
SENATE BILL 5392

State of Washington

67th Legislature

2021 Regular Session

By Senators Wagoner and Muzzall

Read first time 02/01/21. Referred to Committee on Environment,
Energy & Technology.

1 AN ACT Relating to criteria for excluding artificial water bodies
2 as shorelines of the state; and amending RCW 90.58.030.

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

4 **Sec. 1.** RCW 90.58.030 and 2016 c 193 s 1 are each amended to
5 read as follows:

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

8 (1) Administration:

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

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

11 (c) "Hearings board" means the shorelines hearings board
12 established by this chapter;

13 (d) "Local government" means any county, incorporated city, or
14 town which contains within its boundaries any lands or waters subject
15 to this chapter;

16 (e) "Person" means an individual, partnership, corporation,
17 association, organization, cooperative, public or municipal
18 corporation, or agency of the state or local governmental unit
19 however designated.

20 (2) Geographical:

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

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

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

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

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

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

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

20 (ii) "Shorelines" also do not include any artificial water bodies
21 where the following criteria apply:

22 (A) Constructed, operated, and maintained to meet a specific
23 commercial need, such as for farm animals or treatment of mine
24 tailings;

25 (B) Restricted to people operating the facility. No recreation or
26 other activities are allowed;

27 (C) Not intentionally built to support fish or wildlife habitat;

28 (D) Ingress and egress to and from another water body is
29 controlled and mechanized; and

30 (E) Surface continuity with a natural water body is interrupted
31 by a pipe, pump, dike, or other structure;

32 (f) "Shorelines of statewide significance" means the following
33 shorelines of the state:

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

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

1 (A) Nisqually Delta—from DeWolf Bight to Tatsolo Point,
2 (B) Birch Bay—from Point Whitehorn to Birch Point,
3 (C) Hood Canal—from Tala Point to Foulweather Bluff,
4 (D) Skagit Bay and adjacent area—from Brown Point to Yokeko
5 Point, and
6 (E) Padilla Bay—from March Point to William Point;
7 (iii) Those areas of Puget Sound and the Strait of Juan de Fuca
8 and adjacent salt waters north to the Canadian line and lying seaward
9 from the line of extreme low tide;
10 (iv) Those lakes, whether natural, artificial, or a combination
11 thereof, with a surface acreage of one thousand acres or more
12 measured at the ordinary high water mark;
13 (v) Those natural rivers or segments thereof as follows:
14 (A) Any west of the crest of the Cascade range downstream of a
15 point where the mean annual flow is measured at one thousand cubic
16 feet per second or more,
17 (B) Any east of the crest of the Cascade range downstream of a
18 point where the annual flow is measured at two hundred cubic feet per
19 second or more, or those portions of rivers east of the crest of the
20 Cascade range downstream from the first three hundred square miles of
21 drainage area, whichever is longer;
22 (vi) Those shorelands associated with (f)(i), (ii), (iv), and (v)
23 of this subsection (2);
24 (g) "Shorelines of the state" are the total of all "shorelines"
25 and "shorelines of statewide significance" within the state;
26 (h) "Wetlands" means areas that are inundated or saturated by
27 surface water or groundwater at a frequency and duration sufficient
28 to support, and that under normal circumstances do support, a
29 prevalence of vegetation typically adapted for life in saturated soil
30 conditions. Wetlands generally include swamps, marshes, bogs, and
31 similar areas. Wetlands do not include those artificial wetlands
32 intentionally created from nonwetland sites, including, but not
33 limited to, irrigation and drainage ditches, grass-lined swales,
34 canals, detention facilities, wastewater treatment facilities, farm
35 ponds, and landscape amenities, or those wetlands created after July
36 1, 1990, that were unintentionally created as a result of the
37 construction of a road, street, or highway. Wetlands may include
38 those artificial wetlands intentionally created from nonwetland areas
39 to mitigate the conversion of wetlands.

1 (3) Procedural terms:

2 (a) "Development" means a use consisting of the construction or
3 exterior alteration of structures; dredging; drilling; dumping;
4 filling; removal of any sand, gravel, or minerals; bulkheading;
5 driving of piling; placing of obstructions; or any project of a
6 permanent or temporary nature which interferes with the normal public
7 use of the surface of the waters overlying lands subject to this
8 chapter at any state of water level;

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

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

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

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

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

3 (ii) Construction of the normal protective bulkhead common to
4 single-family residences;

5 (iii) Emergency construction necessary to protect property from
6 damage by the elements;

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

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

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

30 (vii) Construction of a dock, including a community dock,
31 designed for pleasure craft only, for the private noncommercial use
32 of the owner, lessee, or contract purchaser of single and multiple
33 family residences. This exception applies if either: (A) In salt
34 waters, the fair market value of the dock does not exceed two
35 thousand five hundred dollars; or (B) in fresh waters, the fair
36 market value of the dock does not exceed: (I) Twenty thousand dollars
37 for docks that are constructed to replace existing docks, are of
38 equal or lesser square footage than the existing dock being replaced,
39 and are located in a county, city, or town that has updated its
40 master program consistent with the master program guidelines in

1 chapter 173-26 WAC as adopted in 2003; or (II) ten thousand dollars
2 for all other docks constructed in fresh waters. However, if
3 subsequent construction occurs within five years of completion of the
4 prior construction, and the combined fair market value of the
5 subsequent and prior construction exceeds the amount specified in
6 either (e)(vii)(A) or (B) of this subsection (3), the subsequent
7 construction shall be considered a substantial development for the
8 purpose of this chapter. All dollar thresholds under (e)(vii)(B) of
9 this subsection (3) must be adjusted for inflation by the office of
10 financial management every five years, beginning July 1, 2018, based
11 upon changes in the consumer price index during that time period.
12 "Consumer price index" means, for any calendar year, that year's
13 annual average consumer price index, Seattle, Washington area, for
14 urban wage earners and clerical workers, all items, compiled by the
15 bureau of labor and statistics, United States department of labor.
16 The office of financial management must calculate the new dollar
17 thresholds, rounded to the nearest hundred dollar, and transmit them
18 to the office of the code reviser for publication in the Washington
19 State Register at least one month before the new dollar thresholds
20 are to take effect;

21 (viii) Operation, maintenance, or construction of canals,
22 waterways, drains, reservoirs, or other facilities that now exist or
23 are hereafter created or developed as a part of an irrigation system
24 for the primary purpose of making use of system waters, including
25 return flow and artificially stored groundwater for the irrigation of
26 lands;

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

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

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

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

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

4 (C) The activity does not involve the installation of a
5 structure, and upon completion of the activity the vegetation and
6 land configuration of the site are restored to conditions existing
7 before the activity;

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

12 (E) The activity is not subject to the permit requirements of RCW
13 90.58.550;

14 (xii) The process of removing or controlling an aquatic noxious
15 weed, as defined in RCW 17.26.020, through the use of an herbicide or
16 other treatment methods applicable to weed control that are
17 recommended by a final environmental impact statement published by
18 the department of agriculture or the department jointly with other
19 state agencies under chapter 43.21C RCW;

20 (xiii) The external or internal retrofitting of an existing
21 structure with the exclusive purpose of compliance with the Americans
22 with disabilities act of 1990 (42 U.S.C. Sec. 12101 et seq.) or to
23 otherwise provide physical access to the structure by individuals
24 with disabilities.

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