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HOUSE BILL 1090

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State of Washington                      63rd Legislature                      2013 Regular Session

By Representatives Shea, Reykdal, Crouse, Holy, Springer, and Dahlquist

Read first time 01/16/13. Referred to Committee on Local Government.

1            AN ACT Relating to increasing the dollar amount for construction of  
2 a dock that does not qualify as a substantial development under the  
3 shoreline management act; and reenacting and amending RCW 90.58.030.

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

5            **Sec. 1.** RCW 90.58.030 and 2010 c 107 s 3 are each reenacted and  
6 amended to read as follows:

7            As used in this chapter, unless the context otherwise requires, the  
8 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) "Hearings board" means the shorelines hearings board  
13 established by this chapter;

14            (d) "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            (e) "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 (2) Geographical:

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

6 (b) "Floodway" means the area, as identified in a master program,  
7 that either: (i) Has been established in federal emergency management  
8 agency flood insurance rate maps or floodway maps; or (ii) consists of  
9 those portions of a river valley lying streamward from the outer limits  
10 of a watercourse upon which flood waters are carried during periods of  
11 flooding that occur with reasonable regularity, although not  
12 necessarily annually, said floodway being identified, under normal  
13 condition, by changes in surface soil conditions or changes in types or  
14 quality of vegetative ground cover condition, topography, or other  
15 indicators of flooding that occurs with reasonable regularity, although  
16 not necessarily annually. Regardless of the method used to identify  
17 the floodway, the floodway shall not include those lands that can  
18 reasonably be expected to be protected from flood waters by flood  
19 control devices maintained by or maintained under license from the  
20 federal government, the state, or a political subdivision of the state;

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

33 (d) "Shorelands" or "shoreland areas" means those lands extending  
34 landward for two hundred feet in all directions as measured on a  
35 horizontal plane from the ordinary high water mark; floodways and  
36 contiguous floodplain areas landward two hundred feet from such  
37 floodways; and all wetlands and river deltas associated with the

1 streams, lakes, and tidal waters which are subject to the provisions of  
2 this chapter; the same to be designated as to location by the  
3 department of ecology.

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

8 (ii) Any city or county may also include in its master program land  
9 necessary for buffers for critical areas, as defined in chapter 36.70A  
10 RCW, that occur within shorelines of the state, provided that forest  
11 practices regulated under chapter 76.09 RCW, except conversions to  
12 nonforest land use, on lands subject to the provisions of this  
13 subsection (2)(d)(ii) are not subject to additional regulations under  
14 this chapter;

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

23 (f) "Shorelines of statewide significance" means the following  
24 shorelines of the state:

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

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

- 31 (A) Nisqually Delta--from DeWolf Bight to Tatsolo Point,
- 32 (B) Birch Bay--from Point Whitehorn to Birch Point,
- 33 (C) Hood Canal--from Tala Point to Foulweather Bluff,
- 34 (D) Skagit Bay and adjacent area--from Brown Point to Yokeko Point,

35 and

- 36 (E) Padilla Bay--from March Point to William Point;
- 37 (iii) Those areas of Puget Sound and the Strait of Juan de Fuca and

1 adjacent salt waters north to the Canadian line and lying seaward from  
2 the line of extreme low tide;

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

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

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

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

15 (vi) Those shorelands associated with (i), (ii), (iv), and (v) of  
16 this subsection (2)(f);

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

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

32 (3) Procedural terms:

33 (a) "Development" means a use consisting of the construction or  
34 exterior alteration of structures; dredging; drilling; dumping;  
35 filling; removal of any sand, gravel, or minerals; bulkheading; driving  
36 of piling; placing of obstructions; or any project of a permanent or  
37 temporary nature which interferes with the normal public use of the

1 surface of the waters overlying lands subject to this chapter at any  
2 state of water level;

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

8 (c) "Master program" shall mean the comprehensive use plan for a  
9 described area, and the use regulations together with maps, diagrams,  
10 charts, or other descriptive material and text, a statement of desired  
11 goals, and standards developed in accordance with the policies  
12 enunciated in RCW 90.58.020. "Comprehensive master program update"  
13 means a master program that fully achieves the procedural and  
14 substantive requirements of the department guidelines effective January  
15 17, 2004, as now or hereafter amended;

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

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

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

36 (ii) Construction of the normal protective bulkhead common to  
37 single family residences;

1 (iii) Emergency construction necessary to protect property from  
2 damage by the elements;

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

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

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

26 (vii) Construction of a dock, including a community dock, designed  
27 for pleasure craft only, for the private noncommercial use of the  
28 owner, lessee, or contract purchaser of single and multiple family  
29 residences. This exception applies if either: (A) In salt waters, the  
30 fair market value of the dock does not exceed two thousand five hundred  
31 dollars; or (B) in fresh waters, the fair market value of the dock does  
32 not exceed ~~((ten))~~ twenty thousand dollars ~~((, but if subsequent~~  
33 ~~construction having a fair market value exceeding two thousand five~~  
34 ~~hundred dollars occurs within five years of completion of the prior~~  
35 ~~construction)).~~ However, if subsequent construction occurs within five  
36 years of completion of the prior construction, and the combined fair  
37 market value of the subsequent and prior construction exceeds the

1 amount specified in either (A) or (B) of this subsection (3)(e)(vii),  
2 the subsequent construction shall be considered a substantial  
3 development for the purpose of this chapter;

4 (viii) Operation, maintenance, or construction of canals,  
5 waterways, drains, reservoirs, or other facilities that now exist or  
6 are hereafter created or developed as a part of an irrigation system  
7 for the primary purpose of making use of system waters, including  
8 return flow and artificially stored groundwater for the irrigation of  
9 lands;

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

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

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

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

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

25 (C) The activity does not involve the installation of a structure,  
26 and upon completion of the activity the vegetation and land  
27 configuration of the site are restored to conditions existing before  
28 the activity;

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

33 (E) The activity is not subject to the permit requirements of RCW  
34 90.58.550;

35 (xii) The process of removing or controlling an aquatic noxious  
36 weed, as defined in RCW 17.26.020, through the use of an herbicide or  
37 other treatment methods applicable to weed control that are recommended

1 by a final environmental impact statement published by the department  
2 of agriculture or the department jointly with other state agencies  
3 under chapter 43.21C RCW.

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