
HOUSE BILL 3299

State of Washington 59th Legislature 2006 Regular Session

By Representatives Holmquist, Hinkle, Lovick and O'Brien

Read first time 02/03/2006. Referred to Committee on Natural Resources, Ecology & Parks.

1 AN ACT Relating to the construction of docks in artificial lakes;
2 amending RCW 90.58.030 and 90.58.100; and creating a new section.

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

4 NEW SECTION. **Sec. 1.** (1) The legislature recognizes the
5 importance of appropriate regulation of shorelines of the state. The
6 legislature also recognizes that the shoreline management act
7 acknowledges the importance of granting regulatory relief from
8 inflexible mandates by requiring local master programs to contain
9 provisions allowing for variances in the application of regulations.
10 The reason for this requirement is to ensure that the strict
11 implementation of regulations does not create unnecessary hardships or
12 thwart the policy of the shoreline management act. An example further
13 emphasizing the importance of appropriate variances can be found in
14 provisions of the shoreline management act that exempt the construction
15 of qualifying private, noncommercial docks from certain regulatory
16 requirements.

17 (2) Recognizing that appropriate variances in the strict
18 application of the shoreline management act are consistent with
19 established policy and effective protection measures, the legislature

1 intends to: (a) Exempt qualifying private, noncommercial docks in
2 artificial lakes, including, but not limited to, Moses Lake, from
3 certain regulatory requirements; and (b) require that such docks be
4 granted local permitting preferences.

5 **Sec. 2.** RCW 90.58.030 and 2003 c 321 s 2 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 county, incorporated city, or town
13 which contains within its boundaries any lands or waters subject to
14 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;

19 (e) "Hearing board" means the shoreline hearings board established
20 by this chapter.

21 (2) Geographical:

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

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

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

1 (d) "Shorelines" means all of the water areas of the state,
2 including reservoirs, and their associated shorelands, together with
3 the lands underlying them; except (i) shorelines of statewide
4 significance; (ii) shorelines on segments of streams upstream of a
5 point where the mean annual flow is twenty cubic feet per second or
6 less and the wetlands associated with such upstream segments; and (iii)
7 shorelines on lakes less than twenty acres in size and wetlands
8 associated with such small lakes;

9 (e) "Shorelines of statewide significance" means the following
10 shorelines of the state:

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

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

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

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

19 (C) Hood Canal--from Tala Point to Foulweather Bluff,

20 (D) Skagit Bay and adjacent area--from Brown Point to Yokeko Point,

21 and

22 (E) Padilla Bay--from March Point to William Point;

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

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

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

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

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

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

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

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

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

22 (g) "Floodway" means those portions of the area of a river valley
23 lying streamward from the outer limits of a watercourse upon which
24 flood waters are carried during periods of flooding that occur with
25 reasonable regularity, although not necessarily annually, said floodway
26 being identified, under normal condition, by changes in surface soil
27 conditions or changes in types or quality of vegetative ground cover
28 condition. The floodway shall not include those lands that can
29 reasonably be expected to be protected from flood waters by flood
30 control devices maintained by or maintained under license from the
31 federal government, the state, or a political subdivision of the state;

32 (h) "Wetlands" means areas that are inundated or saturated by
33 surface water or ground water at a frequency and duration sufficient to
34 support, and that under normal circumstances do support, a prevalence
35 of vegetation typically adapted for life in saturated soil conditions.
36 Wetlands generally include swamps, marshes, bogs, and similar areas.
37 Wetlands do not include those artificial wetlands intentionally created
38 from nonwetland sites, including, but not limited to, irrigation and

1 drainage ditches, grass-lined swales, canals, detention facilities,
2 wastewater treatment facilities, farm ponds, and landscape amenities,
3 or those wetlands created after July 1, 1990, that were unintentionally
4 created as a result of the construction of a road, street, or highway.
5 Wetlands may include those artificial wetlands intentionally created
6 from nonwetland areas to mitigate the conversion of wetlands.

7 (3) Procedural terms:

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

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

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

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

27 (e) "Substantial development" shall mean any development of which
28 the total cost or fair market value exceeds five thousand dollars, or
29 any development which materially interferes with the normal public use
30 of the water or shorelines of the state. The dollar threshold
31 established in this subsection (3)(e) must be adjusted for inflation by
32 the office of financial management every five years, beginning July 1,
33 2007, based upon changes in the consumer price index during that time
34 period. "Consumer price index" means, for any calendar year, that
35 year's annual average consumer price index, Seattle, Washington area,
36 for urban wage earners and clerical workers, all items, compiled by the
37 bureau of labor and statistics, United States department of labor. The
38 office of financial management must calculate the new dollar threshold

1 and transmit it to the office of the code reviser for publication in
2 the Washington State Register at least one month before the new dollar
3 threshold is to take effect. The following shall not be considered
4 substantial developments for the purpose of this chapter:

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

7 (ii) Construction of the normal protective bulkhead common to
8 single family residences;

9 (iii) Emergency construction necessary to protect property from
10 damage by the elements;

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

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

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

34 (vii) Construction of a dock, including a community dock, designed
35 for pleasure craft only, for the private noncommercial use of the
36 owner, lessee, or contract purchaser of single and multiple family
37 residences. This exception applies (~~if either~~): (A) In salt waters,
38 if the fair market value of the dock does not exceed two thousand five

