

CERTIFICATION OF ENROLLMENT  
**ENGROSSED SECOND SUBSTITUTE SENATE BILL 5632**

Chapter 402, Laws of 1995

(partial veto)

54th Legislature  
1995 Regular Session

FLOOD DAMAGE REDUCTION

EFFECTIVE DATE: 7/23/95

Passed by the Senate March 14 , 1995  
YEAS 38 NAYS 10

JOEL PRITCHARD

\_\_\_\_\_  
**President of the Senate**

Passed by the House April 20, 1995  
YEAS 67 NAYS 27

CLYDE BALLARD

\_\_\_\_\_  
**Speaker of the  
House of Representatives**

Approved May 16, 1995, with the  
exception of sections 6, 7, 8, 9, 10,  
19, 20, and 29, which are vetoed.

MIKE LOWRY

\_\_\_\_\_  
**Governor of the State of Washington**

CERTIFICATE

I, Marty Brown, Secretary of the  
Senate of the State of Washington,  
do hereby certify that the attached  
is **ENGROSSED SECOND SUBSTITUTE  
SENATE BILL 5632** as passed by the  
Senate and the House of  
Representatives on the dates hereon  
set forth.

MARTY BROWN

\_\_\_\_\_  
**Secretary**

FILED

May 16, 1995 - 9:33 p.m.

**Secretary of State  
State of Washington**

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ENGROSSED SECOND SUBSTITUTE SENATE BILL 5632

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Passed Legislature - 1995 Regular Session

State of Washington                      54th Legislature                      1995 Regular Session

By Senate Committee on Ways & Means (originally sponsored by Senators A. Anderson, Drew, Owen, Hargrove, Swecker, Morton, Hale, Haugen, Finkbeiner, Strannigan, Moyer, Palmer, Johnson, Quigley and Rasmussen)

Read first time 03/06/95.

1            AN ACT Relating to flood damage reduction; amending RCW 36.70A.060,  
2 36.70A.070, 36.70A.170, 43.21C.020, 75.20.100, 75.20.103, 75.20.130,  
3 79.90.150, 79.90.300, 85.38.200, 86.15.030, 86.15.050, 86.15.160,  
4 86.26.105, 90.58.180, 86.12.200, 90.58.030, and 47.28.140; adding new  
5 sections to chapter 75.20 RCW; adding a new section to chapter 79.90  
6 RCW; adding a new section to chapter 43.17 RCW; adding a new section to  
7 chapter 86.26 RCW; creating new sections; repealing RCW 79.90.325; and  
8 declaring an emergency.

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

10            NEW SECTION.    **Sec. 1.** The legislature finds that river and stream  
11 systems can threaten public and private property during flood events.  
12 River systems react in different ways: When some rivers flood, they  
13 scour; others fill in by sediment deposition. The legislature further  
14 finds that when placing or removing organic debris in a river that  
15 scours, it may be appropriate to place more debris for fish habitat; if  
16 it is a river that deposits sediments and tends to fill in then it may  
17 be appropriate to remove deposits to create some deeper pools and a  
18 better flow pattern, that will help fish habitat as well as lessen  
19 flood danger. The legislature therefore declares that reducing flood

1 damage through the use of structural and nonstructural projects is in  
2 the public interest and that it is the duty of the state to assist in  
3 funding flood control projects. Structural and nonstructural projects  
4 include but are not limited to: Streambank stabilization, river  
5 channel maintenance, land use restrictions, land buy-outs, flood  
6 easements, and emergency notification. The legislature further  
7 declares that counties be given the flexibility to make those decisions  
8 that are best for their particular rivers, rather than prescribe or  
9 constrain local government to the point where they cannot manage their  
10 different types of rivers. The legislature further declares that local  
11 governments should coordinate flood planning and flood projects so that  
12 the projects do not cause flooding in other areas. Counties and cities  
13 are encouraged to coordinate using watershed planning areas to provide  
14 consistent planning throughout a water's course.

15 **Sec. 2.** RCW 36.70A.060 and 1991 sp.s. c 32 s 21 are each amended  
16 to read as follows:

17 (1) Each county that is required or chooses to plan under RCW  
18 36.70A.040, and each city within such county, shall adopt development  
19 regulations on or before September 1, 1991, to assure the conservation  
20 of agricultural, forest, and mineral resource lands designated under  
21 RCW 36.70A.170. Regulations adopted under this subsection may not  
22 prohibit uses legally existing on any parcel prior to their adoption  
23 and shall remain in effect until the county or city adopts development  
24 regulations pursuant to RCW 36.70A.120. Such regulations shall assure  
25 that the use of lands adjacent to agricultural, forest, or mineral  
26 resource lands shall not interfere with the continued use, in the  
27 accustomed manner and in accordance with best management practices, of  
28 these designated lands for the production of food, agricultural  
29 products, or timber, or for the extraction of minerals. Counties and  
30 cities shall require that all plats, short plats, development permits,  
31 and building permits issued for development activities on, or within  
32 three hundred feet of, lands designated as agricultural lands, forest  
33 lands, or mineral resource lands, contain a notice that the subject  
34 property is within or near designated agricultural lands, forest lands,  
35 or mineral resource lands on which a variety of commercial activities  
36 may occur that are not compatible with residential development for  
37 certain periods of limited duration.

1 (2) Each county and city shall adopt development regulations that  
2 protect critical areas that are required to be designated under RCW  
3 36.70A.170. For counties and cities that are required or choose to  
4 plan under RCW 36.70A.040, such development regulations shall be  
5 adopted on or before September 1, 1991. For the remainder of the  
6 counties and cities, such development regulations shall be adopted on  
7 or before March 1, 1992.

8 (3) Such counties and cities shall review these designations and  
9 development regulations when adopting their comprehensive plans under  
10 RCW 36.70A.040 and implementing development regulations under RCW  
11 36.70A.120 and may alter such designations and development regulations  
12 to insure consistency.

13 (4) Forest land and agricultural land located within urban growth  
14 areas shall not be designated by a county or city as forest land or  
15 agricultural land of long-term commercial significance under RCW  
16 36.70A.170 unless the city or county has enacted a program authorizing  
17 transfer or purchase of development rights.

18 (5) All development regulations developed under this section shall  
19 be consistent with the comprehensive flood control management plan  
20 adopted by the county under RCW 86.26.105.

21 **Sec. 3.** RCW 36.70A.070 and 1990 1st ex.s. c 17 s 7 are each  
22 amended to read as follows:

23 The comprehensive plan of a county or city that is required or  
24 chooses to plan under RCW 36.70A.040 shall consist of a map or maps,  
25 and descriptive text covering objectives, principles, and standards  
26 used to develop the comprehensive plan. The plan shall be an  
27 internally consistent document and all elements shall be consistent  
28 with the future land use map, and the comprehensive flood control  
29 management plan adopted by the county under RCW 86.26.105. A  
30 comprehensive plan shall be adopted and amended with public  
31 participation as provided in RCW 36.70A.140.

32 Each comprehensive plan shall include a plan, scheme, or design for  
33 each of the following:

34 (1) A land use element designating the proposed general  
35 distribution and general location and extent of the uses of land, where  
36 appropriate, for agriculture, timber production, housing, commerce,  
37 industry, recreation, open spaces, public utilities, public facilities,  
38 and other land uses. The land use element shall include population

1 densities, building intensities, and estimates of future population  
2 growth. The land use element shall provide for protection of the  
3 quality and quantity of ground water used for public water supplies.  
4 Where applicable, the land use element shall review drainage, flooding,  
5 and storm water run-off in the area and nearby jurisdictions and  
6 provide guidance for corrective actions to mitigate or cleanse those  
7 discharges that pollute waters of the state, including Puget Sound or  
8 waters entering Puget Sound.

9 (2) A housing element recognizing the vitality and character of  
10 established residential neighborhoods that: (a) Includes an inventory  
11 and analysis of existing and projected housing needs; (b) includes a  
12 statement of goals, policies, and objectives for the preservation,  
13 improvement, and development of housing; (c) identifies sufficient land  
14 for housing, including, but not limited to, government-assisted  
15 housing, housing for low-income families, manufactured housing,  
16 multifamily housing, and group homes and foster care facilities; and  
17 (d) makes adequate provisions for existing and projected needs of all  
18 economic segments of the community.

19 (3) A capital facilities plan element consisting of: (a) An  
20 inventory of existing capital facilities owned by public entities,  
21 showing the locations and capacities of the capital facilities; (b) a  
22 forecast of the future needs for such capital facilities; (c) the  
23 proposed locations and capacities of expanded or new capital  
24 facilities; (d) at least a six-year plan that will finance such capital  
25 facilities within projected funding capacities and clearly identifies  
26 sources of public money for such purposes; and (e) a requirement to  
27 reassess the land use element if probable funding falls short of  
28 meeting existing needs and to ensure that the land use element, capital  
29 facilities plan element, and financing plan within the capital  
30 facilities plan element are coordinated and consistent.

