

HOUSE BILL REPORT

HB 3171

As Reported by House Committee On:
Ecology & Parks

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

Brief Description: Clarifying interests in certain state lands.

Sponsors: Representatives Upthegrove, Williams, Rolfes, Nelson, Cody, Dunshee, Lantz and Simpson.

Brief History:

Committee Activity:

Ecology & Parks: 1/30/08, 2/1/08 [DPA].

Brief Summary of Amended Bill

- Requires the Department of Natural Resources (DNR) to initiate a judicial proceeding to determine the proper ownership of sand, gravel, and rock resources on land located on Maury Island, which was formerly owned by the state and transferred into private ownership through a deed with a mineral reservation.

HOUSE COMMITTEE ON ECOLOGY & PARKS

Majority Report: Do pass as amended. Signed by 9 members: Representatives Upthegrove, Chair; Rolfes, Vice Chair; Sump, Ranking Minority Member; Dickerson, Dunshee, Eickmeyer, Kristiansen, O'Brien and Pearson.

Staff: Jason Callahan (786-7117).

Background:

Management and Sale of State Trust Lands

The Board of Natural Resources has been delegated the responsibility to direct the management of state lands that are held in trust for identified trust beneficiaries. Beneficiaries of these land trusts include the state's public schools and higher education institutions. Revenue earned through land management activities conducted by the Department of Natural Resources (DNR) benefits the identified trust beneficiary for the land.

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.

Although the current laws regarding the sale of state trust lands have been significantly altered over the years, 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. One such former state law involved required mineral reservations attached to 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 Maury Island Aquatic Reserve

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 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 directed to initiate a judicial proceeding to determine the proper ownership of sand, gravel, and rock resources on land located on Maury Island which was formerly owned by the state and transferred into private ownership through a deed with a mineral reservation. Until and unless a court finds otherwise, the DNR is directed to continue operating under their historic interpretation of the mineral reservation in question.

Amended Bill Compared to Original Bill:

The amendment removes a prohibition on the leasing aquatic lands in the Maury Island Aquatic Reserve that was contained in the original bill, 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.

Appropriation: None.

Fiscal Note: Requested on February 1, 2008.

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

Staff Summary of Public Testimony:

(In support) The determination of a mineral reservation's scope is based on the intent of the grantor and grantee at the time of the sale, not on what the current owners believe. The historical record from the Legislature and the Office of the Commissioner shows that the mineral reservation language was intended to be as broad of a reservation as could be imagined. It is just common sense to make sure that the property in question is not indeed owned by the state.

The scope of the uncertainty created by asking the question of who owns the minerals is very limited because the question only applies to land that was purchased by the state and that currently has an ongoing sand or gravel extraction operation.

(Opposed) The historic actions of both the DNR and past mining operations show express consent that the sand and gravel was not included in the mineral reservation. All parties to the land transaction are in agreement as to what the mineral reservation does and does not include. Although some of the parcels of the mining operation on Maury Island have deed language with a mineral reservation, most of the operation does not.

Surface minerals are always sold with the land. The mineral reservation in question is not unique, and has been included in all state land sales since 1906. Raising questions about the valid ownership of sand and gravel will undermine economic security and run counter to regional transportation goals. The bill can upset long-held expectations over what property rights were purchased from the state. There is no reason to re-litigate law that has been settled for over 70 years.

The proposed project on Maury Island has passed every environmental and legal challenge that has been presented. It would be a misuse of the legislative process to overturn permits and court decisions.

Persons Testifying: (In support) Representative Upthegrove, prime sponsor; Lonnie Johns-Brown, League of Women Voters; and David Mann, Gendler and Mann, LLC.

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

Persons Signed In To Testify But Not Testifying: None.