HOUSE BILL REPORT
SSB 6777

As Reported by House Committee On:
Finance

Title: An act relating to clarifying interests in certain state lands.

Brief Description: Clarifying interests in certain state lands.

Sponsors: Senate Committee on Water, Energy & Telecommunications (originally sponsored by Senators McDermott, Brown, Murray, Kohl-Welles and Pridemore).

Brief History:
Committee Activity:
Finance: 2/27/08, 3/3/08 [DPA].

Brief Summary of Substitute Bill
(As Amended by House Committee)

- Clarifying interests in certain state lands.

HOUSE COMMITTEE ON FINANCE

Majority Report: Do pass as amended. Signed by 5 members: Representatives Hunter, Chair; Hasegawa, Vice Chair; Conway, McIntire and Santos.

Minority Report: Do not pass. Signed by 4 members: Representatives Orcutt, Ranking Minority Member; Condotta, Assistant Ranking Minority Member; Ericks and Roach.

Staff: Jeff Mitchell (786-7139).

Background:

At statehood, Washington received approximately 3.2 million acres from the United States when it joined the Union in 1889. Just under 1 million acres of granted land has been sold. By statute, current state policy is to preserve the public land base, including the remaining granted lands.

The Legislature serves as the trustee of the granted lands and has delegated land management duties to the Department of Natural Resources (DNR). The DNR manages nearly three

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million acres of upland state trust lands to benefit specific public institutions. Beneficiaries of these lands include the state's public schools and higher education institutions.

The current laws regarding the sale of state trust lands have been significantly altered over the years; however, many aspects of land sales that occurred in the past are affected by the state law that was in place at the time of the actual transaction. At one time, state law required mineral reservations for state land sales.

In the past, all land sales offered by the DNR were required to have a mineral reservation with exact language specified by the Legislature. This language required the DNR to reserve from the property rights conveyed "all oils, gases, coal, ores, minerals, and fossils of every name, kind or description, and which may be in or upon said lands."

This language was incorporated in the deeds executed during the time that the law was in effect, including parcels of former state lands located on Maury Island. There has not been a binding judicial determination interpreting whether the language of the mineral reservation retained in state ownership sand and gravel resources located on the land, or whether the sand and gravel resources were transferred to the buyer.

The Legislature has delegated to the DNR the responsibility of managing the state's nearly 2.4 million acres of aquatic lands for the benefit of the public. Aquatic reserves are established by the DNR to protect important native ecosystems on state-owned aquatic lands and to promote preservation, restoration, and enhancement of state-owned aquatic lands. The management of aquatic lands must support a balance of goals, including the encouragement of public access, the fostering of water-dependent uses, the utilization of renewable resources, and the generation of revenue. Revenues generated from the state's aquatic lands are generally directed to be used for public benefits, such as shoreline access, environmental protection, and recreational opportunities, but unlike trust lands, the land is not held in trust for a specific beneficiary.

The Maury Island Aquatic Reserve was created in 2004 by the Commissioner of Public Lands (Commissioner), and includes the bedlands and tidelands surrounding Maury Island and Quartermaster Harbor. In the order establishing the Maury Island Aquatic Reserve, the Commissioner identified unique and significant natural values of the impacted aquatic lands and withdrew the lands from general leasing.

Summary of Amended Bill:
The DNR is required to initiate a judicial proceeding to determine the proper ownership of sand, gravel, and rock resources on certain parcels of Maury Island. The DNR is required to operate, manage land, and enter into leases consistent with its historic interpretation of the Maury Island land transfers in dispute unless a formal and final judicial opinion rules that the state has a reserved right in the sand, gravel, and rock resources.

Amended Bill Compared to Substitute Bill:

Removes the prohibition on leasing aquatic lands in the Maury Island Aquatic Reserve, requires the DNR to initiate a judicial determination as to the ownership of the sand and gravel resources on certain Maury Island parcels, instructs the DNR to not change their historic land management policies while awaiting a judicial determination, and adds language suggesting that the disagreement over mineral ownership is potential and not necessarily shared by the grantor and the grantee.

Removes the emergency clause.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) The state clearly reserved mineral rights in the land. This bill does not restrict current operations in any way. The intent of the parties at the time the reservation is created is what controls. In this case, since one of the parties is the state, we need to look at legislative intent at the time the reservations were created. Extremely broad language was used. The state had a history, prior to 1907, of reserving more and more rights. In 1907 legislation was enacted that created very broad language for inclusion in every deed. The 1907 legislation also required an appraisal of mineral, stone, and rock. The legislation also authorized the sale of stone and rock after the appraisal. At this time, the commissioner of public lands recognized how strong this deed language was and indicated that no broader provision could be made for the reservation of state rights. There is strong evidence that statutory requirements were not followed with respect to the initial sale of the land by the state in the 1910 deed. With respect to the second deed, it is not as clear. We think the state did intend to reserve rights in sand and gravel.

(Concerns) The Department of Natural Resources is the trust manager for state lands. It has been a consistent and long-standing practice of the state to retain the mineral rights while selling the valuable materials such as sand and gravel. Absent any context, it is understandable that the language could be interpreted in more than one way, however various legal documents appear to indicate that sand and gravel was put up for sale and that there has been a longstanding understanding of what constitutes mineral rights. The bill creates some concerns: how does the Joint Legislative Audit and Review Committee (JLARC) study relate to the court case - depending on the outcome of the JLARC study a court case may not even be necessary; how would an appellate case rule on this issue when there is no current case pending or no clear path to an appellate decision; if a court decision did determine that the state retained rights in sand and gravel, how would this impact other landowners; and how does leasing aquatic lands have anything to do with the state maintaining interests in state lands.

(Neutral) A request could be made of the Attorney General to look at issues required by the JLARC study. A legal memorandum was provided by the Attorney General to the DNR that concluded that public land statutes since 1907 have consistently distinguished minerals from valuable materials, which includes sand, gravel, and rock. The issue of whether sand, gravel, and rock resources are considered mineral rights has never been raised before.

(Opposed) The part of the bill that requires an appellate decision on the title to the sand, gravel, and rock resources is unfair. An appellate decision may be impossible to obtain because if Glacier Northwest prevails in the superior court, they cannot appeal to the court of appeals because they are the prevailing party. After a 10-year permitting process, Glacier Northwest has obtained the necessary permits, including the shoreline permits and the draft finding of no significant impact. The state has never asserted that the term "mineral" in the reservation clause includes surface materials such as sand, gravel, and rock. Thousands of land transactions have been consummated under this assumption. In 2007 the DNR advised project opponents that it has historically construed reserved mineral rights to exclude rock, sand, and gravel. The Attorney General's Office issued a legal memorandum outlining the basis for this long-standing position. The Legislature has been clear and consistent in its separate treatment of sand and gravel from mineral rights.

Persons Testifying: (In support) Senator McDermott, prime sponsor; Clifford Traisman, Washington Conservation Voters and Washington Environmental Council; Lonnie Johns-Brown, League of Women Voters; and David Mann, Gendler & Mann and Preserve Our Islands.

(Concerns) Bonnie Bunning, Department of Natural Resources.

(Neutral) Joe Panesko, Department of Natural Resources.

(Opposed) Steve Gano, Steve Rous, and Pete Stoltz, Glacier Northwest.

Persons Signed In To Testify But Not Testifying: None.