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**SUBSTITUTE SENATE BILL 5800**

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**State of Washington**

**61st Legislature**

**2009 Regular Session**

**By** Senate Government Operations & Elections (originally sponsored by Senators Fraser, Swecker, Fairley, Murray, Shin, and Kline)

READ FIRST TIME 02/24/09.

1 AN ACT Relating to shorelines of statewide significance; amending  
2 RCW 90.58.030; adding a new section to chapter 35A.63 RCW; creating a  
3 new section; and declaring an emergency.

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

5 NEW SECTION. **Sec. 1.** (1) The legislature finds that the shoreline  
6 known as the "Olympia Isthmus" located in the city of Olympia between  
7 Capitol Lake and Budd Inlet should be designated a "shoreline of  
8 statewide significance."

9 (2) The legislature further finds that:

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

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

4 (c) The Olympia Isthmus as a whole is historically significant,  
5 fragile, and a major contributor to significant changes to the natural  
6 estuary area of the area. The Olympia Isthmus was constructed by fill  
7 in early 1911, with the reflecting lake created in the 1950s when the  
8 dam was constructed at what is now called the Deschutes spillway;

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

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

20 (3) The legislature intends that the Olympia Isthmus be declared to  
21 be a shoreline of statewide significance through the shoreline  
22 management act to advance the public interest and to protect public  
23 investments.

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

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

30 **Sec. 2.** RCW 90.58.030 and 2007 c 328 s 1 are each amended to read  
31 as follows:

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

34 (1) Administration:

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

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

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

4 (d) "Person" means an individual, partnership, corporation,  
5 association, organization, cooperative, public or municipal  
6 corporation, or agency of the state or local governmental unit however  
7 designated;

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

10 (2) Geographical:

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

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

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

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

35 (e) "Shorelines of statewide significance" means the following  
36 shorelines of the state:

37 (i) The area between the ordinary high water mark and the western

1 boundary of the state from Cape Disappointment on the south to Cape  
2 Flattery on the north, including harbors, bays, estuaries, and inlets;  
3 (ii) Those areas of Puget Sound and adjacent salt waters and the  
4 Strait of Juan de Fuca between the ordinary high water mark and the  
5 line of extreme low tide as follows:  
6 (A) Nisqually Delta--from DeWolf Bight to Tatsolo Point,  
7 (B) Birch Bay--from Point Whitehorn to Birch Point,  
8 (C) Hood Canal--from Tala Point to Foulweather Bluff,  
9 (D) Skagit Bay and adjacent area--from Brown Point to Yokeko Point,  
10 ((and))  
11 (E) Padilla Bay--from March Point to William Point, and  
12 (F) Budd Inlet--from the north extension of Water Street in Olympia  
13 to the Deschutes spillway, and including the historic shoreline of Budd  
14 Inlet contained in Capitol Lake from the Deschutes spillway to the  
15 south extension of Water Street;  
16 (iii) Those areas of Puget Sound and the Strait of Juan de Fuca and  
17 adjacent salt waters north to the Canadian line and lying seaward from  
18 the line of extreme low tide;  
19 (iv) Those lakes, whether natural, artificial, or a combination  
20 thereof, with a surface acreage of one thousand acres or more measured  
21 at the ordinary high water mark;  
22 (v) Those natural rivers or segments thereof as follows:  
23 (A) Any west of the crest of the Cascade range downstream of a  
24 point where the mean annual flow is measured at one thousand cubic feet  
25 per second or more,  
26 (B) Any east of the crest of the Cascade range downstream of a  
27 point where the annual flow is measured at two hundred cubic feet per  
28 second or more, or those portions of rivers east of the crest of the  
29 Cascade range downstream from the first three hundred square miles of  
30 drainage area, whichever is longer;  
31 (vi) Those shorelands associated with (i), (ii), (iv), and (v) of  
32 this subsection (2)(e);  
33 (f) "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

1 streams, lakes, and tidal waters which are subject to the provisions of  
2 this chapter; the same to be designated as to location by the  
3 department of ecology.

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

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

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

30 (h) "Wetlands" means areas that are inundated or saturated by  
31 surface water or groundwater at a frequency and duration sufficient to  
32 support, and that under normal circumstances do support, a prevalence  
33 of vegetation typically adapted for life in saturated soil conditions.  
34 Wetlands generally include swamps, marshes, bogs, and similar areas.  
35 Wetlands do not include those artificial wetlands intentionally created  
36 from nonwetland sites, including, but not limited to, irrigation and  
37 drainage ditches, grass-lined swales, canals, detention facilities,  
38 wastewater treatment facilities, farm ponds, and landscape amenities,

1 or those wetlands created after July 1, 1990, that were unintentionally  
2 created as a result of the construction of a road, street, or highway.  
3 Wetlands may include those artificial wetlands intentionally created  
4 from nonwetland areas to mitigate the conversion of wetlands.

5 (3) Procedural terms:

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

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

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

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

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

1 the Washington State Register at least one month before the new dollar  
2 threshold is to take effect. The following shall not be considered  
3 substantial developments for the purpose of this chapter:

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

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

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

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

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

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

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

1 not exceed ten thousand dollars, but if subsequent construction having  
2 a fair market value exceeding two thousand five hundred dollars occurs  
3 within five years of completion of the prior construction, the  
4 subsequent construction shall be considered a substantial development  
5 for the purpose of this chapter;

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

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

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

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

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

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

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

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

35 (E) The activity is not subject to the permit requirements of RCW  
36 90.58.550;

37 (xii) The process of removing or controlling an aquatic noxious  
38 weed, as defined in RCW 17.26.020, through the use of an herbicide or



1 other treatment methods applicable to weed control that are recommended  
2 by a final environmental impact statement published by the department  
3 of agriculture or the department jointly with other state agencies  
4 under chapter 43.21C RCW.

5 NEW SECTION. **Sec. 3.** A new section is added to chapter 35A.63 RCW  
6 to read as follows:

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

11 (2) The Olympia Isthmus special height district is located as  
12 follows: The Olympia Isthmus--from the centerline of Water Street in  
13 Olympia proceeding west to the shoreline of the Deschutes spillway  
14 bounded by Capitol Lake shoreline and Budd Inlet shoreline.

15 (3) The maximum allowable height for a new or remodeled building or  
16 structure located within the Olympia Isthmus special height district is  
17 thirty-five feet. This section only applies to new construction, and  
18 remodeling or restructuring that affects the height of the building.  
19 This section is not intended to prevent normal repair, maintenance, and  
20 internal remodeling of any building already exceeding the height  
21 limitation.

22 NEW SECTION. **Sec. 4.** If any provision of this act or its  
23 application to any person or circumstance is held invalid, the  
24 remainder of the act or the application of the provision to other  
25 persons or circumstances is not affected.

26 NEW SECTION. **Sec. 5.** This act is necessary for the immediate  
27 preservation of the public peace, health, or safety, or support of the  
28 state government and its existing public institutions, and takes effect  
29 immediately.

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