

2 **SB 5776** - S AMD - 428

3 By Senators Fraser, Swecker, Haugen and A. Anderson

4 ADOPTED AS AMENDED 4/23/95

5 Strike everything after the enacting clause and insert the  
6 following:

7 **Sec. 1.** RCW 35.44.020 and 1987 c 242 s 4 are each amended to read  
8 as follows:

9 There shall be included in the cost and expense of every local  
10 improvement for assessment against the property in the district created  
11 to pay the same, or any part thereof:

12 (1) The cost of all of the construction or improvement authorized  
13 for the district including, but not limited to, that portion of the  
14 improvement within the street intersections;

15 (2) The estimated cost and expense of all engineering and surveying  
16 necessary for the improvement done under the supervision of the city or  
17 town engineer;

18 (3) The estimated cost and expense of ascertaining the ownership of  
19 the lots or parcels of land included in the assessment district;

20 (4) The estimated cost and expense of advertising, mailing, and  
21 publishing all necessary notices;

22 (5) The estimated cost and expense of accounting, clerical labor,  
23 and of books and blanks extended or used on the part of the city or  
24 town clerk and city or town treasurer in connection with the  
25 improvement;

26 (6) All cost of the acquisition of rights of way, property,  
27 easements, or other facilities or rights, including without limitation  
28 rights to use property, facilities, or other improvements appurtenant,  
29 related to, and/or useful in connection with the local improvement,  
30 whether by eminent domain, purchase, gift, payment of connection  
31 charges, capacity charges, or other similar charges or in any other  
32 manner;

33 (7) The cost for legal, financial, and appraisal services and any  
34 other expenses incurred by the city, town, or public corporation for  
35 the district or in the formation thereof, or by the city, town, or  
36 public corporation in connection with such construction or improvement

1 and in the financing thereof, including the issuance of any bonds and  
2 the cost of providing for increases in the local improvement guaranty  
3 fund, or providing for a separate reserve fund or other security for  
4 the payment of principal of and interest on such bonds.

5 Any of the costs set forth in this section may be excluded from the  
6 cost and expense to be assessed against the property in such local  
7 improvement district and may be paid from any other moneys available  
8 therefor if the legislative body of the city or town so designates by  
9 ordinance at any time.

10 **Sec. 2.** RCW 43.21B.160 and 1990 c 65 s 5 are each amended to read  
11 as follows:

12 There shall be included in the cost and expense of every local  
13 improvement for assessment against the property in the district created  
14 to pay the same, or any part thereof:

15 (1) The cost of all of the construction or improvement authorized  
16 for the district including, but not limited to, that portion of the  
17 improvement within the street intersections;

18 (2) The estimated cost and expense of all engineering and surveying  
19 necessary for the improvement done under the supervision of the city or  
20 town engineer;

21 (3) The estimated cost and expense of ascertaining the ownership of  
22 the lots or parcels of land included in the assessment district;

23 (4) The estimated cost and expense of advertising, mailing, and  
24 publishing all necessary notices;

25 (5) The estimated cost and expense of accounting, clerical labor,  
26 and of books and blanks extended or used on the part of the city or  
27 town clerk and city or town treasurer in connection with the  
28 improvement;

29 (6) All cost of the acquisition of rights of way, property,  
30 easements, or other facilities or rights, including without limitation  
31 rights to use property, facilities, or other improvements appurtenant,  
32 related to, and/or useful in connection with the local improvement,  
33 whether by eminent domain, purchase, gift, payment of connection  
34 charges, capacity charges, or other similar charges or in any other  
35 manner;

36 (7) The cost for legal, financial, and appraisal services and any  
37 other expenses incurred by the city, town, or public corporation for  
38 the district or in the formation thereof, or by the city, town, or

1 public corporation in connection with such construction or improvement  
2 and in the financing thereof, including the issuance of any bonds and  
3 the cost of providing for increases in the local improvement guaranty  
4 fund, or providing for a separate reserve fund or other security for  
5 the payment of principal of and interest on such bonds.

