
ENGROSSED SENATE BILL 5800

State of Washington

55th Legislature

1997 Regular Session

By Senator Hargrove

Read first time 02/13/97. Referred to Committee on Agriculture & Environment.

1 AN ACT Relating to the shoreline substantial development exemption
2 for docks; and amending RCW 90.58.030.

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

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

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

8 (1) Administration:

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

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

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

14 (d) "Person" means an individual, partnership, corporation,
15 association, organization, cooperative, public or municipal
16 corporation, or agency of the state or local governmental unit however
17 designated;

18 (e) "Hearing board" means the shoreline hearings board established
19 by this chapter.

1 (2) Geographical:

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

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

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

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

26 (e) "Shorelines of state-wide significance" means the following
27 shorelines of the state:

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

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

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

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

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

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

38 and

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

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

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

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

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

11 (B) Any east of the crest of the Cascade range downstream of a
12 point where the annual flow is measured at two hundred cubic feet per
13 second or more, or those portions of rivers east of the crest of the
14 Cascade range downstream from the first three hundred square miles of
15 drainage area, whichever is longer;

16 (vi) Those shorelands associated with (i), (ii), (iv), and (v) of
17 this subsection (2)(e);

18 (f) "Shorelands" or "shoreland areas" means those lands extending
19 landward for two hundred feet in all directions as measured on a
20 horizontal plane from the ordinary high water mark; floodways and
21 contiguous floodplain areas landward two hundred feet from such
22 floodways; and all wetlands and river deltas associated with the
23 streams, lakes, and tidal waters which are subject to the provisions of
24 this chapter; the same to be designated as to location by the
25 department of ecology. Any county or city may determine that portion
26 of a one-hundred-year-flood plain to be included in its master program
27 as long as such portion includes, as a minimum, the floodway and the
28 adjacent land extending landward two hundred feet therefrom;

29 (g) "Floodway" means those portions of the area of a river valley
30 lying streamward from the outer limits of a watercourse upon which
31 flood waters are carried during periods of flooding that occur with
32 reasonable regularity, although not necessarily annually, said floodway
33 being identified, under normal condition, by changes in surface soil
34 conditions or changes in types or quality of vegetative ground cover
35 condition. The floodway shall not include those lands that can
36 reasonably be expected to be protected from flood waters by flood
37 control devices maintained by or maintained under license from the
38 federal government, the state, or a political subdivision of the state;

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

14 (3) Procedural terms:

15 (a) "Guidelines" means those standards adopted to implement the
16 policy of this chapter for regulation of use of the shorelines of the
17 state prior to adoption of master programs. Such standards shall also
18 provide criteria to local governments and the department in developing
19 master programs;

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

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

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

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

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

3 (ii) Construction of the normal protective bulkhead common to
4 single family residences;

5 (iii) Emergency construction necessary to protect property from
6 damage by the elements;

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

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

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

29 (vii) Construction of a dock, including a community dock, designed
30 for pleasure craft only, for the private noncommercial use of the
31 owner, lessee, or contract purchaser of single and multiple family
32 residences. (~~This exception applies if either: (A) In salt waters,
33 the fair market value of the dock does not exceed two thousand five
34 hundred dollars; or (B) in fresh waters, the fair market value of the
35 dock does not exceed ten thousand dollars, but if subsequent
36 construction having a fair market value exceeding two thousand five
37 hundred dollars occurs within five years of completion of the prior
38 construction, the subsequent construction shall be considered a
39 substantial development for the purpose of this chapter~~) For

1 shorelines of the state west of the crest of the Cascade mountains,
2 this exception applies to docks that do not exceed four hundred square
3 feet in area and do not exceed eight feet in width at any point. For
4 shorelines of the state east of the crest of the Cascade mountains,
5 this exception applies to docks with a fair market value that does not
6 exceed ten thousand dollars;

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

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

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

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

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

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

28 (C) The activity does not involve the installation of a structure,
29 and upon completion of the activity the vegetation and land
30 configuration of the site are restored to conditions existing before
31 the activity;

32 (D) A private entity seeking development authorization under this
33 section first posts a performance bond or provides other evidence of
34 financial responsibility to the local jurisdiction to ensure that the
35 site is restored to preexisting conditions; and

36 (E) The activity is not subject to the permit requirements of RCW
37 90.58.550;

38 (xii) The process of removing or controlling an aquatic noxious
39 weed, as defined in RCW 17.26.020, through the use of an herbicide or

1 other treatment methods applicable to weed control that are recommended
2 by a final environmental impact statement published by the department
3 of agriculture or the department jointly with other state agencies
4 under chapter 43.21C RCW.

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