
SENATE BILL 6026

State of Washington

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By Senators Honeyford, Haugen, Stevens, Morton, Hatfield, Ericksen, Hobbs, Schoesler, Delvin, Shin, Hewitt, Roach, and Holmquist Newbry

Read first time 01/09/12. Referred to Committee on Agriculture, Water & Rural Economic Development.

1 AN ACT Relating to maintaining and enhancing the viability of
2 agriculture; amending RCW 36.70A.175 and 90.48.020; reenacting and
3 amending RCW 36.70A.030 and 90.58.030; and creating a new section.

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

5 NEW SECTION. **Sec. 1.** The legislature finds that a strong state
6 economy is critical to ensuring that the public welfare is maintained
7 in its highest state. The legislature further finds that agriculture
8 is a critical segment of a strong economy.

9 Therefore, the legislature declares that all necessary actions
10 should be taken to ensure that the state provide an economic climate
11 that fosters a strong, viable agricultural industry and promotes
12 consistency in administration of state and federal wetlands programs in
13 order to maximize the impacts on agricultural landowners to the fullest
14 possible extent consistent with the important goals of protecting
15 wetlands.

16 **Sec. 2.** RCW 36.70A.030 and 2009 c 565 s 22 are each reenacted and
17 amended to read as follows:

1 (~~Unless the context clearly requires otherwise,~~) The definitions
2 in this section apply throughout this chapter unless the context
3 clearly requires otherwise.

4 (1) "Adopt a comprehensive land use plan" means to enact a new
5 comprehensive land use plan or to update an existing comprehensive land
6 use plan.

7 (2) "Agricultural land" means land primarily devoted to the
8 commercial production of horticultural, viticultural, floricultural,
9 dairy, apiary, vegetable, or animal products or of berries, grain, hay,
10 straw, turf, seed, Christmas trees not subject to the excise tax
11 imposed by RCW 84.33.100 through 84.33.140, finfish in upland
12 hatcheries, or livestock, and that has long-term commercial
13 significance for agricultural production.

14 (3) "City" means any city or town, including a code city.

15 (4) "Comprehensive land use plan," "comprehensive plan," or "plan"
16 means a generalized coordinated land use policy statement of the
17 governing body of a county or city that is adopted pursuant to this
18 chapter.

19 (5) "Critical areas" include the following areas and ecosystems:
20 (a) Wetlands; (b) areas with a critical recharging effect on aquifers
21 used for potable water; (c) fish and wildlife habitat conservation
22 areas; (d) frequently flooded areas; and (e) geologically hazardous
23 areas.

24 (6) "Department" means the department of commerce.

25 (7) "Development regulations" or "regulation" means the controls
26 placed on development or land use activities by a county or city,
27 including, but not limited to, zoning ordinances, critical areas
28 ordinances, shoreline master programs, official controls, planned unit
29 development ordinances, subdivision ordinances, and binding site plan
30 ordinances together with any amendments thereto. A development
31 regulation does not include a decision to approve a project permit
32 application, as defined in RCW 36.70B.020, even though the decision may
33 be expressed in a resolution or ordinance of the legislative body of
34 the county or city.

35 (8) "Forest land" means land primarily devoted to growing trees for
36 long-term commercial timber production on land that can be economically
37 and practically managed for such production, including Christmas trees
38 subject to the excise tax imposed under RCW 84.33.100 through

1 84.33.140, and that has long-term commercial significance. In
2 determining whether forest land is primarily devoted to growing trees
3 for long-term commercial timber production on land that can be
4 economically and practically managed for such production, the following
5 factors shall be considered: (a) The proximity of the land to urban,
6 suburban, and rural settlements; (b) surrounding parcel size and the
7 compatibility and intensity of adjacent and nearby land uses; (c) long-
8 term local economic conditions that affect the ability to manage for
9 timber production; and (d) the availability of public facilities and
10 services conducive to conversion of forest land to other uses.

11 (9) "Geologically hazardous areas" means areas that because of
12 their susceptibility to erosion, sliding, earthquake, or other
13 geological events, are not suited to the siting of commercial,
14 residential, or industrial development consistent with public health or
15 safety concerns.

