

Chapter 79.105 RCW
AQUATIC LANDS—GENERAL

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RCW 79.105.001 Intent—2005 c 155. This act is intended to make technical amendments to certain codified statutes that deal with the department of natural resources. Any statutory changes made by this act should be interpreted as technical in nature and not be interpreted to have any substantive policy implications. [2005 c 155 § 1001.]

GENERAL PROVISIONS

RCW 79.105.010 Aquatic lands—Findings. The legislature finds that state-owned aquatic lands are a finite natural resource of great value and an irreplaceable public heritage. The legislature recognizes that the state owns these aquatic lands in fee and has delegated to the department the responsibility to manage these lands for the benefit of the public. The legislature finds that water-dependent industries and activities have played a major role in the history of the state and will continue to be important in the future. The legislature finds that revenues derived from leases of state-owned aquatic lands should be used to enhance opportunities for public recreation, shoreline access, environmental protection, and other public benefits associated with the aquatic lands of the state. The legislature further finds that aquatic lands are faced with conflicting use demands. [2005 c 155 § 139; 1984 c 221 § 1. Formerly RCW 79.90.450.]

RCW 79.105.020 Purpose—Articulation of management philosophy. The purpose of RCW 79.105.060, 79.105.230, 79.105.280, and 79.105.010

through 79.105.040 is to articulate a management philosophy to guide the exercise of the state's ownership interest and the exercise of the department's management authority, and to establish standards for determining equitable and predictable lease rates for users of state-owned aquatic lands. [2005 c 155 § 101. FORMERLY PART OF RCW 79.90.450.]

RCW 79.105.030 Aquatic lands—Management guidelines. The management of state-owned aquatic lands shall be in conformance with constitutional and statutory requirements. The manager of state-owned aquatic lands shall strive to provide a balance of public benefits for all citizens of the state. The public benefits provided by state-owned aquatic lands are varied and include:

- (1) Encouraging direct public use and access;
- (2) Fostering water-dependent uses;
- (3) Ensuring environmental protection;
- (4) Utilizing renewable resources.

Generating revenue in a manner consistent with subsections (1) through (4) of this section is a public benefit. [2005 c 155 § 140; 1984 c 221 § 2. Formerly RCW 79.90.455.]

RCW 79.105.040 Application to existing property rights—Application of shoreline management act. Nothing in *this chapter or RCW 79.120.040 or 79.120.060 shall modify or affect any existing legal rights involving the boundaries of, title to, or vested property rights in aquatic lands or waterways. Nothing in *this chapter shall modify, alter, or otherwise affect the applicability of chapter 90.58 RCW. [2005 c 155 § 157; 1984 c 221 § 20. Formerly RCW 79.90.545.]

***Reviser's note:** The reference to "this chapter" referred to chapter 79.90 RCW, which was recodified and/or repealed in its entirety by 2005 c 155.

RCW 79.105.050 Fostering use of aquatic environment—Limitation. The department shall foster the commercial and recreational use of the aquatic environment for production of food, fibre, income, and public enjoyment from state-owned aquatic lands and from associated waters, and to this end the department may develop and improve production and harvesting of seaweeds and sealife attached to or growing on aquatic land or contained in aquaculture containers, but nothing in this section alters the responsibility of other state agencies for their normal management of fish, shellfish, game, and water. [2005 c 155 § 141; 2003 c 334 § 541; 1971 ex.s. c 234 § 8. Formerly RCW 79.90.456, 79.68.080.]

Intent—2003 c 334: See note following RCW 79.02.010.

RCW 79.105.060 Definitions. The definitions in this section apply throughout chapters 79.105 through 79.145 RCW unless the context clearly requires otherwise.

(1) "Aquatic lands" means all tidelands, shorelands, harbor areas, and the beds of navigable waters.

(2) "Beds of navigable waters" means those lands lying waterward of and below the line of navigability on rivers and lakes not subject to tidal flow, or extreme low tide mark in navigable tidal waters, or the outer harbor line where harbor area has been created.

(3) "First-class shorelands" means the shores of a navigable lake or river belonging to the state, not subject to tidal flow, lying between the line of ordinary high water and the line of navigability, or inner harbor line where established and within or in front of the corporate limits of any city or within two miles of either side.

(4) "First-class tidelands" means the shores of navigable tidal waters belonging to the state, lying within or in front of the corporate limits of any city, or within one mile of either side and between the line of ordinary high tide and the inner harbor line; and within two miles of the corporate limits on either side and between the line of ordinary high tide and the line of extreme low tide.

(5) "Harbor area" means the area of navigable waters determined as provided in Article XV, section 1 of the state Constitution, which shall be forever reserved for landings, wharves, streets, and other conveniences of navigation and commerce.

(6) "Improvements" when referring to state-owned aquatic lands means anything considered a fixture in law placed within, upon, or attached to aquatic lands that has changed the value of those lands, or any changes in the previous condition of the fixtures that changes the value of the land.

(7) "Inflation rate" means for a given year the percentage rate of change in the previous calendar year's all commodity producer price index of the bureau of labor statistics of the United States department of commerce. If the index ceases to be published, the department shall designate by rule a comparable substitute index.

(8) "Inner harbor line" means a line located and established in navigable waters between the line of ordinary high tide or ordinary high water and the outer harbor line, constituting the inner boundary of the harbor area.

(9) "Log booming" means placing logs into and taking them out of the water, assembling and disassembling log rafts before or after their movement in waterborne commerce, related handling and sorting activities taking place in the water, and the temporary holding of logs to be taken directly into a processing facility. "Log booming" does not include the temporary holding of logs to be taken directly into a vessel.