6 Any of the costs set forth in this section may be excluded from the  
7 cost and expense to be assessed against the property in such local  
8 improvement district and may be paid from any other moneys available  
9 therefor if the legislative body of the city or town so designates by  
10 ordinance at any time. In all appeals (~~involving a formal~~  
11 ~~hearing~~), the hearings board shall have all powers relating to  
12 administration of oaths, issuance of subpoenas, and taking of  
13 depositions as are granted to agencies in chapter 34.05 RCW, the  
14 Administrative Procedure Act. The hearings board, and each member  
15 thereof, shall be subject to all duties imposed upon, and shall have  
16 all powers granted to, an agency by those provisions of chapter 34.05  
17 RCW relating to adjudicative proceedings. In the case of appeals  
18 within the jurisdiction of the hearings board, the hearings board, or  
19 any member thereof, may obtain such assistance, including the making of  
20 field investigations, from the staff of the director as the hearings  
21 board, or any member thereof, may deem necessary or appropriate. Any  
22 communication, oral or written, from the staff of the director to the  
23 hearings board shall be presented only in an open hearing.

24 **Sec. 3.** RCW 43.21B.170 and 1970 ex.s. c 62 s 47 are each amended  
25 to read as follows:

26 All proceedings(~~(, including both formal and informal hearings,)~~)  
27 before the hearings board or any of its members shall be conducted in  
28 accordance with such rules of practice and procedure as the hearings  
29 board may prescribe. The hearings board shall publish such rules and  
30 arrange for the reasonable distribution thereof.

31 **Sec. 4.** RCW 43.21B.190 and 1994 c 253 s 7 are each amended to read  
32 as follows:

33 Within thirty days after the final decision and order of the  
34 hearings board upon such an appeal has been communicated to the  
35 interested parties, such interested party aggrieved by the decision and  
36 order of the hearings board may appeal to the superior court. (~~In all~~  
37 ~~appeals involving a decision or an order of the hearings board after an~~

1 informal hearing, the petition shall be filed in the superior court for  
2 the county of the petitioner's residence or principal place of  
3 business, or in the absence of a residence or principal place of  
4 business, for Thurston county. Such appeal may be perfected by filing  
5 with the clerk of the superior court a notice of appeal, and by serving  
6 a copy thereof by mail, or personally on the director, the air  
7 pollution control boards or authorities, established pursuant to  
8 chapter 70.94 RCW or on the board as the case may be. The hearings  
9 board shall serve upon the appealing party, the director, the air  
10 pollution control board or authorities established pursuant to chapter  
11 70.94 RCW, or the board, as the case may be, and on any other party  
12 appearing at the hearings board's proceeding, and file with the clerk  
13 of the court before trial, a certified copy of the hearings board's  
14 decision and order. Appellate review of a decision of the superior  
15 court may be sought as in other civil cases. No bond shall be required  
16 on appeals to the superior court or on review by the supreme court  
17 unless specifically required by the judge of the superior court.))

18 **Sec. 5.** RCW 34.05.518 and 1988 c 288 s 503 are each amended to  
19 read as follows:

20 (1) The final decision of an administrative agency in an  
21 adjudicative proceeding under this chapter may be directly reviewed by  
22 the court of appeals either (a) upon certification by the superior  
23 court pursuant to this section or (b) if the final decision is from an  
24 environmental board as defined in subsection (3) of this section, upon  
25 acceptance by the court of appeals after a certificate of appealability  
26 has been filed by the environmental board that rendered the final  
27 decision.

28 (2) For direct review upon certification by the superior court, an  
29 application for direct review must be filed with the superior court  
30 within thirty days of the filing of the petition for review in superior  
31 court. The superior court may certify a case for direct review only if  
32 the judicial review is limited to the record of the agency proceeding  
33 and the court finds that:

34 ((+1)) (a) Fundamental and urgent issues affecting the future  
35 administrative process or the public interest are involved which  
36 require a prompt determination;

37 ((+2)) (b) Delay in obtaining a final and prompt determination of  
38 such issues would be detrimental to any party or the public interest;

1       ~~((3))~~ (c) An appeal to the court of appeals would be likely  
2 regardless of the determination in superior court; and

3       ~~((4))~~ (d) The appellate court's determination in the proceeding  
4 would have significant precedential value.

