

TESTIMONY OF JAMES P. CREEDON  
SECRETARY  
DEPARTMENT OF GENERAL SERVICES  
HOUSE STATE GOVERNMENT COMMITTEE  
FEBRUARY 6, 2008

Chairman Josephs, Chairman Baker and members of the Committee, thank you for giving me the opportunity to appear before you today to again discuss the practice of granting what are known as riparian rights to developers who own land that adjoins navigable waterways of the Commonwealth. I am joined by Cathy Myers, Deputy Secretary for Water in the Department of Environmental Protection.

As you are probably already aware, the Commonwealth owns the beds of navigable waterways, referred to as "submerged lands." When someone wants to develop the adjoining property in a manner that requires some use of those submerged lands, it is necessary to receive a grant of a right to do so from the Commonwealth. Depending upon the size of the portion of the submerged lands required and the use of those lands, the grant is made in the form of either a license or a lease.

Following numerous requests for long-term leases for new residential development along the Delaware River, the Department of General Services requested, in the spring of 2006, that the legislature suspend consideration of bills dealing with riparian rights until the administration had an opportunity to develop a policy for granting leases and for setting their value. Past practice had been to grant these leases for nominal consideration and with little consistency for public access. We appreciate the fact that the legislature voluntarily supported this suspension and allowed us the time to develop a policy.

In May of 2007, I met with this committee to review our policy that would charge a rent of \$5 per square foot for all areas in which the Commonwealth has been requested to grant riparian rights. While the policy was developed in response to the residential requests, as we were completing our work, the Gaming Commission granted licenses to two gaming facilities along the Delaware waterfront. We concluded that the policy needed to be adapted to deal with the potential need to grant similar rights for gaming operations.

The working group considered different methods of valuation including appraisals, assessed values or transaction based fees. However, after careful consideration, we determined that a flat fee based on square footage is the best method because of its consistency, transparency, and ease in which the rent can be built into the project and financed. This method is similar to DEP's charge for other submerged lands when leases are not required.

We also recommend that the Commonwealth give a rent credit to developers for improvements to the public infrastructure above those routinely required by DEP and DGS to protect the public's right to river access. Developers may have the opportunity to obtain a credit against the rental fee by spending a portion of the proposed rent on infrastructure needs such as extraordinary traffic improvements or by building exceptional public amenities that allow

greater access to the waterfront. If a special services district for the riverfront or other non-profit were created, contributions to these organizations would also be considered for a credit.

We developed model legislation and model lease forms based on legislation previously considered by the House and Senate. Both the legislation and lease would include requirements related to preserving public access to the waterfront – including public walkways, signage and free public parking related to the walkways. In addition, the lease includes the requirement that improvements be constructed within 5 years and that the developer remains responsible to pay for maintenance of public improvements.

House Bills 1621 and 1627 expanded on the model legislation by charging an additional \$1 per square foot for improvements on submerged lands and requiring the developer to reach an agreement with a local neighborhood group. As you know, the administration supports both bills in their current form.

Since our policy was proposed, Sugarhouse elected to request the riparian permit from the City of Philadelphia. We supported this effort to move the casino development forward. The city recently retracted this permit. This matter is now the subject of pending litigation before the Supreme Court. Therefore I am unable to answer questions related to this issue.

Thank you for inviting me this morning. We look forward to continuing working with you on this issue. I will now turn to Deputy Secretary Myers to address your specific questions regarding the boundaries of submerged lands.