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HOUSE BILL 1077

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State of Washington                      61st Legislature                      2009 Regular Session  
By Representatives Blake, Warnick, O'Brien, McCune, Alexander, and Roach  
Prefiled 01/07/09.

1            AN ACT Relating to aquatic lands lease rates for marinas; amending  
2 RCW 79.105.060, 79.105.240, and 79.105.360; and adding a new section to  
3 chapter 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 **Sec. 3.** RCW 79.105.360 and 2005 c 155 s 156 are each amended to  
13 read as follows:

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

22 (2) The department shall adopt rules for implementing section 4 of  
23 this act specifically to establish geographic zones where marinas  
24 within the zone will pay the same aquatic lands square footage lease  
25 rates.

26 NEW SECTION. **Sec. 4.** A new section is added to chapter 79.105 RCW  
27 to read as follows:

28 Annual rent rates for the lease of state-owned aquatic lands for  
29 marinas must be determined as follows:

30 (1) The total rent for state aquatic lands leased for marinas as of  
31 the effective date of this section must be determined in a geographic  
32 zone as defined by rule by the department. The total rent must be  
33 divided by the total square footage of state aquatic lands under lease  
34 for marinas within the geographic zone to determine a square footage  
35 rental rate for the geographic zone. Each marina lessee within the

1 geographic zone must pay aquatic lands rent by multiplying the lessee's  
2 square footage rental rate by the amount of square footage the lessee  
3 has under lease.

4 (2) Every four years after establishing the initial rent, the  
5 department shall determine the charge in the average marina boat  
6 moorage rate within a geographic zone. The square footage rental rate  
7 for a geographic zone must be adjusted by the percentage change on the  
8 average marina moorage rate from the rate four years previously. The  
9 adjustment may never be more than five percent.

10 (3) The rental rate in years other than the year the rental rate  
11 was initially determined, or for every four-year adjustment thereafter  
12 under subsection (2) of this section, must be adjusted by the inflation  
13 rate.

14 (4) If the initial rent established under this section is more than  
15 thirty-three percent above the rent in effect prior to establishing the  
16 initial rent under this section, the annual rent may not increase in  
17 any year by more than thirty-three percent of the difference of the  
18 previous rent and the initial rent. If the initial rent established  
19 under this section is more than thirty-three percent below the rent in  
20 effect prior to establishing the initial rent under this section, the  
21 annual rent may not decrease in any year by more than thirty-three  
22 percent of the difference between the previous rent and the initial  
23 rent. All rents determined under this subsection are subject to an  
24 inflation rate.

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