16 (10) "Long-term commercial significance" includes the growing
17 capacity, productivity, and soil composition of the land for long-term
18 commercial production, in consideration with the land's proximity to
19 population areas, and the possibility of more intense uses of the land.

20 (11) "Minerals" include gravel, sand, and valuable metallic
21 substances.

22 (12) "Public facilities" include streets, roads, highways,
23 sidewalks, street and road lighting systems, traffic signals, domestic
24 water systems, storm and sanitary sewer systems, parks and recreational
25 facilities, and schools.

26 (13) "Public services" include fire protection and suppression, law
27 enforcement, public health, education, recreation, environmental
28 protection, and other governmental services.

29 (14) "Recreational land" means land so designated under RCW
30 36.70A.1701 and that, immediately prior to this designation, was
31 designated as agricultural land of long-term commercial significance
32 under RCW 36.70A.170. Recreational land must have playing fields and
33 supporting facilities existing before July 1, 2004, for sports played
34 on grass playing fields.

35 (15) "Rural character" refers to the patterns of land use and
36 development established by a county in the rural element of its
37 comprehensive plan:

1 (a) In which open space, the natural landscape, and vegetation
2 predominate over the built environment;

3 (b) That foster traditional rural lifestyles, rural-based
4 economies, and opportunities to both live and work in rural areas;

5 (c) That provide visual landscapes that are traditionally found in
6 rural areas and communities;

7 (d) That are compatible with the use of the land by wildlife and
8 for fish and wildlife habitat;

9 (e) That reduce the inappropriate conversion of undeveloped land
10 into sprawling, low-density development;

11 (f) That generally do not require the extension of urban
12 governmental services; and

13 (g) That are consistent with the protection of natural surface
14 water flows and groundwater and surface water recharge and discharge
15 areas.

16 (16) "Rural development" refers to development outside the urban
17 growth area and outside agricultural, forest, and mineral resource
18 lands designated pursuant to RCW 36.70A.170. Rural development can
19 consist of a variety of uses and residential densities, including
20 clustered residential development, at levels that are consistent with
21 the preservation of rural character and the requirements of the rural
22 element. Rural development does not refer to agriculture or forestry
23 activities that may be conducted in rural areas.

24 (17) "Rural governmental services" or "rural services" include
25 those public services and public facilities historically and typically
26 delivered at an intensity usually found in rural areas, and may include
27 domestic water systems, fire and police protection services,
28 transportation and public transit services, and other public utilities
29 associated with rural development and normally not associated with
30 urban areas. Rural services do not include storm or sanitary sewers,
31 except as otherwise authorized by RCW 36.70A.110(4).

32 (18) "Urban governmental services" or "urban services" include
33 those public services and public facilities at an intensity
34 historically and typically provided in cities, specifically including
35 storm and sanitary sewer systems, domestic water systems, street
36 cleaning services, fire and police protection services, public transit
37 services, and other public utilities associated with urban areas and
38 normally not associated with rural areas.

1 (19) "Urban growth" refers to growth that makes intensive use of
2 land for the location of buildings, structures, and impermeable
3 surfaces to such a degree as to be incompatible with the primary use of
4 land for the production of food, other agricultural products, or fiber,
5 or the extraction of mineral resources, rural uses, rural development,
6 and natural resource lands designated pursuant to RCW 36.70A.170. A
7 pattern of more intensive rural development, as provided in RCW
8 36.70A.070(5)(d), is not urban growth. When allowed to spread over
9 wide areas, urban growth typically requires urban governmental
10 services. "Characterized by urban growth" refers to land having urban
11 growth located on it, or to land located in relationship to an area
12 with urban growth on it as to be appropriate for urban growth.

13 (20) "Urban growth areas" means those areas designated by a county
14 pursuant to RCW 36.70A.110.

