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ENGROSSED SENATE BILL 5776

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State of Washington

54th Legislature

1995 Regular Session

By Senator Fraser

Read first time 02/06/95. Referred to Committee on Government Operations.

1 AN ACT Relating to the integration of water resources and growth  
2 management; amending RCW 35.44.020, 43.21B.160, 43.21B.170, 43.21B.190,  
3 34.05.518, 34.05.522, 75.20.140, and 90.58.030; reenacting and amending  
4 RCW 36.70A.030; adding a new section to chapter 90.58 RCW; adding new  
5 sections to chapter 36.70A RCW; and repealing RCW 43.21B.140 and  
6 43.21B.150.

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

8 **Sec. 1.** RCW 35.44.020 and 1987 c 242 s 4 are each amended to read  
9 as follows:

10 There shall be included in the cost and expense of every local  
11 improvement for assessment against the property in the district created  
12 to pay the same, or any part thereof:

13 (1) The cost of all of the construction or improvement authorized  
14 for the district including, but not limited to, that portion of the  
15 improvement within the street intersections;

16 (2) The estimated cost and expense of all engineering and surveying  
17 necessary for the improvement done under the supervision of the city or  
18 town engineer;

1 (3) The estimated cost and expense of ascertaining the ownership of  
2 the lots or parcels of land included in the assessment district;

3 (4) The estimated cost and expense of advertising, mailing, and  
4 publishing all necessary notices;

5 (5) The estimated cost and expense of accounting, clerical labor,  
6 and of books and blanks extended or used on the part of the city or  
7 town clerk and city or town treasurer in connection with the  
8 improvement;

9 (6) All cost of the acquisition of rights of way, property,  
10 easements, or other facilities or rights, including without limitation  
11 rights to use property, facilities, or other improvements appurtenant,  
12 related to, and/or useful in connection with the local improvement,  
13 whether by eminent domain, purchase, gift, payment of connection  
14 charges, capacity charges, or other similar charges or in any other  
15 manner;

16 (7) The cost for legal, financial, and appraisal services and any  
17 other expenses incurred by the city, town, or public corporation for  
18 the district or in the formation thereof, or by the city, town, or  
19 public corporation in connection with such construction or improvement  
20 and in the financing thereof, including the issuance of any bonds and  
21 the cost of providing for increases in the local improvement guaranty  
22 fund, or providing for a separate reserve fund or other security for  
23 the payment of principal of and interest on such bonds.

24 Any of the costs set forth in this section may be excluded from the  
25 cost and expense to be assessed against the property in such local  
26 improvement district and may be paid from any other moneys available  
27 therefor if the legislative body of the city or town so designates by  
28 ordinance at any time.

29 **Sec. 2.** RCW 43.21B.160 and 1990 c 65 s 5 are each amended to read  
30 as follows:

31 In all appeals (~~(involving a formal hearing)~~), the hearings board  
32 shall have all powers relating to administration of oaths, issuance of  
33 subpoenas, and taking of depositions as are granted to agencies in  
34 chapter 34.05 RCW, the Administrative Procedure Act. The hearings  
35 board, and each member thereof, shall be subject to all duties imposed  
36 upon, and shall have all powers granted to, an agency by those  
37 provisions of chapter 34.05 RCW relating to adjudicative proceedings.  
38 In the case of appeals within the jurisdiction of the hearings board,

1 the hearings board, or any member thereof, may obtain such assistance,  
2 including the making of field investigations, from the staff of the  
3 director as the hearings board, or any member thereof, may deem  
4 necessary or appropriate. Any communication, oral or written, from the  
5 staff of the director to the hearings board shall be presented only in  
6 an open hearing.

7 **Sec. 3.** RCW 43.21B.170 and 1970 ex.s. c 62 s 47 are each amended  
8 to read as follows:

9 All proceedings(~~(, including both formal and informal hearings,)~~)  
10 before the hearings board or any of its members shall be conducted in  
11 accordance with such rules of practice and procedure as the hearings  
12 board may prescribe. The hearings board shall publish such rules and  
13 arrange for the reasonable distribution thereof.