(10) "Log storage" means the water storage of logs in rafts or otherwise prepared for shipment in waterborne commerce, but does not include the temporary holding of logs to be taken directly into a vessel or processing facility.

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

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

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

- (14) "Port district" means a port district created under Title 53 RCW.
- (15) "Public utility lines" means pipes, conduits, and similar facilities for distribution of water, electricity, natural gas, telephone, other electronic communication, and sewers, including sewer outfall lines.
- (16) "Real rate of return" means the average for the most recent ten calendar years of the average rate of return on conventional real property mortgages as reported by the federal home loan bank board or any successor agency, minus the average inflation rate for the most recent ten calendar years.
- (17) "Second-class shorelands" means the shores of a navigable lake or river belonging to the state, not subject to tidal flow, lying between the line of ordinary high water and the line of navigability, and more than two miles from the corporate limits of any city.
- (18) "Second-class tidelands" means the shores of navigable tidal waters belonging to the state, lying outside of and more than two miles from the corporate limits of any city, and between the line of ordinary high tide and the line of extreme low tide.
- (19) "Shorelands," where not preceded by "first-class" or "second-class," means both first-class shorelands and second-class shorelands.
- (20) "State-owned aquatic lands" means all tidelands, shorelands, harbor areas, the beds of navigable waters, and waterways owned by the state and administered by the department or managed under RCW 79.105.420 by a port district. "State-owned aquatic lands" does not include aquatic lands owned in fee by, or withdrawn for the use of, state agencies other than the department.
- (21) "Terminal" means a point of interchange between land and water carriers, such as a pier, wharf, or group of such, equipped with facilities for care and handling of either cargo or passengers, or both.
- (22) "Tidelands," where not preceded by "first-class" or "second-class," means both first-class tidelands and second-class tidelands.
- (23) "Valuable materials" when referring to state-owned aquatic lands means any product or material within or upon lands, such as forest products, forage, stone, gravel, sand, peat, agricultural crops, and all other materials of value except mineral, coal, petroleum, and gas as provided for under chapter 79.14 RCW. However, RCW 79.140.190 and 79.140.200 also apply to materials provided for under chapter 79.14 RCW.
- (24) (a) "Water-dependent use" means a use that cannot logically exist in any location but on the water. Examples include, but are not limited to: Waterborne commerce; terminal and transfer facilities; ferry terminals; watercraft sales in conjunction with other water-dependent uses; watercraft construction, repair, and maintenance; moorage and launching facilities; aquaculture; log booming; and public fishing piers and parks.
- (b) "Water-dependent use" includes a vessel or any other floating structure, other than a floating home as defined in RCW 90.58.270(5):
- (a) [(i)] That is designed or used primarily as a residence on the water and has detachable utilities; and (b) [(ii)] whose owner or primary occupant has held an ownership interest in a marina, or has held a lease or sublease to use space in a marina, since a date prior to July 1, 2014. Any rule making necessary under this subsection
- (24) (b) is not subject to the requirements of RCW 43.21C.030(2)(c).

(25) "Water-oriented use" means a use that historically has been dependent on a waterfront location, but with existing technology could be located away from the waterfront. Examples include, but are not limited to, wood products manufacturing, watercraft sales, fish processing, petroleum refining, sand and gravel processing, log storage, and a floating home as defined in RCW 90.58.270(5)(b)(ii). For the purposes of determining rent under this chapter, water-oriented uses shall be classified as water-dependent uses if the activity either is conducted on state-owned aquatic lands leased on October 1, 1984, or was actually conducted on the state-owned aquatic lands for at least three years before October 1, 1984. If, after October 1, 1984, the activity is changed to a use other than a water-dependent use, the activity shall be classified as a nonwater-dependent use. If continuation of the existing use requires leasing additional state-owned aquatic lands and is permitted under the shoreline management act of 1971, chapter 90.58 RCW, the department may allow reasonable expansion of the water-oriented use. [2021 c 148 § 2; 2005 c 155 § 102.]

GENERAL USE, SALE, AND LEASE PROVISIONS

RCW 79.105.100 Sale and lease of state-owned aquatic lands—Blank forms of applications. The department shall prepare, and furnish to applicants, blank forms of applications for the purchase of state-owned tidelands or shorelands, otherwise permitted by RCW 79.125.200 to be sold, and the purchase of valuable material situated thereon, and the lease of state-owned tidelands, shorelands, and harbor areas, which forms shall contain such instructions as will inform and aid the applicants. [2005 c 155 § 104; 1982 1st ex.s. c 21 § 15. Formerly RCW 79.90.090.]

RCW 79.105.110 Who may purchase or lease—Application—Fees. Any person desiring to purchase any state-owned tidelands or shorelands, otherwise permitted under RCW 79.125.200 to be sold, or to purchase any valuable material situated thereon, or to lease any state-owned aquatic lands, shall file with the department an application, on the proper form which shall be accompanied by reasonable fees to be prescribed by the board in its rules, in an amount sufficient to defray the cost of performing or otherwise providing for the processing, review, or inspection of the applications or activities permitted pursuant to the applications for each category of services performed. These fees shall be credited to the resource management cost account fund in the general fund. [2005 c 155 § 105; 1982 1st ex.s. c 21 § 16. Formerly RCW 79.90.100.]

RCW 79.105.120 Survey to determine areas subject to sale or lease. The department may cause any state-owned aquatic lands to be surveyed for the purpose of ascertaining and determining the area subject to sale or lease. [2005 c 155 § 108; 1982 1st ex.s. c 21 § 18. Formerly RCW 79.90.120.]

RCW 79.105.130 Reconsideration of official acts. The department may review and reconsider any of its official acts relating to state-owned aquatic lands until such time as a lease, contract, or deed is made, executed, and finally issued, and the department may recall any lease, contract, or deed issued for the purpose of correcting mistakes or errors, or supplying omissions. [2005 c 155 § 138; 1982 1st ex.s. c 21 § 47. Formerly RCW 79.90.410.]