15 (21) "Wetland" or "wetlands" means areas that are inundated or
16 saturated by surface water or groundwater at a frequency and duration
17 sufficient to support, and that under normal circumstances do support,
18 a prevalence of vegetation typically adapted for life in saturated soil
19 conditions. Wetlands generally include swamps, marshes, bogs, and
20 similar areas. Wetlands do not include those artificial wetlands
21 intentionally created from nonwetland sites, including, but not limited
22 to, irrigation and drainage ditches, grass-lined swales, canals,
23 detention facilities, wastewater treatment facilities, farm ponds,
24 wetlands converted to agricultural use prior to December 23, 1985, in
25 accordance with the federal food security act of 1985 (99 Stat. 1354;
26 P.L. 99-198), and landscape amenities, or those wetlands created after
27 July 1, 1990, that were unintentionally created as a result of the
28 construction of a road, street, or highway. Wetlands may include those
29 artificial wetlands intentionally created from nonwetland areas created
30 to mitigate conversion of wetlands.

31 **Sec. 3.** RCW 36.70A.175 and 1995 c 382 s 12 are each amended to
32 read as follows:

33 Wetlands regulated under development regulations adopted pursuant
34 to this chapter shall be delineated in accordance with the manual
35 adopted by the department pursuant to RCW 90.58.380 and do not include
36 wetlands converted to agricultural use prior to December 23, 1985, in

1 accordance with the federal food security act of 1985 (99 Stat. 1354;
2 P.L. 99-198).

3 **Sec. 4.** RCW 90.48.020 and 2002 c 161 s 4 are each amended to read
4 as follows:

5 ~~((Whenever the word "person" is used in this chapter, it shall be~~
6 ~~construed to))~~ The definitions in this section apply throughout this
7 chapter unless the context clearly requires otherwise.

8 (1) "Person" includes any political subdivision, government agency,
9 municipality, industry, public or private corporation, copartnership,
10 association, firm, individual or any other entity whatsoever.

11 ~~((Wherever the words))~~ (2) "Waters of the state" ((shall be used in
12 ~~this chapter, they shall be construed to))~~ includes lakes, rivers,
13 ponds, streams, inland waters, underground waters, salt waters, and all
14 other surface waters and watercourses within the jurisdiction of the
15 state of Washington, but shall not be construed to include wetlands
16 converted to agricultural use prior to December 23, 1985, in accordance
17 with the federal food security act of 1985 (99 Stat. 1354; P.L. 99-
18 198).

19 ~~((Whenever the word "pollution" is used in this chapter, it shall~~
20 ~~be construed to))~~ (3) "Pollution" means such contamination, or other
21 alteration of the physical, chemical or biological properties, of any
22 waters of the state, including change in temperature, taste, color,
23 turbidity, or odor of the waters, or such discharge of any liquid,
24 gaseous, solid, radioactive, or other substance into any waters of the
25 state as will or is likely to create a nuisance or render such waters
26 harmful, detrimental or injurious to the public health, safety or
27 welfare, or to domestic, commercial, industrial, agricultural,
28 recreational, or other legitimate beneficial uses, or to livestock,
29 wild animals, birds, fish or other aquatic life.

30 ~~((Wherever the word "department" is used in this chapter it shall))~~
31 (4) "Department" means the department of ecology.

32 ~~((Whenever the word "director" is used in this chapter it shall))~~
33 (5) "Director" means the director of ecology.

34 ~~((Whenever the words))~~ (6) "Aquatic noxious weed" ((are used in
35 ~~this chapter, they have))~~ has the same meaning ~~((prescribed))~~ as
36 defined under RCW 17.26.020.

1 not necessarily annually. Regardless of the method used to identify
2 the floodway, the floodway shall not include those lands that can
3 reasonably be expected to be protected from flood waters by flood
4 control devices maintained by or maintained under license from the
5 federal government, the state, or a political subdivision of the state;

6 (c) "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 department:
14 PROVIDED, That in any area where the ordinary high water mark cannot be
15 found, the ordinary high water mark adjoining salt water shall be the
16 line of mean higher high tide and the ordinary high water mark
17 adjoining freshwater shall be the line of mean high water;

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

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

30 (ii) Any city or county may also include in its master program land
31 necessary for buffers for critical areas, as defined in chapter 36.70A
32 RCW, that occur within shorelines of the state, provided that forest
33 practices regulated under chapter 76.09 RCW, except conversions to
34 nonforest land use, on lands subject to the provisions of this
35 subsection (2)(d)(ii) are not subject to additional regulations under
36 this chapter;

37 (e) "Shorelines" means all of the water areas of the state,
38 including reservoirs, and their associated shorelands, together with

