
SUBSTITUTE SENATE BILL 5550

State of Washington

62nd Legislature

2011 Regular Session

By Senate Natural Resources & Marine Waters (originally sponsored by Senators Regala, Ranker, Swecker, Hargrove, Morton, Stevens, Fraser, Shin, and Kohl-Welles; by request of Department of Natural Resources)

READ FIRST TIME 02/17/11.

1 AN ACT Relating to annual rent rates for marina; amending RCW
2 79.105.060 and 79.105.240; adding a new section to chapter 79.105 RCW;
3 and creating a new section.

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) "Nonwater-dependent use" means a use that can operate in a
37 location other than on the waterfront. Examples include, but are not

1 limited to, hotels, condominiums, apartments, restaurants, retail
2 stores, and warehouses not part of a marine terminal or transfer
3 facility.

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

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

12 (14) "Port district" means a port district created under Title 53
13 RCW.

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

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

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

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

31 (19) "Shorelands," where not preceded by "first-class" or "second-
32 class," means both first-class shorelands and second-class shorelands.

33 (20) "State-owned aquatic lands" means all tidelands, shorelands,
34 harbor areas, the beds of navigable waters, and waterways owned by the
35 state and administered by the department or managed under RCW
36 79.105.420 by a port district. "State-owned aquatic lands" does not
37 include aquatic lands owned in fee by, or withdrawn for the use of,
38 state agencies other than the department.

1 (21) "Terminal" means a point of interchange between land and water
2 carriers, such as a pier, wharf, or group of such, equipped with
3 facilities for care and handling of either cargo or passengers, or
4 both.

5 (22) "Tidelands," where not preceded by "first-class" or "second-
6 class," means both first-class tidelands and second-class tidelands.

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

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

21 (25) "Water-oriented use" means a use that historically has been
22 dependent on a waterfront location, but with existing technology could
23 be located away from the waterfront. Examples include, but are not
24 limited to, wood products manufacturing, watercraft sales, fish
25 processing, petroleum refining, sand and gravel processing, log
26 storage, and house boats. For the purposes of determining rent under
27 this chapter, water-oriented uses shall be classified as water-
28 dependent uses if the activity either is conducted on state-owned
29 aquatic lands leased on October 1, 1984, or was actually conducted on
30 the state-owned aquatic lands for at least three years before October
31 1, 1984. If, after October 1, 1984, the activity is changed to a use
32 other than a water-dependent use, the activity shall be classified as
33 a nonwater-dependent use. If continuation of the existing use requires
34 leasing additional state-owned aquatic lands and is permitted under the
35 shoreline management act of 1971, chapter 90.58 RCW, the department may
36 allow reasonable expansion of the water-oriented use.

37 (26) "Marina" means any entity occupying state-owned aquatic lands
38 that provides vessel moorage for a fee or includes marina slips within

1 the definition of a unit for condominium purposes, excluding homeowner
2 associations, facilities that provide moorage exclusively for floating
3 homes, and facilities that are entirely dedicated to providing public
4 use and access under a no-fee public use and access agreement.

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 shall
9 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.)) For marinas only, the
17 upland value used to calculate rent shall be as determined in (a) of
18 this subsection unless the upland value is not within forty-five
19 percent of the geographic average upland value for that marina. The
20 geographic average upland value for each marina is the average of the
21 upland values as determined in (a) of this subsection of all the
22 marinas within a five mile radius centered on each marina.~~

23 (i) If the upland value of a marina is more than forty-five percent
24 above the geographic average upland value for that marina, then the
25 upland value used to calculate the marina's rent will be a value that
26 is forty-five percent above the geographic average upland value for
27 that marina.

28 (ii) If the upland value of a marina is more than forty-five
29 percent below the geographic average upland value for that marina, then
30 the upland value used to calculate the marina's rent will be a value
31 that is forty-five percent below the geographic average upland value
32 for that marina.

33 (c) The upland value times the area of leased aquatic lands times
34 thirty percent equals the aquatic land value.

35 (2) As of July 1, 1989, and each July 1st thereafter, the
36 department shall determine the real capitalization rate to be applied
37 to water-dependent aquatic land leases commencing or being adjusted

1 under subsection (3)(a)(i) of this section in that fiscal year. The
2 real capitalization rate shall be the real rate of return, except that
3 until June 30, 1989, the real capitalization rate shall be five percent
4 and thereafter it shall not change by more than one percentage point in
5 any one year or be more than seven percent or less than three percent.

6 (3)(a) The annual rent shall be:

7 ((+a)) (i) Determined initially, and redetermined every four years
8 or as otherwise provided in the lease, by multiplying the aquatic land
9 value times the real capitalization rate; and

10 ((+b)) (ii) Adjusted by the inflation rate each year in which the
11 rent is not determined under (a)(i) of this subsection.

12 (b) For marinas only, on years when rent is initially or
13 redetermined under (a) of this subsection, the rent determined under
14 (a) of this subsection must be added to a base rent of two hundred
15 fifty dollars. The base rent must be deposited into the resource
16 management cost account created in RCW 79.64.020.

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

22 (5) For the purposes of this section, "upland tax parcel" is a tax
23 parcel, some portion of which has upland characteristics. Filled
24 tidelands or shorelands with upland characteristics which abut state-
25 owned aquatic land shall be considered as uplands in determining
26 aquatic land values.

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

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

35 NEW SECTION. Sec. 3. A new section is added to chapter 79.105 RCW
36 to read as follows:

37 If the initial annual rent for a marina established using RCW

1 79.105.240(1)(b) to calculate upland value results in an increase in
2 rent, the initial annual rent will be increased by twenty-five percent
3 of the difference of the initial annual rent and the previous rent. On
4 each anniversary date before the following revaluation, the annual rent
5 must be increased an additional twenty-five percent of the difference
6 of the initial rent and the previous rent. The annual rent established
7 on the following revaluation date is not subject to this section. If
8 the initial annual rent for a marina established using RCW
9 79.105.240(1)(b) to calculate upland value results in a decrease in
10 rent, the initial annual rent will be decreased by twenty-five percent
11 of the difference of the previous rent and the initial annual rent. On
12 each anniversary date before the following revaluation, the annual rent
13 shall be decreased an additional twenty-five percent of the difference
14 of the previous rent and the initial rent. The annual rent established
15 on the following revaluation date is not subject to this section. All
16 rents determined under this section are subject to an inflation rate.

17 NEW SECTION. **Sec. 4.** RCW 79.105.060, 79.105.240, and section 3 of
18 this act apply to all annual rents for marinas determined initially or
19 redetermined on or after the effective date of this section.

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