14 **Sec. 4.** RCW 43.21B.190 and 1994 c 253 s 7 are each amended to read  
15 as follows:

16 Within thirty days after the final decision and order of the  
17 hearings board upon such an appeal has been communicated to the  
18 interested parties, such interested party aggrieved by the decision and  
19 order of the hearings board may appeal to the superior court. ~~((In all  
20 appeals involving a decision or an order of the hearings board after an  
21 informal hearing, the petition shall be filed in the superior court for  
22 the county of the petitioner's residence or principal place of  
23 business, or in the absence of a residence or principal place of  
24 business, for Thurston county. Such appeal may be perfected by filing  
25 with the clerk of the superior court a notice of appeal, and by serving  
26 a copy thereof by mail, or personally on the director, the air  
27 pollution control boards or authorities, established pursuant to  
28 chapter 70.94 RCW or on the board as the case may be. The hearings  
29 board shall serve upon the appealing party, the director, the air  
30 pollution control board or authorities established pursuant to chapter  
31 70.94 RCW, or the board, as the case may be, and on any other party  
32 appearing at the hearings board's proceeding, and file with the clerk  
33 of the court before trial, a certified copy of the hearings board's  
34 decision and order. Appellate review of a decision of the superior  
35 court may be sought as in other civil cases. No bond shall be required  
36 on appeals to the superior court or on review by the supreme court  
37 unless specifically required by the judge of the superior court.))~~

1       **Sec. 5.** RCW 34.05.518 and 1988 c 288 s 503 are each amended to  
2 read as follows:

3       (1) The final decision of an administrative agency in an  
4 adjudicative proceeding under this chapter may be directly reviewed by  
5 the court of appeals either (a) upon certification by the superior  
6 court pursuant to this section or (b) if the final decision is from an  
7 environmental board as defined in subsection (3) of this section, upon  
8 acceptance by the court of appeals after a certificate of appealability  
9 has been filed by the environmental board that rendered the final  
10 decision.

11       (2) For direct review upon certification by the superior court, an  
12 application for direct review must be filed with the superior court  
13 within thirty days of the filing of the petition for review in superior  
14 court. The superior court may certify a case for direct review only if  
15 the judicial review is limited to the record of the agency proceeding  
16 and the court finds that:

17       ~~((+1))~~ (a) Fundamental and urgent issues affecting the future  
18 administrative process or the public interest are involved which  
19 require a prompt determination;

20       ~~((+2))~~ (b) Delay in obtaining a final and prompt determination of  
21 such issues would be detrimental to any party or the public interest;

22       ~~((+3))~~ (c) An appeal to the court of appeals would be likely  
23 regardless of the determination in superior court; and

24       ~~((+4))~~ (d) The appellate court's determination in the proceeding  
25 would have significant precedential value.

26       Procedures for certification shall be established by court rule.

27       (3)(a) For the purposes of direct review of final decisions of  
28 environmental boards, environmental boards include those boards  
29 identified in RCW 43.21B.005 and growth management hearings boards as  
30 identified in RCW 36.70A.250.

31       (b) An environmental board may issue a certificate of appealability  
32 if it finds that delay in obtaining a final and prompt determination of  
33 the issues would be detrimental to any party or the public interest and  
34 either:

35       (i) Fundamental and urgent state-wide or regional issues are  
36 raised; or

37       (ii) The proceeding is likely to have significant precedential  
38 value.

1       (4) The environmental board shall state in the certificate of  
2 appealability which criteria it applied, explain how that criteria was  
3 met, and file with the certificate a copy of the final decision.

4       (5) For an appellate court to accept direct review of a final  
5 decision of an environmental board, it shall consider the same criteria  
6 outlined in subsection (3) of this section.

7       (6) The procedures for direct review of final decisions of  
8 environmental boards include:

9       (a) Within thirty days after filing the petition for review with  
10 the superior court, a party may file an application for direct review  
11 with the superior court and serve the appropriate environmental board  
12 and all parties of record. The application shall request the  
13 environmental board to file a certificate of appealability.

14       (b) If an issue on review is the jurisdiction of the environmental  
15 board, the board may file an application for direct review on that  
16 issue.

17       (c) The environmental board shall have thirty days to grant or deny  
18 the request for a certificate of appealability and its decision shall  
19 be filed with the superior court and served on all parties of record.

20       (d) If a certificate of appealability is issued, the parties shall  
21 have fifteen days from the date of service to file a notice of  
22 discretionary review in the superior court, and the notice shall  
23 include a copy of the certificate of appealability and a copy of the  
24 final decision.

