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SENATE BILL 5796

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State of Washington

56th Legislature

1999 Regular Session

By Senators Eide, Fairley, McAuliffe, Kline and Jacobsen

Read first time 02/09/1999. Referred to Committee on Environmental Quality & Water Resources.

1 AN ACT Relating to reducing shoreline permit exemptions; amending  
2 RCW 90.58.030; and creating a new section.

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

4 NEW SECTION. **Sec. 1.** The legislature finds that the state's  
5 shorelines have continued to be of great importance since the adoption  
6 of the shoreline management act of 1971, and that population growth and  
7 increasing shoreline uses have magnified the demands upon these  
8 important resources. Shoreline area residents and landowners, and all  
9 Washington citizens have a vital concern that local programs for the  
10 appropriate management of shoreline areas be fully complied with in  
11 shoreline substantial development activities. The shoreline  
12 substantial development permits issued by cities and counties provides  
13 the means for assuring consistency with these local programs, and  
14 provides the opportunity for community residents to obtain notice and  
15 comment upon proposed developments in shoreline areas. Therefore, it  
16 is the purpose of this act to require persons constructing single-  
17 family residential structures within shorelines or shoreline areas to  
18 obtain a shoreline substantial development permit.

1       **Sec. 2.** RCW 90.58.030 and 1996 c 265 s 1 are each amended to read  
2 as follows:

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

5       (1) Administration:

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

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

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

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

15       (e) "Hearing board" means the shoreline hearings board established  
16 by this chapter.

17       (2) Geographical:

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

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

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

34       (d) "Shorelines" means all of the water areas of the state,  
35 including reservoirs, and their associated shorelands, together with  
36 the lands underlying them; except (i) shorelines of state-wide  
37 significance; (ii) shorelines on segments of streams upstream of a  
38 point where the mean annual flow is twenty cubic feet per second or  
39 less and the wetlands associated with such upstream segments; and (iii)

1 shorelines on lakes less than twenty acres in size and wetlands  
2 associated with such small lakes;

3 (e) "Shorelines of state-wide significance" means the following  
4 shorelines of the state:

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

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

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

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

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

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

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

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

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

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

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

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

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

34 (f) "Shorelands" or "shoreland areas" means those lands extending  
35 landward for two hundred feet in all directions as measured on a  
36 horizontal plane from the ordinary high water mark; floodways and  
37 contiguous floodplain areas landward two hundred feet from such  
38 floodways; and all wetlands and river deltas associated with the  
39 streams, lakes, and tidal waters which are subject to the provisions of

1 this chapter; the same to be designated as to location by the  
2 department of ecology. Any county or city may determine that portion  
3 of a one-hundred-year-flood plain to be included in its master program  
4 as long as such portion includes, as a minimum, the floodway and the  
5 adjacent land extending landward two hundred feet therefrom;

6 (g) "Floodway" means those portions of the area of a river valley  
7 lying streamward from the outer limits of a watercourse upon which  
8 flood waters are carried during periods of flooding that occur with  
9 reasonable regularity, although not necessarily annually, said floodway  
10 being identified, under normal condition, by changes in surface soil  
11 conditions or changes in types or quality of vegetative ground cover  
12 condition. The floodway shall not include those lands that can  
13 reasonably be expected to be protected from flood waters by flood  
14 control devices maintained by or maintained under license from the  
15 federal government, the state, or a political subdivision of the state;

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

29 (3) Procedural terms:

30 (a) "Guidelines" means those standards adopted to implement the  
31 policy of this chapter for regulation of use of the shorelines of the  
32 state prior to adoption of master programs. Such standards shall also  
33 provide criteria to local governments and the department in developing  
34 master programs;

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

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

3 (d) "Development" means a use consisting of the construction or  
4 exterior alteration of structures; dredging; drilling; dumping;  
5 filling; removal of any sand, gravel, or minerals; bulkheading; driving  
6 of piling; placing of obstructions; or any project of a permanent or  
7 temporary nature which interferes with the normal public use of the  
8 surface of the waters overlying lands subject to this chapter at any  
9 state of water level;

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

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

18 (ii) Construction of the normal protective bulkhead common to  
19 single family residences;

20 (iii) Emergency construction necessary to protect property from  
21 damage by the elements;

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

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

38 ~~(vi) ((Construction on shorelands by an owner, lessee, or contract~~  
39 ~~purchaser of a single family residence for his own use or for the use~~

1 of his family, which residence does not exceed a height of thirty five  
2 feet above average grade level and which meets all requirements of the  
3 state agency or local government having jurisdiction thereof, other  
4 than requirements imposed pursuant to this chapter;

5 ~~(vii))~~ Construction of a dock, including a community dock,  
6 designed for pleasure craft only, for the private noncommercial use of  
7 the owner, lessee, or contract purchaser of single and multiple family  
8 residences. This exception applies if either: (A) In salt waters, the  
9 fair market value of the dock does not exceed two thousand five hundred  
10 dollars; or (B) in fresh waters, the fair market value of the dock does  
11 not exceed ten thousand dollars, but if subsequent construction having  
12 a fair market value exceeding two thousand five hundred dollars occurs  
13 within five years of completion of the prior construction, the  
14 subsequent construction shall be considered a substantial development  
15 for the purpose of this chapter;

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

22 ~~((ix))~~ (viii) The marking of property lines or corners on state  
23 owned lands, when such marking does not significantly interfere with  
24 normal public use of the surface of the water;

25 ~~((x))~~ (ix) Operation and maintenance of any system of dikes,  
26 ditches, drains, or other facilities existing on September 8, 1975,  
27 which were created, developed, or utilized primarily as a part of an  
28 agricultural drainage or diking system;

29 ~~((xi))~~ (x) Site exploration and investigation activities that are  
30 prerequisite to preparation of an application for development  
31 authorization under this chapter, if:

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

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

37 (C) The activity does not involve the installation of a structure,  
38 and upon completion of the activity the vegetation and land

1 configuration of the site are restored to conditions existing before  
2 the activity;

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

7 (E) The activity is not subject to the permit requirements of RCW  
8 90.58.550;

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

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