RCW 79.105.140 Assignment of contracts or leases. All contracts of purchase of state-owned tidelands or shorelands, otherwise permitted under RCW 79.125.200 to be sold, and all leases of state-owned tidelands, shorelands, or beds of navigable waters issued by the department shall be assignable in writing by the contract holder or lessee. The assignee shall be subject to the provisions of law applicable to the purchaser or lessee of whom they are the assignee, and shall have the same rights in all respects as the original purchaser or lessee of the lands, but only if the assignment is first approved by the department and entered upon the records in the department. [2005 c 155 § 135; 1982 1st ex.s. c 21 § 43. Formerly RCW 79.90.370.]

RCW 79.105.150 Deposit, use of proceeds from sale or lease of aquatic lands or valuable materials therefrom—Aquatic lands enhancement project grant requirements—Aquatic lands enhancement account. (1) After deduction for management costs as provided in RCW 79.64.040 and payments to towns under RCW 79.115.150(2), all moneys received by the state from the sale or lease of state-owned aquatic lands and from the sale of valuable material from state-owned aquatic lands shall be deposited in the aquatic lands enhancement account which is hereby created in the state treasury. After appropriation, these funds shall be used solely for aquatic lands enhancement projects; for the purchase, improvement, or protection of aquatic lands for public purposes; for providing and improving access to the lands; and for volunteer cooperative fish and game projects. The aquatic lands enhancement account may be used to support the shellfish program, the ballast water program, hatcheries, the Puget Sound toxic sampling program and steelhead mortality research at the department of fish and wildlife, the knotweed program at the department of agriculture, actions at the University of Washington for reducing ocean acidification, which may include the creation of a center on ocean acidification, the Puget SoundCorps program, and support of the marine resource advisory council and the Washington coastal marine advisory council. During the 2017-2019 and 2019-2021 fiscal biennia, the legislature may transfer from the aquatic lands enhancement account to the geoduck aquaculture research account for research related to shellfish aquaculture. During the 2015-2017 fiscal biennium, the legislature may transfer moneys from the aquatic lands enhancement account to the marine resources stewardship trust account.

(2) In providing grants for aquatic lands enhancement projects, the recreation and conservation funding board shall:

- (a) Require grant recipients to incorporate the environmental benefits of the project into their grant applications;
- (b) Utilize the statement of environmental benefits, consideration, except as provided in RCW 79.105.610, of whether the

applicant is a Puget Sound partner, as defined in RCW 90.71.010, whether a project is referenced in the action agenda developed by the Puget Sound partnership under RCW 90.71.310, and except as otherwise provided in RCW 79.105.630, and effective one calendar year following the development and statewide availability of urban forestry management plans and ordinances under RCW 76.15.090, whether the applicant is an entity that has been recognized, and what gradation of recognition was received, in the evergreen community designation program created in RCW 76.15.090 in its prioritization and selection process; and

(c) Develop appropriate outcome-focused performance measures to be used both for management and performance assessment of the grants.

(3) To the extent possible, the department should coordinate its performance measure system with other natural resource-related agencies as defined in RCW 43.41.270.

(4) The department shall consult with affected interest groups in implementing this section.

(5) Any project designed to address the restoration of Puget Sound may be funded under this chapter only if the project is not in conflict with the action agenda developed by the Puget Sound partnership under RCW 90.71.310. [2022 c 157 § 19. Prior: 2021 c 334 § 996; 2021 c 209 § 16; 2019 c 415 § 986; 2018 c 299 § 914; 2017 3rd sp.s. c 1 § 987; 2015 3rd sp.s. c 4 § 974; 2013 2nd sp.s. c 4 § 1002; prior: 2012 2nd sp.s. c 7 § 929; 2012 2nd sp.s. c 2 § 6008; 2011 2nd sp.s. c 9 § 911; 2011 1st sp.s. c 50 § 967; 2010 1st sp.s. c 37 § 949; 2009 c 564 § 959; 2008 c 299 § 28; 2007 c 341 § 32; prior: 2005 c 518 § 946; 2005 c 155 § 121; 2004 c 276 § 914; 2002 c 371 § 923; 2001 c 227 § 7; 1999 c 309 § 919; 1997 c 149 § 913; 1995 2nd sp.s. c 18 § 923; 1994 c 219 § 12; 1993 sp.s. c 24 § 927; 1987 c 350 § 1; 1985 c 57 § 79; 1984 c 221 § 24; 1982 2nd ex.s. c 8 § 4; 1969 ex.s. c 273 § 12; 1967 ex.s. c 105 § 3; 1961 c 167 § 9. Formerly RCW 79.90.245, 79.24.580.]

Conflict with federal requirements—Effective date—2021 c 334:

See notes following RCW 43.79.555.

Findings—Intent—2021 c 209: See note following RCW 76.15.005.

Effective date—2019 c 415: See note following RCW 28B.20.476.

Effective date—2018 c 299: See note following RCW 43.41.433.

Effective date—2017 3rd sp.s. c 1: See note following RCW 43.41.455.

Effective dates—2015 3rd sp.s. c 4: See note following RCW 28B.15.069.

Effective dates—2013 2nd sp.s. c 4: See note following RCW 2.68.020.

Effective date—2012 2nd sp.s. c 7: See note following RCW 2.68.020.

Effective date—2012 2nd sp.s. c 2: See note following RCW 43.155.050.

Effective dates—2011 2nd sp.s. c 9: See note following RCW 28B.50.837.

Effective dates—2011 1st sp.s. c 50: See note following RCW 15.76.115.