5       Procedures for certification shall be established by court rule.

6       (3)(a) For the purposes of direct review of final decisions of  
7 environmental boards, environmental boards include those boards  
8 identified in RCW 43.21B.005 and growth management hearings boards as  
9 identified in RCW 36.70A.250.

10       (b) An environmental board may issue a certificate of appealability  
11 if it finds that delay in obtaining a final and prompt determination of  
12 the issues would be detrimental to any party or the public interest and  
13 either:

14       (i) Fundamental and urgent state-wide or regional issues are  
15 raised; or

16       (ii) The proceeding is likely to have significant precedential  
17 value.

18       (4) The environmental board shall state in the certificate of  
19 appealability which criteria it applied, explain how that criteria was  
20 met, and file with the certificate a copy of the final decision.

21       (5) For an appellate court to accept direct review of a final  
22 decision of an environmental board, it shall consider the same criteria  
23 outlined in subsection (3) of this section.

24       (6) The procedures for direct review of final decisions of  
25 environmental boards include:

26       (a) Within thirty days after filing the petition for review with  
27 the superior court, a party may file an application for direct review  
28 with the superior court and serve the appropriate environmental board  
29 and all parties of record. The application shall request the  
30 environmental board to file a certificate of appealability.

31       (b) If an issue on review is the jurisdiction of the environmental  
32 board, the board may file an application for direct review on that  
33 issue.

34       (c) The environmental board shall have thirty days to grant or deny  
35 the request for a certificate of appealability and its decision shall  
36 be filed with the superior court and served on all parties of record.

37       (d) If a certificate of appealability is issued, the parties shall  
38 have fifteen days from the date of service to file a notice of  
39 discretionary review in the superior court, and the notice shall

1 include a copy of the certificate of appealability and a copy of the  
2 final decision.

3 (e) If the appellate court accepts review, the certificate of  
4 appealability shall be transmitted to the court of appeals as part of  
5 the certified record.

6 (f) If a certificate of appealability is denied, review shall be by  
7 the superior court. The superior court's decision may be appealed to  
8 the court of appeals.

9 **Sec. 6.** RCW 34.05.522 and 1988 c 288 s 504 are each amended to  
10 read as follows:

11 The court of appeals may refuse to accept direct review of a case  
12 ~~((certified))~~ pursuant to RCW 34.05.518 if it finds that the case does  
13 not meet the applicable standard in RCW 34.05.518(2) or (5). Rules of  
14 Appellate Procedure 2.3 do not apply in this instance. The refusal to  
15 accept such review is not subject to further appellate review,  
16 notwithstanding anything in Rule 13.3 of the Rules of Appellate  
17 Procedure to the contrary.

18 **Sec. 7.** RCW 75.20.140 and 1989 c 175 s 161 are each amended to  
19 read as follows:

20 ~~(1) ((In all appeals over which the hydraulic appeals board has~~  
21 ~~jurisdiction, a party taking an appeal may elect either a formal or~~  
22 ~~informal hearing. Such election shall be made according to the rules~~  
23 ~~of practice and procedure to be adopted by the hydraulic appeals board.~~  
24 ~~In the event that appeals are taken from the same decision, order, or~~  
25 ~~determination, by different parties and only one of such parties elects~~  
26 ~~a formal hearing, a formal hearing shall be granted.~~

27 ~~(2))~~ In all appeals, the hydraulic appeals board shall have all  
28 powers relating to administration of oaths, issuance of subpoenas, and  
29 taking of depositions, but such powers shall be exercised in conformity  
30 with chapter 34.05 RCW.

31 ~~((3))~~ (2) In all appeals ~~((involving a formal hearing))~~, the  
32 hydraulic appeals board, and each member thereof, shall be subject to  
33 all duties imposed upon and shall have all powers granted to, an agency  
34 by those provisions of chapter 34.05 RCW relating to adjudicative  
35 proceedings.

