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ENGROSSED SENATE BILL 6140

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State of Washington

65th Legislature

2018 Regular Session

By Senators King, Van De Wege, and Sheldon; by request of Department of Natural Resources

Read first time 01/09/18. Referred to Committee on Agriculture, Water, Natural Resources & Parks.

1 AN ACT Relating to promoting the efficient and effective  
2 management of state-managed lands; amending RCW 79.125.400,  
3 79.130.020, 79.125.030, 79.11.340, and 79.17.200; adding a new  
4 section to chapter 79.10 RCW; creating a new section; and repealing  
5 RCW 79.125.020 and 79.125.410.

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

7 **Sec. 1.** RCW 79.125.400 and 2005 c 155 s 506 are each amended to  
8 read as follows:

9 (1) ~~((Upon platting and appraisal of first-class tidelands or  
10 shorelands as provided in this chapter))~~ Except when the department  
11 is re-leasing first-class tidelands or shorelands under subsection  
12 (4) of this section, if the department deems it for the best public  
13 interest to offer ~~((the))~~ first-class tidelands or shorelands for  
14 lease, the department shall notify the owner of record of ~~((uplands))~~  
15 the lands fronting upon the tidelands or shorelands to be offered for  
16 lease ~~((if the upland owner is a resident of the state, or the upland  
17 owner is a nonresident of the state, shall mail))~~ by mailing to the  
18 ~~((upland))~~ land owner's last known post office address, as reflected  
19 in the county records, a copy of the notice notifying the owner that  
20 the state is offering the tidelands or shorelands for lease, giving a  
21 description of those lands ~~((and the department's appraised fair~~

1 ~~market value of the tidelands or shorelands for lease)), and~~  
2 notifying the owner that the ((~~upland~~)) owner has a preference right  
3 to apply to lease the tidelands or shorelands ((~~at the appraised~~  
4 ~~value for the lease for~~)). The owner has a period of sixty days from  
5 the date of service of mailing of the notice to exercise the  
6 preference by applying to lease the tidelands or shorelands.

7 (2) If at the expiration of sixty days from the service or  
8 mailing of the notice, as provided in subsection (1) of this section,  
9 there being no conflicting applications filed, and the owner of the  
10 ((~~uplands~~)) lands fronting upon the tidelands or shorelands offered  
11 for lease, has failed to avail themselves of their preference right  
12 to apply to lease ((~~or to pay to the department the appraised value~~  
13 ~~for lease of the tidelands or shorelands described in the notice~~)),  
14 the tidelands or shorelands may be offered for lease to any person  
15 and may be leased in the manner provided for in the case of lease of  
16 state-owned aquatic lands.

17 (3) If at the expiration of sixty days two or more claimants  
18 asserting a preference right to lease have filed applications to  
19 lease any tract, conflicting with each other, the conflict between  
20 the claimants shall be equitably resolved by the department as the  
21 best interests of the state require ((~~in accord with the procedures~~  
22 ~~prescribed by chapter 34.05 RCW~~)). However, any contract purchaser of  
23 lands or rights therein, which ((~~upland~~)) land qualifies the owner  
24 for a preference right under this section, shall have first priority  
25 for the preference right.

26 (4) At the expiration of any lease of first-class tidelands or  
27 shorelands, the lessee or the lessee's successors or assigns has the  
28 preference right to re-lease all or part of the area covered by the  
29 original lease or any portion of the lease, if the department deems  
30 it to be in the best interests of the state to re-lease the area.  
31 Such a re-lease must be upon the terms and conditions as may be  
32 prescribed by the department. This preference right to re-lease is  
33 superior to any preference right given to the land owner fronting the  
34 tidelands and shorelands under subsection (1) of this section.

35 (5) In case the fronting uplands are not improved and occupied  
36 for residential purposes and the fronting land owner has not filed an  
37 application for the lease of the lands, the department may lease the  
38 lands to any person for booming purposes. However, failure to use for  
39 booming purposes any lands leased under this section for such  
40 purposes for a period of one year shall work a forfeiture of the

1 lease and the land shall revert to the state without any notice to  
2 the lessee upon the entry of a declaration of forfeiture in the  
3 records of the department.

4 **Sec. 2.** RCW 79.130.020 and 2005 c 155 s 602 are each amended to  
5 read as follows:

6 (1) The department shall, prior to the issuance of any lease  
7 under the provisions of this chapter, fix the annual (~~rental~~) rent  
8 and prescribe the terms and conditions of the lease. However, in  
9 fixing the (~~rental~~) rent, the department shall not take into  
10 account the value of any improvements placed upon the lands by the  
11 lessee.