25       (e) If the appellate court accepts review, the certificate of  
26 appealability shall be transmitted to the court of appeals as part of  
27 the certified record.

28       (f) If a certificate of appealability is denied, review shall be by  
29 the superior court. The superior court's decision may be appealed to  
30 the court of appeals.

31       **Sec. 6.** RCW 34.05.522 and 1988 c 288 s 504 are each amended to  
32 read as follows:

33       The court of appeals may refuse to accept direct review of a case  
34 ((certified)) pursuant to RCW 34.05.518 if it finds that the case does  
35 not meet the applicable standard in RCW 34.05.518(2) or (5). Rules of  
36 Appellate Procedure 2.3 do not apply in this instance. The refusal to  
37 accept such review is not subject to further appellate review,

1 notwithstanding anything in Rule 13.3 of the Rules of Appellate  
2 Procedure to the contrary.

3 **Sec. 7.** RCW 75.20.140 and 1989 c 175 s 161 are each amended to  
4 read as follows:

5 ~~(1) ((In all appeals over which the hydraulic appeals board has  
6 jurisdiction, a party taking an appeal may elect either a formal or  
7 informal hearing. Such election shall be made according to the rules  
8 of practice and procedure to be adopted by the hydraulic appeals board.  
9 In the event that appeals are taken from the same decision, order, or  
10 determination, by different parties and only one of such parties elects  
11 a formal hearing, a formal hearing shall be granted.~~

12 ~~(2))~~ In all appeals, the hydraulic appeals board shall have all  
13 powers relating to administration of oaths, issuance of subpoenas, and  
14 taking of depositions, but such powers shall be exercised in conformity  
15 with chapter 34.05 RCW.

16 ~~((3))~~ (2) In all appeals ~~((involving a formal hearing))~~, the  
17 hydraulic appeals board, and each member thereof, shall be subject to  
18 all duties imposed upon and shall have all powers granted to, an agency  
19 by those provisions of chapter 34.05 RCW relating to adjudicative  
20 proceedings.

21 ~~((4))~~ (3) All proceedings~~((, including both formal and informal  
22 hearings,))~~ before the hydraulic appeals board or any of its members  
23 shall be conducted in accordance with such rules of practice and  
24 procedure as the board may prescribe. Such rules shall be published  
25 and distributed.

26 ~~((5))~~ (4) Judicial review of a decision of the hydraulic appeals  
27 board ~~((shall be de novo except when the decision has been rendered  
28 pursuant to the formal hearing, in which event judicial review))~~ may be  
29 obtained only pursuant to RCW 34.05.510 through 34.05.598.

30 NEW SECTION. **Sec. 8.** The following acts or parts of acts are each  
31 repealed:

32 (1) RCW 43.21B.140 and 1987 c 109 s 30 & 1970 ex.s. c 62 s 44; and

33 (2) RCW 43.21B.150 and 1990 c 65 s 4, 1974 ex.s. c 69 s 2, & 1970  
34 ex.s. c 62 s 45.

35 **Sec. 9.** RCW 36.70A.030 and 1994 c 307 s 2 and 1994 c 257 s 5 are  
36 each reenacted and amended to read as follows:

1 Unless the context clearly requires otherwise, the definitions in  
2 this section apply throughout this chapter.

3 (1) "Adopt a comprehensive land use plan" means to enact a new  
4 comprehensive land use plan or to update an existing comprehensive land  
5 use plan.

6 (2) "Agricultural land" means land primarily devoted to the  
7 commercial production of horticultural, viticultural, floricultural,  
8 dairy, apiary, vegetable, or animal products or of berries, grain, hay,  
9 straw, turf, seed, Christmas trees not subject to the excise tax  
10 imposed by RCW 84.33.100 through 84.33.140, finfish in upland  
11 hatcheries, or livestock, and that has long-term commercial  
12 significance for agricultural production.

13 (3) "City" means any city or town, including a code city.

14 (4) "Comprehensive land use plan," "comprehensive plan," or "plan"  
15 means a generalized coordinated land use policy statement of the  
16 governing body of a county or city that is adopted pursuant to this  
17 chapter.