36 ~~((4))~~ (3) All proceedings ~~((, including both formal and informal~~  
37 ~~hearings,))~~ before the hydraulic appeals board or any of its members

1 shall be conducted in accordance with such rules of practice and  
2 procedure as the board may prescribe. Such rules shall be published  
3 and distributed.

4 ~~((+5+))~~ (4) Judicial review of a decision of the hydraulic appeals  
5 board ~~((shall be de novo except when the decision has been rendered  
6 pursuant to the formal hearing, in which event judicial review))~~ may be  
7 obtained only pursuant to RCW 34.05.510 through 34.05.598.

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

- 10 (1) RCW 43.21B.140 and 1987 c 109 s 30 & 1970 ex.s. c 62 s 44; and  
11 (2) RCW 43.21B.150 and 1990 c 65 s 4, 1974 ex.s. c 69 s 2, & 1970  
12 ex.s. c 62 s 45.

13 **Sec. 9.** RCW 36.70A.030 and 1994 c 307 s 2 and 1994 c 257 s 5 are  
14 each reenacted and amended to read as follows:

15 Unless the context clearly requires otherwise, the definitions in  
16 this section apply throughout this chapter.

17 (1) "Adopt a comprehensive land use plan" means to enact a new  
18 comprehensive land use plan or to update an existing comprehensive land  
19 use plan.

20 (2) "Agricultural land" means land primarily devoted to the  
21 commercial production of horticultural, viticultural, floricultural,  
22 dairy, apiary, vegetable, or animal products or of berries, grain, hay,  
23 straw, turf, seed, Christmas trees not subject to the excise tax  
24 imposed by RCW 84.33.100 through 84.33.140, finfish in upland  
25 hatcheries, or livestock, and that has long-term commercial  
26 significance for agricultural production.

27 (3) "City" means any city or town, including a code city.

28 (4) "Comprehensive land use plan," "comprehensive plan," or "plan"  
29 means a generalized coordinated land use policy statement of the  
30 governing body of a county or city that is adopted pursuant to this  
31 chapter.

32 (5) "Critical areas" include the following areas and ecosystems:

- 33 (a) Wetlands; (b) areas with a critical recharging effect on aquifers  
34 used for potable water; (c) fish and wildlife habitat conservation  
35 areas; (d) frequently flooded areas; and (e) geologically hazardous  
36 areas.

1 (6) "Department" means the department of community, trade, and  
2 economic development.

3 (~~(7)~~) (~~For purposes of RCW 36.70A.065 and 36.70A.440, "development~~  
4 ~~permit application" means any application for a development proposal~~  
5 ~~for a use that could be permitted under a plan adopted pursuant to this~~  
6 ~~chapter and is consistent with the underlying land use and zoning,~~  
7 ~~including but not limited to building permits, subdivisions, binding~~  
8 ~~site plans, planned unit developments, conditional uses or other~~  
9 ~~applications pertaining to land uses, but shall not include rezones,~~  
10 ~~proposed amendments to comprehensive plans or the adoption or amendment~~  
11 ~~of development regulations.~~

12 (~~(8)~~) "Development regulations" means (~~(any)~~) the controls placed  
13 on development or land use activities by a county or city, including,  
14 but not limited to, zoning ordinances, critical areas ordinances,  
15 shoreline master programs, official controls, planned unit development  
16 ordinances, subdivision ordinances, and binding site plan ordinances  
17 together with any amendments thereto. A development regulation does  
18 not include a decision to approve a project permit application, as  
19 defined in section 402 of chapter \_\_\_\_\_, Laws of 1995 (ESHB 1724), even  
20 though the decision may be expressed in a resolution or ordinance of  
21 the legislative body of the county or city.