Effective date—2010 1st sp.s. c 37: See note following RCW 13.06.050.

Effective date—2009 c 564: See note following RCW 2.68.020.

Short title—2008 c 299: See note following RCW 76.15.020.

Effective date—2007 c 341: See RCW 90.71.907.

Effective date—2005 c 518: See note following RCW 28A.600.110.

Severability—Effective date—2004 c 276: See notes following RCW 43.330.167.

Severability—Effective date—2002 c 371: See notes following RCW 9.46.100.

Findings—Intent—2001 c 227: See note following RCW 43.41.270.

Severability—Effective date—1999 c 309: See notes following RCW 41.06.152.

Severability—Effective date—1997 c 149: See notes following RCW 43.08.250.

Severability—Effective date—1995 2nd sp.s. c 18: See notes following RCW 19.118.110.

Finding—1994 c 219: See note following RCW 43.88.030.

Severability—Effective dates—1993 sp.s. c 24: See notes following RCW 28A.310.020.

Effective date—1987 c 350: "This act shall take effect July 1, 1989." [1987 c 350 § 3.]

Effective date—1985 c 57: See note following RCW 18.04.105.

Effective date—1984 c 221: See RCW 79.105.902.

RCW 79.105.160 Aquatic lands—Court review of actions. Any applicant to purchase or lease any state-owned aquatic lands, or any valuable materials on state-owned aquatic lands, and any person whose property rights or interest will be affected by the sale or lease, feeling himself or herself aggrieved by any order or decision of the board, or the commissioner, concerning the order or decision, may appeal in the manner provided in RCW 79.02.030. [2005 c 155 § 137; 2003 c 334 § 606; 1982 1st ex.s. c 21 § 46. Formerly RCW 79.90.400.]

Intent—2003 c 334: See note following RCW 79.02.010.

RCW 79.105.170 Nonnative finfish aquaculture—Department may not allow as an authorized use under any new lease or use authorization.

(1) The department may not allow nonnative marine finfish aquaculture as an authorized use under any new lease or other use authorization.

(2) The department may not renew or extend a lease or other use authorization in existence on June 7, 2018, where the use includes nonnative marine finfish aquaculture. [2018 c 179 § 2.]

LEASING AND RENTAL RATES

RCW 79.105.200 Use and occupancy fee in lieu of lease—

Construction of section. (1) The department may require the payment of a use and occupancy fee in lieu of a lease where improvements have been placed without authorization on state-owned aquatic lands.

(2) Nothing in this section shall be construed to prevent the assertion of public ownership rights in any publicly owned aquatic lands, or the leasing of the aquatic lands when the leasing is not contrary to the statewide public interest. [2005 c 155 § 516; 1982 1st ex.s. c 21 § 102. Formerly RCW 79.94.170.]

RCW 79.105.210 Aquatic lands—Preservation and enhancement of water-dependent uses—Leasing authority. (1) The management of state-owned aquatic lands shall preserve and enhance water-dependent uses. Water-dependent uses shall be favored over other uses in state-owned aquatic land planning and in resolving conflicts between competing lease applications. In cases of conflict between water-dependent uses, priority shall be given to uses which enhance renewable resources, waterborne commerce, and the navigational and biological capacity of the waters, and to statewide interests as distinguished from local interests.

(2) Nonwater-dependent use of state-owned aquatic lands is a low-priority use providing minimal public benefits and shall not be permitted to expand or be established in new areas except in exceptional circumstances where it is compatible with water-dependent uses occurring in or planned for the area.

(3) The department shall consider the natural values of state-owned aquatic lands as wildlife habitat, natural area preserve, representative ecosystem, or spawning area prior to issuing any initial lease or authorizing any change in use. The department may withhold from leasing lands which it finds to have significant natural values, or may provide within any lease for the protection of such values.

(4) The power to lease state-owned aquatic lands is vested in the department, which has the authority to make leases upon terms, conditions, and length of time in conformance with the state Constitution and chapters 79.105 through 79.140 RCW.

(5) State-owned aquatic lands shall not be leased to persons or organizations which discriminate on the basis of race, color, creed, religion, sex, age, or disability. [2020 c 274 § 67; 2005 c 155 § 143; 1984 c 221 § 3. Formerly RCW 79.90.460.]

RCW 79.105.220 Lease of tidelands in front of public parks. The department may lease state-owned tidelands that are in front of state parks only with the approval of the state parks and recreation commission. The department may lease bedlands in front of state parks only after the department has consulted with the state parks and recreation commission. [2005 c 155 § 145. FORMERLY PART OF RCW 79.94.010; 2002 c 152 § 2; 1984 c 221 § 5. Formerly RCW 79.90.470.]

Findings—Severability—2002 c 152: See notes following RCW 79.110.240.

RCW 79.105.230 Use for public parks or public recreation purposes. Use for public parks or public recreation purposes shall be granted without charge if the state-owned aquatic lands and improvements are available to the general public on a first-come, first-served basis and are not managed to produce a profit for the operator or a concessionaire. [2005 c 155 § 144.]

RCW 79.105.240 Determination of annual rent rates for lease of aquatic lands for water-dependent uses. Except as otherwise provided by this chapter, annual rent rates for the lease of state-owned aquatic lands for water-dependent uses shall be determined as follows:

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

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

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

(3) The annual rent shall be:

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

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

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

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

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

(7) For all new leases for other water-dependent uses, issued after December 31, 1997, the initial annual water-dependent rent shall be determined by the methods in subsections (1) through (6) of this section. [2005 c 155 § 147; 2003 c 310 § 1; 1998 c 185 § 2; 1984 c 221 § 7. Formerly RCW 79.90.480.]

