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SECOND SUBSTITUTE SENATE BILL 5255

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State of Washington

61st Legislature

2009 Regular Session

**By** Senate Ways & Means (originally sponsored by Senators Jacobsen, Swecker, Regala, Morton, Kilmer, Pridemore, and Shin)

READ FIRST TIME 03/02/09.

1 AN ACT Relating to aquatic lands lease rates for marinas; amending  
2 RCW 79.105.060 and 79.105.240; adding new sections to chapter 79.105  
3 RCW; creating new sections; and providing expiration dates.

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 any entity occupying state-owned aquatic lands  
37 that provides vessel moorage for a fee, excluding homeowner

1 associations, facilities that provide moorage exclusive for floating  
2 homes, and facilities that are entirely dedicated to providing public  
3 use and access under a no-fee public use and access agreement.

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

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

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

17 ~~((+14+))~~ (15) "Port district" means a port district created under  
18 Title 53 RCW.

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

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

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

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

37 ~~((+19+))~~ (20) "Shorelands," where not preceded by "first-class" or

1 "second-class," means both first-class shorelands and second-class  
2 shorelands.

3 ~~((+20+))~~ (21) "State-owned aquatic lands" means all tidelands,  
4 shorelands, harbor areas, the beds of navigable waters, and waterways  
5 owned by the state and administered by the department or managed under  
6 RCW 79.105.420 by a port district. "State-owned aquatic lands" does  
7 not include aquatic lands owned in fee by, or withdrawn for the use of,  
8 state agencies other than the department.

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

13 ~~((+22+))~~ (23) "Tidelands," where not preceded by "first-class" or  
14 "second-class," means both first-class tidelands and second-class  
15 tidelands.

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

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

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

1 conducted on the state-owned aquatic lands for at least three years  
2 before October 1, 1984. If, after October 1, 1984, the activity is  
3 changed to a use other than a water-dependent use, the activity shall  
4 be classified as a nonwater-dependent use. If continuation of the  
5 existing use requires leasing additional state-owned aquatic lands and  
6 is permitted under the shoreline management act of 1971, chapter 90.58  
7 RCW, the department may allow reasonable expansion of the water-  
8 oriented use.

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

11 Except as otherwise provided in section 4 of this act and by this  
12 chapter, annual rent rates for the lease of state-owned aquatic lands  
13 for water-dependent uses shall be determined as follows:

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

19 (b) For marinas only, the department shall determine the upland  
20 value for a geographic averaging zone by following (a) of this  
21 subsection for marinas within the zone and then calculating the average  
22 upland value for such marinas. Each county contains two distinct  
23 geographic averaging zones: One zone consisting of marinas located  
24 within its cities and urban growth area designated under RCW  
25 36.70A.110, if any; and one zone consisting of marinas located outside  
26 of such areas. The upland value is uniform for all marinas within a  
27 geographic averaging zone.

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

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

1 (3) The annual rent shall be:

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

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

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

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

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

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

25 NEW SECTION. **Sec. 3.** A new section is added to chapter 79.105 RCW  
26 to read as follows:

27 (1) If the initial rent for marinas established using RCW  
28 79.105.240(1)(b) to calculate upland value is more than twenty percent  
29 above the rent in effect prior to establishing the initial rent using  
30 RCW 79.105.240(1)(b) to calculate upland value, the annual rent may not  
31 increase in any year by more than twenty-five percent of the difference  
32 of the previous rent and the initial rent. If the initial rent  
33 established using RCW 79.105.240(1)(b) to calculate upland value is  
34 more than twenty percent below the rent in effect prior to establishing  
35 the initial rent using RCW 79.105.240(1)(b) to calculate upland value,  
36 the annual rent may not decrease in any year by more than twenty-five

1 percent of the difference between the previous rent and the initial  
2 rent. All rents determined under this section are subject to an  
3 inflation rate.

4 (2) This section expires June 30, 2015.

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

7 (1) The department shall determine the annual rent for any lease of  
8 state-owned aquatic lands for a water-dependent use that qualifies for  
9 a youth recreation aquatic lands lease rate by following the method set  
10 forth in RCW 79.105.240 (1) through (6) and then multiplying the  
11 resulting amount by one-half.

12 (2) To be eligible for a youth recreation aquatic lands lease rate,  
13 an organization must: (a) Be exempt from federal income tax under 26  
14 U.S.C. Sec. 501(c)(3); and (b) certify that the primary use of the  
15 aquatic lands is boating and maritime recreation and instruction for  
16 youth.

17 (3) Upon request, the department shall promptly redetermine under  
18 subsection (1) of this section the annual rent for a lease of state-  
19 owned aquatic lands existing on the effective date of this section that  
20 meets the requirements of subsection (2) of this section.

21 (4) If the department determines that a lease with an annual rent  
22 determined under subsection (1) of this section no longer meets the  
23 requirements of subsection (2) of this section, the department shall  
24 promptly redetermine the annual rent under RCW 79.105.240.

25 NEW SECTION. **Sec. 5.** (1) In cooperation with relevant state  
26 agencies, local governments, and marinas, the department of natural  
27 resources must develop a plan to enhance the number of operating vessel  
28 sewage pumpout stations available for public use on state-owned aquatic  
29 lands.

30 (2) The plan must include a prioritized list of areas of state-  
31 owned aquatic lands most in need of pumpout station installation or  
32 improved operation and maintenance of existing pumpout stations.

33 (3) The plan must include recommendations for plan implementation  
34 and funding, including ongoing operation and maintenance costs. The  
35 department of natural resources, in cooperation with the state parks  
36 and recreation commission, must ensure that the plan is designed to

1 make maximum use of available federal funding sources. The plan  
2 recommendations must also include a mechanism designed to provide  
3 supplemental funding for plan implementation using a portion of marina  
4 lease revenues, since available federal funding sources require  
5 matching money and may be insufficient to fully fund plan  
6 implementation.

7 (4) The department of natural resources must provide the plan to  
8 the appropriate committees of the legislature by November 1, 2009.

9 (5) This section expires December 1, 2009.

10 NEW SECTION. **Sec. 6.** Sections 1 through 3 of this act apply to  
11 all annual rents for marinas determined initially or redetermined on or  
12 after January 1, 2010.

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