22 (~~(9)~~) (8) "Forest land" means land primarily devoted to growing  
23 trees for long-term commercial timber production on land that can be  
24 economically and practically managed for such production, including  
25 Christmas trees subject to the excise tax imposed under RCW 84.33.100  
26 through 84.33.140, and that has long-term commercial significance. In  
27 determining whether forest land is primarily devoted to growing trees  
28 for long-term commercial timber production on land that can be  
29 economically and practically managed for such production, the following  
30 factors shall be considered: (a) The proximity of the land to urban,  
31 suburban, and rural settlements; (b) surrounding parcel size and the  
32 compatibility and intensity of adjacent and nearby land uses; (c) long-  
33 term local economic conditions that affect the ability to manage for  
34 timber production; and (d) the availability of public facilities and  
35 services conducive to conversion of forest land to other uses.

36 (~~(10)~~) (9) "Geologically hazardous areas" means areas that  
37 because of their susceptibility to erosion, sliding, earthquake, or  
38 other geological events, are not suited to the siting of commercial,



1 residential, or industrial development consistent with public health or  
2 safety concerns.

3 ~~((11))~~ (10) "Long-term commercial significance" includes the  
4 growing capacity, productivity, and soil composition of the land for  
5 long-term commercial production, in consideration with the land's  
6 proximity to population areas, and the possibility of more intense  
7 uses of the land.

8 ~~((12))~~ (11) "Minerals" include gravel, sand, and valuable  
9 metallic substances.

10 ~~((13))~~ (12) "Public facilities" include streets, roads, highways,  
11 sidewalks, street and road lighting systems, traffic signals, domestic  
12 water systems, storm and sanitary sewer systems, parks and recreational  
13 facilities, and schools.

14 ~~((14))~~ (13) "Public services" include fire protection and  
15 suppression, law enforcement, public health, education, recreation,  
16 environmental protection, and other governmental services.

17 ~~((15))~~ (14) "Urban growth" refers to growth that makes intensive  
18 use of land for the location of buildings, structures, and impermeable  
19 surfaces to such a degree as to be incompatible with the primary use of  
20 such land for the production of food, other agricultural products, or  
21 fiber, or the extraction of mineral resources. When allowed to spread  
22 over wide areas, urban growth typically requires urban governmental  
23 services. "Characterized by urban growth" refers to land having urban  
24 growth located on it, or to land located in relationship to an area  
25 with urban growth on it as to be appropriate for urban growth.

26 ~~((16))~~ (15) "Urban growth areas" means those areas designated by  
27 a county pursuant to RCW 36.70A.110.

28 ~~((17))~~ (16) "Urban governmental services" include those  
29 governmental services historically and typically delivered by cities,  
30 and include storm and sanitary sewer systems, domestic water systems,  
31 street cleaning services, fire and police protection services, public  
32 transit services, and other public utilities associated with urban  
33 areas and normally not associated with nonurban areas.

34 ~~((18))~~ (17) "Wetland" or "wetlands" means areas that are  
35 inundated or saturated by surface water or ground water at a frequency  
36 and duration sufficient to support, and that under normal circumstances  
37 do support, a prevalence of vegetation typically adapted for life in  
38 saturated soil conditions. Wetlands generally include swamps, marshes,  
39 bogs, and similar areas. Wetlands do not include those artificial

1 wetlands intentionally created from nonwetland sites, including, but  
2 not limited to, irrigation and drainage ditches, grass-lined swales,  
3 canals, detention facilities, wastewater treatment facilities, farm  
4 ponds, and landscape amenities, or those wetlands created after July 1,  
5 1990, that were unintentionally created as a result of the construction  
6 of a road, street, or highway. (~~However,~~) Wetlands may include those  
7 artificial wetlands intentionally created from nonwetland areas created  
8 to mitigate conversion of wetlands(~~(, if permitted by the county or~~  
9 ~~city)~~).

10 **Sec. 10.** RCW 90.58.030 and 1987 c 474 s 1 are each amended to read  
11 as follows:

12 As used in this chapter, unless the context otherwise requires, the  
13 following definitions and concepts apply:

14 (1) Administration:

15 (a) "Department" means the department of ecology;

16 (b) "Director" means the director of the department of ecology;

17 (c) "Local government" means any county, incorporated city, or town  
18 which contains within its boundaries any lands or waters subject to  
19 this chapter;

20 (d) "Person" means an individual, partnership, corporation,  
21 association, organization, cooperative, public or municipal  
22 corporation, or agency of the state or local governmental unit however  
23 designated;

24 (e) "Hearing board" means the shoreline hearings board established  
25 by this chapter.