Effective date—2003 c 310: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 14, 2003]." [2003 c 310 § 2.]

Findings—Report—1998 c 185: "(1) The legislature finds that the current method for determining water-dependent rental rates for aquatic land leases may not be achieving the management goals in RCW 79.90.455. The current method for setting rental rates, as well as alternatives to the current methods, should be evaluated in light of achieving management goals for aquatic lands leases. The legislature further finds that there should be no further increases in water-dependent rental rates for marina leases before the completion of this evaluation.

(2) The department of natural resources shall study and prepare a report to the legislature on alternatives to the current method for determination of water-dependent rent set forth in RCW 79.90.480. The report shall be prepared with the assistance of appropriate outside economic expertise and stakeholder involvement. Affected stakeholders shall participate with the department by providing information necessary to complete this study. For each alternative, the report shall:

- (a) Describe each method and the costs and benefits of each;
- (b) Compare each with the current method of calculating rents;
- (c) Provide the private industry perspective;
- (d) Describe the public perspective;
- (e) Analyze the impact on state lease revenue;
- (f) Evaluate the impacts of water-dependent rates on economic development in economically distressed counties; and
- (g) Evaluate the ease of administration.

(3) The report shall be presented to the legislature by November 1, 1998, with the recommendations of the department clearly identified. The department's recommendations shall include draft legislation as necessary for implementation of its recommendations." [1998 c 185 § 1.]

RCW 79.105.250 Log storage rents. (1) Until June 30, 1989, the log storage rents per acre shall be the average rents the log storage leases in effect on July 1, 1984, would have had under the formula for water-dependent leases as set out in RCW 79.105.240, except that the aquatic land values shall be thirty percent of the assessed value of the abutting upland parcels exclusive of improvements, if they are assessed. If the abutting upland parcel is not assessed, the nearest assessed upland parcel shall be used.

(2) On July 1, 1989, and every four years thereafter, the base log storage rents established under subsection (1) of this section shall be adjusted in proportion to the change in average water-dependent lease rates per acre since the date the log storage rates were last established under this section.

(3) The annual rent shall be adjusted by the inflation rate each year in which the rent is not determined under subsection (1) or (2) of this section.

(4) If the lease provides for seasonal use so that portions of the leased area are available for public use without charge part of the year, the annual rent may be discounted to reflect such public use in accordance with rules adopted by the board. [2005 c 155 § 148; 1984 c 221 § 8. Formerly RCW 79.90.485.]

RCW 79.105.260 Rent for leases in effect October 1, 1984. (1) For leases in effect on October 1, 1984, the rent shall remain at the annual rate in effect on September 30, 1984, until the next lease anniversary date, at which time rent established under RCW 79.105.240 or 79.105.250 shall become effective. If the first rent amount established is an increase of more than one hundred dollars and is more than thirty-three percent above the rent in effect on September 30, 1984, the annual rent shall not increase in any year by more than thirty-three percent of the difference between the previous rent and the rent established under RCW 79.105.240 or 79.105.250. If the first rent amount established under RCW 79.105.240 or 79.105.250 is more than thirty-three percent below the rent in effect on September 30, 1984, the annual rent shall not decrease in any year by more than thirty-three percent of the difference between the previous rent and the rent established under RCW 79.105.240 or 79.105.250. Thereafter, notwithstanding any other provision of this title, the annual rental established under RCW 79.105.240 or 79.105.250 shall not increase more than fifty percent in any year.

(2) This section applies only to leases of state-owned aquatic lands subject to RCW 79.105.240 or 79.105.250. [2005 c 155 § 149; 1984 c 221 § 9. Formerly RCW 79.90.490.]

RCW 79.105.270 Aquatic lands—Leases/rents for nonwater-dependent uses. Leases for nonwater-dependent uses of state-owned aquatic lands shall be charged the fair market rental value of the leased lands, determined in accordance with appraisal techniques specified by rule. However, rents for nonwater-dependent uses shall always be more than the amount that would be charged as rent for a water-dependent use of the same parcel. [2005 c 155 § 150; 1984 c 221 § 11. Formerly RCW 79.90.500.]

RCW 79.105.280 Rents and fees for recovery of mineral or geothermal resources. Rents and fees for the mining or other recovery of mineral or geothermal resources shall be established through competitive bidding, negotiations, or as otherwise provided by statute. [2005 c 155 § 151. FORMERLY PART OF RCW 79.90.500.]

RCW 79.105.290 Aquatic lands—Rents for multiple uses. If water-dependent and nonwater-dependent uses occupy separate portions of the same leased parcel of state-owned aquatic land, the rental rate for each use shall be that established for the use by this chapter, prorated in accordance with the proportion of the whole parcel that each use occupies. If water-dependent and nonwater-dependent uses occupy the same portion of a leased parcel of state-owned aquatic land, the rental rate for the parcel shall be subject to negotiation with the department taking into account the proportion of the improvements each use occupies. [2005 c 155 § 152; 1984 c 221 § 12. Formerly RCW 79.90.505.]

RCW 79.105.300 Aquatic lands—Lease for water-dependent use—Rental for nonwater-dependent use. If a parcel leased for water-dependent uses is used for an extended period of time, as defined by rule of the department, for a nonwater-dependent use, the rental for the nonwater-dependent use shall be negotiated with the department. [1984 c 221 § 13. Formerly RCW 79.90.510.]

RCW 79.105.310 Aquatic lands—Rent for improvements. (1) Except as agreed between the department and the lessee prior to construction of the improvements, rent shall not be charged under any lease of state-owned aquatic lands for improvements, including fills, authorized by the department or installed by the lessee or its predecessor before June 1, 1971, so long as the lands remain under a lease or succession of leases without a period of three years in which no lease is in effect or a bona fide application for a lease is pending.

