

HOUSE BILL REPORT

HB 1849

As Reported by House Committee On: Environment & Energy

Title: An act relating to revising the lease terms for managing first-class unplatted tidelands and shorelands.

Brief Description: Revising the lease terms for managing first-class unplatted tidelands and shorelands.

Sponsors: Representatives Lekanoff, Chapman, Fitzgibbon and Doglio; by request of Department of Natural Resources.

Brief History:

Committee Activity:

Environment & Energy: 2/14/19, 2/21/19 [DPS].

Brief Summary of Substitute Bill

- Aligns the lease terms for platted and unplatted first-class tidelands and shorelands.
- Removes the requirement that the Department of Natural Resources plat unplatted first-class tidelands and shorelands.
- Extends the preference rights granted to lessees re-leasing first-class unplatted tidelands and shorelands to those re-leasing platted first-class tidelands and shorelands.
- Changes, from one year to three years, the period of nonuse for booming purposes after which a lease of certain tidelands and shorelands is forfeited.

HOUSE COMMITTEE ON ENVIRONMENT & ENERGY

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Fitzgibbon, Chair; Lekanoff, Vice Chair; Doglio, Fey, Mead, Peterson and Shewmake.

Minority Report: Do not pass. Signed by 3 members: Representatives Shea, Ranking Minority Member; Dye, Assistant Ranking Minority Member; Boehnke.

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.

Staff: Jenny Aronson (786-7290) and Robert Hatfield (786-7117).

Background:

State Management of Aquatic Lands.

Aquatic lands are generally managed by the state and protected for the common good. The Legislature has designated the Department of Natural Resources (DNR) as the manager of the more than 2.6 million acres of state-owned aquatic lands. In managing these lands, the DNR must support a balance of use demands and statutory goals such as public use, environmental protections, trade, transportation, and generating revenue consistent with those goals. The DNR must also establish standards for determining equitable and predictable lease rates for users of state-owned aquatic lands.

Types of Aquatic Land and Lease Terms.

Aquatic lands include the lands beneath navigable marine "salt" waters and fresh waters of the state. There are three categories of aquatic lands: tidelands, shorelands, and bedlands.

Tidelands are submerged lands and beaches that are exposed and submerged with the ebb and flow of the tides. Shorelands are the submerged lands lying along the edge of a river or lake, between the line of ordinary high water and the line of navigability. Tidelands and shorelands in front of or within 2 miles of a city are considered first-class tidelands and shorelands, and those lands more than 2 miles from a city are considered second-class tidelands and shorelands. Bedlands are those aquatic lands that are submerged at all times beneath navigable waters.

Platting is the process of making a plan or map showing the division of a piece of land into individual lots or subdivisions. The DNR is required to plat all previously unplatted first-class tidelands and shorelands simultaneously with the establishment of harbor lines and the determination of harbor areas. The DNR may, but is not required to, plat second-class tidelands and shorelands.

Unplatted first-class tidelands and shorelands may be leased for a maximum period of 10 years. The maximum term for a re-lease of unplatted first-class tidelands and shorelands is five years. The maximum lease term for platted tidelands and shorelands is generally 55 years. Bedlands in front of second-class tidelands or shorelands may be leased for a maximum period of 30 years. Bedlands in front of leased unplatted first-class tidelands or shorelands may be leased for a maximum period of 10 years.

Rights of Adjacent Upland Owners to Navigable Waters.

Washington is a "non-riparian" state, meaning adjacent upland owners do not have an automatic right, by virtue of their upland ownership, to build out over the adjacent navigable waters. Owners of residential property abutting state-owned tidelands and shorelands are permitted by statute to install and maintain private recreational docks on such land free of charge.

Upon offering first-class tidelands or shorelands for lease after platting and appraising them, the DNR must notify the owner of record of uplands fronting upon the lands being offered for lease by mail that:

- the tideland or shorelands are being offered for lease; and
 - the property owner has a preference right to apply to lease the tidelands or shorelands at the appraised value for the lease for a period of 60 days from the date of service of mailing of the notice.
-

Summary of Substitute Bill:

Leases for both platted and unplatted first-class tidelands and shorelands are aligned under the same terms and processes.

Leases of state-owned first-class tidelands and shorelands must be for a term no longer than 55 years, whether for platted or unplatted tidelands and shorelands. At the expiration of any lease of first-class tidelands or shorelands, whether platted or unplatted, the lessee or the lessee's successors or assigns have the preferential right to re-lease all or part of the area, superior to any preference right given to the landowner fronting the tidelands and shorelands.

The Department of Natural Resources (DNR) retains the authority to survey and plat unplatted tidelands and shorelands, but is no longer required to do so.

Leases of state-owned bedlands must be for a term of no longer than 30 years, irrespective of the type of tidelands or shorelands fronted by the bedlands.

Where the fronting uplands are not improved and occupied for residential purposes and the fronting landowner has not filed an application for the lease of the lands, the DNR may lease the lands to any person for booming purposes. Failure to use lands leased for booming purposes for a period of three years shall result in a forfeiture of the lease, and land ownership of reverts to the state without any notice to the lessee upon the entry of a declaration of forfeiture in the records of the DNR.

Substitute Bill Compared to Original Bill:

The substitute bill changes, from one year to three years, the period of nonuse for booming purposes after which a lease of certain tidelands and shorelands is forfeited.

Appropriation: None.

Fiscal Note: Available.

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

Staff Summary of Public Testimony:

(In support) This bill simplifies and aligns lease term limitations for platted and unplatted state-owned aquatic lands. These changes will make it easier for some lessees, such as small businesses, to obtain loans to make improvements to the land and their facilities. Current law limits leases of first-class unplatted tidelands to initial terms of 10 years with the option to re-lease for terms of five years. This term limitation poses a challenge for lessees, who are often required to have a longer lease term in order to obtain financing. These lessees include state universities, whose staff must re-lease state-owned aquatic land where they conduct ongoing research every five years, which reduces efficiency. Requiring the Department of Natural Resources (DNR) to re-lease these lands every five years also creates additional administrative work for their staff. The bill proposes an appropriate extension term which helps businesses and state governments run efficiently, and promotes long-term environmental stewardship of our shorelines.

(Opposed) Some of the language in this bill would allow the DNR to decide not to renew an aquatic lease when it is up for re-lease if it is not in the interest of the state. This language provides broad authority to the DNR, creating uncertainty for entities which have invested in the shoreline infrastructure and other facilities. This may frustrate attempts to secure financing and the desire to invest in these types of leased lands.

Persons Testifying: (In support) Representative Lekanoff, prime sponsor; Kristin Swenddal, Department of Natural Resources; and Morgan Hickel, University of Washington.

(Opposed) Mike Ennis, Association of Washington Business.

Persons Signed In To Testify But Not Testifying: None.