26 (2) Geographical:

27 (a) "Extreme low tide" means the lowest line on the land reached by  
28 a receding tide;

29 (b) "Ordinary high water mark" on all lakes, streams, and tidal  
30 water is that mark that will be found by examining the bed and banks  
31 and ascertaining where the presence and action of waters are so common  
32 and usual, and so long continued in all ordinary years, as to mark upon  
33 the soil a character distinct from that of the abutting upland, in  
34 respect to vegetation as that condition exists on June 1, 1971, as it  
35 may naturally change thereafter, or as it may change thereafter in  
36 accordance with permits issued by a local government or the department:  
37 PROVIDED, That in any area where the ordinary high water mark cannot be  
38 found, the ordinary high water mark adjoining salt water shall be the

1 line of mean higher high tide and the ordinary high water mark  
2 adjoining fresh water shall be the line of mean high water;

3 (c) "Shorelines of the state" are the total of all "shorelines" and  
4 "shorelines of state-wide significance" within the state;

5 (d) "Shorelines" means all of the water areas of the state,  
6 including reservoirs, and their associated (~~wetlands~~) shorelands,  
7 together with the lands underlying them; except (i) shorelines of  
8 state-wide significance; (ii) shorelines on segments of streams  
9 upstream of a point where the mean annual flow is twenty cubic feet per  
10 second or less and the wetlands associated with such upstream segments;  
11 and (iii) shorelines on lakes less than twenty acres in size and  
12 wetlands associated with such small lakes;

13 (e) "Shorelines of state-wide significance" means the following  
14 shorelines of the state:

15 (i) The area between the ordinary high water mark and the western  
16 boundary of the state from Cape Disappointment on the south to Cape  
17 Flattery on the north, including harbors, bays, estuaries, and inlets;

18 (ii) Those areas of Puget Sound and adjacent salt waters and the  
19 Strait of Juan de Fuca between the ordinary high water mark and the  
20 line of extreme low tide as follows:

21 (A) Nisqually Delta--from DeWolf Bight to Tatsolo Point,

22 (B) Birch Bay--from Point Whitehorn to Birch Point,

23 (C) Hood Canal--from Tala Point to Foulweather Bluff,

24 (D) Skagit Bay and adjacent area--from Brown Point to Yokeko Point,

25 and

26 (E) Padilla Bay--from March Point to William Point;

27 (iii) Those areas of Puget Sound and the Strait of Juan de Fuca and  
28 adjacent salt waters north to the Canadian line and lying seaward from  
29 the line of extreme low tide;

30 (iv) Those lakes, whether natural, artificial, or a combination  
31 thereof, with a surface acreage of one thousand acres or more measured  
32 at the ordinary high water mark;

33 (v) Those natural rivers or segments thereof as follows:

34 (A) Any west of the crest of the Cascade range downstream of a  
35 point where the mean annual flow is measured at one thousand cubic feet  
36 per second or more,

37 (B) Any east of the crest of the Cascade range downstream of a  
38 point where the annual flow is measured at two hundred cubic feet per  
39 second or more, or those portions of rivers east of the crest of the

1 Cascade range downstream from the first three hundred square miles of  
2 drainage area, whichever is longer;

3 (vi) Those ~~((wetlands))~~ shorelands associated with (i), (ii), (iv),  
4 and (v) of this subsection (2)(e);

5 (f) "~~((Wetlands))~~ Shorelands" or "~~((wetland))~~ shoreland areas"  
6 means those lands extending landward for two hundred feet in all  
7 directions as measured on a horizontal plane from the ordinary high  
8 water mark; floodways and contiguous floodplain areas landward two  
9 hundred feet from such floodways; and all ~~((marshes, bogs, swamps,))~~  
10 wetlands and river deltas associated with the streams, lakes, and tidal  
11 waters which are subject to the provisions of this chapter; the same to  
12 be designated as to location by the department of ecology(~~(:—PROVIDED,~~  
13 ~~That))~~). Any county or city may determine that portion of a one-  
14 hundred-year-flood plain to be included in its master program as long  
15 as such portion includes, as a minimum, the floodway and the adjacent  
16 land extending landward two hundred feet therefrom;

