
SUBSTITUTE HOUSE BILL 1077

State of Washington 61st Legislature 2009 Regular Session

By House Ecology & Parks (originally sponsored by Representatives Blake, Warnick, O'Brien, McCune, Alexander, and Roach)

READ FIRST TIME 02/23/09.

1 AN ACT Relating to aquatic lands lease rates for marinas; amending
2 RCW 79.105.060 and 79.105.240; and adding a new section to chapter
3 79.105 RCW.

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

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

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

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

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

15 (3) "First-class shorelands" means the shores of a navigable lake
16 or river belonging to the state, not subject to tidal flow, lying
17 between the line of ordinary high water and the line of navigability,
18 or inner harbor line where established and within or in front of the
19 corporate limits of any city or within two miles of either side.

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

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

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

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

21 (8) "Inner harbor line" means a line located and established in
22 navigable waters between the line of ordinary high tide or ordinary
23 high water and the outer harbor line, constituting the inner boundary
24 of the harbor area.

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

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

36 (11) "Marina" means a private facility providing boat moorage
37 space, fuel, or commercial services. Commercial services include, but
38 are not limited to, overnight or live-aboard boating accommodations.

1 (12) "Nonwater-dependent use" means a use that can operate in a
2 location other than on the waterfront. Examples include, but are not
3 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. "State-owned aquatic lands" does
3 not include aquatic lands owned in fee by, or withdrawn for the use of,
4 state agencies other than the department.

5 ~~((+21+))~~ (22) "Terminal" means a point of interchange between land
6 and water carriers, such as a pier, wharf, or group of such, equipped
7 with facilities for care and handling of either cargo or passengers, or
8 both.

9 ~~((+22+))~~ (23) "Tidelands," where not preceded by "first-class" or
10 "second-class," means both first-class tidelands and second-class
11 tidelands.

12 ~~((+23+))~~ (24) "Valuable materials" when referring to state-owned
13 aquatic lands means any product or material within or upon lands, such
14 as forest products, forage, stone, gravel, sand, peat, agricultural
15 crops, and all other materials of value except mineral, coal,
16 petroleum, and gas as provided for under chapter 79.14 RCW. However,
17 RCW 79.140.190 and 79.140.200 also apply to materials provided for
18 under chapter 79.14 RCW.

19 ~~((+24+))~~ (25) "Water-dependent use" means a use that cannot
20 logically exist in any location but on the water. Examples include,
21 but are not limited to: Water-borne commerce; terminal and transfer
22 facilities; ferry terminals; watercraft sales in conjunction with other
23 water-dependent uses; watercraft construction, repair, and maintenance;
24 moorage and launching facilities; aquaculture; log booming; and public
25 fishing piers and parks.

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

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

5 **Sec. 2.** RCW 79.105.240 and 2005 c 155 s 147 are each amended to
6 read as follows:

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

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

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

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

25 (3) The annual rent shall be:

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

29 (b) Adjusted by the inflation rate each year in which the rent is
30 not determined under (a) of this subsection.

31 (4) If the upland parcel used in conjunction with the leased area
32 is not assessed or has an assessed value inconsistent with the purposes
33 of the lease, the nearest comparable upland parcel used for similar
34 purposes shall be substituted and the lease payment determined in the
35 same manner as provided in this section.

36 (5) For the purposes of this section, "upland tax parcel" is a tax
37 parcel, some portion of which has upland characteristics. Filled

1 tidelands or shorelands with upland characteristics which abut state-
2 owned aquatic land shall be considered as uplands in determining
3 aquatic land values.

4 (6) The annual rent for filled state-owned aquatic lands that have
5 the characteristics of uplands shall be determined in accordance with
6 RCW 79.105.270 in those cases in which the state owns the fill and has
7 a right to charge for the fill.

8 ~~((7) For all new leases for other water dependent uses, issued
9 after December 31, 1997, the initial annual water dependent rent shall
10 be determined by the methods in subsections (1) through (6) of this
11 section.))~~

12 NEW SECTION. **Sec. 3.** A new section is added to chapter 79.105 RCW
13 under the subchapter heading "leasing and rental rates" to read as
14 follows:

15 (1) For leases for marina uses only, as of July 1, 2010, lease
16 rates are a percentage of the annual gross revenues generated by the
17 lessee marina. It is the intent of the legislature that additional
18 legislation be enacted prior to July 1, 2010, to establish the
19 percentage of gross revenues that will serve as the basis for a
20 marina's rent and a definition of gross revenues. Annual rent must be
21 recalculated each year based upon the marina's gross revenues from the
22 previous year, as reported to the department consistent with this
23 section.

24 (2) By December 31, 2009, the department must develop a recommended
25 formula for calculating marina rents consistent with this section and
26 report the recommendation to the appropriate committees of the
27 legislature. The formula recommended by the department must include a
28 percentage or a range of percentages of gross revenues, a system for
29 implementing such percentages, and the designation of revenue sources
30 to be considered for rent calculation purposes. The department must
31 also ensure, given the available information, that the rent formula
32 recommended by the department is initially calculated to maintain state
33 proceeds from marina rents as of July 1, 2009.

34 (3) In addition to the percent of marina income, the department
35 shall determine its direct administrative costs and shall recover these
36 costs from lessees. Administrative costs may include the cost of hours
37 worked directly on applications and leases, based on salaries and

1 benefits, plus travel reimbursement and other actual out-of-pocket
2 costs, to calculate, audit, execute, and monitor marina leases. All
3 administrative costs recovered by the department must be deposited into
4 the resource management cost account created in RCW 79.64.020.

5 (4) Prior to making recommendations to the legislature, a work
6 session consisting of the department, marina owners, and stakeholders
7 must be convened to discuss the rate-setting criteria. The legislature
8 directs the department to include any minority reports by the
9 participating parties in its report to the legislature.

10 (5) When developing its recommendation for a marina lease formula
11 consistent with this section, the department shall ensure that the
12 percentage of revenue established is applied to the income of the
13 direct lessee, as well as to the income of any person or entity that
14 subleases, or contracts to operate the marina, with the direct lessee,
15 less the amount paid by the sublease to the direct lessee.

16 (6) All marina operators under lease with the department must
17 return to the department an income reporting form, provided by the
18 department, and certified by a licensed certified public accountant,
19 before July 31, 2009, and again annually on a date set by the
20 department. On the income reporting form, the department may require
21 a marina to disclose to the department any information about income
22 from all marina-related sources, excluding restaurants and bars. All
23 income reports submitted to the department are subject to either audit
24 or verification, or both, by the department, and the department may
25 inspect all of the lessee's books, records, and documents, including
26 state and federal income tax returns relating to the operation of the
27 marina and leased aquatic lands at all reasonable times. If the lessee
28 fails to submit the required income reporting form once the new method
29 for calculating marina rents is effective, the department may conduct
30 an audit at the lessee's expense or cancel the lease.

31 (7) Initially, the marina rent formula developed by the department
32 under subsection (2) of this section must be applied to each marina on
33 its anniversary date, beginning July 1, 2010, and must be based on that
34 marina's 2009 income information. Thereafter, rents will be
35 recalculated each year, based on the marina's gross revenue from the
36 previous year.

37 (8) No marina lease may be for less than five hundred dollars, plus
38 direct administrative costs.

1 (9) If by July 1, 2010, the legislature fails to adopt additional
2 legislation amending this section, the department shall initiate rule
3 making that establishes the recommended rent formula developed under
4 subsection (2) of this section by rule.

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