18 (5) "Critical areas" include the following areas and ecosystems:  
19 (a) Wetlands; (b) areas with a critical recharging effect on aquifers  
20 used for potable water; (c) fish and wildlife habitat conservation  
21 areas; (d) frequently flooded areas; and (e) geologically hazardous  
22 areas.

23 (6) "Department" means the department of community, trade, and  
24 economic development.

25 (7) ~~((For purposes of RCW 36.70A.065 and 36.70A.440, "development  
26 permit application" means any application for a development proposal  
27 for a use that could be permitted under a plan adopted pursuant to this  
28 chapter and is consistent with the underlying land use and zoning,  
29 including but not limited to building permits, subdivisions, binding  
30 site plans, planned unit developments, conditional uses or other  
31 applications pertaining to land uses, but shall not include rezones,  
32 proposed amendments to comprehensive plans or the adoption or amendment  
33 of development regulations.~~

34 ~~(8))~~ "Development regulations" means ~~((any))~~ the controls placed  
35 on development or land use activities by a county or city, including,  
36 but not limited to, zoning ordinances, critical areas ordinances,  
37 shoreline master programs, official controls, planned unit development  
38 ordinances, subdivision ordinances, and binding site plan ordinances  
39 together with any amendments thereto. A development regulation does

1 not include a decision to approve a project permit application, as  
2 defined in section 402, chapter . . . . (Engrossed Substitute House Bill  
3 No. 1724), Laws of 1995, even though the decision may be expressed in  
4 a resolution or ordinance of the legislative body of the county or  
5 city.

6 ~~((+9))~~ (8) "Forest land" means land primarily devoted to growing  
7 trees for long-term commercial timber production on land that can be  
8 economically and practically managed for such production, including  
9 Christmas trees subject to the excise tax imposed under RCW 84.33.100  
10 through 84.33.140, and that has long-term commercial significance. In  
11 determining whether forest land is primarily devoted to growing trees  
12 for long-term commercial timber production on land that can be  
13 economically and practically managed for such production, the following  
14 factors shall be considered: (a) The proximity of the land to urban,  
15 suburban, and rural settlements; (b) surrounding parcel size and the  
16 compatibility and intensity of adjacent and nearby land uses; (c) long-  
17 term local economic conditions that affect the ability to manage for  
18 timber production; and (d) the availability of public facilities and  
19 services conducive to conversion of forest land to other uses.

20 ~~((+10))~~ (9) "Geologically hazardous areas" means areas that  
21 because of their susceptibility to erosion, sliding, earthquake, or  
22 other geological events, are not suited to the siting of commercial,  
23 residential, or industrial development consistent with public health or  
24 safety concerns.

25 ~~((+11))~~ (10) "Long-term commercial significance" includes the  
26 growing capacity, productivity, and soil composition of the land for  
27 long-term commercial production, in consideration with the land's  
28 proximity to population areas, and the possibility of more intense  
29 uses of the land.

30 ~~((+12))~~ (11) "Minerals" include gravel, sand, and valuable  
31 metallic substances.

32 ~~((+13))~~ (12) "Public facilities" include streets, roads, highways,  
33 sidewalks, street and road lighting systems, traffic signals, domestic  
34 water systems, storm and sanitary sewer systems, parks and recreational  
35 facilities, and schools.

36 ~~((+14))~~ (13) "Public services" include fire protection and  
37 suppression, law enforcement, public health, education, recreation,  
38 environmental protection, and other governmental services.



1       (~~(15)~~) (14) "Urban growth" refers to growth that makes intensive  
2 use of land for the location of buildings, structures, and impermeable  
3 surfaces to such a degree as to be incompatible with the primary use of  
4 such land for the production of food, other agricultural products, or  
5 fiber, or the extraction of mineral resources. When allowed to spread  
6 over wide areas, urban growth typically requires urban governmental  
7 services. "Characterized by urban growth" refers to land having urban  
8 growth located on it, or to land located in relationship to an area  
9 with urban growth on it as to be appropriate for urban growth.

10       (~~(16)~~) (15) "Urban growth areas" means those areas designated by  
11 a county pursuant to RCW 36.70A.110.

12       (~~(17)~~) (16) "Urban governmental services" include those  
13 governmental services historically and typically delivered by cities,  
14 and include storm and sanitary sewer systems, domestic water systems,  
15 street cleaning services, fire and police protection services, public  
16 transit services, and other public utilities associated with urban  
17 areas and normally not associated with nonurban areas.