17 (g) "Floodway" means those portions of the area of a river valley  
18 lying streamward from the outer limits of a watercourse upon which  
19 flood waters are carried during periods of flooding that occur with  
20 reasonable regularity, although not necessarily annually, said floodway  
21 being identified, under normal condition, by changes in surface soil  
22 conditions or changes in types or quality of vegetative ground cover  
23 condition. The floodway shall not include those lands that can  
24 reasonably be expected to be protected from flood waters by flood  
25 control devices maintained by or maintained under license from the  
26 federal government, the state, or a political subdivision of the state;

27 (h) "Wetlands" means areas that are inundated or saturated by  
28 surface water or ground water at a frequency and duration sufficient to  
29 support, and that under normal circumstances do support, a prevalence  
30 of vegetation typically adapted for life in saturated soil conditions.  
31 Wetlands generally include swamps, marshes, bogs, and similar areas.  
32 Wetlands do not include those artificial wetlands intentionally created  
33 from nonwetland sites, including, but not limited to, irrigation and  
34 drainage ditches, grass-lined swales, canals, detention facilities,  
35 wastewater treatment facilities, farm ponds, and landscape amenities,  
36 or those wetlands created after July 1, 1990, that were unintentionally  
37 created as a result of the construction of a road, street, or highway.  
38 Wetlands may include those artificial wetlands intentionally created  
39 from nonwetland areas to mitigate the conversion of wetlands.

1 (3) Procedural terms:

2 (a) "Guidelines" means those standards adopted to implement the  
3 policy of this chapter for regulation of use of the shorelines of the  
4 state prior to adoption of master programs. Such standards shall also  
5 provide criteria to local governments and the department in developing  
6 master programs;

7 (b) "Master program" shall mean the comprehensive use plan for a  
8 described area, and the use regulations together with maps, diagrams,  
9 charts, or other descriptive material and text, a statement of desired  
10 goals, and standards developed in accordance with the policies  
11 enunciated in RCW 90.58.020;

12 (c) "State master program" is the cumulative total of all master  
13 programs approved or adopted by the department of ecology;

14 (d) "Development" means a use consisting of the construction or  
15 exterior alteration of structures; dredging; drilling; dumping;  
16 filling; removal of any sand, gravel, or minerals; bulkheading; driving  
17 of piling; placing of obstructions; or any project of a permanent or  
18 temporary nature which interferes with the normal public use of the  
19 surface of the waters overlying lands subject to this chapter at any  
20 state of water level;

21 (e) "Substantial development" shall mean any development of which  
22 the total cost or fair market value exceeds two thousand five hundred  
23 dollars, or any development which materially interferes with the normal  
24 public use of the water or shorelines of the state; except that the  
25 following shall not be considered substantial developments for the  
26 purpose of this chapter:

27 (i) Normal maintenance or repair of existing structures or  
28 developments, including damage by accident, fire, or elements;

29 (ii) Construction of the normal protective bulkhead common to  
30 single family residences;

31 (iii) Emergency construction necessary to protect property from  
32 damage by the elements;

33 (iv) Construction and practices normal or necessary for farming,  
34 irrigation, and ranching activities, including agricultural service  
35 roads and utilities on (~~wetlands~~) shorelands, and the construction  
36 and maintenance of irrigation structures including but not limited to  
37 head gates, pumping facilities, and irrigation channels(~~(:—PROVIDED,~~  
38 ~~That)~~). A feedlot of any size, all processing plants, other activities  
39 of a commercial nature, alteration of the contour of the (~~wetlands~~)