31 (4) A utilities element consisting of the general location,  
32 proposed location, and capacity of all existing and proposed utilities,  
33 including, but not limited to, electrical lines, telecommunication  
34 lines, and natural gas lines.

35 (5) Counties shall include a rural element including lands that are  
36 not designated for urban growth, agriculture, forest, or mineral  
37 resources. The rural element shall permit land uses that are  
38 compatible with the rural character of such lands and provide for a  
39 variety of rural densities.

1 (6) A transportation element that implements, and is consistent  
2 with, the land use element. The transportation element shall include  
3 the following subelements:

4 (a) Land use assumptions used in estimating travel;

5 (b) Facilities and services needs, including:

6 (i) An inventory of air, water, and land transportation facilities  
7 and services, including transit alignments, to define existing capital  
8 facilities and travel levels as a basis for future planning;

9 (ii) Level of service standards for all arterials and transit  
10 routes to serve as a gauge to judge performance of the system. These  
11 standards should be regionally coordinated;

12 (iii) Specific actions and requirements for bringing into  
13 compliance any facilities or services that are below an established  
14 level of service standard;

15 (iv) Forecasts of traffic for at least ten years based on the  
16 adopted land use plan to provide information on the location, timing,  
17 and capacity needs of future growth;

18 (v) Identification of system expansion needs and transportation  
19 system management needs to meet current and future demands;

20 (c) Finance, including:

21 (i) An analysis of funding capability to judge needs against  
22 probable funding resources;

23 (ii) A multiyear financing plan based on the needs identified in  
24 the comprehensive plan, the appropriate parts of which shall serve as  
25 the basis for the six-year street, road, or transit program required by  
26 RCW 35.77.010 for cities, RCW 36.81.121 for counties, and RCW  
27 35.58.2795 for public transportation systems;

28 (iii) If probable funding falls short of meeting identified needs,  
29 a discussion of how additional funding will be raised, or how land use  
30 assumptions will be reassessed to ensure that level of service  
31 standards will be met;

32 (d) Intergovernmental coordination efforts, including an assessment  
33 of the impacts of the transportation plan and land use assumptions on  
34 the transportation systems of adjacent jurisdictions;

35 (e) Demand-management strategies.

36 After adoption of the comprehensive plan by jurisdictions required  
37 to plan or who choose to plan under RCW 36.70A.040, local jurisdictions  
38 must adopt and enforce ordinances which prohibit development approval  
39 if the development causes the level of service on a transportation

1 facility to decline below the standards adopted in the transportation  
2 element of the comprehensive plan, unless transportation improvements  
3 or strategies to accommodate the impacts of development are made  
4 concurrent with the development. These strategies may include  
5 increased public transportation service, ride sharing programs, demand  
6 management, and other transportation systems management strategies.  
7 For the purposes of this subsection (6) "concurrent with the  
8 development" shall mean that improvements or strategies are in place at  
9 the time of development, or that a financial commitment is in place to  
10 complete the improvements or strategies within six years.

11 The transportation element described in this subsection, and the  
12 six-year plans required by RCW 35.77.010 for cities, RCW 36.81.121 for  
13 counties, and RCW 35.58.2795 for public transportation systems, must be  
14 consistent.

15 **Sec. 4.** RCW 36.70A.170 and 1990 1st ex.s. c 17 s 17 are each  
16 amended to read as follows:

17 (1) On or before September 1, 1991, each county, and each city,  
18 shall designate where appropriate:

19 (a) Agricultural lands that are not already characterized by urban  
20 growth and that have long-term significance for the commercial  
21 production of food or other agricultural products;

22 (b) Forest lands that are not already characterized by urban growth  
23 and that have long-term significance for the commercial production of  
24 timber;

25 (c) Mineral resource lands that are not already characterized by  
26 urban growth and that have long-term significance for the extraction of  
27 minerals; and

28 (d) Critical areas.

29 (2) In making the designations required by this section, counties  
30 and cities shall consider the guidelines established pursuant to RCW  
31 36.70A.050, and shall make such designations so that they are  
32 consistent with the comprehensive flood control management plan adopted  
33 by the county under RCW 86.26.105.

34 **Sec. 5.** RCW 43.21C.020 and 1971 ex.s. c 109 s 2 are each amended  
35 to read as follows:

36 (1) The legislature, recognizing that (~~man~~) people depend(~~s~~) on  
37 (~~his~~) their biological and physical surroundings for food, shelter,

1 and other needs, and for cultural enrichment as well((+)), and  
2 recognizing further the profound impact of ((man's)) human activity on  
3 the interrelations of all components of the natural environment,  
4 particularly the profound influences of population growth, high-density  
5 urbanization, industrial expansion, resource utilization and  
6 exploitation, and new and expanding technological advances, and  
7 recognizing further the critical importance of restoring and  
8 maintaining environmental quality to the overall welfare and  
9 development of ((man)) people, declares that it is the continuing  
10 policy of the state of Washington, in cooperation with federal and  
11 local governments, and other concerned public and private  
12 organizations, to use all practicable means and measures, including  
13 financial and technical assistance, in a manner calculated to: (a)  
14 Foster and promote the general welfare; (b) ((to)) create and maintain  
15 conditions under which ((man)) people and nature can exist in  
16 productive harmony; and (c) fulfill the social, economic, and other  
17 requirements of present and future generations of Washington citizens.

18 (2) In order to carry out the policy set forth in this chapter, it  
19 is the continuing responsibility of the state of Washington and all  
20 agencies of the state to use all practicable means, consistent with  
21 other essential considerations of state policy, to improve and  
22 coordinate plans, functions, programs, and resources to the end that  
23 the state and its citizens may:

24 (a) Fulfill the responsibilities of each generation as trustee of  
25 the environment for succeeding generations;

26 (b) Assure for all people of Washington safe, healthful,  
27 productive, and aesthetically and culturally pleasing surroundings;

28 (c) Attain the widest range of beneficial uses of the environment  
29 without degradation, risk to health or safety, or other undesirable and  
30 unintended consequences;

31 (d) Preserve important historic, cultural, and natural aspects of  
32 our national heritage;

33 (e) Maintain, wherever possible, an environment which supports  
34 diversity and variety of individual choice;

35 (f) Achieve a balance between population and resource use which  
36 will permit high standards of living and a wide sharing of life's  
37 amenities; ((and))

38 (g) Enhance the quality of renewable resources and approach the  
39 maximum attainable recycling of depletable resources; and

1        (h) Provide for the prevention, minimization, and repair of flood  
2 damage as defined in RCW 86.16.120.

3        (3) The legislature recognizes that each person has a fundamental  
4 and inalienable right to a healthful environment and that each person  
5 has a responsibility to contribute to the preservation and enhancement  
6 of the environment.

7        ***\*NEW SECTION.** Sec. 6. A new section is added to chapter 75.20 RCW*  
8 *to read as follows:*

9        *Unless the context clearly requires otherwise, the definitions in*  
10 *this section apply to RCW 75.20.100, 75.20.103, and 75.20.130.*

11        (1) "Bed" means the land below the ordinary high water lines of  
12 state waters. This definition does not include irrigation ditches,  
13 canals, storm water run-off devices, or other artificial watercourses  
14 except where they exist in a natural watercourse that has been altered  
15 by humans.

16        (2) "Commercial" means any facility or building used for commerce,  
17 including those used for agricultural or industrial purposes.

18        (3) "Emergency" means an immediate threat to life, public land, or  
19 private property, or an immediate threat of serious environmental  
20 degradation.

21        (4) "Streambank stabilization" includes but is not limited to log  
22 and debris removal; bank protection including riprap, jetties, and  
23 groins; gravel removal; and erosion control.

24        (5) "To construct any form of hydraulic project or perform other  
25 work" does not include the act of driving across an established ford.  
26 Driving across streams or on wetted stream beds at areas other than  
27 established fords requires approval. Work within the ordinary high  
28 water line of state waters to construct or repair a ford or crossing  
29 requires approval.

30        \*Sec. 6 was vetoed. See message at end of chapter.

31        ***\*NEW SECTION.** Sec. 7. A new section is added to chapter 75.20 RCW*  
32 *to read as follows:*

33        *The permitting department may impose the following conditions on*  
34 *persons applying under RCW 75.20.100 or 75.20.103:*

35        (1) *The permittee shall establish an excavation line. "Excavation*  
36 *line" means a line on the dry bed, parallel to the water's edge unless*  
37 *otherwise stated, that changes with water level fluctuations.*

1       (2) The permittee may not remove bed material from the water side  
2 of the excavation line.