12 (2) No lease issued under the provisions of this chapter shall be  
13 for a term longer than thirty years (~~from the date thereof if in~~  
14 ~~front of second-class tidelands or shorelands; or a term longer than~~  
15 ~~ten years if in front of unplatted first-class tidelands or~~  
16 ~~shorelands leased under the provisions of RCW 79.125.410, in which~~  
17 ~~case the lease shall be subject to the same terms and conditions as~~  
18 ~~provided for in the lease of the unplatted first-class tidelands or~~  
19 ~~shorelands)). Failure to use those beds leased under the provisions~~

20 of this chapter for booming purposes, for a period of two years shall  
21 work a forfeiture of the lease and the land shall revert to the state  
22 without notice to the lessee upon the entry of a declaration of  
23 forfeiture in the records of the department.

24 **Sec. 3.** RCW 79.125.030 and 2005 c 155 s 502 are each amended to  
25 read as follows:

26 The department may survey and plat any (~~second-class~~) tidelands  
27 and shorelands not previously platted.

28 **Sec. 4.** RCW 79.11.340 and 2003 c 334 s 399 are each amended to  
29 read as follows:

30 (1) Except as provided in RCW 79.10.030(2), the department shall  
31 manage and control all lands acquired by the state by escheat, deed  
32 of sale, gift, devise, or under RCW 79.19.010 through 79.19.110,  
33 except such lands that are conveyed or devised to the state for a  
34 particular purpose.

35 (2) When the department determines to sell the lands, they  
36 (~~shall initially be~~) must be either: (a) Offered for sale

1 ((either)) at public auction ((~~or direct sale to public agencies~~)) as  
2 provided in this chapter(~~(-~~

3 ~~(3) If the lands are not sold at public auction, the department~~  
4 ~~may,)); (b) offered for direct sale to public agencies as provided in~~  
5 RCW 79.17.200; or (c) with approval of the board, ((~~market the~~  
6 lands)) marketed through persons licensed under chapter 18.85 RCW or  
7 through other commercially feasible means at a price not lower than  
8 the land's appraised value.

9 ((~~4~~)) (3) Necessary marketing costs may be paid from the sale  
10 proceeds. For the purpose of this subsection, necessary marketing  
11 costs include reasonable costs associated with advertising the  
12 property and paying commissions.

13 ((~~5~~)) (4) Proceeds of the sale shall be deposited into the  
14 appropriate fund in the state treasury unless the grantor in any deed  
15 or the testator in case of a devise specifies that the proceeds of  
16 the sale be devoted to a particular purpose.

17 **Sec. 5.** RCW 79.17.200 and 1992 c 167 s 2 are each amended to  
18 read as follows:

19 (1) For the purposes of this section, "public agency" means any  
20 agency, political subdivision, or unit of local government of this  
21 state including, but not limited to, municipal corporations, quasi-  
22 municipal corporations, special purpose districts, and local service  
23 districts; any agency of the state government; any agency of the  
24 United States; and any Indian tribe recognized as such by the federal  
25 government.

26 (2) With the approval of the board of natural resources, the  
27 department of natural resources may directly transfer or dispose of  
28 real property, without public auction, in the following  
29 circumstances:

30 (a) Transfers in lieu of condemnations;  
31 (b) Transfers to public agencies; ((~~and~~))  
32 (c) Transfers to resolve trespass and property ownership  
33 disputes; and

34 (d) Transfers of real property to a lessee that has continuously  
35 leased the real property directly from the department of natural  
36 resources for purposes of a home site since prior to the effective  
37 date of this section. This subsection (2)(d) does not apply to  
38 aquatic lands as defined by RCW 79.105.060, or to lessees that do not

1 hold a lease for the real property directly with the department of  
2 natural resources.

3 (3) Real property to be transferred or disposed of under this  
4 section shall be transferred or disposed of only after appraisal and  
5 for at least fair market value, and only if such transaction is in  
6 the best interest of the state or affected trust.

7 NEW SECTION. Sec. 6. A new section is added to chapter 79.10  
8 RCW under the subchapter heading "general provisions" to read as  
9 follows:

10 (1) Subject to the availability of amounts appropriated for this  
11 specific purpose, the department must evaluate the department's lands  
12 portfolio and revenue streams, management practices, and transaction  
13 processes, and develop options and recommendations designed to ensure  
14 the state's fiduciary duty is being met and increase the amount and  
15 stability of revenue from state lands and state forestland over time.  
16 The evaluation must seek to account for the volatility of forest  
17 product markets and consider ways to mitigate the impact of market  
18 downturns on its revenues.