1 the lands underlying them; except (i) shorelines of statewide
2 significance; (ii) shorelines on segments of streams upstream of a
3 point where the mean annual flow is twenty cubic feet per second or
4 less and the wetlands associated with such upstream segments; and (iii)
5 shorelines on lakes less than twenty acres in size and wetlands
6 associated with such small lakes;

7 (f) "Shorelines of statewide significance" means the following
8 shorelines of the state:

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

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

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

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

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

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

19 and

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

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

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

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

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

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

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

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

3 (h) "Wetlands" means areas that are inundated or saturated by
4 surface water or groundwater at a frequency and duration sufficient to
5 support, and that under normal circumstances do support, a prevalence
6 of vegetation typically adapted for life in saturated soil conditions.
7 Wetlands generally include swamps, marshes, bogs, and similar areas.
8 Wetlands do not include those artificial wetlands intentionally created
9 from nonwetland sites, including, but not limited to, irrigation and
10 drainage ditches, grass-lined swales, canals, detention facilities,
11 wastewater treatment facilities, farm ponds, wetlands converted to an
12 agricultural use prior to December 23, 1985, in accordance with the
13 federal food security act of 1985 (99 Stat. 1354; P.L. 99-198), and
14 landscape amenities, or those wetlands created after July 1, 1990, that
15 were unintentionally created as a result of the construction of a road,
16 street, or highway. Wetlands may include those artificial wetlands
17 intentionally created from nonwetland areas to mitigate the conversion
18 of wetlands.

19 (3) Procedural terms:

20 (a) "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 (b) "Guidelines" means those standards adopted to implement the
28 policy of this chapter for regulation of use of the shorelines of the
29 state prior to adoption of master programs. Such standards shall also
30 provide criteria to local governments and the department in developing
31 master programs;

32 (c) "Master program" shall mean the comprehensive use plan for a
33 described area, and the use regulations together with maps, diagrams,
34 charts, or other descriptive material and text, a statement of desired
35 goals, and standards developed in accordance with the policies
36 enunciated in RCW 90.58.020((~~7~~));

37 (d) "Comprehensive master program update" means a master program

1 that fully achieves the procedural and substantive requirements of the
2 department guidelines effective January 17, 2004, as now or hereafter
3 amended;

4 ~~((d))~~ (e) "State master program" is the cumulative total of all
5 master programs approved or adopted by the department of ecology;

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

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

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

27 (iii) Emergency construction necessary to protect property from
28 damage by the elements;

29 (iv) Construction and practices normal or necessary for farming,
30 irrigation, and ranching activities, including agricultural service
31 roads and utilities on shorelands, and the construction and maintenance
32 of irrigation structures including but not limited to head gates,
33 pumping facilities, and irrigation channels. A feedlot of any size,
34 all processing plants, other activities of a commercial nature,
35 alteration of the contour of the shorelands by leveling or filling
36 other than that which results from normal cultivation, shall not be
37 considered normal or necessary farming or ranching activities. A
38 feedlot shall be an enclosure or facility used or capable of being used

1 for feeding livestock hay, grain, silage, or other livestock feed, but
2 shall not include land for growing crops or vegetation for livestock
3 feeding and/or grazing, nor shall it include normal livestock wintering
4 operations;

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

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

14 (vii) Construction of a dock, including a community dock, designed
15 for pleasure craft only, for the private noncommercial use of the
16 owner, lessee, or contract purchaser of single and multiple-family
17 residences. This exception applies if either: (A) In salt waters, the
18 fair market value of the dock does not exceed two thousand five hundred
19 dollars; or (B) in freshwaters, the fair market value of the dock does
20 not exceed ten thousand dollars, but if subsequent construction having
21 a fair market value exceeding two thousand five hundred dollars occurs
22 within five years of completion of the prior construction, the
23 subsequent construction shall be considered a substantial development
24 for the purpose of this chapter;

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

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

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

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

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

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

9 (C) The activity does not involve the installation of a structure,
10 and upon completion of the activity the vegetation and land
11 configuration of the site are restored to conditions existing before
12 the activity;

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

17 (E) The activity is not subject to the permit requirements of RCW
18 90.58.550;

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

--- END ---