3       (3) The permittee shall begin excavating at the excavation line and  
4 proceed toward the bank, perpendicular to the alignment of the  
5 watercourse.

6       (4) The permittee shall keep the maximum distance of excavation  
7 toward the bank from the excavation line approximately equal throughout  
8 the excavation zone. "Excavation zone" means the area between the  
9 excavation line and the bank.

10       (5) The permittee shall identify the excavation zone with boundary  
11 markers.

12       (6) The permittee shall maintain a minimum one-half percent  
13 gradient upward from the excavation line in the excavation zone.

14       (7) The permittee shall ensure that the excavation zone is free of  
15 pits or potholes.

16       (8) The permittee shall not stockpile or spoil excavated materials  
17 within the ordinary high water line except from June 15 to October 15.

18       (9) The permittee may not allow any equipment within the wetted  
19 perimeter of the watercourse without specific permission.

20       (10) The permittee shall dispose of debris in the excavation zone  
21 so it does not reenter the watercourse.

22       (11) The permittee may not perform gravel washing or crushing  
23 operations below the ordinary high water line.

24       (12) The permittee shall be allowed to remove only that amount of  
25 rock, sand, gravel, or silt which is naturally replenished on an annual  
26 basis, except in instances where a lapse in material removal has  
27 occurred. If such lapse has occurred, then an amount of material  
28 equivalent to the amount estimated to have accumulated since the last  
29 material removal operation, including debris and vegetation, may be  
30 removed.

31 \*Sec. 7 was vetoed. See message at end of chapter.

32       \*Sec. 8. RCW 75.20.100 and 1993 sp.s. c 2 s 30 are each amended to  
33 read as follows:

34       (1) In the event that any person or government agency desires to  
35 construct any form of hydraulic project or perform other work that will  
36 use, divert, obstruct, or change the natural flow or bed of any of the  
37 salt or fresh waters of the state, such person or government agency  
38 shall, before commencing construction or work thereon and to ensure the

1 proper protection of fish life, secure the written approval of the  
2 department as to the adequacy of the means proposed for the protection  
3 of fish life. The department may not limit, condition, or otherwise  
4 affect the amount, timing, or delivery method of water diverted under  
5 chapter 90.03 RCW after the water leaves the stream channel and before  
6 it is returned to the stream. This approval shall not be unreasonably  
7 withheld. Except as provided in RCW 75.20.1001 (~~and 75.20.1002~~), the  
8 department shall grant or deny approval within forty-five calendar days  
9 of the receipt of a complete application and notice of compliance with  
10 any applicable requirements of the state environmental policy act, made  
11 in the manner prescribed in this section. The applicant may document  
12 receipt of application by filing in person or by registered mail. A  
13 complete application for approval shall contain general plans for the  
14 overall project, complete plans and specifications of the proposed  
15 construction or work within the mean higher high water line in salt  
16 water or within the ordinary high water line in fresh water, and  
17 complete plans and specifications for the proper protection of fish  
18 life. The forty-five day requirement shall be suspended if (~~(1)~~) (a)  
19 after ten working days of receipt of the application, the applicant  
20 remains unavailable or unable to arrange for a timely field evaluation  
21 of the proposed project; (~~(2)~~) (b) the site is physically  
22 inaccessible for inspection; or (~~(3)~~) (c) the applicant requests  
23 delay. Immediately upon determination that the forty-five day period  
24 is suspended, the department shall notify the applicant in writing of  
25 the reasons for the delay. Approval is valid for a period of up to  
26 five years from date of issuance. The permittee must demonstrate  
27 substantial progress on construction of that portion of the project  
28 relating to the approval within two years of the date of issuance. If  
29 the department denies approval, the department shall provide the  
30 applicant, in writing, a statement of the specific reasons why and how  
31 the proposed project would adversely affect fish life. Protection of  
32 fish life shall be the only ground upon which approval may be denied or  
33 conditioned.

34 (2) In making a decision as to whether fish life is protected, the  
35 department of fish and wildlife shall determine if a project as  
36 proposed or modified:

37 (a) Presents no substantial risk to fish life and provides fish  
38 habitat productivity equivalent to preproject conditions at the project  
39 site within two years of the project's completion; or

1 (b)(i) Protects a residential, commercial, industrial, or public  
2 facility or structure that is likely to incur significant flood damage  
3 during the next flood season if the project is not completed; and (ii)  
4 lessens the loss of fish life or habitat as compared to a project  
5 resulting from an emergency request under this section.

6 The department with jurisdiction shall approve a project if it  
7 determines that the project meets either (a) or (b) of this subsection.

8 (3) Chapter 34.05 RCW applies to any denial of project approval,  
9 conditional approval, or requirements for project modification upon  
10 which approval may be contingent. If any person or government agency  
11 commences construction on any hydraulic works or projects subject to  
12 this section without first having obtained written approval of the  
13 department as to the adequacy of the means proposed for the protection  
14 of fish life, or if any person or government agency fails to follow or  
15 carry out any of the requirements or conditions as are made a part of  
16 such approval, the person or director of the agency is guilty of a  
17 gross misdemeanor. If any such person or government agency is  
18 convicted of violating any of the provisions of this section and  
19 continues construction on any such works or projects without fully  
20 complying with the provisions hereof, such works or projects are hereby  
21 declared a public nuisance and shall be subject to abatement as such.

22 ~~((For the purposes of this section and RCW 75.20.103, "bed" shall~~  
23 ~~mean the land below the ordinary high water lines of state waters.~~  
24 ~~This definition shall not include irrigation ditches, canals, storm~~  
25 ~~water run-off devices, or other artificial watercourses except where~~  
26 ~~they exist in a natural watercourse that has been altered by man.~~

27 ~~The phrase "to construct any form of hydraulic project or perform~~  
28 ~~other work" shall not include the act of driving across an established~~  
29 ~~ford. Driving across streams or on wetted stream beds at areas other~~  
30 ~~than established fords requires approval. Work within the ordinary~~  
31 ~~high water line of state waters to construct or repair a ford or~~  
32 ~~crossing requires approval.))~~

33 (4) In case of an emergency arising from weather or stream flow  
34 conditions or other natural conditions, upon request the department,  
35 through its authorized representatives, shall ((issue)) grant  
36 immediately ((upon request)), oral approval for removing any  
37 obstructions, repairing existing structures, restoring stream banks, or  
38 ((to protect)) protecting property threatened by the stream or a change  
39 in the stream flow without ((the necessity of obtaining)) requiring a

1 written approval prior to commencing work. Conditions of an oral  
2 approval shall be reduced to writing within thirty days and complied  
3 with as provided for in this section. Oral approval shall be granted  
4 immediately upon request, for a stream crossing during an emergency  
5 situation.

6 (5) This section shall not apply to the repair of an existing flood  
7 control project if the project is determined by the county to be:

8 (a) Consistent with a currently approved comprehensive flood  
9 control management plan; and

10 (b) Necessary to avoid flood damage during the next flood season.

11 (6) This section shall not apply to the construction of any form of  
12 hydraulic project or other work which diverts water for agricultural  
13 irrigation or stock watering purposes authorized under or recognized as  
14 being valid by the state's water codes, or when such hydraulic project  
15 or other work is associated with streambank stabilization to protect  
16 farm and agricultural land as defined in RCW 84.34.020. These  
17 irrigation or stock watering diversion and streambank stabilization  
18 projects shall be governed by RCW 75.20.103.

19 \*Sec. 8 was vetoed. See message at end of chapter.

20 \*Sec. 9. RCW 75.20.103 and 1993 sp.s. c 2 s 32 are each amended to  
21 read as follows:

22 (1) In the event that any person or government agency desires to  
23 construct any form of hydraulic project or other work that diverts  
24 water for agricultural irrigation or stock watering purposes, or when  
25 such hydraulic project or other work is associated with streambank  
26 stabilization or flood damage reduction to protect farm and  
27 agricultural land as defined in RCW 84.34.020, and when such  
28 ((~~diversion or streambank stabilization~~)) hydraulic project will use,  
29 divert, obstruct, or change the natural flow or bed of any river or  
30 stream or will utilize any waters of the state or materials from the  
31 stream beds, the person or government agency shall, before commencing  
32 construction or work thereon and to ensure the proper protection of  
33 fish life, secure a written approval from the department as to the  
34 adequacy of the means proposed for the protection of fish life. The  
35 department may not limit, condition, or otherwise affect the amount,  
36 timing, or delivery method of water diverted under chapter 90.03 RCW  
37 after the water leaves the stream channel and before it is returned to  
38 the stream. This approval shall not be unreasonably withheld. Except

1 as provided in RCW 75.20.1001 (~~and 75.20.1002~~), the department shall  
2 grant or deny the approval within forty-five calendar days of the  
3 receipt of a complete application (~~and notice of compliance with any~~  
4 ~~applicable requirements of the state environmental policy act,~~) made  
5 in the manner prescribed in this section. The applicant may document  
6 receipt of application by filing in person or by registered mail.