(2) If improvements were installed under a good faith belief that a state-owned aquatic lands lease was not necessary, rent shall not be charged for the improvements if, within ninety days after specific written notification by the department that a lease is required, the owner either applies for a lease or files suit to determine if a lease is required. [2005 c 155 § 153; 1984 c 221 § 14. Formerly RCW 79.90.515.]

RCW 79.105.320 Aquatic lands—Administrative review of proposed rent. The manager shall, by rule, provide for an administrative review of any state-owned aquatic land rent proposed to be charged. The rules shall require that the lessee or applicant for release file a request for review within thirty days after the manager has notified the lessee or applicant of the rent due. For leases issued by the department, the final authority for the review rests with the board. For leases managed under RCW 79.105.420, the final authority for the review rests with the appropriate port commission. If the request for review is made within thirty days after the manager's final determination as to the rental, the lessee may pay rent at the preceding year's rate pending completion of the review, and shall pay any additional rent or be entitled to a refund, with interest thirty days after announcement of the decision. The interest rate shall be fixed by rule adopted by the board and shall not be less than six percent per annum. Nothing in this section abrogates the right of an aggrieved party to pursue legal remedies. For purposes of this

section, "manager" is the department except where state-owned aquatic lands are managed by a port district, in which case "manager" is the port district. [2005 c 155 § 154; 1991 c 64 § 1; 1984 c 221 § 15. Formerly RCW 79.90.520.]

RCW 79.105.330 Aquatic lands—Security for leases for more than one year. For any lease for a term of more than one year, the department may require that the rent be secured by insurance, bond, or other security satisfactory to the department in an amount not exceeding two years' rent. The department may require additional security for other lease provisions. The department shall not require cash deposits exceeding one-twelfth of the annual rental. [1984 c 221 § 16. Formerly RCW 79.90.525.]

RCW 79.105.340 Aquatic lands—Payment of rent. If the annual rent charged for the use of a parcel of state-owned aquatic lands exceeds four thousand dollars, the lessee may pay on a prorated quarterly basis. If the annual rent exceeds twelve thousand dollars, the lessee may pay on a prorated monthly basis. [1984 c 221 § 17. Formerly RCW 79.90.530.]

RCW 79.105.350 Aquatic lands—Interest rate. The interest rate and all interest rate guidelines shall be fixed by rule adopted by the board and shall not be less than six percent per annum. [2005 c 155 § 155; 1991 c 64 § 2; 1984 c 221 § 18. Formerly RCW 79.90.535.]

RCW 79.105.360 Adoption of rules. The department shall adopt such rules as are necessary to carry out the purposes of RCW 79.105.010, 79.105.030, 79.105.050, 79.105.210, 79.105.220, 79.105.240 through 79.105.260, 79.105.270, 79.105.290 through 79.105.350, 79.105.400, 79.105.420, 79.130.070, and 79.135.100, specifically including criteria for determining under RCW 79.105.240(4) when an abutting upland parcel has been inappropriately assessed and for determining the nearest comparable upland parcel used for water-dependent uses. [2005 c 155 § 156; 1984 c 221 § 19. Formerly RCW 79.90.540.]

OTHER CONVEYANCES

RCW 79.105.400 Authority to exchange state-owned tidelands and shorelands—Rules—Limitation. The department may exchange state-owned tidelands and shorelands with private and other public landowners if the exchange is in the public interest and will actively contribute to the public benefits established in RCW 79.105.030. The board shall adopt rules which establish criteria for determining when a proposed exchange is in the public interest and actively contributes to the public benefits established in RCW 79.105.030. The department may not exchange state-owned harbor areas or waterways. [2005 c 155 § 142; 1995 c 357 § 1. Formerly RCW 79.90.457.]

RCW 79.105.410 Gifts of aquatic land—Procedures and criteria.

(1) The department is authorized to accept gifts of aquatic land within the state, including tidelands, shorelands, harbor areas, and the beds of navigable waters, which shall become part of the state-owned aquatic land base. Consistent with RCW 79.105.030, the department must develop procedures and criteria that state the manner in which gifts of aquatic land, received after July 27, 2003, may occur. No gift of aquatic land may be accepted until: (a) An appraisal of the value of the land has been prepared; (b) an environmental site assessment has been conducted; and (c) the title property report has been examined and approved by the attorney general of the state. The results of the appraisal, the site assessment, and the examination of the title property report must be submitted to the board before the department may accept a gift of aquatic land.

(2) The authorization to accept gifts of aquatic land within the state extends to aquatic land accepted as gifts prior to July 27, 2003. [2005 c 155 § 163; 2003 c 176 § 1. Formerly RCW 79.90.580.]

RCW 79.105.420 Management of certain aquatic lands by port district—Agreement—Rent—Model management agreement. (1) Upon request of a port district, the department and port district may enter into an agreement authorizing the port district to manage state-owned aquatic lands abutting or used in conjunction with and contiguous to uplands owned, leased, or otherwise managed by a port district, for port purposes as provided in Title 53 RCW. The agreement shall include, but not be limited to, provisions defining the specific area to be managed, the term, conditions of occupancy, reservations, periodic review, and other conditions to ensure consistency with the state Constitution and the policies of this chapter. If a port district acquires operating management, lease, or ownership of real property which abuts state-owned aquatic lands currently under lease from the state to a person other than the port district, the port district shall manage state-owned aquatic lands if: (a) The port district acquires the leasehold interest in accordance with state law, or (b) the current lessee and the department agree to termination of the current lease to accommodate management by the port. The administration of state-owned aquatic lands covered by a management agreement shall be consistent with the aquatic land policies of chapters 79.105 through 79.140 RCW and the implementing rules adopted by the department. The administrative procedures for management of the lands shall be those of Title 53 RCW.

