
SENATE BILL 6532

State of Washington

60th Legislature

2008 Regular Session

By Senators Haugen and Keiser

Read first time 01/17/08. Referred to Committee on Natural Resources, Ocean & Recreation.

1 AN ACT Relating to the management of state-owned aquatic lands by
2 cities for the purposes of operating a publicly owned marina; amending
3 RCW 79.105.060, 79.105.320, 79.105.360, and 79.120.040; and adding a
4 new section to chapter 79.105 RCW.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 **Sec. 1.** RCW 79.105.060 and 2005 c 155 s 102 are each amended to
7 read as follows:

8 The definitions in this section apply throughout chapters 79.105
9 through 79.145 RCW unless the context clearly requires otherwise.

10 (1) "Aquatic lands" means all tidelands, shorelands, harbor areas,
11 and the beds of navigable waters.

12 (2) "Beds of navigable waters" means those lands lying waterward of
13 and below the line of navigability on rivers and lakes not subject to
14 tidal flow, or extreme low tide mark in navigable tidal waters, or the
15 outer harbor line where harbor area has been created.

16 (3) "City" means a city or town created under Title 35 or 35A RCW.

17 (4) "First-class shorelands" means the shores of a navigable lake
18 or river belonging to the state, not subject to tidal flow, lying

1 between the line of ordinary high water and the line of navigability,
2 or inner harbor line where established and within or in front of the
3 corporate limits of any city or within two miles of either side.

4 ~~((4))~~ (5) "First-class tidelands" means the shores of navigable
5 tidal waters belonging to the state, lying within or in front of the
6 corporate limits of any city, or within one mile of either side and
7 between the line of ordinary high tide and the inner harbor line; and
8 within two miles of the corporate limits on either side and between the
9 line of ordinary high tide and the line of extreme low tide.

10 ~~((5))~~ (6) "Harbor area" means the area of navigable waters
11 determined as provided in Article XV, section 1 of the state
12 Constitution, which shall be forever reserved for landings, wharves,
13 streets, and other conveniences of navigation and commerce.

14 ~~((6))~~ (7) "Improvements" when referring to state-owned aquatic
15 lands means anything considered a fixture in law placed within, upon,
16 or attached to aquatic lands that has changed the value of those lands,
17 or any changes in the previous condition of the fixtures that changes
18 the value of the land.

19 ~~((7))~~ (8) "Inflation rate" means for a given year the percentage
20 rate of change in the previous calendar year's all commodity producer
21 price index of the bureau of labor statistics of the United States
22 department of commerce. If the index ceases to be published, the
23 department shall designate by rule a comparable substitute index.

24 ~~((8))~~ (9) "Inner harbor line" means a line located and
25 established in navigable waters between the line of ordinary high tide
26 or ordinary high water and the outer harbor line, constituting the
27 inner boundary of the harbor area.

28 ~~((9))~~ (10) "Log booming" means placing logs into and taking them
29 out of the water, assembling and disassembling log rafts before or
30 after their movement in water-borne commerce, related handling and
31 sorting activities taking place in the water, and the temporary holding
32 of logs to be taken directly into a processing facility. "Log booming"
33 does not include the temporary holding of logs to be taken directly
34 into a vessel.

35 ~~((10))~~ (11) "Log storage" means the water storage of logs in
36 rafts or otherwise prepared for shipment in water-borne commerce, but
37 does not include the temporary holding of logs to be taken directly
38 into a vessel or processing facility.

1 (~~(11)~~) (12) "Nonwater-dependent use" means a use that can operate
2 in a location other than on the waterfront. Examples include, but are
3 not limited to, hotels, condominiums, apartments, restaurants, retail
4 stores, and warehouses not part of a marine terminal or transfer
5 facility.

6 (~~(12)~~) (13) "Outer harbor line" means a line located and
7 established in navigable waters as provided in Article XV, section 1 of
8 the state Constitution, beyond which the state shall never sell or
9 lease any rights whatever to private persons.

10 (~~(13)~~) (14) "Person" means any private individual, partnership,
11 association, organization, cooperative, firm, corporation, the state or
12 any agency or political subdivision thereof, any public or municipal
13 corporation, or any unit of government, however designated.

14 (~~(14)~~) (15) "Port district" means a port district created under
15 Title 53 RCW.

16 (~~(15)~~) (16) "Public utility lines" means pipes, conduits, and
17 similar facilities for distribution of water, electricity, natural gas,
18 telephone, other electronic communication, and sewers, including sewer
19 outfall lines.

20 (~~(16)~~) (17) "Real rate of return" means the average for the most
21 recent ten calendar years of the average rate of return on conventional
22 real property mortgages as reported by the federal home loan bank board
23 or any successor agency, minus the average inflation rate for the most
24 recent ten calendar years.