7 (2) A complete application for an approval shall:

8 (a) Contain general plans for the overall project, complete plans  
9 and specifications of the proposed construction or work within ordinary  
10 high water line, and complete plans and specifications for the proper  
11 protection of fish life; and

12 (b) Not be required to include notice of compliance with any  
13 applicable requirements of the state environmental policy act. Final  
14 approval of a project may not be granted until any applicable  
15 requirements of the state environmental policy act have been satisfied.

16 (3) The forty-five day requirement shall be suspended if (~~(1)~~):

17 (a) After ten working days of receipt of the application, the  
18 applicant remains unavailable or unable to arrange for a timely field  
19 evaluation of the proposed project; (~~(2)~~)

20 (b) The site is physically inaccessible for inspection; (~~or (3)~~)

21 (c) After forty-four days of receipt of a complete application, a  
22 notice of compliance with the state environmental policy act has not  
23 been issued; or

24 (d) The applicant requests delay.

25 (4) Immediately upon determination that the forty-five day period  
26 is suspended, the department shall notify the applicant in writing of  
27 the reasons for the delay.

28 (5) In making a decision as to whether fish life is protected, the  
29 department shall determine if a project as proposed or modified:

30 (a) Presents no substantial risk to fish life and provides fish  
31 habitat productivity equivalent to preproject conditions at the project  
32 site within two years of the project's completion; or

33 (b)(i) Protects a residential, commercial, industrial, or public  
34 facility or structure that is likely to incur significant flood damage  
35 during the next flood season if the project is not completed; and (ii)  
36 lessens the loss of fish life or habitat as compared to a project  
37 resulting from an emergency request under this section.

38 The department shall approve a project if it determines that the  
39 project meets either (a) or (b) of this subsection.

1       (6) An approval shall remain in effect without need for periodic  
2 renewal for projects that divert water for agricultural irrigation or  
3 stock watering purposes and that involve seasonal construction or other  
4 work. Approval for streambank stabilization projects shall remain in  
5 effect without need for periodic renewal if the problem causing the  
6 need for the streambank stabilization occurs on an annual or more  
7 frequent basis. The permittee must notify the appropriate agency  
8 before commencing the construction or other work within the area  
9 covered by the approval.

10       (7) The permittee must demonstrate substantial progress on  
11 construction of that portion of the project relating to the approval  
12 within two years of the date of issuance. If the department denies  
13 approval, the department shall provide the applicant, in writing, a  
14 statement of the specific reasons why and how the proposed project  
15 would adversely affect fish life. Protection of fish life shall be the  
16 only ground upon which approval may be denied or conditioned.  
17 Issuance, denial, conditioning, or modification shall be appealable to  
18 the hydraulic appeals board established in RCW 43.21B.005 within thirty  
19 days of the notice of decision. The burden shall be upon the  
20 department to show that the denial or conditioning of an approval is  
21 solely aimed at the protection of fish life.

22       (8) The department may, after consultation with the permittee,  
23 modify an approval due to changed conditions. The modifications shall  
24 become effective unless appealed to the hydraulic appeals board within  
25 thirty days from the notice of the proposed modification. The burden  
26 is on the department to show that changed conditions warrant the  
27 modification in order to protect fish life.

28       (9) A permittee may request modification of an approval due to  
29 changed conditions. The request shall be processed within forty-five  
30 calendar days of receipt of the written request. A decision by the  
31 department may be appealed to the hydraulic appeals board within thirty  
32 days of the notice of the decision. The burden is on the permittee to  
33 show that changed conditions warrant the requested modification and  
34 that such modification will not impair fish life.

35       (10) If any person or government agency commences construction on  
36 any hydraulic works or projects subject to this section without first  
37 having obtained written approval of the department as to the adequacy  
38 of the means proposed for the protection of fish life, or if any person  
39 or government agency fails to follow or carry out any of the

1 requirements or conditions as are made a part of such approval, the  
2 person or director of the agency is guilty of a gross misdemeanor. If  
3 any such person or government agency is convicted of violating any of  
4 the provisions of this section and continues construction on any such  
5 works or projects without fully complying with the provisions hereof,  
6 such works or projects are hereby declared a public nuisance and shall  
7 be subject to abatement as such.

8 (11) In case of an emergency arising from weather or stream flow  
9 conditions or other natural conditions, the department, through its  
10 authorized representatives, shall issue immediately upon request oral  
11 approval for removing any obstructions, repairing existing structures,  
12 restoring stream banks, or to protect property threatened by the stream  
13 or a change in the stream flow without the necessity of obtaining a  
14 written approval prior to commencing work. Conditions of an oral  
15 approval shall be reduced to writing within thirty days and complied  
16 with as provided for in this section. Oral approval shall be granted  
17 immediately upon request, for a stream crossing during an emergency.

18 ~~((For purposes of this chapter, "streambank stabilization" shall~~  
19 ~~include but not be limited to log and debris removal, bank protection~~  
20 ~~(including riprap, jetties, and groins), gravel removal and erosion~~  
21 ~~control.))~~

22 (12) This section shall not apply to a project involving the repair  
23 of an existing flood control facility if the project is determined by  
24 the county to be:

25 (a) Consistent with a previously approved comprehensive flood  
26 control management plan; and

27 (b) Necessary to avoid flood damage during the next flood season.

28 \*Sec. 9 was vetoed. See message at end of chapter.

29 \*Sec. 10. RCW 75.20.130 and 1993 sp.s. c 2 s 37 are each amended  
30 to read as follows:

31 (1) There is hereby created within the environmental hearings  
32 office under RCW 43.21B.005 the hydraulic appeals board of the state of  
33 Washington.

34 (2) The hydraulic appeals board shall consist of three members:  
35 The director of the department of ecology or the director's designee,  
36 the director of the department of agriculture or the director's  
37 designee, and the director or the director's designee of the department  
38 whose action is appealed under subsection (6) of this section. A

1 decision must be agreed to by at least two members of the board to be  
2 final.

3 (3) The board may adopt rules necessary for the conduct of its  
4 powers and duties or for transacting other official business.

5 (4) The board shall make findings of fact and prepare a written  
6 decision in each case decided by it, and that finding and decision  
7 shall be effective upon being signed by two or more board members and  
8 upon being filed at the hydraulic appeals board's principal office, and  
9 shall be open to public inspection at all reasonable times.

10 (5) The board has exclusive jurisdiction to hear appeals arising  
11 from the approval, denial, conditioning, or modification of a hydraulic  
12 approval issued by the department under the authority granted in RCW  
13 75.20.103 for the diversion of water for agricultural irrigation or  
14 stock watering purposes or when associated with streambank  
15 stabilization to protect farm and agricultural land as defined in RCW  
16 84.34.020.

17 (6)(a) Any person aggrieved by the approval, denial, conditioning,  
18 or modification of a hydraulic approval pursuant to RCW 75.20.103 may  
19 seek review from the board by filing a request for the same within  
20 thirty days of notice of the approval, denial, conditioning, or  
21 modification of such approval.

22 (b) The review proceedings authorized in (a) of this subsection are  
23 subject to the provisions of chapter 34.05 RCW pertaining to procedures  
24 in adjudicative proceedings.

25 (c) If a review proceeding authorized in (a) of this subsection  
26 finds for the aggrieved permit applicant, the applicant may be awarded  
27 any legal and engineering costs involved in challenging the permit  
28 decision.

29 \*Sec. 10 was vetoed. See message at end of chapter.

30 NEW SECTION. **Sec. 11.** A new section is added to chapter 79.90 RCW  
31 to read as follows:

32 (1) Use or modification, or both, of any river system must involve  
33 basic hydraulic principles, as well as harmonize as much as possible  
34 with existing aquatic ecosystems, and human needs.

35 (2) The department, commissioner, and board shall:

36 (a) Give priority consideration to the preservation of the  
37 streamway environment with special attention given to preservation of

1 those areas considered aesthetically or environmentally unique for  
2 stream segments with a naturally unconfined channel;

3 (b) Encourage bank and island stabilization programs which rely  
4 mainly on natural vegetative systems as holding elements;

5 (c) Encourage research to develop alternative methods of channel  
6 control, utilizing natural systems of stabilization;

7 (d) Recognize natural plant and animal communities and other  
8 features that provide an ecological balance to a streamway in  
9 evaluating competing human uses and require protection from significant  
10 human impact; and

11 (e) Recognize that hydraulic conditions may require the  
12 installation of riprap or other similar measure to further protect  
13 natural systems of stabilization.