1 shorelands by leveling or filling other than that which results from  
2 normal cultivation, shall not be considered normal or necessary farming  
3 or ranching activities. A feedlot shall be an enclosure or facility  
4 used or capable of being used for feeding livestock hay, grain, silage,  
5 or other livestock feed, but shall not include land for growing crops  
6 or vegetation for livestock feeding and/or grazing, nor shall it  
7 include normal livestock wintering operations;

8 (v) Construction or modification of navigational aids such as  
9 channel markers and anchor buoys;

10 (vi) Construction on ((wetlands)) shorelands by an owner, lessee,  
11 or contract purchaser of a single family residence for his own use or  
12 for the use of his family, which residence does not exceed a height of  
13 thirty-five feet above average grade level and which meets all  
14 requirements of the state agency or local government having  
15 jurisdiction thereof, other than requirements imposed pursuant to this  
16 chapter;

17 (vii) Construction of a dock, including a community dock, designed  
18 for pleasure craft only, for the private noncommercial use of the  
19 owner, lessee, or contract purchaser of single and multiple family  
20 residences, the cost of which does not exceed two thousand five hundred  
21 dollars;

22 (viii) Operation, maintenance, or construction of canals,  
23 waterways, drains, reservoirs, or other facilities that now exist or  
24 are hereafter created or developed as a part of an irrigation system  
25 for the primary purpose of making use of system waters, including  
26 return flow and artificially stored ground water for the irrigation of  
27 lands;

28 (ix) The marking of property lines or corners on state owned lands,  
29 when such marking does not significantly interfere with normal public  
30 use of the surface of the water;

31 (x) Operation and maintenance of any system of dikes, ditches,  
32 drains, or other facilities existing on September 8, 1975, which were  
33 created, developed, or utilized primarily as a part of an agricultural  
34 drainage or diking system((+)

35 ~~(xi) Any action commenced prior to December 31, 1982, pertaining to~~  
36 ~~(A) the restoration of interim transportation services as may be~~  
37 ~~necessary as a consequence of the destruction of the Hood Canal bridge,~~  
38 ~~including, but not limited to, improvements to highways, development of~~  
39 ~~park and ride facilities, and development of ferry terminal facilities~~

1 ~~until a new or reconstructed Hood Canal bridge is open to traffic; and~~  
2 ~~(B) the reconstruction of a permanent bridge at the site of the~~  
3 ~~original Hood Canal bridge)).~~

4 NEW SECTION. **Sec. 11.** A new section is added to chapter RCW 90.58  
5 RCW to read as follows:

6 The department by rule shall adopt a manual for the delineation of  
7 wetlands under this chapter that implements and is consistent with the  
8 manual in use on January 1, 1995 by the united states corps of  
9 engineers and the united states environmental protection agency. If  
10 the corps of engineers and the environmental protection agency adopt a  
11 changes to or a different manual, the department shall consider those  
12 changes and may adopt rules implementing those changes.

13 NEW SECTION. **Sec. 12.** A new section is added to chapter RCW  
14 36.70A RCW to read as follows:

15 Wetlands regulated under development regulations adopted pursuant  
16 to this chapter shall be delineated in accordance with the manual  
17 adopted by the department pursuant to section 11 of this act.

18 NEW SECTION. **Sec. 13.** A new section is added to chapter RCW  
19 36.70A RCW to read as follows:

20 Nothing in section 104 of chapter \_\_\_\_\_, Laws of 1995 (Engrossed  
21 Substitute House Bill 1724) shall be construed to authorize a county or  
22 city to adopt regulations applicable to shorelands as defined in RCW  
23 90.58.030 that are inconsistent with the provisions of chapter 90.58  
24 RCW."

25 **SB 5776** - S AMD - 428

26 By Senators Fraser, Swecker, Haugen and A. Anderson

27 ADOPTED 4/23/95

28 On page 1, line 2, strike everything after "management" through  
29 "RCW" on page 1, line 3, and insert "amending 35.44.020, 43.21B.160,  
30 43.21B.170, 43.21B.190, 34.05.518, 34.05.522, 75.20.140; creating a new  
31 section in chapter 90.58 RCW; creating new sections 36.70A RCW; and  
32 repealing 43.21B.140, 43.21B.150."

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