25 (~~(17)~~) (18) "Second-class shorelands" means the shores of a
26 navigable lake or river belonging to the state, not subject to tidal
27 flow, lying between the line of ordinary high water and the line of
28 navigability, and more than two miles from the corporate limits of any
29 city.

30 (~~(18)~~) (19) "Second-class tidelands" means the shores of
31 navigable tidal waters belonging to the state, lying outside of and
32 more than two miles from the corporate limits of any city, and between
33 the line of ordinary high tide and the line of extreme low tide.

34 (~~(19)~~) (20) "Shorelands," where not preceded by "first-class" or
35 "second-class," means both first-class shorelands and second-class
36 shorelands.

37 (~~(20)~~) (21) "State-owned aquatic lands" means all tidelands,
38 shorelands, harbor areas, the beds of navigable waters, and waterways

1 owned by the state and administered by the department or managed under
2 RCW 79.105.420 by a port district or managed under section 2 of this
3 act by a city. "State-owned aquatic lands" does not include aquatic
4 lands owned in fee by, or withdrawn for the use of, state agencies
5 other than the department.

6 ((+21+)) (22) "Terminal" means a point of interchange between land
7 and water carriers, such as a pier, wharf, or group of such, equipped
8 with facilities for care and handling of either cargo or passengers, or
9 both.

10 ((+22+)) (23) "Tidelands," where not preceded by "first-class" or
11 "second-class," means both first-class tidelands and second-class
12 tidelands.

13 ((+23+)) (24) "Valuable materials" when referring to state-owned
14 aquatic lands means any product or material within or upon lands, such
15 as forest products, forage, stone, gravel, sand, peat, agricultural
16 crops, and all other materials of value except mineral, coal,
17 petroleum, and gas as provided for under chapter 79.14 RCW. However,
18 RCW 79.140.190 and 79.140.200 also apply to materials provided for
19 under chapter 79.14 RCW.

20 ((+24+)) (25) "Water-dependent use" means a use that cannot
21 logically exist in any location but on the water. Examples include,
22 but are not limited to: Water-borne commerce; terminal and transfer
23 facilities; ferry terminals; watercraft sales in conjunction with other
24 water-dependent uses; watercraft construction, repair, and maintenance;
25 moorage and launching facilities; aquaculture; log booming; and public
26 fishing piers and parks.

27 ((+25+)) (26) "Water-oriented use" means a use that historically
28 has been dependent on a waterfront location, but with existing
29 technology could be located away from the waterfront. Examples
30 include, but are not limited to, wood products manufacturing,
31 watercraft sales, fish processing, petroleum refining, sand and gravel
32 processing, log storage, and house boats. For the purposes of
33 determining rent under this chapter, water-oriented uses shall be
34 classified as water-dependent uses if the activity either is conducted
35 on state-owned aquatic lands leased on October 1, 1984, or was actually
36 conducted on the state-owned aquatic lands for at least three years
37 before October 1, 1984. If, after October 1, 1984, the activity is
38 changed to a use other than a water-dependent use, the activity shall

1 be classified as a nonwater-dependent use. If continuation of the
2 existing use requires leasing additional state-owned aquatic lands and
3 is permitted under the shoreline management act of 1971, chapter 90.58
4 RCW, the department may allow reasonable expansion of the water-
5 oriented use.

6 NEW SECTION. **Sec. 2.** A new section is added to chapter 79.105 RCW
7 to read as follows:

8 (1) Upon request of a city, the department and the city may enter
9 into an agreement authorizing the city to manage state-owned aquatic
10 lands for the purpose of operating a publicly owned marina. The lands
11 that may be included in a city aquatic lands management agreement are
12 those state-owned aquatic lands abutting or used in conjunction with
13 and contiguous to uplands owned, leased, or otherwise managed by a city
14 for marina purposes. All state-owned aquatic lands beneath any
15 publicly owned marina developed or maintained by a city are eligible
16 for management by the city under a city aquatic lands management
17 agreement.

18 (2) A city aquatic lands management agreement must include, but is
19 not limited to, provisions defining the specific area to be managed,
20 the term, conditions of occupancy, reservations, periodic review, and
21 other conditions to ensure consistency with the state Constitution and
22 the policies of this chapter. The administration of aquatic lands
23 covered by a city aquatic lands management agreement must be consistent
24 with the aquatic land policies of this chapter and chapters 79.110
25 through 79.140 RCW and the implementing rules adopted by the
26 department. The administrative procedures for management of the lands
27 are those of Title 35 or 35A RCW, whichever is appropriate.

