

HOUSE BILL REPORT

ESHB 1090

As Passed House:
March 9, 2013

Title: An act relating to increasing the dollar amount for construction of a dock that does not qualify as a substantial development under the shoreline management act.

Brief Description: Increasing the dollar amount for construction of a dock that does not qualify as a substantial development under the shoreline management act.

Sponsors: House Committee on Local Government (originally sponsored by Representatives Shea, Reykdal, Crouse, Holy, Springer and Dahlquist).

Brief History:

Committee Activity:

Local Government: 1/24/13, 1/31/13 [DPS].

Floor Activity:

Passed House: 3/9/13, 95-0.

Brief Summary of Engrossed Substitute Bill

- Increases the dollar threshold for construction of certain docks in fresh waters, below which the dock construction is not considered a “substantial development” subject to permitting requirements under the Shoreline Management Act (SMA).
- Sets a \$20,000 threshold for construction of a dock in fresh waters that: (1) is constructed to replace an existing dock; (2) has equal or lesser square footage than the dock it is replacing; and (3) is located in a jurisdiction that has updated its master program.
- Establishes that the combined fair market value of prior and subsequent dock construction that exceeds the salt water or fresh water thresholds within a five-year-period determines whether construction of the dock is considered a “substantial development” under the SMA.

HOUSE COMMITTEE ON LOCAL GOVERNMENT

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Takko, Chair; Taylor, Ranking Minority Member; Kochmar, Assistant Ranking Minority Member; Liias, Springer and Upthegrove.

Minority Report: Do not pass. Signed by 2 members: Representatives Fitzgibbon, Vice Chair; Buys.

Staff: Michaela Murdock (786-7289).

Background:

The Shoreline Management Act (SMA) was enacted in 1971, and it governs uses of the shorelines of the state. Shorelines of the state are all water areas of the state, with some exceptions, and the land underlying them, including reservoirs, and their associated shorelands. Lands that extend landward 200 feet in all directions as measured on a horizontal plane from the ordinary high water mark, wetlands, and river deltas are "shorelands."

The SMA provides for a cooperative regulatory approach between local governments (counties, cities, or towns that contain within their boundaries any lands or waters subject to the SMA) and the state. At the local level, the SMA regulations are developed in local shoreline master programs (master programs). All counties and cities with shorelines of the state are required to adopt and enforce master programs that regulate land use activities within their jurisdictions. Master programs must be consistent with guidelines adopted by the Department of Ecology (DOE). Master programs, and any segments of or amendments to the programs, become effective when approved by the DOE.

The master program guidelines adopted by the DOE were revised in 2003. The revised guidelines are located in chapter 173-26 of the Washington Administrative Code.

Development Permits Under the Shoreline Management Act.

Prior to undertaking any substantial development on the shorelines of the state, the SMA requires that a property owner or developer first obtain a permit. A "substantial development" is any development with a total cost or fair market value exceeding \$5,000, or any development which materially interferes with the normal public use of the water or shorelines of the state. Certain developments are specifically not considered "substantial developments" by statute and are exempt from the requirement of obtaining a special development permit.

Construction of a Dock.

Under certain circumstances, construction of a dock is not considered a "substantial development" for purposes of the SMA. To qualify for this exemption, the dock to be constructed must meet the following conditions:

- designed for pleasure craft use only;
- designed for private noncommercial use by the: (1) owner, (2) lessee, or (3) contract purchaser of single and multiple family residences; and
- the fair market value of the dock does not exceed \$2,500 in salt waters, or \$10,000 in fresh waters.

However, if subsequent construction having a fair market value exceeding \$2,500 occurs within five years of completion of the prior construction, the subsequent construction is considered a substantial development.

Consumer Price Index.

The consumer price index for urban wage earners and clerical workers (CPI-W) is an index prepared and published by the Bureau of Labor Statistics of the United States Department of Labor, which measures the average change in prices of goods and services. It is used to illustrate the extent that prices have risen or the amount of inflation that has taken place.

Summary of Engrossed Substitute Bill:

For construction of certain docks in fresh waters, the dollar threshold (below which dock construction is not considered a "substantial development" subject to permitting requirements of the SMA) is increased to \$20,000. Docks constructed in fresh waters that meet the following criteria are subject to the \$20,000 threshold: (1) constructed to replace an existing dock; (2) have equal or lesser square footage than the dock being replaced; and (3) located in a jurisdiction that has updated its master program consistent with the 2003 guidelines adopted by the DOE. All other docks constructed in fresh waters are subject to a lower dollar threshold of \$10,000.