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

33       **Sec. 10.** RCW 90.58.030 and 1987 c 474 s 1 are each amended to read  
34 as follows:

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

37       (1) Administration:

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

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

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

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

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

11 (2) Geographical:

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

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

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

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

36 (e) "Shorelines of state-wide significance" means the following  
37 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 ~~((wetlands))~~ shorelands associated with (i), (ii), (iv),  
29 and (v) of this subsection (2)(e);  
30 (f) "~~((Wetlands))~~ Shorelands" or "~~((wetland))~~ shoreland areas"  
31 means those lands extending landward for two hundred feet in all  
32 directions as measured on a horizontal plane from the ordinary high  
33 water mark; floodways and contiguous floodplain areas landward two  
34 hundred feet from such floodways; and all ~~((marshes, bogs, swamps,))~~  
35 wetlands and river deltas associated with the streams, lakes, and tidal  
36 waters which are subject to the provisions of this chapter; the same to  
37 be designated as to location by the department of ecology(~~(:—PROVIDED,~~  
38 ~~That)).~~ Any county or city may determine that portion of a one-  
39 hundred-year-flood plain to be included in its master program as long

1 as such portion includes, as a minimum, the floodway and the adjacent  
2 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 thousand five hundred  
10 dollars, or any development which materially interferes with the normal  
11 public use of the water or shorelines of the state; except that the  
12 following shall not be considered substantial developments for the  
13 purpose of this chapter:

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

16 (ii) Construction of the normal protective bulkhead common to  
17 single family residences;

18 (iii) Emergency construction necessary to protect property from  
19 damage by the elements;

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

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

36 (vi) Construction on ((~~wetlands~~)) shorelands by an owner, lessee,  
37 or contract purchaser of a single family residence for his own use or  
38 for the use of his family, which residence does not exceed a height of  
39 thirty-five feet above average grade level and which meets all

1 requirements of the state agency or local government having  
2 jurisdiction thereof, other than requirements imposed pursuant to this  
3 chapter;

4 (vii) Construction of a dock, including a community dock, designed  
5 for pleasure craft only, for the private noncommercial use of the  
6 owner, lessee, or contract purchaser of single and multiple family  
7 residences, the cost of which does not exceed two thousand five hundred  
8 dollars;

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

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

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

22 ~~(xi) Any action commenced prior to December 31, 1982, pertaining to~~  
23 ~~(A) the restoration of interim transportation services as may be~~  
24 ~~necessary as a consequence of the destruction of the Hood Canal bridge,~~  
25 ~~including, but not limited to, improvements to highways, development of~~  
26 ~~park and ride facilities, and development of ferry terminal facilities~~  
27 ~~until a new or reconstructed Hood Canal bridge is open to traffic; and~~  
28 ~~(B) the reconstruction of a permanent bridge at the site of the~~  
29 ~~original Hood Canal bridge)).~~

30 NEW SECTION. Sec. 11. A new section is added to chapter 90.58 RCW  
31 to read as follows:

32 The department by rule shall adopt a manual for the delineation of  
33 wetlands under this chapter that implements and is consistent with the  
34 1987 manual in use on January 1, 1995, by the United States army corps  
35 of engineers and the United States environmental protection agency. If  
36 the corps of engineers and the environmental protection agency adopt  
37 changes to or a different manual, the department shall consider those  
38 changes and may adopt rules implementing those changes.

1        NEW SECTION.    **Sec. 12.**    A new section is added to chapter 36.70A  
2 RCW to read as follows:

3        Wetlands regulated under development regulations adopted pursuant  
4 to this chapter shall be delineated in accordance with the manual  
5 adopted by the department pursuant to section 11 of this act.

6        NEW SECTION.    **Sec. 13.**    A new section is added to chapter 36.70A  
7 RCW to read as follows:

8        Nothing in section 104, chapter ..... (Engrossed Substitute House  
9 Bill No. 1724), Laws of 1995, shall be construed to authorize a county  
10 or city to adopt regulations applicable to shorelands as defined in RCW  
11 90.58.030 that are inconsistent with the provisions of chapter 90.58  
12 RCW.

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