(2) No rent is due the state for the use of state-owned aquatic lands managed under this section for water-dependent or water-oriented uses. If a port district manages state-owned aquatic lands under this section and either leases or otherwise permits any person to use the lands, the rental fee attributable to the state-owned aquatic land only shall be comparable to the rent charged lessees for the same or similar uses by the department. However, a port district need not itemize for the lessee any charges for state-owned aquatic lands improved by the port district for use by carriers by water. If a port leases state-owned aquatic lands to any person for nonwater-dependent use, eighty-five percent of the revenue attributable to the rent of the state-owned aquatic land only shall be paid to the state.

(3) Upon application for a management agreement, and so long as the application is pending and being diligently pursued, no rent is

due the department for the lease by the port district of state-owned aquatic lands included within the application for water-dependent or water-oriented uses.

(4) The department and representatives of the port industry shall develop a proposed model management agreement which shall be used as the basis for negotiating the management agreements required by this section. The model management agreement shall be reviewed and approved by the board. [2005 c 155 § 146; 1984 c 221 § 6. Formerly RCW 79.90.475.]

RCW 79.105.430 Private recreational docks—Mooring buoys. (1)

The abutting residential owner to state-owned shorelands, tidelands, or related beds of navigable waters, other than harbor areas, may install and maintain without charge a dock on the areas if used exclusively for private recreational purposes and the area is not subject to prior rights, including any rights of upland, tideland, or shoreland owners as provided in RCW 79.125.400, 79.125.460, 79.125.410, and 79.130.010. The dock cannot be sold or leased separately from the upland residence. The dock cannot be used to moor boats for commercial or residential use. This permission is subject to applicable local, state, and federal rules and regulations governing location, design, construction, size, and length of the dock. Nothing in this subsection (1) prevents the abutting owner from obtaining a lease if otherwise provided by law.

(2) The abutting residential owner to state-owned shorelands, tidelands, or related beds of navigable waters, other than harbor areas, may install and maintain a mooring buoy without charge if the boat that is moored to the buoy is used for private recreational purposes, the area is not subject to prior rights, including any rights of upland, tideland, or shoreland owners as provided in RCW 79.125.400, 79.125.460, 79.125.410, and 79.130.010, and the buoy will not obstruct the use of mooring buoys previously authorized by the department.

(a) The buoy must be located as near to the upland residence as practical, consistent with applicable rules and regulations and the provisions of this section. The buoy must be located, or relocated if necessary, to accommodate the use of lawfully installed and maintained buoys.

(b) If two or more residential owners, who otherwise qualify for free use under the provisions of this section, are in dispute over assertion of rights to install and maintain a mooring buoy in the same location, they may seek formal settlement through adjudication in superior court for the county in which the buoy site is located. In the adjudication, preference must be given to the residential owner that first installed and continually maintained and used a buoy on that site, if it meets all applicable rules, regulations, and provisions of this section, and then to the owner of the residential property nearest the site. Nothing in this section requires the department to mediate or otherwise resolve disputes between residential owners over the use of the same site for a mooring buoy.

(c) The buoy cannot be sold or leased separately from the abutting residential property. The buoy cannot be used to moor boats for commercial or residential use, nor to moor boats over sixty feet in length.

(d) If the department determines that it is necessary for secure moorage, the abutting residential owner may install and maintain a second mooring buoy, under the same provisions as the first, the use of which is limited to a second mooring line to the boat moored at the first buoy.

(e) The permission granted in this subsection (2) is subject to applicable local, state, and federal rules and regulations governing location, design, installation, maintenance, and operation of the mooring buoy, anchoring system, and moored boat. Nothing in this subsection (2) prevents a boat owner from obtaining a lease if otherwise provided by law. This subsection (2) also applies to areas that have been designated by the commissioner or the fish and wildlife commission as aquatic reserves.

(3) This permission to install and maintain a recreational dock or mooring buoy may be revoked by the department, or the department may direct the owner of a recreational dock or mooring buoy to relocate their dock or buoy, if the department makes a finding of public necessity to protect waterward access, ingress rights of other landowners, public health or safety, or public resources. Circumstances prompting a finding of public necessity may include, but are not limited to, the dock, buoy, anchoring system, or boat posing a hazard or obstruction to navigation or fishing, contributing to degradation of aquatic habitat, or contributing to decertification of shellfish beds otherwise suitable for commercial or recreational harvest. The revocation may be appealed as provided for under RCW 79.105.160.

(4) Nothing in this section authorizes a boat owner to abandon a vessel at a recreational dock, mooring buoy, or elsewhere. [2005 c 155 § 106; 2002 c 304 § 1; 2001 c 277 § 1; 1989 c 175 § 170; 1983 2nd ex.s. c 2 § 2. Formerly RCW 79.90.105.]

Effective date—1989 c 175: See note following RCW 34.05.010.

DREDGED MATERIAL DISPOSAL

RCW 79.105.500 Aquatic land dredged material disposal sites—Findings. The legislature finds that the department provides, manages, and monitors aquatic land dredged material disposal sites on state-owned aquatic lands for materials dredged from rivers, harbors, and shipping lanes. These disposal sites are approved through a cooperative planning process by the departments of natural resources and ecology, the United States army corps of engineers, and the United States environmental protection agency in cooperation with the Puget Sound partnership. These disposal sites are essential to the commerce and well-being of the citizens of the state of Washington. Management and environmental monitoring of these sites are necessary to protect environmental quality and to assure appropriate use of state-owned aquatic lands. The creation of an aquatic land dredged material disposal site account is a reasonable means to enable and facilitate proper management and environmental monitoring of these disposal sites. [2007 c 341 § 58; 2005 c 155 § 158; 1987 c 259 § 1. Formerly RCW 79.90.550.]