19 (a) The evaluation must specifically include an analysis of  
20 options that would leverage the earning potential for high value, low  
21 performing portions of state lands, with suggested legislative  
22 recommendations to enhance revenue generation from these types of  
23 lands, including transitioning lower performing assets to higher  
24 revenue production.

25 (b) The evaluation must develop alternatives and recommendations  
26 relating to fully addressing the existing arrearage volume, including  
27 annual updates to the appropriate committees of the legislature on  
28 specific progress towards meeting, and the updated timeline to fully  
29 address, this shortfall within the ten-year time frame identified by  
30 the board of natural resources in November 2017.

31 (c) The evaluation must evaluate and develop alternatives and  
32 recommendations relating to calculating and addressing arrearage,  
33 with a particular focus on ensuring the stability of revenue from  
34 state lands and state trust lands over time.

35 (d) The evaluation must include an assessment of factors that  
36 restrict the department from prudent management and revenue  
37 production.

38 (e) Regarding state forestlands, the evaluation must specifically  
39 include an analysis of options and recommendations for:

1 (i) The creation of a unitary trust for the revenue derived from  
2 state forestlands. The evaluation must include methods for allocating  
3 disbursements to the benefiting counties, and include consultation  
4 with the affected counties and their association;

5 (ii) Any alternative management focus, such as returning the  
6 lands to the counties for their management, leasing the lands to  
7 private timber investment management organizations, and transition of  
8 lands into higher revenue producing assets; and

9 (iii) Any other options for legislative consideration.

10 (2) The department must develop methods or tools to estimate the  
11 current asset value of state lands and state forestlands, as defined  
12 in RCW 79.02.010. The methods should be designed to be as accurate  
13 and resource efficient as possible and be designed to allow repeated  
14 estimates over time. The methods must allow for the segregation of  
15 different asset classes, and at a minimum allow for the tracking  
16 values over time for the following: Forestland, irrigated  
17 agricultural land, nonirrigated agricultural land, and commercial  
18 real estate land. The department may recommend other asset classes to  
19 track in addition to those listed.

20 (3) The department may utilize the services of a contractor for  
21 any portion of the evaluation, analysis, and tool and method  
22 development required by this section.

23 (4) The department must provide a final report to the appropriate  
24 committees of the senate and house of representatives by June 30,  
25 2020, that includes the evaluation, analysis, and tools and methods  
26 required by this section. The department must provide progress  
27 reports by December 1, 2018, and December 1, 2019.

28 NEW SECTION. **Sec. 7.** (1) Within existing appropriations, the  
29 department of natural resources must prepare an evaluation of leases  
30 and easements of state-owned aquatic lands for industrial and  
31 commercial uses in existence on January 1, 2018, except leases for  
32 purposes of marinas and moorage. The evaluation must include:

33 (a) A summary of each lease and easement, including lease term,  
34 rental rate, and use conditions;

35 (b) A listing of annual revenues obtained from each lease and  
36 easement;

37 (c) A summary of the methods or formula used to value and  
38 establish payment for each type of lease and easement;

1 (d) A summary description of inspection and monitoring efforts  
2 completed over the previous ten years relating to compliance with the  
3 terms of the lease or easement as well as compliance with all  
4 applicable water quality and other local, state, or federal  
5 environmental, public health, and safety standards;

6 (e) A summary description of the applicable requirements for  
7 inspection and monitoring under the terms of the leases and easements  
8 as well as other applicable local, state, and federal regulatory  
9 requirements;

10 (f) A summary description of the lease and easement compliance  
11 activities performed by the department to ensure the protection of  
12 the state's aquatic resources, consistent with RCW 79.105.010, is  
13 maintained.

14 (2) The department of natural resources must submit the  
15 evaluation, including any recommendations for legislative or  
16 administrative actions, to the appropriate policy and fiscal  
17 committees of the senate and house of representatives by December 1,  
18 2018.

19 NEW SECTION. **Sec. 8.** The following acts or parts of acts are  
20 each repealed:

21 (1) RCW 79.125.020 (First-class tidelands and shorelands to be  
22 platted) and 2005 c 155 s 501 & 1982 1st ex.s. c 21 s 87; and

23 (2) RCW 79.125.410 (First-class unplatted tidelands and  
24 shorelands—Lease preference right to upland owners—Lease for booming  
25 purposes) and 2005 c 155 s 527 & 1982 1st ex.s. c 21 s 113.

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