14 (3) No person may remove normal stream depositions of logs,  
15 uprooted tree snags, and stumps which abut on shorelands and do not  
16 intrude on the navigational channel or reduce flow, or adversely  
17 redirect a river course, and are not harmful to life and property  
18 without the department's permission but the department must consider  
19 the need to protect the resultant dependent aquatic systems.

20 (4) No person may fill indentations such as mudholes, eddies,  
21 pools, and aeration drops without permission of the department.

22 (5) The department may permit river channel relocations only when  
23 an overriding public benefit can be shown. Filling, grading,  
24 lagooning, or dredging which would result in substantial detriment to  
25 navigable waters by reason of erosion, sedimentation, or impairment of  
26 fish and aquatic life are not authorized.

27 (6) No person may remove sand and gravel below the wetted perimeter  
28 of navigable rivers unless authorized by a hydraulics permit issued by  
29 either the department of fisheries or department of wildlife under RCW  
30 75.20.100 and 75.20.103. These removals may be authorized for  
31 maintenance and improvement of navigational channels or for creating  
32 backwater channels for fish rearing or improvement of the flow capacity  
33 of the channels.

34 (7) The department may allow sand and gravel removals above the  
35 wetted perimeter of a navigable river which are not harmful to public  
36 health and safety when any or all of the following situations exist:

37 (a) The removal is designed to create or improve a feature such as  
38 a pond, wetland, or other habitat valuable for fish and wildlife;

39 (b) The removal provides recreational benefits;

1 (c) The removal will aid in reducing a detrimental accumulation of  
2 aggregates in downstream lakes, reservoirs, and river beds;

3 (d) The removal will aid in reducing damage to private or public  
4 land and property abutting a navigable river; or

5 (e) The removal will contribute to increased flood protection for  
6 private or public land.

7 (8) The department may not allow sand and gravel removals above the  
8 wetted perimeter of a navigable river when:

9 (a) The location of such material is below a dam and has inadequate  
10 supplementary feeding of gravel or sand;

11 (b) Removal will cause unstable hydraulic conditions detrimental to  
12 fish, wildlife, public health, and safety; or

13 (c) Removal will impact esthetics of nearby recreational  
14 facilities.

15 (9) No person may perform bank dumping or junk revetment on aquatic  
16 lands.

17 (10) The department shall condition sand and gravel removal leases  
18 to allow removal of only that amount which is naturally replenished on  
19 an annual basis, except in instances where a lapse in material removal  
20 has occurred. If such a lapse has occurred, then an amount of material  
21 equivalent to the amount estimated to have accumulated since the last  
22 material removal operation, including debris and vegetation, may be  
23 removed if consistent with the county comprehensive flood control  
24 management plan.

25 **Sec. 12.** RCW 79.90.150 and 1991 c 337 s 1 are each amended to read  
26 as follows:

27 When gravel, rock, sand, silt or other material from any aquatic  
28 lands is removed by any public agency or under public contract for  
29 channel or harbor improvement, or flood control, use of such material  
30 may be authorized by the department of natural resources for a public  
31 purpose on land owned or leased by the state or any municipality,  
32 county, or public corporation: PROVIDED, That when no public land site  
33 is available for deposit of such material, its deposit on private land  
34 with the landowner's permission is authorized and may be designated by  
35 the department of natural resources to be for a public purpose. Prior  
36 to removal and use, the state agency, municipality, county, or public  
37 corporation contemplating or arranging such use shall first obtain  
38 written permission from the department of natural resources. No

1 payment of royalty shall be required for such gravel, rock, sand, silt,  
2 or other material used for such public purpose, but a charge will be  
3 made if such material is subsequently sold or used for some other  
4 purpose: PROVIDED, That the department may authorize such public  
5 agency or private landowner to dispose of such material without charge  
6 when necessary to implement disposal of material. No charge shall be  
7 required for any use of the material obtained under the provisions of  
8 this chapter when used solely on an authorized site. No charge shall  
9 be required for any use of the material obtained under the provisions  
10 of this chapter if the material is used for public purposes by local  
11 governments. No charge may be required for removal or use of such  
12 material if the removal of the material is determined by the county  
13 engineer or equivalent position to be for flood control purposes.  
14 Public purposes include, but are not limited to, construction and  
15 maintenance of roads, dikes, and levies. Nothing in this section shall  
16 repeal or modify the provisions of RCW 75.20.100 or eliminate the  
17 necessity of obtaining a permit for such removal from other state or  
18 federal agencies as otherwise required by law.

19 **Sec. 13.** RCW 79.90.300 and 1991 c 322 s 26 are each amended to  
20 read as follows:

21 (1) The department of natural resources, upon application by any  
22 person or when determined by the department to be in the best interest  
23 of the state, may enter into a contract or lease providing for the  
24 removal and sale of rock, gravel, sand, and silt, or other valuable  
25 materials located within or upon beds of navigable waters, or upon any  
26 tidelands or shorelands belonging to the state and providing for  
27 payment to be made therefor by such royalty as the department may fix,  
28 by negotiation, by sealed bid, or at public auction. If application is  
29 made for the purchase of any valuable material situated within or upon  
30 aquatic lands the department shall inspect and appraise the value of  
31 the material in the application. The department may reduce or  
32 eliminate royalties in areas prone to flooding. The department may  
33 include a provision in contracts for the removal of rock, gravel, sand,  
34 or silt that allows for payment to be made as the material is sold.

35 (2) The department shall actively seek to encourage through permit  
36 requirements and adjusted fees the removal of accumulated materials  
37 from rivers and streams where there is a flood damage reduction

1 benefit. The department shall develop policies to accomplish this  
2 goal.

3 **Sec. 14.** RCW 85.38.200 and 1986 c 278 s 8 are each amended to read  
4 as follows:

5 (1) Territory that is (~~contiguously located~~) adjoining or in  
6 close proximity to a special district may be annexed by the special  
7 district as provided in this section under the petition and election,  
8 resolution and election, or direct petition method of annexation.

9 (2) An annexation under the election method may be initiated by the  
10 filing of a petition requesting the action that is signed by at least  
11 ten owners of property in the area proposed to be annexed or the  
12 adoption of a resolution requesting such action by the governing body  
13 of the special district. The petitions shall be filed with the  
14 governing body of the special district that is requested to annex the  
15 territory. An election to authorize an annexation initiated under the  
16 petition and election method may be held only if the governing body  
17 approves the annexation. An annexation under either election method  
18 shall be authorized if the voters of the area proposed to be annexed  
19 approve a ballot proposition favoring the annexation by a simple  
20 majority vote. The annexation shall be effective when results of an  
21 election so favoring the annexation are certified by the county auditor  
22 or auditors. The election, notice of the election, and eligibility to  
23 vote at the election shall be as provided for the creation of a special  
24 district.

25 (3) An annexation under the direct petition method of annexation  
26 may be accomplished if the owners of a majority of the acreage proposed  
27 to be annexed sign a petition requesting the annexation, and the  
28 governing body of the special district approves the annexation. The  
29 petition shall be filed with the governing body of the special  
30 district. The annexation shall be effective when the governing body  
31 approves the annexation.

32 (4) Whenever a special district annexes territory under this  
33 section, the exclusive method by which the special district measures  
34 and imposes special assessments upon real property within the entire  
35 enlarged area shall be as set forth in RCW 85.38.150 through 85.38.170.

36 **Sec. 15.** RCW 86.15.030 and 1969 ex.s. c 195 s 2 are each amended  
37 to read as follows:

1 Upon receipt of a petition asking that a zone be created, or upon  
2 motion of the board, the board shall adopt a resolution which shall  
3 describe the boundaries of such proposed zone; describe in general  
4 terms the flood control needs or requirements within the zone; set a  
5 date for public hearing upon the creation of such zone, which shall be  
6 not more than thirty days after the adoption of such resolution.  
7 Notice of such hearing and publication shall be had in the manner  
8 provided in RCW 36.32.120(7).

9 At the hearing scheduled upon the resolution, the board shall  
10 permit all interested parties to be heard. Thereafter, the board may  
11 reject the resolution or it may modify the boundaries of such zone and  
12 make such other corrections or additions to the resolutions as they  
13 deem necessary to the accomplishment of the purpose of this chapter:  
14 PROVIDED, That if the boundaries of such zone are enlarged, the board  
15 shall hold an additional hearing following publication and notice of  
16 such new boundaries: PROVIDED FURTHER, That the boundaries of any zone  
17 shall generally follow the boundaries of the watershed area affected:  
18 PROVIDED FURTHER, That the immediately preceding proviso shall in no  
19 way limit or be construed to prohibit the formation of a county-wide  
20 flood control zone district authorized to be created by RCW 86.15.025.