1 hundred dollars; ~~((or))~~ (B) in fresh waters, if the fair market value
2 of the dock does not exceed ten thousand dollars, but if subsequent
3 construction having a fair market value exceeding two thousand five
4 hundred dollars occurs within five years of completion of the prior
5 construction, the subsequent construction shall be considered a
6 substantial development for the purpose of this chapter; and (C) in
7 artificial lakes;

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

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

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

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

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

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

29 (C) The activity does not involve the installation of a structure,
30 and upon completion of the activity the vegetation and land
31 configuration of the site are restored to conditions existing before
32 the activity;

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

37 (E) The activity is not subject to the permit requirements of RCW
38 90.58.550;

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

7 **Sec. 3.** RCW 90.58.100 and 1997 c 369 s 7 are each amended to read
8 as follows:

9 (1) The master programs provided for in this chapter, when adopted
10 or approved by the department shall constitute use regulations for the
11 various shorelines of the state. In preparing the master programs, and
12 any amendments thereto, the department and local governments shall to
13 the extent feasible:

14 (a) Utilize a systematic interdisciplinary approach which will
15 insure the integrated use of the natural and social sciences and the
16 environmental design arts;

17 (b) Consult with and obtain the comments of any federal, state,
18 regional, or local agency having any special expertise with respect to
19 any environmental impact;

20 (c) Consider all plans, studies, surveys, inventories, and systems
21 of classification made or being made by federal, state, regional, or
22 local agencies, by private individuals, or by organizations dealing
23 with pertinent shorelines of the state;

24 (d) Conduct or support such further research, studies, surveys, and
25 interviews as are deemed necessary;

26 (e) Utilize all available information regarding hydrology,
27 geography, topography, ecology, economics, and other pertinent data;

28 (f) Employ, when feasible, all appropriate, modern scientific data
29 processing and computer techniques to store, index, analyze, and manage
30 the information gathered.

31 (2) The master programs shall include, when appropriate, the
32 following:

33 (a) An economic development element for the location and design of
34 industries, industrial projects of statewide significance,
35 transportation facilities, port facilities, tourist facilities,
36 commerce and other developments that are particularly dependent on
37 their location on or use of the shorelines of the state;

1 (b) A public access element making provision for public access to
2 publicly owned areas;

3 (c) A recreational element for the preservation and enlargement of
4 recreational opportunities, including but not limited to parks,
5 tidelands, beaches, and recreational areas;

6 (d) A circulation element consisting of the general location and
7 extent of existing and proposed major thoroughfares, transportation
8 routes, terminals, and other public utilities and facilities, all
9 correlated with the shoreline use element;

10 (e) A use element which considers the proposed general distribution
11 and general location and extent of the use on shorelines and adjacent
12 land areas for housing, business, industry, transportation,
13 agriculture, natural resources, recreation, education, public buildings
14 and grounds, and other categories of public and private uses of the
15 land;

16 (f) A conservation element for the preservation of natural
17 resources, including but not limited to scenic vistas, aesthetics, and
18 vital estuarine areas for fisheries and wildlife protection;

19 (g) An historic, cultural, scientific, and educational element for
20 the protection and restoration of buildings, sites, and areas having
21 historic, cultural, scientific, or educational values;

22 (h) An element that gives consideration to the statewide interest
23 in the prevention and minimization of flood damages; and

24 (i) Any other element deemed appropriate or necessary to effectuate
25 the policy of this chapter.

26 (3) The master programs shall include such map or maps, descriptive
27 text, diagrams and charts, or other descriptive material as are
28 necessary to provide for ease of understanding.

29 (4) Master programs will reflect that state-owned shorelines of the
30 state are particularly adapted to providing wilderness beaches,
31 ecological study areas, and other recreational activities for the
32 public and will give appropriate special consideration to same.

33 (5) Each master program shall contain provisions to allow for the
34 varying of the application of use regulations of the program, including
35 provisions for permits for conditional uses and variances, to insure
36 that strict implementation of a program will not create unnecessary
37 hardships or thwart the policy enumerated in RCW 90.58.020. Any such
38 varying shall be allowed only if extraordinary circumstances are shown

1 and the public interest suffers no substantial detrimental effect. The
2 concept of this subsection shall be incorporated in the rules adopted
3 by the department relating to the establishment of a permit system as
4 provided in RCW 90.58.140(3).

5 (6) Each master program shall contain standards governing the
6 protection of single family residences and appurtenant structures
7 against damage or loss due to shoreline erosion. The standards shall
8 govern the issuance of substantial development permits for shoreline
9 protection, including structural methods such as construction of
10 bulkheads, and nonstructural methods of protection. The standards
11 shall provide for methods which achieve effective and timely protection
12 against loss or damage to single family residences and appurtenant
13 structures due to shoreline erosion. The standards shall provide a
14 preference for permit issuance for measures to protect single family
15 residences occupied prior to January 1, 1992, where the proposed
16 measure is designed to minimize harm to the shoreline natural
17 environment.

18 (7) Each master program shall contain provisions providing a
19 preference for permit issuance for the construction of docks, including
20 community docks, in artificial lakes. Docks subject to this subsection
21 must be designed for pleasure craft only and must be for the private
22 noncommercial use of owners, lessees, or contract purchasers of single
23 and multiple family residences.

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