
HOUSE BILL 1241

State of Washington 60th Legislature 2007 Regular Session

By Representatives B. Sullivan, Upthegrove, Kessler and Kretz

Read first time 01/15/2007. Referred to Committee on Agriculture & Natural Resources.

1 AN ACT Relating to modifying existing exemptions for substantial
2 development under chapter 90.58 RCW; 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 2003 c 321 s 2 are each amended to read
5 as follows:

6 (~~As used in this chapter,~~) The definitions in this section apply
7 throughout this chapter unless the context clearly requires otherwise
8 (~~requires, the following definitions and concepts apply:~~).

9 (1) Administration:

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

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

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

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

1 (e) "Hearing board" means the shoreline hearings board established
2 by this chapter.

3 (2) Geographical:

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

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

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

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

28 (e) "Shorelines of statewide significance" means the following
29 shorelines of the state:

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

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

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

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

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

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

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

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

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

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

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

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

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

21 (f) "Shorelands" or "shoreland areas" means those lands extending
22 landward for two hundred feet in all directions as measured on a
23 horizontal plane from the ordinary high water mark; floodways and
24 contiguous floodplain areas landward two hundred feet from such
25 floodways; and all wetlands and river deltas associated with the
26 streams, lakes, and tidal waters which are subject to the provisions of
27 this chapter; the same to be designated as to location by the
28 department of ecology.

29 (i) Any county or city may determine that portion of a one-hundred-
30 year-flood plain to be included in its master program as long as such
31 portion includes, as a minimum, the floodway and the adjacent land
32 extending landward two hundred feet therefrom.

33 (ii) Any city or county may also include in its master program land
34 necessary for buffers for critical areas, as defined in chapter 36.70A
35 RCW, that occur within shorelines of the state, provided that forest
36 practices regulated under chapter 76.09 RCW, except conversions to
37 nonforest land use, on lands subject to the provisions of this

1 subsection (2)(f)(ii) are not subject to additional regulations under
2 this chapter;

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

24 (i) Normal maintenance or repair of existing structures or
25 developments, including damage by accident, fire, or elements. "Normal
26 maintenance" includes those usual acts to prevent a decline, lapse, or
27 cessation from a lawfully established condition. "Normal repair" means
28 to restore a development to a state comparable to its original
29 condition, including but not limited to its size, shape, configuration,
30 location, and external appearance, except where repair causes
31 significant adverse effects to the quality of the environment such that
32 a detailed statement is required under RCW 43.21C.030. Replacement of
33 a structure or development must be authorized as repair where the
34 replacement is the common method of repair for the type of structure or
35 development and the replacement structure or development is comparable
36 to the original structure or development including but not limited to
37 its size, shape, configuration, location, and external appearance;

1 (ii) Construction of the normal protective bulkhead common to
2 single family residences;

3 (iii) Emergency construction necessary to protect property from
4 damage by the elements;

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

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

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

28 (vii) Either construction of a dock((, including a community dock))
29 or installation of a freestanding or portable boat lift, or both,
30 designed for pleasure craft only, for the private noncommercial use of
31 the owner, lessee, or contract purchaser of single and multiple family
32 residences. This exception applies if ((either)): (A) ((In salt
33 waters,)) The fair market value of the dock or boat lift, or both,
34 not exceed ((two thousand five hundred)) forty thousand dollars; or (B)
35 ((in fresh waters, the fair market value of the dock does not exceed
36 ten thousand dollars)) for community docks, the fair market value does
37 not exceed forty thousand dollars for the first moorage space plus ten
38 thousand dollars for each additional moorage space, but if subsequent

1 construction having a fair market value exceeding (~~two~~) five thousand
2 (~~five hundred~~) dollars occurs within five years of completion of the
3 prior construction, the subsequent construction shall be considered a
4 substantial development for the purpose of this chapter. The dollar
5 thresholds established in this subsection (3)(e)(vii) must be adjusted
6 for inflation by the office of financial management every five years,
7 beginning July 1, 2008, based upon changes in the consumer price index
8 during that time period. "Consumer price index" means, for any
9 calendar year, that year's annual average consumer price index,
10 Seattle, Washington area, for urban wage earners and clerical workers,
11 all items, compiled by the bureau of labor and statistics, United
12 States department of labor. The office of financial management must
13 calculate the new dollar threshold and transmit it to the office of the
14 code reviser for publication in the Washington State Register at least
15 one month before the new dollar threshold is to take effect;

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

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

29 (xi) 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,

1 and upon completion of the activity the vegetation and land
2 configuration of the site are restored to conditions existing before
3 the activity;

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

8 (E) The activity is not subject to the permit requirements of RCW
9 90.58.550;

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

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