Effective date—2007 c 341: See RCW 90.71.907.

Effective date—1987 c 259: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect on July 1, 1987." [1987 c 259 § 5.]

RCW 79.105.510 Aquatic land dredged material disposal site account. The aquatic land dredged material disposal site account is established in the state treasury. The account shall consist of funds appropriated to the account; funds transferred or paid to the account pursuant to settlements; court or administrative agency orders or judgments; gifts and grants to the account; and all funds received by the department from users of aquatic land dredged material disposal sites. After appropriation, moneys in the fund may be spent only for the management and environmental monitoring of aquatic land dredged material disposal sites. The account is subject to the allotment procedure provided under chapter 43.88 RCW. [2005 c 155 § 159; 1991 sp.s. c 13 § 63; 1987 c 259 § 2. Formerly RCW 79.90.555.]

Effective dates—Severability—1991 sp.s. c 13: See notes following RCW 18.08.240.

Effective date—1987 c 259: See note following RCW 79.105.500.

RCW 79.105.520 Fees for use of aquatic land dredged material disposal sites authorized. The department shall estimate the costs of site management and environmental monitoring at aquatic land dredged material disposal sites and may, by rule, establish fees for use of the sites in amounts no greater than necessary to cover the estimated costs. All such revenues shall be placed in the aquatic land dredged material disposal site account under RCW 79.105.510. [2005 c 155 § 160; 1987 c 259 § 3. Formerly RCW 79.90.560.]

Effective date—1987 c 259: See note following RCW 79.105.500.

OTHER MANAGEMENT PROVISIONS

RCW 79.105.600 Archaeological activities on state-owned aquatic lands—Agreements, leases, or other conveyances. After consultation with the *director of community, trade, and economic development, the department may enter into agreements, leases, or other conveyances for archaeological activities on state-owned aquatic lands. The agreements, leases, or other conveyances may contain those conditions as are required for the department to comply with its legal rights and duties. All agreements, leases, or other conveyances, shall be issued in accordance with the terms of chapters 79.105 through 79.140 RCW. [2005 c 155 § 161; 1995 c 399 § 210; 1988 c 124 § 9. Formerly RCW 79.90.565.]

***Reviser's note:** The "director of community, trade, and economic development" was renamed the "director of commerce" by 2009 c 565.

Intent—Application—1988 c 124: See notes following RCW 27.53.030.

RCW 79.105.610 Puget Sound partners. When administering funds under this chapter, the *interagency committee for outdoor recreation shall give preference only to Puget Sound partners, as defined in RCW 90.71.010, in comparison to other entities that are eligible to be included in the definition of Puget Sound partner. Entities that are not eligible to be a Puget Sound partner due to geographic location, composition, exclusion from the scope of the Puget Sound action agenda developed by the Puget Sound partnership under RCW 90.71.310, or for any other reason, shall not be given less preferential treatment than Puget Sound partners. [2007 c 341 § 33.]

***Reviser's note:** Chapter 241, Laws of 2007 changed the name of the interagency committee for outdoor recreation to the recreation and conservation funding board.

Effective date—2007 c 341: See RCW 90.71.907.

RCW 79.105.620 City use of state-owned aquatic lands for publicly owned marina—Reduced fee lease—Expiration date. (Expires July 1, 2029.) (1) (a) A city with a population between twenty thousand and twenty-five thousand on June 12, 2008, and that currently operates a publicly owned marina may enter into a reduced fee lease authorizing the city to use state-owned aquatic lands for the purpose of operating a publicly owned marina. The office of financial management's population estimate must be used to determine a city's population for purposes of this section. The lease period may not exceed twenty years.

(b) No rent is due the state for the use of state-owned aquatic lands for the first ten years under such a lease. During subsequent years under such a lease, rent is due for only those lands that have been included under a previous aquatic land lease for the marina. The lease may not be renewed, extended, or put into holdover.

(2) A city choosing to enter into a lease as provided in subsection (1) of this section must do so within one year of June 12, 2008. Prior to entering into such a lease, the city must be in good standing with the department and must have paid all amounts owed the department including any accrued interest.

(3) State-owned aquatic lands that may be included in the lease are limited only to those lands included in the most recent expired lease with the city for the marina, along with any state-owned aquatic lands immediately adjacent to those lands. Only those marina operations conducted directly by the city may be included within the leased area.

(4) If a city chooses to enter into an agreement as provided in subsection (1) of this section, the city is not eligible to apply for grants from the aquatic lands enhancement account created under RCW 79.105.150 for the first ten years of the lease.

(5) Upon expiration of the twenty-year lease, the city may enter into a new lease for the use of state-owned aquatic lands or vacate the lands as agreed to in the expiring lease. To ensure the consistent statewide application of aquatic land management principles, the new lease must be completed in accordance with all applicable sections of this title.

(6) This section expires July 1, 2029. [2008 c 132 § 1.]

RCW 79.105.630 Administering funds—Preference to an evergreen community. When administering funds under this chapter, the recreation and conservation funding board shall give preference only to an evergreen community recognized under RCW 76.15.090 in comparison to other entities that are eligible to receive evergreen community designation. Entities not eligible for designation as an evergreen community shall not be given less preferential treatment than an evergreen community. [2021 c 209 § 23; 2008 c 299 § 33.]

Findings—Intent—2021 c 209: See note following RCW 76.15.005.

Short title—2008 c 299: See note following RCW 76.15.020.

RCW 79.105.902 Effective date—1984 c 221. This act shall take effect on October 1, 1984. [1984 c 221 § 32. Formerly RCW 79.90.902.]