21 Within (~~ten~~) thirty days after final hearing on a resolution, the  
22 board shall issue its (~~order~~) ordinance creating the flood control  
23 zone district.

24 **Sec. 16.** RCW 86.15.050 and 1961 c 153 s 5 are each amended to read  
25 as follows:

26 The board (~~of county commissioners of each county~~) shall be ex  
27 officio, by virtue of their office, supervisors of the zones created in  
28 each county. The supervisors of the district shall conduct the  
29 business of the flood control zone district according to the regular  
30 rules and procedures that it adopts.

31 **Sec. 17.** RCW 86.15.160 and 1986 c 278 s 60 are each amended to  
32 read as follows:

33 For the purposes of this chapter the supervisors may authorize:

34 (1) An annual excess ad valorem tax levy within any zone or  
35 participating zones when authorized by the voters of the zone or  
36 participating zones under RCW 84.52.052 and 84.52.054;

1 (2) An assessment upon property, including state property,  
2 specially benefited by flood control improvements or storm water  
3 control improvements imposed under chapter 86.09 RCW;

4 (3) Within any zone or participating zones an annual ad valorem  
5 property tax levy of not to exceed fifty cents per thousand dollars of  
6 assessed value when the levy will not take dollar rates that other  
7 taxing districts may lawfully claim and that will not cause the  
8 combined levies to exceed the constitutional and/or statutory  
9 limitations, and the additional levy, or any portion thereof, may also  
10 be made when dollar rates of other taxing units is released therefor by  
11 agreement with the other taxing units from their authorized levies  
12 under chapter 39.67 RCW;

13 (4) A charge, under RCW 36.89.080 through 36.89.100, for the  
14 furnishing of service to those who are receiving or will receive  
15 benefits from storm water control facilities ((and)) or who are  
16 contributing to an increase in surface water runoff. Except as  
17 otherwise provided in RCW 90.03.525, any public entity and public  
18 property, including the state and state property, shall be liable for  
19 the charges to the same extent a private person and privately owned  
20 property is liable for the charges, and in setting these rates and  
21 charges, consideration may be made of in-kind services, such as stream  
22 improvements or donation of property;

23 (5) The creation of local improvement districts and utility local  
24 improvement districts, the issuance of improvement district bonds and  
25 warrants, and the imposition, collection, and enforcement of special  
26 assessments on all property, including any state-owned or other  
27 publicly-owned property, specially benefited from improvements in the  
28 same manner as provided for counties by chapter 36.94 RCW.

29 **Sec. 18.** RCW 86.26.105 and 1986 c 46 s 5 are each amended to read  
30 as follows:

31 ~~((A comprehensive flood control management plan shall determine the  
32 need for flood control work, consider alternatives to in-stream flood  
33 control work, identify and consider potential impacts of in-stream  
34 flood control work on the state's in-stream resources, and identify the  
35 river's meander belt or floodway.))~~ A comprehensive flood control  
36 management plan shall be completed and adopted ~~((within at least three  
37 years of the certification that it is being prepared, as provided in  
38 RCW 86.26.050))~~ by any county that has experienced at least two

1 presidentially declared flood disasters within the most recent ten-year  
2 period by December 31, 1999, or within two years of a second  
3 presidentially declared flood disaster.

4 If ((after this three year period has elapsed)), by December 31,  
5 1999, or by the end of the two-year period following a second  
6 presidentially declared flood disaster such a comprehensive flood  
7 control plan has not been completed and adopted, grants for flood  
8 control maintenance projects shall not be made to the county or  
9 municipal corporations in the county until a comprehensive flood  
10 control plan is completed and adopted by the appropriate local  
11 authority. These limitations on grants shall not preclude allocations  
12 for emergency purposes made pursuant to RCW 86.26.060, however priority  
13 consideration for emergency assistance shall be given to those counties  
14 required to plan under this section who have completed their plans.

15 *\*Sec. 19. RCW 90.58.180 and 1994 c 253 s 3 are each amended to*  
16 *read as follows:*

17 *(1) Any person aggrieved by the granting, denying, or rescinding of*  
18 *a permit on shorelines of the state pursuant to RCW 90.58.140 may seek*  
19 *review from the shorelines hearings board by filing a request for the*  
20 *same within thirty days of the date of filing as defined in RCW*  
21 *90.58.140(6).*

22 *Concurrently with the filing of any request for review with the*  
23 *board as provided in this section pertaining to a final order of a*  
24 *local government, the requestor shall file a copy of his or her request*  
25 *with the department and the attorney general. If it appears to the*  
26 *department or the attorney general that the requestor has valid reasons*  
27 *to seek review, either the department or the attorney general may*  
28 *certify the request within thirty days after its receipt to the*  
29 *shorelines hearings board following which the board shall then, but not*  
30 *otherwise, review the matter covered by the requestor. The failure to*  
31 *obtain such certification shall not preclude the requestor from*  
32 *obtaining a review in the superior court under any right to review*  
33 *otherwise available to the requestor. The department and the attorney*  
34 *general may intervene to protect the public interest and insure that*  
35 *the provisions of this chapter are complied with at any time within*  
36 *fifteen days from the date of the receipt by the department or the*  
37 *attorney general of a copy of the request for review filed pursuant to*  
38 *this section. The shorelines hearings board shall initially schedule*

1 review proceedings on such requests for review without regard as to  
2 whether such requests have or have not been certified or as to whether  
3 the period for the department or the attorney general to intervene has  
4 or has not expired, unless such review is to begin within thirty days  
5 of such scheduling. If at the end of the thirty day period for  
6 certification neither the department nor the attorney general has  
7 certified a request for review, the hearings board shall remove the  
8 request from its review schedule.

9 (2) The department or the attorney general may obtain review of any  
10 final order granting a permit, or granting or denying an application  
11 for a permit issued by a local government by filing a written request  
12 with the shorelines hearings board and the appropriate local government  
13 within thirty days from the date the final order was filed as provided  
14 in RCW 90.58.140(6).

15 (3) The review proceedings authorized in subsections (1) and (2) of  
16 this section are subject to the provisions of chapter 34.05 RCW  
17 pertaining to procedures in adjudicative proceedings. Judicial review  
18 of such proceedings of the shorelines hearings board is governed by  
19 chapter 34.05 RCW.

20 (4) If the review proceedings authorized in subsection (1) of this  
21 section find for the requestor, and if the requestor is the permit  
22 applicant, the requestor may be awarded any legal and engineering costs  
23 involved in challenging the permit decision.

24 (5) A local government may appeal to the shorelines hearings board  
25 any rules, regulations, or guidelines adopted or approved by the  
26 department within thirty days of the date of the adoption or approval.  
27 The board shall make a final decision within sixty days following the  
28 hearing held thereon.

29 If the board determines that the rule, regulation, or guideline:

30 (a) Is clearly erroneous in light of the policy of this chapter; or

31 (b) Constitutes an implementation of this chapter in violation of  
32 constitutional or statutory provisions; or

33 (c) Is arbitrary and capricious; or

34 (d) Was developed without fully considering and evaluating all  
35 material submitted to the department by the local government; or

36 (e) Was not adopted in accordance with required procedures;

37 the board shall enter a final decision declaring the rule, regulation,  
38 or guideline invalid, remanding the rule, regulation, or guideline to  
39 the department with a statement of the reasons in support of the

1 *determination, and directing the department to adopt, after a thorough*  
2 *consultation with the affected local government, a new rule,*  
3 *regulation, or guideline. Unless the board makes one or more of the*  
4 *determinations as hereinbefore provided, the board shall find the rule,*  
5 *regulation, or guideline to be valid and enter a final decision to that*  
6 *effect.*

7 *((+5)) (6) Rules, regulations, and guidelines shall be subject to*  
8 *review in superior court, if authorized pursuant to RCW 34.05.570(2).*  
9 *No review shall be granted by a superior court on petition from a local*  
10 *government unless the local government shall first have obtained review*  
11 *under subsection ((+4)) (5) of this section and the petition for court*  
12 *review is filed within three months after the date of final decision by*  
13 *the shorelines hearings board.*

14 *\*Sec. 19 was vetoed. See message at end of chapter.*

15 *\*NEW SECTION. Sec. 20. A new section is added to chapter 43.17*  
16 *RCW to read as follows:*

