

HOUSE BILL REPORT

HB 1123

As Reported by House Committee On:
Agriculture & Natural Resources

Title: An act relating to clarifying the authority of the department of natural resources with respect to certain aquatic lands.

Brief Description: Clarifying the authority of the department of natural resources with respect to certain aquatic lands.

Sponsors: Representatives Strow, VanDeWege, Kagi, B. Sullivan, Eickmeyer, McCoy, Orcutt and Hailey.

Brief History:

Committee Activity:

Agriculture & Natural Resources: 1/18/07, 1/25/07 [DP].

Brief Summary of Bill

- Authorizes the Department of Natural Resources to issue aquatic land use authorizations for less than a full lease, such as easements, licenses, permits, and rights-of-entry.
- Eliminates reference to federal pierhead lines in describing the area of federal regulatory authority in waterways.

HOUSE COMMITTEE ON AGRICULTURE & NATURAL RESOURCES

Majority Report: Do pass. Signed by 15 members: Representatives B. Sullivan, Chair; Blake, Vice Chair; Kretz, Ranking Minority Member; Warnick, Assistant Ranking Minority Member; Dickerson, Eickmeyer, Grant, Hailey, Kagi, Lantz, McCoy, Newhouse, Orcutt, Strow and VanDeWege.

Staff: Jaclyn Ford (786-7339).

Background:

Leasing Authority

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.

The Department of Natural Resources (DNR) is authorized to manage and lease aquatic lands. Leases must be in conformity with all applicable laws and the state Constitution.

A July 2006 court decision (*Northlake v. DNR*, 134 Wash.App 272) found that the DNR's leasing authority did not explicitly include lesser use authorizations, such as easements, licenses, permits, and rights-of-entry. Some of the DNR authorization statutes include lease language while others include language for lesser agreement types. The court decided this separation meant that since the lesser agreement types were not included in the section on leasing aquatic lands, they were not authorized. However, the court did state that the DNR has been granted authority to manage state aquatic lands and has authority to issue use permits, generally.

Permits in Waterways

Federal pierhead lines were established by the Secretary of the Army to protect harbors. A pierhead line is the authorized waterward limit of any in-water structure such as docks, piers, gangways, ramps, groins, jetties or any other structure projecting from the shoreline. The federal waterways are maintained by the Army Corps of Engineers under the Rivers and Harbors Acts. Regardless of pierhead lines, any plans to build in or modify waterways must receive a permit by the Army Corps of Engineers.

In addition to the permit given by the federal government, all plans must be permitted by the DNR. The permit given by the DNR determines all the terms and conditions of the project and can be for no longer than 30 years.

Summary of Bill:

The DNR is given express authority to issue lesser contractual agreements, such as easements, licenses, permits and rights-of-entry on leased state-owned aquatic lands.

In state waterways, the jurisdiction of the federal government over navigable waters is described without referring to pierhead lines. The DNR may cancel any permit after 60 days notice if a waterway is required for public highway purposes.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony:

(In support) This bill is a technical bill that helps clarify language as it applies to aquatic lands. The bill expressly allows the DNR to use lesser contractual agreements. The DNR

will be able to modernize the language in relation to pierheads with this bill. State agencies can only do that which is authorized by the Legislature and this bill will eliminate any confusion resulting from the *Northlake* case. The bill will allow Washington to re-synchronize with the federal government.

(Opposed) None.

Persons Testifying: Representative Chris Strow, prime sponsor; Doug Sutherland and Fran McNair, Department of Natural Resources; and Joe Panesko, Department of Natural Resources and Assistant Attorney General Office.

Persons Signed In To Testify But Not Testifying: None.