
ENGROSSED SUBSTITUTE SENATE BILL 5671

State of Washington

53rd Legislature

1993 Regular Session

By Senate Committee on Natural Resources (originally sponsored by Senators Owen, Sutherland, Amondson, Erwin, Hargrove, Oke, L. Smith and Fraser)

Read first time 02/25/93.

1 AN ACT Relating to the definition of a substantial development and
2 providing for hydraulics permit exemptions for routine repair and
3 maintenance; and amending RCW 90.58.030 and 75.20.100.

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

5 **Sec. 1.** RCW 90.58.030 and 1987 c 474 s 1 are each amended to read
6 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) "Local government" means ((any)) a county, incorporated city,
13 or town ((which)) that contains within its boundaries ((any)) lands or
14 waters subject to 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
14 department(~~(: PROVIDED, That)~~). In ((any)) an area where the ordinary
15 high water mark cannot be found, the ordinary high water mark adjoining
16 salt water shall be the line of mean higher high tide and the ordinary
17 high water mark adjoining fresh water shall be the line of mean high
18 water;

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

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

29 (e) "Shorelines of state-wide significance" means the following
30 shorelines of the state:

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

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

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

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

39 (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 wetlands associated with (i), (ii), (iv), and (v) of
20 this subsection (2)(e);

21 (f) "Wetlands" or "wetland 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 marshes, bogs, swamps, and river deltas associated
26 with the streams, lakes, and tidal waters which are subject to the
27 provisions of this chapter; the same to be designated as to location by
28 the department of ecology(~~(:—PROVIDED, That any)~~). A county or city
29 may determine that portion of a one-hundred-year-flood plain to be
30 included in its master program as long as (~~(such)~~) the portion
31 includes, as a minimum, the floodway and the adjacent land extending
32 landward two hundred feet therefrom;

33 (g) "Floodway" means those portions of the area of a river valley
34 lying streamward from the outer limits of a watercourse upon which
35 flood waters are carried during periods of flooding that occur with
36 reasonable regularity, although not necessarily annually, said floodway
37 being identified, under normal condition, by changes in surface soil
38 conditions or changes in types or quality of vegetative ground cover
39 condition. The floodway shall not include those lands that can

1 reasonably be expected to be protected from flood waters by flood
2 control devices maintained by or maintained under license from the
3 federal government, the state, or a political subdivision of the state.

4 (3) Procedural terms:

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

10 (b) "Master program" ~~((shall mean))~~ means the comprehensive use
11 plan for a described area, and the use regulations together with maps,
12 diagrams, charts, or other descriptive material and text, a statement
13 of desired goals, and standards developed in accordance with the
14 policies enunciated in RCW 90.58.020;

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

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

24 (e) "Substantial development" ~~((shall mean any))~~ means a
25 development of which the total cost or fair market value exceeds
26 ~~((two))~~ eight thousand five hundred dollars, to be reviewed and
27 reported to the legislature every five years beginning September 1998
28 by the department of ecology for possible increases due to inflation,
29 or any development which materially interferes with the normal public
30 use of the water or shorelines of the state; except that the following
31 shall not be considered substantial developments for the purpose of
32 this chapter:

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

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

37 (iii) Emergency construction necessary to protect property from
38 damage by the elements;

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

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

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

24 (vii) Construction of a dock, including a community dock, designed
25 for pleasure craft only, for the private noncommercial use of the
26 owner, lessee, or contract purchaser of single and multiple family
27 residences, the cost of which does not exceed (~~(two)~~) eight thousand
28 five hundred dollars to be reviewed and reported to the legislature
29 every five years beginning September 1998 by the department of ecology
30 for possible increases due to inflation;

31 (viii) Operation, maintenance, or construction of canals,
32 waterways, drains, reservoirs, or other facilities that now exist or
33 are hereafter created or developed as a part of an irrigation system
34 for the primary purpose of making use of system waters, including
35 return flow and artificially stored ground water for the irrigation of
36 lands;

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

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

5 (xi) ((Any)) An action commenced prior to December 31, 1982,
6 pertaining to (A) the restoration of interim transportation services as
7 may be necessary as a consequence of the destruction of the Hood Canal
8 bridge, including, but not limited to, improvements to highways,
9 development of park and ride facilities, and development of ferry
10 terminal facilities until a new or reconstructed Hood Canal bridge is
11 open to traffic; and (B) the reconstruction of a permanent bridge at
12 the site of the original Hood Canal bridge.