17 *Each appropriate agency shall actively seek to encourage through*  
18 *permit requirements the removal of accumulated materials from rivers*  
19 *and streams where there is a measurable flood damage reduction benefit.*  
20 *Each agency shall develop policies to accomplish this goal. Policies*  
21 *should consider the benefits of a designed, open-channel hydraulic*  
22 *engineering criteria to facilitate the natural downstream movement of*  
23 *detrimental material.*

24 *\*Sec. 20 was vetoed. See message at end of chapter.*

25 ***Sec. 21.** RCW 86.12.200 and 1991 c 322 s 3 are each amended to read*  
26 *as follows:*

27 *The county legislative authority of any county may adopt a*  
28 *comprehensive flood control management plan for any drainage basin that*  
29 *is located wholly or partially within the county.*

30 *A comprehensive flood control management plan shall include the*  
31 *following elements:*

32 *(1) Designation of areas that are susceptible to periodic flooding,*  
33 *from inundation by bodies of water or surface water runoff, or both,*  
34 *including the river's meander belt or floodway;*

35 *(2) Establishment of a comprehensive scheme of flood control*  
36 *protection and improvements for the areas that are subject to such*  
37 *periodic flooding, that includes: (a) Determining the need for, and*  
38 *desirable location of, flood control improvements to protect or*

1 preclude flood damage to structures, works, and improvements, based  
2 upon a ~~((cost/benefit))~~ cost-benefit ratio between the expense of  
3 providing and maintaining these improvements and the benefits arising  
4 from these improvements; (b) establishing the level of flood protection  
5 that each portion of the system of flood control improvements will be  
6 permitted; (c) identifying and considering alternatives to in-stream  
7 flood control work; (d) the impact of in-stream flood control work on  
8 the state's in-stream resources; (e) identifying areas where flood  
9 waters could be directed during a flood to avoid damage to buildings  
10 and other structures; ~~((and-(e)))~~ (f) identifying areas where a river  
11 may migrate into a new channel and developing options to prevent the  
12 creation of the new channel; (g) identifying practices that will avoid  
13 long-term accretion of sediments; and (h) identifying sources of  
14 revenue that will be sufficient to finance the comprehensive scheme of  
15 flood control protection and improvements;

16 (3) Establishing land use regulations that preclude the location of  
17 structures, works, or improvements in critical portions of such areas  
18 subject to periodic flooding, including a river's meander belt or  
19 floodway, and permitting only flood-compatible land uses in such areas;

20 (4) Establishing restrictions on construction activities in areas  
21 subject to periodic floods that require the flood proofing of those  
22 structures that are permitted to be constructed or remodeled; and

23 (5) Establishing restrictions on land clearing activities and  
24 development practices that exacerbate flood problems by increasing the  
25 flow or accumulation of flood waters, or the intensity of drainage, on  
26 low-lying areas. Land clearing activities do not include forest  
27 practices as defined in chapter 76.09 RCW.

28 A comprehensive flood control management plan shall be subject to  
29 the minimum requirements for participation in the national flood  
30 insurance program, requirements exceeding the minimum national flood  
31 insurance program that have been adopted by the department of ecology  
32 for a specific flood plain pursuant to RCW 86.16.031, and rules adopted  
33 by the department of ecology pursuant to chapter 86.16 RCW and RCW  
34 86.26.050 relating to flood plain management activities. When a county  
35 plans under chapter 36.70A RCW, it ~~((may))~~ must incorporate the portion  
36 of its comprehensive flood control management plan relating to land use  
37 restrictions in its comprehensive plan and development regulations  
38 adopted pursuant to chapter 36.70A RCW.

1       **Sec. 22.** RCW 90.58.030 and 1987 c 474 s 1 are each amended to read  
2 as follows:

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

5       (1) Administration:

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

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

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

11       (d) "Person" means an individual, partnership, corporation,  
12 association, organization, cooperative, public or municipal  
13 corporation, or agency of the state or local governmental unit however  
14 designated;

15       (e) "Hearing board" means the shoreline hearings board established  
16 by this chapter.

17       (2) Geographical:

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

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

32       (c) "Shorelines of the state" are the total of all "shorelines" and  
33 "shorelines of state-wide significance" within the state;

34       (d) "Shorelines" means all of the water areas of the state,  
35 including reservoirs, and their associated wetlands, together with the  
36 lands underlying them; except (i) shorelines of state-wide  
37 significance; (ii) shorelines on segments of streams upstream of a  
38 point where the mean annual flow is twenty cubic feet per second or  
39 less and the wetlands associated with such upstream segments; and (iii)

1 shorelines on lakes less than twenty acres in size and wetlands  
2 associated with such small lakes;

3 (e) "Shorelines of state-wide significance" means the following  
4 shorelines of the state:

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

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

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

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

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

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

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

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

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

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

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

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

32 (vi) Those wetlands associated with (i), (ii), (iv), and (v) of  
33 this subsection (2)(e);

34 (f) "Wetlands" or "wetland areas" means those lands extending  
35 landward for two hundred feet in all directions as measured on a  
36 horizontal plane from the ordinary high water mark; floodways and  
37 contiguous flood plain areas landward two hundred feet from such  
38 floodways; and all marshes, bogs, swamps, and river deltas associated  
39 with the streams, lakes, and tidal waters which are subject to the

1 provisions of this chapter; the same to be designated as to location by  
2 the department of ecology(~~(: PROVIDED, That)~~). However, any county or  
3 city may determine that portion of a one-hundred-year-flood plain to be  
4 included in its master program as long as such portion includes, as a  
5 minimum, the floodway and the adjacent land extending landward two  
6 hundred feet (~~(therefrom)~~);

7 (g) "Floodway" means those portions of the area of a river valley  
8 lying streamward from the outer limits of a watercourse upon which  
9 flood waters are carried during periods of flooding that occur with  
10 reasonable regularity, although not necessarily annually, said floodway  
11 being identified, under normal condition, by changes in surface soil  
12 conditions or changes in types or quality of vegetative ground cover  
13 condition. The floodway shall not include those lands that can  
14 reasonably be expected to be protected from flood waters by flood  
15 control devices maintained by or maintained under license from the  
16 federal government, the state, or a political subdivision of the state.

17 (3) Procedural terms:

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

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

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

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

37 (e) "Substantial development" shall mean any development of which  
38 the total cost or fair market value exceeds two thousand five hundred  
39 dollars, or any development which materially interferes with the normal

1 public use of the water or shorelines of the state; except that the  
2 following shall not be considered substantial developments for the  
3 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) Improvements to dikes and levees if the improvement is  
7 determined by a county to be consistent with a comprehensive flood  
8 control management plan developed under chapter 86.26 RCW;

9 (iii) Construction of the normal protective bulkhead common to  
10 single family residences;

11 (~~(iii)~~) (iv) Emergency construction necessary to protect property  
12 from damage by the elements;

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

27 (~~(v)~~) (vi) Construction or modification of navigational aids such  
28 as channel markers and anchor buoys;

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

36 (~~(vii)~~) (viii) Construction of a dock, including a community  
37 dock, designed for pleasure craft only, for the private noncommercial  
38 use of the owner, lessee, or contract purchaser of single and multiple

1 family residences, the cost of which does not exceed two thousand five  
2 hundred dollars;

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

9 ~~((ix))~~ (x) The marking of property lines or corners on state  
10 owned lands, when such marking does not significantly interfere with  
11 normal public use of the surface of the water;

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

16 ~~((xi))~~ (xii) Any action commenced prior to December 31, 1982,  
17 pertaining to (A) the restoration of interim transportation services as  
18 may be necessary as a consequence of the destruction of the Hood Canal  
19 bridge, including, but not limited to, improvements to highways,  
20 development of park and ride facilities, and development of ferry  
21 terminal facilities until a new or reconstructed Hood Canal bridge is  
22 open to traffic; and (B) the reconstruction of a permanent bridge at  
23 the site of the original Hood Canal bridge.

24 **Sec. 23.** RCW 47.28.140 and 1991 c 322 s 29 are each amended to  
25 read as follows:

26 When in the opinion of the governing authorities representing the  
27 department and any agency, instrumentality, municipal corporation, or  
28 political subdivision of the state of Washington, any highway, road, or  
29 street will be benefited or improved by constructing, reconstructing,  
30 locating, relocating, laying out, repairing, surveying, altering,  
31 improving, or maintaining, or by the establishment adjacent to, under,  
32 upon, within, or above any portion of any such highway, road, or street  
33 of an urban public transportation system, by either the department or  
34 any agency, instrumentality, municipal corporation, or political  
35 subdivision of the state, and it is in the public interest to do so,  
36 the authorities may enter into cooperative agreements wherein either  
37 agrees to perform the work and furnish the materials necessary and pay  
38 the cost thereof, including necessary engineering assistance, which

1 costs and expenses shall be reimbursed by the party whose  
2 responsibility it was to do or perform the work or improvement in the  
3 first instance. The work may be done by either day labor or contract,  
4 and the cooperative agreement between the parties shall provide for the  
5 method of reimbursement. In the case of some special benefit or  
6 improvement to a state highway derived from (~~any project that assists~~  
7 ~~in preventing or minimizing flood damages as defined in RCW 86.16.120~~  
8 ~~or from~~) the construction of any public works project, including any  
9 urban public transportation system, the department may contribute to  
10 the cost thereof by making direct payment to the particular state  
11 department, agency, instrumentality, municipal corporation, or  
12 political subdivision on the basis of benefits received, but such  
13 payment shall be made only after a cooperative agreement has been  
14 entered into for a specified amount or on an actual cost basis prior to  
15 the commencement of the particular public works project.

