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ENGROSSED SUBSTITUTE HOUSE BILL 2847

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AS AMENDED BY THE SENATE

Passed Legislature - 2016 Regular Session

**State of Washington**                      **64th Legislature**                      **2016 Regular Session**

**By** House Environment (originally sponsored by Representative Rossetti)

READ FIRST TIME 02/05/16.

1            AN ACT Relating to creating an exemption to the definition of  
2 substantial development in chapter 90.58 RCW relating to the  
3 retrofitting of existing structures to accommodate physical access by  
4 individuals with disabilities; and amending RCW 90.58.030.

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

6            **Sec. 1.** RCW 90.58.030 and 2014 c 23 s 1 are each amended to read  
7 as follows:

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

10            (1) Administration:

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

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

13            (c) "Hearings board" means the shorelines hearings board  
14 established by this chapter;

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

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

1 (2) Geographical:

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

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

20 (c) "Ordinary high water mark" on all lakes, streams, and tidal  
21 water is that mark that will be found by examining the bed and banks  
22 and ascertaining where the presence and action of waters are so  
23 common and usual, and so long continued in all ordinary years, as to  
24 mark upon the soil a character distinct from that of the abutting  
25 upland, in respect to vegetation as that condition exists on June 1,  
26 1971, as it may naturally change thereafter, or as it may change  
27 thereafter in accordance with permits issued by a local government or  
28 the department: PROVIDED, That in any area where the ordinary high  
29 water mark cannot be found, the ordinary high water mark adjoining  
30 salt water shall be the line of mean higher high tide and the  
31 ordinary high water mark adjoining fresh water shall be the line of  
32 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  
38 streams, lakes, and tidal waters which are subject to the provisions  
39 of this chapter; the same to be designated as to location by the  
40 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 nonforest land 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) "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) shorelines of statewide  
15 significance; (ii) shorelines on segments of streams upstream of a  
16 point where the mean annual flow is twenty cubic feet per second or  
17 less and the wetlands associated with such upstream segments; and  
18 (iii) shorelines on lakes less than twenty acres in size and wetlands  
19 associated with such small lakes;

20 (f) "Shorelines of statewide significance" means the following  
21 shorelines of the state:

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

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

29 (A) Nisqually Delta—from DeWolf Bight to Tatsolo Point,

30 (B) Birch Bay—from Point Whitehorn to Birch Point,

31 (C) Hood Canal—from Tala Point to Foulweather Bluff,

32 (D) Skagit Bay and adjacent area—from Brown Point to Yokeko  
33 Point, and

34 (E) Padilla Bay—from March Point to William Point;

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

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

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

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

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

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

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

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

31 (3) Procedural terms:

32 (a) "Development" means a use consisting of the construction or  
33 exterior alteration of structures; dredging; drilling; dumping;  
34 filling; removal of any sand, gravel, or minerals; bulkheading;  
35 driving of piling; placing of obstructions; or any project of a  
36 permanent or temporary nature which interferes with the normal public  
37 use of the surface of the waters overlying lands subject to this  
38 chapter at any state of water level;

39 (b) "Guidelines" means those standards adopted to implement the  
40 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  
3 developing master programs;

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

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

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

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

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

35 (iii) Emergency construction necessary to protect property from  
36 damage by the elements;

37 (iv) Construction and practices normal or necessary for farming,  
38 irrigation, and ranching activities, including agricultural service  
39 roads and utilities on shorelands, and the construction and  
40 maintenance of irrigation structures including but not limited to

1 head gates, pumping facilities, and irrigation channels. A feedlot of  
2 any size, all processing plants, other activities of a commercial  
3 nature, alteration of the contour of the shorelands by leveling or  
4 filling other than that which results from normal cultivation, shall  
5 not be considered normal or necessary farming or ranching activities.  
6 A feedlot shall be an enclosure or facility used or capable of being  
7 used for feeding livestock hay, grain, silage, or other livestock  
8 feed, but shall not include land for growing crops or vegetation for  
9 livestock feeding and/or grazing, nor shall it include normal  
10 livestock wintering operations;

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

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

20 (vii) Construction of a dock, including a community dock,  
21 designed for pleasure craft only, for the private noncommercial use  
22 of the owner, lessee, or contract purchaser of single and multiple  
23 family residences. This exception applies if either: (A) In salt  
24 waters, the fair market value of the dock does not exceed two  
25 thousand five hundred dollars; or (B) in fresh waters, the fair  
26 market value of the dock does not exceed: (I) Twenty thousand dollars  
27 for docks that are constructed to replace existing docks, are of  
28 equal or lesser square footage than the existing dock being replaced,  
29 and are located in a county, city, or town that has updated its  
30 master program consistent with the master program guidelines in  
31 chapter 173-26 WAC as adopted in 2003; or (II) ten thousand dollars  
32 for all other docks constructed in fresh waters. However, if  
33 subsequent construction occurs within five years of completion of the  
34 prior construction, and the combined fair market value of the  
35 subsequent and prior construction exceeds the amount specified in  
36 either (e)(vii)(A) or (B) of this subsection (3), the subsequent  
37 construction shall be considered a substantial development for the  
38 purpose of this chapter. All dollar thresholds under (e)(vii)(B) of  
39 this subsection (3) must be adjusted for inflation by the office of  
40 financial management every five years, beginning July 1, 2018, based

1 upon changes in the consumer price index during that time period.  
2 "Consumer price index" means, for any calendar year, that year's  
3 annual average consumer price index, Seattle, Washington area, for  
4 urban wage earners and clerical workers, all items, compiled by the  
5 bureau of labor and statistics, United States department of labor.  
6 The office of financial management must calculate the new dollar  
7 thresholds, rounded to the nearest hundred dollar, and transmit them  
8 to the office of the code reviser for publication in the Washington  
9 State Register at least one month before the new dollar thresholds  
10 are to take effect;

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

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

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

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

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

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

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

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

1 (E) The activity is not subject to the permit requirements of RCW  
2 90.58.550;

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

9 (xiii) The external or internal retrofitting of an existing  
10 structure with the exclusive purpose of compliance with the Americans  
11 with disabilities act of 1990 (42 U.S.C. Sec. 12101 et seq.) or to  
12 otherwise provide physical access to the structure by individuals  
13 with disabilities.

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