
SENATE BILL 5328

State of Washington

55th Legislature

1997 Regular Session

By Senators Hargrove, Morton, Loveland, Snyder and Stevens

Read first time 01/23/97. Referred to Committee on Agriculture & Environment.

1 AN ACT Relating to raising the amount that must be exceeded by the
2 cost of construction of a dock, including a community dock, designed
3 for pleasure craft only, for the private noncommercial use of the
4 owner, lessee, or contract purchaser of single and multiple family
5 residences for the construction to be considered substantial
6 development under the shoreline management act of 1971; and amending
7 RCW 90.58.030.

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

9 **Sec. 1.** RCW 90.58.030 and 1996 c 265 s 1 are each amended to read
10 as follows:

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

13 (1) Administration:

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

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

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

1 (d) "Person" means an individual, partnership, corporation,
2 association, organization, cooperative, public or municipal
3 corporation, or agency of the state or local governmental unit however
4 designated;

5 (e) "Hearing board" means the shoreline hearings board established
6 by this chapter.

7 (2) Geographical:

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

10 (b) "Ordinary high water mark" on all lakes, streams, and tidal
11 water is that mark that will be found by examining the bed and banks
12 and ascertaining where the presence and action of waters are so common
13 and usual, and so long continued in all ordinary years, as to mark upon
14 the soil a character distinct from that of the abutting upland, in
15 respect to vegetation as that condition exists on June 1, 1971, as it
16 may naturally change thereafter, or as it may change thereafter in
17 accordance with permits issued by a local government or the department:
18 PROVIDED, That in any area where the ordinary high water mark cannot be
19 found, the ordinary high water mark adjoining salt water shall be the
20 line of mean higher high tide and the ordinary high water mark
21 adjoining fresh water shall be the line of mean high water;

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

24 (d) "Shorelines" means all of the water areas of the state,
25 including reservoirs, and their associated shorelands, together with
26 the lands underlying them; except (i) shorelines of state-wide
27 significance; (ii) shorelines on segments of streams upstream of a
28 point where the mean annual flow is twenty cubic feet per second or
29 less and the wetlands associated with such upstream segments; and (iii)
30 shorelines on lakes less than twenty acres in size and wetlands
31 associated with such small lakes;

32 (e) "Shorelines of state-wide significance" means the following
33 shorelines of the state:

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

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

1 (A) Nisqually Delta--from DeWolf Bight to Tatsolo Point,
2 (B) Birch Bay--from Point Whitehorn to Birch Point,
3 (C) Hood Canal--from Tala Point to Foulweather Bluff,
4 (D) Skagit Bay and adjacent area--from Brown Point to Yokeko Point,
5 and
6 (E) Padilla Bay--from March Point to William Point;
7 (iii) Those areas of Puget Sound and the Strait of Juan de Fuca and
8 adjacent salt waters north to the Canadian line and lying seaward from
9 the line of extreme low tide;
10 (iv) Those lakes, whether natural, artificial, or a combination
11 thereof, with a surface acreage of one thousand acres or more measured
12 at the ordinary high water mark;
13 (v) Those natural rivers or segments thereof as follows:
14 (A) Any west of the crest of the Cascade range downstream of a
15 point where the mean annual flow is measured at one thousand cubic feet
16 per second or more,
17 (B) Any east of the crest of the Cascade range downstream of a
18 point where the annual flow is measured at two hundred cubic feet per
19 second or more, or those portions of rivers east of the crest of the
20 Cascade range downstream from the first three hundred square miles of
21 drainage area, whichever is longer;
22 (vi) Those shorelands associated with (i), (ii), (iv), and (v) of
23 this subsection (2)(e);
24 (f) "Shorelands" or "shoreland areas" means those lands extending
25 landward for two hundred feet in all directions as measured on a
26 horizontal plane from the ordinary high water mark; floodways and
27 contiguous floodplain areas landward two hundred feet from such
28 floodways; and all wetlands and river deltas associated with the
29 streams, lakes, and tidal waters which are subject to the provisions of
30 this chapter; the same to be designated as to location by the
31 department of ecology. Any county or city may determine that portion
32 of a one-hundred-year-flood plain to be included in its master program
33 as long as such portion includes, as a minimum, the floodway and the
34 adjacent land extending landward two hundred feet therefrom;
35 (g) "Floodway" means those portions of the area of a river valley
36 lying streamward from the outer limits of a watercourse upon which
37 flood waters are carried during periods of flooding that occur with
38 reasonable regularity, although not necessarily annually, said floodway
39 being identified, under normal condition, by changes in surface soil

1 conditions or changes in types or quality of vegetative ground cover
2 condition. The floodway shall not include those lands that can
3 reasonably be expected to be protected from flood waters by flood
4 control devices maintained by or maintained under license from the
5 federal government, the state, or a political subdivision of the state;

6 (h) "Wetlands" means areas that are inundated or saturated by
7 surface water or ground water at a frequency and duration sufficient to
8 support, and that under normal circumstances do support, a prevalence
9 of vegetation typically adapted for life in saturated soil conditions.
10 Wetlands generally include swamps, marshes, bogs, and similar areas.
11 Wetlands do not include those artificial wetlands intentionally created
12 from nonwetland sites, including, but not limited to, irrigation and
13 drainage ditches, grass-lined swales, canals, detention facilities,
14 wastewater treatment facilities, farm ponds, and landscape amenities,
15 or those wetlands created after July 1, 1990, that were unintentionally
16 created as a result of the construction of a road, street, or highway.
17 Wetlands may include those artificial wetlands intentionally created
18 from nonwetland areas to mitigate the conversion of wetlands.