13 **Sec. 2.** RCW 75.20.100 and 1991 c 322 s 30 are each amended to read
14 as follows:

15 In the event that any person or government agency desires to
16 construct any form of hydraulic project or perform other work that will
17 use, divert, obstruct, or change the natural flow or bed of any of the
18 salt or fresh waters of the state, such person or government agency
19 shall, before commencing construction or work thereon and to ensure the
20 proper protection of fish life, secure the written approval of the
21 department of fisheries or the department of wildlife as to the
22 adequacy of the means proposed for the protection of fish life. This
23 approval shall not be unreasonably withheld. Except as provided in RCW
24 75.20.1001 and 75.20.1002, the department of fisheries or the
25 department of wildlife shall grant or deny approval within forty-five
26 calendar days of the receipt of a complete application and notice of
27 compliance with any applicable requirements of the state environmental
28 policy act, made in the manner prescribed in this section. The
29 applicant may document receipt of application by filing in person or by
30 registered mail. A complete application for approval shall contain
31 general plans for the overall project, complete plans and
32 specifications of the proposed construction or work within the mean
33 higher high water line in salt water or within the ordinary high water
34 line in fresh water, and complete plans and specifications for the
35 proper protection of fish life. The forty-five day requirement shall
36 be suspended if (1) after ten working days of receipt of the
37 application, the applicant remains unavailable or unable to arrange for
38 a timely field evaluation of the proposed project; (2) the site is

1 physically inaccessible for inspection; or (3) the applicant requests
2 delay. Immediately upon determination that the forty-five day period
3 is suspended, the department of fisheries or the department of wildlife
4 shall notify the applicant in writing of the reasons for the delay.
5 Approval is valid for a period of up to five years from date of
6 issuance. The permittee must demonstrate substantial progress on
7 construction of that portion of the project relating to the approval
8 within two years of the date of issuance. If either the department of
9 fisheries or the department of wildlife denies approval, that
10 department shall provide the applicant, in writing, a statement of the
11 specific reasons why and how the proposed project would adversely
12 affect fish life. Protection of fish life shall be the only ground
13 upon which approval may be denied or conditioned. Chapter 34.05 RCW
14 applies to any denial of project approval, conditional approval, or
15 requirements for project modification upon which approval may be
16 contingent. If any person or government agency commences construction
17 on any hydraulic works or projects subject to this section without
18 first having obtained written approval of the department of fisheries
19 or the department of wildlife as to the adequacy of the means proposed
20 for the protection of fish life, or if any person or government agency
21 fails to follow or carry out any of the requirements or conditions as
22 are made a part of such approval, the person or director of the agency
23 is guilty of a gross misdemeanor. If any such person or government
24 agency is convicted of violating any of the provisions of this section
25 and continues construction on any such works or projects without fully
26 complying with the provisions hereof, such works or projects are hereby
27 declared a public nuisance and shall be subject to abatement as such.

28 For the purposes of this section and RCW 75.20.103, "bed" shall
29 mean the land below the ordinary high water lines of state waters.
30 This definition shall not include irrigation ditches, canals, storm
31 water run-off devices, or other artificial watercourses except where
32 they exist in a natural watercourse that has been altered by man.

33 The phrase "to construct any form of hydraulic project or perform
34 other work" shall not include the act of driving across an established
35 ford. Driving across streams or on wetted stream beds at areas other
36 than established fords requires approval. Work within the ordinary
37 high water line of state waters to construct or repair a ford or
38 crossing requires approval.

1 For each application, the department of fisheries and the
2 department of wildlife shall mutually agree on whether the department
3 of fisheries or the department of wildlife shall administer the
4 provisions of this section, in order to avoid duplication of effort.
5 The department designated to act shall cooperate with the other
6 department in order to protect all species of fish life found at the
7 project site. If the department of fisheries or the department of
8 wildlife receives an application concerning a site not in its
9 jurisdiction, it shall transmit the application to the other department
10 within three days and notify the applicant.

11 In case of an emergency arising from weather or stream flow
12 conditions or other natural conditions, the department of fisheries or
13 department of wildlife, through their authorized representatives, shall
14 issue immediately upon request oral approval for removing any
15 obstructions, repairing existing structures, restoring stream banks, or
16 to protect property threatened by the stream or a change in the stream
17 flow without the necessity of obtaining a written approval prior to
18 commencing work. Conditions of an oral approval shall be reduced to
19 writing within thirty days and complied with as provided for in this
20 section. Oral approval shall be granted immediately upon request, for
21 a stream crossing during an emergency situation.

22 For hydraulic projects approved between January 1, 1989, and the
23 effective date of this act for which a maintenance plan has not been
24 submitted, the applicant may contact the department of fisheries or the
25 department of wildlife to determine whether the conditions of the
26 original permit are adequate for maintenance work. If the conditions
27 of the original permit are adequate, the department shall issue a
28 permit within fifteen days. If the original conditions are not
29 adequate the applicant may submit a maintenance plan for review by the
30 department. If either the department of fisheries or the department of
31 wildlife denies approval of a maintenance plan, that department shall
32 provide in writing a statement of the specific reasons how the
33 maintenance plan adversely affects fish life and what changes would be
34 necessary to adequately protect fish life and gain approval of the
35 maintenance plan. Maintenance plans approved under this section may be
36 approved for a period of five years and may be renewed upon request.
37 After the effective date of this act, an applicant may apply for a
38 hydraulic approval and a five-year maintenance plan simultaneously.

1 This section shall not apply to the construction of any form of
2 hydraulic project or other work which diverts water for agricultural
3 irrigation or stock watering purposes authorized under or recognized as
4 being valid by the state's water codes, or when such hydraulic project
5 or other work is associated with streambank stabilization to protect
6 farm and agricultural land as defined in RCW 84.34.020. These
7 irrigation or stock watering diversion and streambank stabilization
8 projects shall be governed by RCW 75.20.103.

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