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ENGROSSED HOUSE BILL 2623

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State of Washington                      57th Legislature                      2002 Regular Session

By Representatives Grant, Cairnes, Reardon, Orcutt, Hatfield, Esser, Doumit, Anderson, Linville, Schoesler, Kessler, Jarrett, Berkey, Pflug, Alexander, Jackley, O'Brien, Nixon, Edwards, Mulliken and Haigh

Read first time 01/23/2002. Referred to Committee on Local Government & Housing.

1            AN ACT Relating to adjusting the dollar threshold for substantial  
2 development under the shoreline management act; amending RCW 90.58.030;  
3 and creating a new section.

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

5            NEW SECTION.    **Sec. 1.**    The legislature finds that the dollar  
6 threshold for what constitutes substantial development under the  
7 shoreline management act has not been changed since 1971.    The  
8 legislature recognizes that the effects of inflation have brought in  
9 many activities under the jurisdiction of chapter 90.58 RCW that would  
10 have been exempted under its original provisions.    It is the intent of  
11 the legislature to modify the current dollar threshold for what  
12 constitutes substantial development under the shoreline management act,  
13 and to have this threshold readjusted on a five-year basis.

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

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

18            (1) Administration:

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

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

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

6 (d) "Person" means an individual, partnership, corporation,  
7 association, organization, cooperative, public or municipal  
8 corporation, or agency of the state or local governmental unit however  
9 designated;

10 (e) "Hearing board" means the shoreline hearings board established  
11 by this chapter.

12 (2) Geographical:

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

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

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

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

37 (e) "Shorelines of statewide significance" means the following  
38 shorelines of the state:

1 (i) The area between the ordinary high water mark and the western  
2 boundary of the state from Cape Disappointment on the south to Cape  
3 Flattery on the north, including harbors, bays, estuaries, and inlets;  
4 (ii) Those areas of Puget Sound and adjacent salt waters and the  
5 Strait of Juan de Fuca between the ordinary high water mark and the  
6 line of extreme low tide as follows:  
7 (A) Nisqually Delta--from DeWolf Bight to Tatsolo Point,  
8 (B) Birch Bay--from Point Whitehorn to Birch Point,  
9 (C) Hood Canal--from Tala Point to Foulweather Bluff,  
10 (D) Skagit Bay and adjacent area--from Brown Point to Yokeko Point,  
11 and  
12 (E) Padilla Bay--from March Point to William Point;  
13 (iii) Those areas of Puget Sound and the Strait of Juan de Fuca and  
14 adjacent salt waters north to the Canadian line and lying seaward from  
15 the line of extreme low tide;  
16 (iv) Those lakes, whether natural, artificial, or a combination  
17 thereof, with a surface acreage of one thousand acres or more measured  
18 at the ordinary high water mark;  
19 (v) Those natural rivers or segments thereof as follows:  
20 (A) Any west of the crest of the Cascade range downstream of a  
21 point where the mean annual flow is measured at one thousand cubic feet  
22 per second or more,  
23 (B) Any east of the crest of the Cascade range downstream of a  
24 point where the annual flow is measured at two hundred cubic feet per  
25 second or more, or those portions of rivers east of the crest of the  
26 Cascade range downstream from the first three hundred square miles of  
27 drainage area, whichever is longer;  
28 (vi) Those shorelands associated with (i), (ii), (iv), and (v) of  
29 this subsection (2)(e);  
30 (f) "Shorelands" or "shoreland areas" means those lands extending  
31 landward for two hundred feet in all directions as measured on a  
32 horizontal plane from the ordinary high water mark; floodways and  
33 contiguous floodplain areas landward two hundred feet from such  
34 floodways; and all wetlands and river deltas associated with the  
35 streams, lakes, and tidal waters which are subject to the provisions of  
36 this chapter; the same to be designated as to location by the  
37 department of ecology. Any county or city may determine that portion  
38 of a one-hundred-year-flood plain to be included in its master program

1 as long as such portion includes, as a minimum, the floodway and the  
2 adjacent land extending landward two hundred feet therefrom;

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

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

26 (3) Procedural terms:

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

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

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

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

8 (e) "Substantial development" shall mean any development of which  
9 the total cost or fair market value exceeds (~~two~~) twelve thousand  
10 five hundred dollars, or any development which materially interferes  
11 with the normal public use of the water or shorelines of the state(~~+~~  
12 ~~except that~~). The dollar threshold established in this subsection  
13 (3)(e) must be adjusted for inflation by the office of financial  
14 management every five years, beginning July 1, 2007, based upon changes  
15 in the consumer price index during that time period. "Consumer price  
16 index" means, for any calendar year, that year's annual average  
17 consumer price index, Seattle, Washington area, for urban wage earners  
18 and clerical workers, all items, compiled by the bureau of labor and  
19 statistics, United States department of labor. The office of financial  
20 management must calculate the new dollar threshold and transmit it to  
21 the office of the code reviser for publication in the Washington State  
22 Register at least one month before the new dollar threshold is to take  
23 effect. The following shall not be considered substantial developments  
24 for the purpose of this chapter:

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

27 (ii) Construction of the normal protective bulkhead common to  
28 single family residences;

29 (iii) Emergency construction necessary to protect property from  
30 damage by the elements;

31 (iv) Construction and practices normal or necessary for farming,  
32 irrigation, and ranching activities, including agricultural service  
33 roads and utilities on shorelands, and the construction and maintenance  
34 of irrigation structures including but not limited to head gates,  
35 pumping facilities, and irrigation channels. A feedlot of any size,  
36 all processing plants, other activities of a commercial nature,  
37 alteration of the contour of the shorelands by leveling or filling  
38 other than that which results from normal cultivation, shall not be  
39 considered normal or necessary farming or ranching activities. A

1 feedlot shall be an enclosure or facility used or capable of being used  
2 for feeding livestock hay, grain, silage, or other livestock feed, but  
3 shall not include land for growing crops or vegetation for livestock  
4 feeding and/or grazing, nor shall it include normal livestock wintering  
5 operations;

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

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

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

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

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

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

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

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

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

9 (C) The activity does not involve the installation of a structure,  
10 and upon completion of the activity the vegetation and land  
11 configuration of the site are restored to conditions existing before  
12 the activity;

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

17 (E) The activity is not subject to the permit requirements of RCW  
18 90.58.550;

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

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