28 (3) No rent is due the state for the use of state-owned aquatic
29 lands managed under this section for water-dependent or water-oriented
30 uses. If a city manages state-owned aquatic lands under this section
31 and either leases or otherwise permits any person to use the lands, the
32 rental fee attributable to the aquatic land only must be comparable to
33 the rent charged lessees for the same or similar uses by the
34 department. If a city leases state-owned aquatic lands to any person
35 for nonwater-dependent use, eighty-five percent of the revenue
36 attributable to the rent of the state-owned aquatic land only must be
37 paid to the state.

1 (4) Upon application for a city aquatic lands management agreement,
2 and as long as the application is pending and being diligently pursued,
3 no rent is due the department for the lease by the city of state-owned
4 aquatic lands included within the application for water-dependent or
5 water-oriented uses.

6 (5) A city that operates a publicly owned marina within the
7 territorial limits of a port district must obtain the approval of the
8 port commission prior to applying to the department for a city aquatic
9 lands management agreement. A city with marina facilities in existence
10 on the effective date of this section may enter into a city aquatic
11 lands management agreement for those facilities without port commission
12 approval.

13 (6) Only cities with a population between twenty and forty
14 thousand, based on the office of financial management's population
15 estimate, may enter into a city aquatic lands management agreement with
16 the department.

17 (7) For the purposes of this section, "marina" means a waterfront
18 facility that provides moorage for one or more of the following:
19 Recreational vessels; charter vessels; commercial fishing vessels; and
20 water-based aircraft. A marina facility may include fuel docks and
21 associated chandlery activities designed to serve recreational vessels,
22 charter vessels, commercial fishing vessels, and water-based aircraft.

23 **Sec. 3.** RCW 79.105.320 and 2005 c 155 s 154 are each amended to
24 read as follows:

25 The manager shall, by rule, provide for an administrative review of
26 any state-owned aquatic land rent proposed to be charged. The rules
27 shall require that the lessee or applicant for release file a request
28 for review within thirty days after the manager has notified the lessee
29 or applicant of the rent due. For leases issued by the department, the
30 final authority for the review rests with the board. For leases
31 managed under RCW 79.105.420, the final authority for the review rests
32 with the appropriate port commission. For leases managed under section
33 2 of this act, the final authority for the review rests with the
34 appropriate city legislative authority. If the request for review is
35 made within thirty days after the manager's final determination as to
36 the rental, the lessee may pay rent at the preceding year's rate
37 pending completion of the review, and shall pay any additional rent or

1 be entitled to a refund, with interest thirty days after announcement
2 of the decision. The interest rate shall be fixed by rule adopted by
3 the board and shall not be less than six percent per annum. Nothing in
4 this section abrogates the right of an aggrieved party to pursue legal
5 remedies. For purposes of this section, "manager" is the department
6 except where state-owned aquatic lands are managed by a port district
7 or a city, in which case "manager" is the appropriate port district or
8 city.

9 **Sec. 4.** RCW 79.105.360 and 2005 c 155 s 156 are each amended to
10 read as follows:

11 The department shall adopt such rules as are necessary to carry out
12 the purposes of RCW 79.105.010, 79.105.030, 79.105.050, 79.105.210,
13 79.105.220, 79.105.240 through 79.105.260, 79.105.270, 79.105.290
14 through 79.105.350, 79.105.400, 79.105.420, section 2 of this act,
15 79.130.070, and 79.135.100, specifically including criteria for
16 determining under RCW 79.105.240(4) when an abutting upland parcel has
17 been inappropriately assessed and for determining the nearest
18 comparable upland parcel used for water-dependent uses.

19 **Sec. 5.** RCW 79.120.040 and 2005 c 155 s 404 are each amended to
20 read as follows:

21 If the United States government has established pierhead lines
22 within a waterway created under the laws of this state at any distance
23 from the boundaries established by the state, structures may be
24 constructed in that strip of waterway between the waterway boundary and
25 the nearest pierhead line only with the consent of the department and
26 upon such plans, terms, and conditions and for such term as determined
27 by the department. However, no permit shall extend for a period longer
28 than thirty years.

29 The department may cancel any permit upon sixty days' notice for a
30 substantial breach by the permittee of any of the permit conditions.

31 If a waterway is within the territorial limits of a port district,
32 the duties assigned by this section to the department may be exercised
33 by the port commission of the port district as provided in RCW
34 79.105.420. If a waterway is within the territorial limits of a city,
35 the duties assigned to the department under this section may be
36 exercised by a city as provided in section 2 of this act.

1 Nothing in this section shall confer upon, create, or recognize in
2 any abutting owner any right or privilege in or to any strip of
3 waterway abutting any street and between prolongations of the lines of
4 the street, but the control of and the right to use the strip is
5 reserved to the state of Washington, except as authorized by RCW
6 79.105.420 and section 2 of this act.

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