

ESHB 1379 - S AMD TO GO COMM AMD (S2725.1) **326**

By Senators Fraser, Kline, Parlette, Schoesler, McDermott, Murray, Ranker, Swecker, Morton, Carrell, Fairley, Oemig, Hargrove, Stevens

ADOPTED 04/14/2009

1 On page 1, beginning on line 3 of the amendment, after "**Sec. 1.**"
2 strike all material through "requirements." on line 7 and insert "The
3 legislature recognizes that the state, counties, and cities have
4 moratoria authority granted through constitutional and statutory
5 provisions and that this authority, when properly exercised, is an
6 important aspect of complying with environmental stewardship and
7 protection requirements."

8 On page 2, after line 14 of the amendment, insert the following:

9 "NEW SECTION. **Sec. 3.** (1) The legislature finds that a special
10 height moratorium is necessary along the shoreline known as the
11 "Olympia Isthmus" located in the city of Olympia between Capitol Lake
12 and Budd Inlet, which should hereinafter be designated a "shoreline of
13 statewide significance."

14 (2) The legislature further finds that:

15 (a) The shoreline along Capitol Lake is part of the Heritage park
16 area of the state capitol campus, in which the state of Washington has
17 invested millions of dollars to improve and make available for
18 statewide public use, education, and appreciation. It is also an
19 important element of the scenic, historic vista northward from the
20 capitol campus, in which the state of Washington and nonprofit
21 organizations have invested millions of dollars to construct excellent
22 public viewing opportunities of the north capitol campus and other
23 sights of both statewide and national significance;

24 (b) The state of Washington is continuing to invest millions of
25 dollars in water quality improvements along both Capitol Lake and Budd
26 Inlet shorelines;

27 (c) The Olympia Isthmus as a whole is historically significant,
28 fragile, and a major contributor to significant changes to the natural

1 estuary area of the area. The Olympia Isthmus was constructed by fill
2 in early 1911, with the reflecting lake created in the 1950s when the
3 dam was constructed at what is now called the Deschutes spillway;

4 (d) The vista is an integral part of the design of the state
5 capitol campus. The state's founders sited the capitol campus in its
6 location principally to take advantage of this expansive vista. The
7 vista: Is representative of much of the physical characteristics of
8 very large areas of the state; provides a visual and physical
9 connection between the capitol and the Puget Sound; is inspirational;
10 and promotes an appreciation of the scenic grandeur and rich natural
11 resources of our state; and

12 (e) The Washington state capitol, together with its spectacular
13 location, is a state and national treasure that has been passed down
14 from one generation to another.

15 (3) The legislature intends that the Olympia Isthmus be declared to
16 be a shoreline of statewide significance through the shoreline
17 management act to advance the public interest and to protect public
18 investments.

19 (4) This state and national treasure has been passed down from one
20 generation to another. It includes public vistas of Budd Inlet, south
21 Puget Sound, the Olympic mountains, and a broad range of forested
22 hills.

23 (5) Therefore, it is the intent of the legislature to take steps to
24 protect this state and national scenic and historic asset.

25 **Sec. 4.** RCW 90.58.030 and 2007 c 328 s 1 are each amended to read
26 as follows:

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

29 (1) Administration:

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

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

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

35 (d) "Person" means an individual, partnership, corporation,
36 association, organization, cooperative, public or municipal

1 corporation, or agency of the state or local governmental unit however
2 designated;

3 (e) "~~((Hearing[s]))~~ Hearings board" means the ~~((shoreline[s]))~~
4 shorelines hearings board established by this chapter.