19 (3) Procedural terms:

20 (a) "Guidelines" means those standards adopted to implement the
21 policy of this chapter for regulation of use of the shorelines of the
22 state prior to adoption of master programs. Such standards shall also
23 provide criteria to local governments and the department in developing
24 master programs;

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

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

32 (d) "Development" means a use consisting of the construction or
33 exterior alteration of structures; dredging; drilling; dumping;
34 filling; removal of any sand, gravel, or minerals; bulkheading; driving
35 of piling; placing of obstructions; or any project of a permanent or
36 temporary nature which interferes with the normal public use of the
37 surface of the waters overlying lands subject to this chapter at any
38 state of water level;

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

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

9 (ii) Construction of the normal protective bulkhead common to
10 single family residences;

11 (iii) Emergency construction necessary to protect property from
12 damage by the elements;

13 (iv) Construction and practices normal or necessary for farming,
14 irrigation, and ranching activities, including agricultural service
15 roads and utilities on shorelands, and the construction and maintenance
16 of irrigation structures including but not limited to head gates,
17 pumping facilities, and irrigation channels. A feedlot of any size,
18 all processing plants, other activities of a commercial nature,
19 alteration of the contour of the shorelands by leveling or filling
20 other than that which results from normal cultivation, shall not be
21 considered normal or necessary farming or ranching activities. A
22 feedlot shall be an enclosure or facility used or capable of being used
23 for feeding livestock hay, grain, silage, or other livestock feed, but
24 shall not include land for growing crops or vegetation for livestock
25 feeding and/or grazing, nor shall it include normal livestock wintering
26 operations;

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

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

35 (vii) Construction of a dock, including a community dock, designed
36 for pleasure craft only, for the private noncommercial use of the
37 owner, lessee, or contract purchaser of single and multiple family
38 residences(~~(. This exception applies if either: (A) In salt waters,~~
39 ~~the fair market value of the dock does not exceed two thousand five~~

1 hundred dollars; or (B) in fresh waters, the fair market value of the
2 dock does not exceed ten thousand dollars, but if subsequent
3 construction having a fair market value exceeding two thousand five
4 hundred dollars occurs within five years of completion of the prior
5 construction, the subsequent construction shall be considered a
6 substantial development for the purpose of this chapter)), the fair
7 market value of which does not exceed twenty thousand dollars, or for
8 maintenance of such a dock, up to ten thousand dollars per occurrence,
9 and allowed one time in a ten-year period. Further, emergency repairs
10 or reconstruction to such a dock may be made in an amount up to any
11 reasonable repair or reconstruction costs;

12 (viii) Operation, maintenance, or construction of canals,
13 waterways, drains, reservoirs, or other facilities that now exist or
14 are hereafter created or developed as a part of an irrigation system
15 for the primary purpose of making use of system waters, including
16 return flow and artificially stored ground water for the irrigation of
17 lands;

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

21 (x) Operation and maintenance of any system of dikes, ditches,
22 drains, or other facilities existing on September 8, 1975, which were
23 created, developed, or utilized primarily as a part of an agricultural
24 drainage or diking system;

25 (xi) Site exploration and investigation activities that are
26 prerequisite to preparation of an application for development
27 authorization under this chapter, if:

28 (A) The activity does not interfere with the normal public use of
29 the surface waters;

30 (B) The activity will have no significant adverse impact on the
31 environment including, but not limited to, fish, wildlife, fish or
32 wildlife habitat, water quality, and aesthetic values;

33 (C) The activity does not involve the installation of a structure,
34 and upon completion of the activity the vegetation and land
35 configuration of the site are restored to conditions existing before
36 the activity;

37 (D) A private entity seeking development authorization under this
38 section first posts a performance bond or provides other evidence of

1 financial responsibility to the local jurisdiction to ensure that the
2 site is restored to preexisting conditions; and

3 (E) The activity is not subject to the permit requirements of RCW
4 90.58.550;

5 (xii) The process of removing or controlling an aquatic noxious
6 weed, as defined in RCW 17.26.020, through the use of an herbicide or
7 other treatment methods applicable to weed control that are recommended
8 by a final environmental impact statement published by the department
9 of agriculture or the department jointly with other state agencies
10 under chapter 43.21C RCW.

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