A provision governing combined fair market value of subsequent and prior dock construction for purposes of determining whether the dock construction is a "substantial development" subject to the SMA permitting requirements is modified. Where subsequent dock construction occurs within five years of completion of prior dock construction, and the combined fair market value of the prior and subsequent construction exceeds the applicable dollar threshold for salt waters (\$2,500) or for fresh waters (\$10,000 or \$20,000), the subsequent construction is considered a substantial development.

A method and schedule for determining adjustments for inflation to the fresh water dollar thresholds is established. The schedule provides that the dollar thresholds must be adjusted for inflation by the Office of Financial Management (OFM) every five years, beginning July 1, 2018. The new thresholds must be adjusted using the consumer price index for urban wage earners and clerical workers (CPI-W) for the Seattle, Washington area. The OFM must calculate and transmit the new dollar thresholds, rounded to the nearest \$100, to the Office of the Code Reviser for publication at least one month before they are to take effect.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This bill was requested by the Department of Ecology and will clarify the law as to multiple dock construction within a five-year period. It will help stop people who try to

game the system by constructing a dock and then doing additional construction within a five-year period without going through the onerous permitting process.

For the most part, construction of fresh water docks is fairly straightforward work. It is a simple process and an easy legislative fix. Construction of docks in salt waters, however, is a more complicated issue, which is why only the fresh water threshold is addressed by this bill.

Raising the threshold will not only encourage people to use better materials, but also encourage them to use qualified contractors. This in turn will mean that docks will last a long time, rather than people having to replace them every 10 years. People want to build quality docks with environmentally friendly composite materials, but they also want to build docks to the largest extent allowed by local ordinance or law. To stay under the \$10,000 threshold for fresh waters, people must use inferior materials and unqualified contractors, or do the project themselves. By raising the threshold, the use of better, more environmentally friendly materials on fresh waters will be encouraged and incentivized. It will also mean more income and jobs for small dock construction companies, and more money for jurisdictions, because more people will be able to build docks.

Some people would like to condition access to the higher \$20,000 threshold on jurisdictions having updated their Shoreline Master Program. Doing so is not advisable, though, because it would continue to encourage dock owners to use inferior materials.

Increasing the dollar threshold will not increase the square footage of docks that are constructed. Although the statute does not limit the square footage of docks, square footage is addressed elsewhere.

Adjusting the dollar thresholds in the future for inflation is not objectionable. The current numbers, which are no longer workable, were put in place over a decade ago.

Dock construction that is exempt from the substantial development permit requirement is still required to obtain a permit from the Department of Fish & Wildlife. Any construction on the water requires a hydraulics permit.

The current \$10,000 threshold discourages people from building quality, environmentally friendly docks, because the cost of materials, labor, and permit fees is prohibitive. For example, in Thurston County, exempt permit fees total approximately \$2,700. In contrast, to obtain a substantial development permit (*i.e.*, to construct a dock over \$10,000), the total cost is approximately \$8,855. Building a dock for more than \$10,000 is a hard sell for contractors, because the permit fees approach the cost of the dock.

Raising the threshold is just common sense. Ten to 15 years ago, contractors could build quality docks for under \$10,000, but the threshold has not been raised in a long time. Over the years, costs associated with constructing docks have increased: freight costs, insurance rates, wages, fees to moor boats, etc. Dock builders have seen their costs double. The dollar thresholds should increase as well.

Dock builders have been hurt by the low-dollar thresholds. For example, cedar is a costly building material. Construction of a cedar dock puts the cost of the project over the threshold; accordingly, business for cedar dock builders is very poor.

(Opposed) The dollar threshold for construction of a dock in salt water is currently four times less than the threshold for fresh water construction. It does not make sense to increase that difference to eight times.

Increasing the dollar threshold amount will increase the number of docks that are built in fresh water, which will have an adverse effect on fish. For example, red band trout are threatened due to loss of habitat. The greater number of docks that are built, the greater the impact on the fish.

Increasing the dollar threshold amount means that bigger not better docks will be constructed. People will not build more environmentally friendly docks; they will simply use that additional money to build bigger.

Persons Testifying: (In support) Representative Shea, prime sponsor; Bill Evans, Evans Marine Solutions; Dave Drahrman, Knight EZ Dock; Jim Robinson; and Cliff Webster, Northwest Marine Trade Association.

(Opposed) Neil Beaver, The Lands Council and Spokane River Keepers.

Persons Signed In To Testify But Not Testifying: None.