5 (2) Geographical:

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

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

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

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

30 (e) "Shorelines of statewide significance" means the following
31 shorelines of the state:

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

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

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

1 (B) Birch Bay--from Point Whitehorn to Birch Point,
2 (C) Hood Canal--from Tala Point to Foulweather Bluff,
3 (D) Skagit Bay and adjacent area--from Brown Point to Yokeko Point,
4 ((and))
5 (E) Padilla Bay--from March Point to William Point, and
6 (F) Budd Inlet--from the northwest extension of Capitol Waterway in
7 Olympia to the Deschutes spillway, and including the historic shoreline
8 of Budd Inlet contained in Capitol Lake from the Deschutes spillway to
9 the southwest extension of Capitol Waterway;

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

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

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

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

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

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

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

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

1 (ii) Any city or county may also include in its master program land
2 necessary for buffers for critical areas, as defined in chapter 36.70A
3 RCW, that occur within shorelines of the state, provided that forest
4 practices regulated under chapter 76.09 RCW, except conversions to
5 nonforest land use, on lands subject to the provisions of this
6 subsection (2)(f)(ii) are not subject to additional regulations under
7 this chapter;

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

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

36 (3) Procedural terms:

37 (a) "Guidelines" means those standards adopted to implement the
38 policy of this chapter for regulation of use of the shorelines of the

1 state prior to adoption of master programs. Such standards shall also
2 provide criteria to local governments and the department in developing
3 master programs;

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

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

11 (d) "Development" means a use consisting of the construction or
12 exterior alteration of structures; dredging; drilling; dumping;
13 filling; removal of any sand, gravel, or minerals; bulkheading; driving
14 of piling; placing of obstructions; or any project of a permanent or
15 temporary nature which interferes with the normal public use of the
16 surface of the waters overlying lands subject to this chapter at any
17 state of water level;

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 thousand dollars, but if subsequent construction having
33 a fair market value exceeding two thousand five hundred dollars occurs
34 within five years of completion of the prior construction, the
35 subsequent construction shall be considered a substantial development
36 for the purpose of this chapter;

37 (viii) Operation, maintenance, or construction of canals,
38 waterways, drains, reservoirs, or other facilities that now exist or

1 are hereafter created or developed as a part of an irrigation system
2 for the primary purpose of making use of system waters, including
3 return flow and artificially stored groundwater for the irrigation of
4 lands;

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

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

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

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

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

20 (C) The activity does not involve the installation of a structure,
21 and upon completion of the activity the vegetation and land
22 configuration of the site are restored to conditions existing before
23 the activity;

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

28 (E) The activity is not subject to the permit requirements of RCW
29 90.58.550;

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

36 NEW SECTION. **Sec. 5.** A new section is added to chapter 35A.63 RCW
37 to read as follows:

1 (1) A special height moratorium is created on the Olympia Isthmus
2 in the area adjacent to the historic Budd Inlet named in RCW 90.58.030
3 in order to protect the scenic beauty of the state capitol campus for
4 the citizens of this state and for out-of-state visitors.

5 (2) The Olympia Isthmus special height moratorium is located as
6 follows: The Olympia Isthmus--from the western boundary of Capitol
7 Waterway in Olympia proceeding west to the shoreline of the Deschutes
8 spillway bounded by Capitol Lake shoreline and Budd Inlet shoreline.

9 (3) The maximum allowable height for a new or remodeled building or
10 structure located within the Olympia Isthmus special height moratorium
11 is thirty-five feet. This section only applies to new construction,
12 and remodeling or restructuring that affects the height of the
13 building. This section is not intended to prevent normal repair,
14 maintenance, and internal remodeling of any building already exceeding
15 the height limitation.

16 NEW SECTION. **Sec. 6.** If any provision of this act or its
17 application to any person or circumstance is held invalid, the
18 remainder of the act or the application of the provision to other
19 persons or circumstances is not affected.

20 NEW SECTION. **Sec. 7.** This act is necessary for the immediate
21 preservation of the public peace, health, or safety, or support of the
22 state government and its existing public institutions, and takes effect
23 immediately."

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By Senators Fraser, Kline, Parlette, Schoesler, McDermott, Murray,
Ranker, Swecker, Morton, Carrell, Fairley, Oemig, Hargrove, Stevens

ADOPTED 04/14/2009

24 On page 2, line 16 of the title amendment, after "insert" strike
25 all material through "section." on line 17 and insert "amending RCW
26 90.58.030; adding a new section to chapter 90.58 RCW; adding a new
27 section to chapter 35A.63 RCW; creating new sections; and declaring an
28 emergency."

EFFECT: Creates a special height moratorium to protect the Olympia Isthmus, which is recognized as a shoreline of statewide significance.

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