

SHB 1250 - S COMM AMD

By Committee on Natural Resources, Energy & Water

ADOPTED 04/17/2003

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

3 "Sec. 1. RCW 79.90.480 and 1998 c 185 s 2 are each amended to read
4 as follows:

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

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

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

15 (2) As of July 1, 1989, and each July 1 thereafter, the department
16 shall determine the real capitalization rate to be applied to water-
17 dependent aquatic land leases commencing or being adjusted under
18 subsection (3)(a) of this section in that fiscal year. The real
19 capitalization rate shall be the real rate of return, except that until
20 June 30, 1989, the real capitalization rate shall be five percent and
21 thereafter it shall not change by more than one percentage point in any
22 one year or be more than seven percent or less than three percent.

23 (3) The annual rent shall be:

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

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

29 (4) If the upland parcel used in conjunction with the leased area
30 is not assessed or has an assessed value inconsistent with the purposes

1 of the lease, the nearest comparable upland parcel used for similar
2 purposes shall be substituted and the lease payment determined in the
3 same manner as provided in this section.

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

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

13 ~~(7)(a) For leases for marina uses only, ((beginning on June 11,~~
14 ~~1998)) as of July 1, 2004, ((the annual rental rates in effect on~~
15 ~~December 31, 1997, shall remain in effect until July 1, 1999, at which~~
16 ~~time the annual water dependent rent shall be determined by the method~~
17 ~~in effect at that time. In order to be eligible for the rate to remain~~
18 ~~at this level, a marina lease must be in good standing, meaning that~~
19 ~~the lessee must be current with payment of rent, the lease not expired~~
20 ~~or in approved holdover status, and the lessee not in breach of other~~
21 ~~terms of the agreement)) lease rates will be a percentage of the annual~~
22 ~~gross revenues generated by that marina. It is the intent of the~~
23 ~~legislature that additional legislation be enacted prior to July 1,~~
24 ~~2004, to establish the percentage of gross revenues that will serve as~~
25 ~~the basis for a marina's rent and a definition of gross revenues.~~
26 ~~Annual rent must be recalculated each year based upon the marina's~~
27 ~~gross revenues from the previous year, as reported to the department~~
28 ~~consistent with this subsection (7).~~

29 (b) By December 31, 2003, the department will develop a
30 recommended formula for calculating marina rents consistent with this
31 subsection (7) and report the recommendation to the legislature. The
32 formula recommended by the department must include a percentage or a
33 range of percentages of gross revenues, a system for implementing such
34 percentages, and the designation of revenue sources to be considered
35 for rent calculation purposes. The department must also ensure, given
36 the available information, that the rent formula recommended by the
37 department is initially calculated to maintain state proceeds from

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

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

27 (d) All marina operators under lease with the department must
28 return to the department an income reporting form, provided by the
29 department, and certified by a licensed certified public accountant,
30 before July 1, 2003, and again annually on a date set by the
31 department. On the income reporting form, the department may require
32 a marina to disclose to the department any information about income
33 from all marina-related sources, excluding restaurants and bars. All
34 income reports submitted to the department are subject to either audit
35 or verification, or both, by the department, and the department may
36 inspect all of the lessee's books, records, and documents, including
37 state and federal income tax returns relating to the operation of the

1 marina and leased aquatic lands at all reasonable times. If the lessee
2 fails to submit the required income reporting form once the new method
3 for calculating marina rents is effective, the department may conduct
4 an audit at the lessee's expense or cancel the lease.

5 (e) Initially, the marina rent formula developed by the department
6 pursuant to (b) of this subsection will be applied to each marina on
7 its anniversary date, beginning on July 1, 2004, and will be based on
8 that marina's 2003 income information. Thereafter, rents will be
9 recalculated each year, based on the marina's gross revenue from the
10 previous year.

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

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

17 NEW SECTION. Sec. 2. This act is necessary for the immediate
18 preservation of the public peace, health, or safety, or support of the
19 state government and its existing public institutions, and takes effect
20 immediately."

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21 On page 1, line 2 of the title, after "moorage;" strike the
22 remainder of the title and insert "amending RCW 79.90.480; and
23 declaring an emergency."

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