
HOUSE BILL 1903

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By Representatives Hatfield, G. Chandler, Linville, Mulliken, Doumit, Grant, Dunshee, Eickmeyer, Sump, Edmonds, Kessler and Woods

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1 AN ACT Relating to declaring that shoreline master program
2 guidelines provisions adopted after November 1, 2000, do not apply
3 retroactively to existing and ongoing agriculture; amending RCW
4 90.58.030; adding a new section to chapter 90.58 RCW; and creating a
5 new section.

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

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

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

11 (1) Administration:

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

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

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

17 (d) "Person" means an individual, partnership, corporation,
18 association, organization, cooperative, public or municipal

1 corporation, or agency of the state or local governmental unit however
2 designated;

3 (e) "Hearing board" means the shoreline hearings board established
4 by this chapter.

5 (2) Geographical:

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

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

20 (c) "Shorelines of the state" are the total of all "shorelines" and
21 "shorelines of statewide significance" within the state;

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

30 (e) "Shorelines of statewide significance" means the following
31 shorelines of the state:

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

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

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

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

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

1 reasonably be expected to be protected from flood waters by flood
2 control devices maintained by or maintained under license from the
3 federal government, the state, or a political subdivision of the state;

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

17 (3) Procedural terms:

18 (a) "Agricultural land" means land that is currently being used or
19 has historically been used in whole or in part for the production of
20 livestock or agricultural commodities, including land:

21 (i) That is, or historically has been, enrolled in the federal
22 conservation reserve program or its successor administered by the
23 United States department of agriculture;

24 (ii) That has, or historically has had, incidental uses compatible
25 with agricultural purposes, including wetlands preservation;

26 (iii) On which housing for employees or the principal place of
27 residence of the farm operator or owner is located, if this housing is
28 integral to the use of land for agricultural purposes and if the
29 housing is located on the land meeting the definition of agricultural
30 land as otherwise defined in this subsection or is located on a parcel
31 contiguous to land meeting the definition; and

32 (iv) Consisting of a parcel of land of one to five acres, which is
33 not contiguous, but which otherwise constitutes an integral part of
34 agricultural operations on land meeting the definition of agricultural
35 land as otherwise defined in this subsection.

36 (b) "Existing and ongoing agriculture" means agricultural uses and
37 activities including, but not limited to: (i) Production of
38 horticultural, viticultural, floricultural, livestock, dairy, apiary,
39 vegetable, or animal products or of berries, grain, hay, straw, turf,

1 seed, or Christmas trees; (ii) the operation and maintenance of a farm
2 and stock ponds, drainage ditches, or irrigation systems; (iii) normal
3 crop rotation and crop change; and (iv) the normal maintenance and
4 repair of existing structures, facilities, and lands currently under
5 production or cultivation.

6 (c) "Guidelines" means those standards adopted to implement the
7 policy of this chapter for regulation of use of the shorelines of the
8 state prior to adoption of master programs. Such standards shall also
9 provide criteria to local governments and the department in developing
10 master programs;

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

16 (~~(e)~~) (e) "State master program" is the cumulative total of all
17 master programs approved or adopted by the department of ecology;

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

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

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

33 (ii) Construction of the normal protective bulkhead common to
34 single family residences;

35 (iii) Emergency construction necessary to protect property from
36 damage by the elements;

37 (iv) Construction and practices normal or necessary for farming,
38 irrigation, and ranching activities, including agricultural service
39 roads and utilities on shorelands, and the construction and maintenance

1 of irrigation structures including but not limited to head gates,
2 pumping facilities, and irrigation channels. A feedlot of any size,
3 all processing plants, other activities of a commercial nature,
4 alteration of the contour of the shorelands by leveling or filling
5 other than that which results from normal cultivation, shall not be
6 considered normal or necessary farming or ranching activities. A
7 feedlot shall be an enclosure or facility used or capable of being used
8 for feeding livestock hay, grain, silage, or other livestock feed, but
9 shall not include land for growing crops or vegetation for livestock
10 feeding and/or grazing, nor shall it include normal livestock wintering
11 operations;

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

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

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

32 (viii) Operation, maintenance, or construction of canals,
33 waterways, drains, reservoirs, or other facilities that now exist or
34 are hereafter created or developed as a part of an irrigation system
35 for the primary purpose of making use of system waters, including
36 return flow and artificially stored ground water for the irrigation of
37 lands;

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

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

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

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

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

16 (C) The activity does not involve the installation of a structure,
17 and upon completion of the activity the vegetation and land
18 configuration of the site are restored to conditions existing before
19 the activity;

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

24 (E) The activity is not subject to the permit requirements of RCW
25 90.58.550;

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

32 NEW SECTION. **Sec. 2.** A new section is added to chapter 90.58 RCW
33 to read as follows:

34 The guidelines adopted by the department and master programs
35 developed or amended by local governments according to RCW 90.58.080
36 shall address new agricultural development on agricultural land that
37 does not meet the definition of existing and ongoing agriculture
38 specified in RCW 90.58.030. The guidelines and master programs shall

1 not apply retroactively to existing and ongoing agriculture on
2 agricultural land as defined in RCW 90.58.030.

3 NEW SECTION. **Sec. 3.** This act applies to all guidelines adopted
4 by the department of ecology after November 1, 2000.

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