the cost of the easement crossing.

These statutory charges are adjusted annually based on changes in the Consumer Price Index. DNR has 120 days to make a final decision on an application, and 60 days if the applicant requests expedited processing.

The statutory fee schedule expires July 1, 2017.

**Summary of Bill:** The bill as referred to committee not considered.

**Summary of Bill (Proposed Striking Amendment):** Addresses DNR's Aquatic Reserve Authority. DNR may not designate, establish, or enlarge an aquatic reserve without express authorization in an enacted bill.

The Commissioner of Public Lands (Commissioner) must rescind the order issued on January 3, 2017, relating to the Cherry Point aquatic reserve.

Modifies the Statutory Charge for Public Utility Line Crossings on Aquatic Lands. The statute establishing charges for easement crossings on aquatic lands is made permanent, and rates are reduced as follows:

- from \$5,000 to \$1,000 for easement crossings of one mile or less;
- from \$12,500 to \$2,500 for easement crossings between one and five miles; and
- from \$20,000 to \$4,000 for easement crossings of five or more miles.

Charges are no longer annually adjusted based on changes in the Consumer Price Index. DNR has 60 days, instead of the current 120 days, to make a final decision on an easement application and 30 days, instead of the current 60 days, if the applicant requests expedited processing.

**Appropriation:** None.

**Fiscal Note:** Available.

**Creates Committee/Commission/Task Force that includes Legislative members:** No.

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

**Staff Summary of Public Testimony on Proposed Striking Amendment:** PRO: The underlying policy was created as a policy metric to determine whether easements were working or not. The third policy review just occurred. There had been a huge backlog at DNR to get easements for utilities because there was no system in place or a set fee. A deal was made in 2000 to (1) allow aquatics lands crossing, and (2) provide a flat rate for charges rather than a percent of revenue. This policy provides predictability for utilities' capital investments. Without this bill, the Commissioner could charge any amount the Commissioner chooses. The bill pushes out the performance review for six years. The Cherry Point aquatic reserve had a carve out for the pier, which the Commissioner changed on the way out the door. There is no legislative oversight for the aquatic reserve process.

CON: We have no concern with the underlying bill, but the striking amendment is out of scope. Expanding the aquatic reserve at Cherry Point is within the authority of the Commissioner. The expansion of the aquatic reserve followed the process in the law and the Commissioner reached a conclusion to expand the boundary. This is another attempt to circumvent treaty rights. The decision by the Commissioner followed a decision by the Army Corps of Engineers (Corps) that the reserve would allow the tribe to fish in their usual area. The marine area that the reserve serves is an important habitat. It is essential we protect what remains of fish habitats and precious natural resources. Overwhelming support was provided for expanding the reserve and few were in opposition. Years of significant study occurred and the Corps concluded after a rigorous and thoughtful analysis that a permit for the aquatic land lease would violate the tribe's right to harvest fish.

OTHER: We have no issue with the underlying bill. Aquatic reserves are an important tool for the state to protect the Puget Sound. Only eight aquatic reserves have been designated and all provide important habitat for high diversity of fish and wildlife in the Puget Sound. Cherry Point herring stock was once the largest in the Puget Sound but has declined by more than 90 percent since the 1970s. State law allows for DNR to create aquatic reserves. We want to work with the Legislature and the Commissioner to make sure important lands are protected.

**Persons Testifying:** PRO: Representative Jeff Morris, Prime Sponsor; Senator Doug Ericksen; Ron Main, Broadband Communications Association of WA.

CON: Irene Hinkle, citizen; Jasmine Zimmer-Stucky, Power Past Coal Coalition; Victor Johnson, Councilman, Lummi Nation; Craig Engelking, Lummi Nation; Judith Langhans, citizen; Peggy Bruton, citizen.

OTHER: Jeff Parsons, Puget Sound Partnership.

**Persons Signed In To Testify But Not Testifying:** No one.