16 In the case of a special benefit or improvement to a state highway  
17 derived from a project that assists in preventing or reducing flood  
18 damages as defined in RCW 86.16.120, the department shall contribute to  
19 the cost of the benefit or improvement by making direct payment to the  
20 particular state department, agency, instrumentality, municipal  
21 corporation, or political subdivision on the basis of contribution to  
22 the problem or benefits received. The department may make payment only  
23 after an agreement has been entered into between the department and the  
24 appropriate state or local government entity. The department shall  
25 contribute costs on the basis of benefits received.

26 NEW SECTION. Sec. 24. A new section is added to chapter 86.26 RCW  
27 to read as follows:

28 A flood protection project is work necessary to preserve, restore,  
29 or improve either natural or human-made stream banks or flood control  
30 facilities that repair or prevent flood damage as defined in RCW  
31 86.16.120 including but not limited to damage by erosion, stream flow,  
32 sheet runoff, or other damages by the sea or other bodies of water.

33 NEW SECTION. Sec. 25. The department of transportation shall  
34 provide to the respective counties an inventory of all state highways  
35 and bridges, that are located in federal emergency management agency-  
36 designated flood plains, and are located within each county with two or  
37 more presidentially declared flood disasters within the most recent

1 ten-year period. The department of transportation shall provide any  
2 available flood plain information to assist the counties as they  
3 prepare the county comprehensive flood control management plan. The  
4 department shall provide input and cooperate with the counties in  
5 identifying any state roads or bridges that may cause a constriction to  
6 the natural flow of flood waters. The department shall also assist the  
7 counties in identifying state roads that, either by themselves or in  
8 conjunction with levees or other structures in the flood plain, may  
9 potentially entrap floodwaters in areas originally intended to be  
10 floodproofed. The county comprehensive flood control management plan  
11 should identify flooding events that pose a serious threat to critical  
12 transportation facilities in the form of damage to a roadway or to a  
13 bridge, or closure to the roadway or bridge during times of a flooding  
14 emergency.

15 NEW SECTION. **Sec. 26.** A new section is added to chapter 75.20 RCW  
16 to read as follows:

17 By December 31, 1996, the departments of fish and wildlife, natural  
18 resources, and ecology shall jointly develop a memorandum of  
19 understanding to facilitate the consideration of projects that will aid  
20 in the minimization or prevention of flood damage as defined in RCW  
21 86.16.120. To reduce the duplication of information required by a  
22 project's permits, the departments must provide in their memorandum  
23 procedures to share data to the extent practicable among themselves and  
24 with other agencies that may be involved in approving or denying a  
25 permit application. The departments' memorandum must provide a plan to  
26 implement a comprehensive permit process that is streamlined and easily  
27 understandable to permit applicants.

28 NEW SECTION. **Sec. 27.** RCW 79.90.325 and 1984 c 212 s 10 are each  
29 repealed.

30 NEW SECTION. **Sec. 28.** If specific funding for the purposes of  
31 this act, referencing this act by bill number, is not provided by June  
32 30, 1995, in the omnibus appropriations act, this act is null and void.

33 \*NEW SECTION. **Sec. 29.** *This act is necessary for the immediate*  
34 *preservation of the public peace, health, or safety, or support of the*

1 *state government and its existing public institutions, and shall take*  
2 *effect immediately.*

3 \*Sec. 29 was vetoed. See message at end of chapter.

Passed the Senate March 14 , 1995.

Passed the House April 20, 1995.

Approved by the Governor May 16, 1995, with the exception of  
certain items which were vetoed.

Filed in Office of Secretary of State May 16, 1995.

1 Note: Governor's explanation of partial veto is as follows:

2 "I am returning herewith, without my approval as to sections 6, 7,  
3 8, 9, 10, 19, 20, and 29, Engrossed Second Substitute Senate Bill No.  
4 5632 entitled:

5 "AN ACT Relating to flood damage reduction;"

6 Engrossed Second Substitute Senate Bill No. 5632 makes changes to  
7 the way local governments and state agencies are to plan for and to  
8 prevent flooding. The intent and much of the content of the bill is  
9 laudable. We do need to work together to reduce the likelihood of  
10 damage from future floods. I commend the members of the legislature  
11 for their hard work on this difficult task.

12 I am concerned, however, that this bill removes or significantly  
13 weakens many protections for our environment in favor of allowing  
14 nearly unfettered dredging and diking of our rivers. Instead, we must  
15 take a balanced approach that includes adapting our land use practices  
16 to reduce flood damage.

17 Section 6 adds definitions to the hydraulic code which is a primary  
18 tool for protecting fish habitat. These changes would have the effect  
19 of limiting the application of the code and would cause confusion to  
20 the applications. It could also make it harder to deal with real  
21 emergencies.

22 Section 7 places portions of the hydraulic code rules in statute  
23 with changes that would be detrimental to fish habitat, including  
24 changing the minimum gradient required in hydraulic excavations. This  
25 change reduces flexibility of the Department of Fish and Wildlife and  
26 decreases the opportunities to work with permittees to consider site  
27 specific conditions.

28 Sections 8 and 9 amend the hydraulic code and require the  
29 Department of Fish and Wildlife to approve a hydraulic application if  
30 the project protects a structure that is likely to incur significant  
31 flood damage during the next flood season. Approval is also mandated  
32 if the project provides fish habitat productivity equivalent to pre-  
33 project conditions within two years. This requirement places an  
34 unreasonable burden on the Department of Fish and Wildlife to predict  
35 future floods. It could also place certain fish runs at grave risk.

36 The overall effect of sections 6, 7, 8, and 9 would be to reduce  
37 the effectiveness of the Department of Fish and Wildlife in working  
38 with permittees to ensure that instream projects do little harm to fish  
39 habitat. At a time when we have so much to do to restore and protect  
40 salmon runs in our state, it is inappropriate to further limit one of

1 the few tools we have to protect salmon habitat. I believe strongly  
2 that the Department of Fish and Wildlife should continue to extend the  
3 utmost cooperation to permit applicants, especially for projects to  
4 reduce flood damage. I am directing the Department of Fish and  
5 Wildlife, along with my staff, to review the permitting process and to  
6 suggest ways to make the hydraulic code more user-friendly.

7 Sections 10 and 19 award legal and engineering costs to aggrieved  
8 permit applicants but not to others who might appeal a permitting  
9 decision. An applicant might want to raise a flood control dike with  
10 the effect of shifting floodwater to a landowner downstream. That  
11 downstream landowner should have the same possibility of being awarded  
12 costs upon successful appeal as the permit applicant. Sections 901-904  
13 of Engrossed Substitute House Bill No. 1010 allow a broader range of  
14 individuals to recover up to \$25,000 of the cost of appealing an agency  
15 action -- including permit decisions.

16 Section 20 directs "each appropriate agency" to encourage the  
17 removal of gravel where there is a flood damage reduction benefit. The  
18 same agencies are to "consider the benefits of a designed, open-channel  
19 hydraulic engineering criteria to facilitate the natural downstream  
20 movement of detrimental material." This directive is contrary to  
21 agencies' missions elsewhere in statute, such as protecting fish and  
22 wildlife and conserving shorelines.

23 Section 29 is an emergency clause providing that this bill take  
24 effect immediately upon my signing. This legislation addresses issues  
25 of overwhelming importance to the people of this state. Preventing  
26 this bill from being subject to a referendum under Article II, section  
27 1 (b) of the state Constitution unnecessarily denies the people of this  
28 state their power, at their own option, to approve or reject this bill  
29 at the polls.

30 For these reasons, I have vetoed sections 6, 7, 8, 9, 10, 19, 20,  
31 and 29 of Engrossed Second Substitute Senate Bill No. 5632.

32 With the exception of sections 6, 7, 8, 9, 10, 19, 20, and 29,  
33 Engrossed Second Substitute Senate Bill No. 5632 is approved."