
SUBSTITUTE SENATE BILL 5433

State of Washington**55th Legislature****1997 Regular Session**

By Senate Committee on Natural Resources & Parks (originally sponsored by Senators Stevens, Anderson, Rasmussen, Newhouse, Rossi, Benton, Hargrove, Goings, Finkbeiner and Zarelli)

Read first time 02/28/97.

1 AN ACT Relating to flood damage reduction; amending RCW 43.21C.020,
2 75.20.130, 79.90.150, 79.90.300, 86.15.030, 86.15.050, 86.15.160,
3 86.26.105, 90.58.180, 86.12.200, and 90.58.030; adding a new section to
4 chapter 36.70A RCW; adding a new section to chapter 86.09 RCW; adding
5 new sections to chapter 86.12 RCW; adding a new section to chapter
6 86.13 RCW; adding a new section to chapter 86.15 RCW; adding a new
7 section to chapter 86.16 RCW; adding a new section to chapter 35.13
8 RCW; adding a new section to chapter 35A.14 RCW; adding a new section
9 to chapter 75.20 RCW; adding a new section to chapter 79.90 RCW; adding
10 a new section to chapter 43.17 RCW; adding a new section to chapter
11 86.26 RCW; creating a new section; repealing RCW 79.90.325; and
12 declaring an emergency.

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

14 NEW SECTION. **Sec. 1.** The legislature finds that river and stream
15 systems can threaten public and private property during flood events.
16 River systems react in different ways: When some rivers flood, they
17 scour; others fill in by sediment deposition. The legislature further
18 finds that when placing or removing organic debris in a river that
19 scours, it may be appropriate to place more debris for fish habitat; if

1 it is a river that deposits sediments and tends to fill in then it may
2 be appropriate to remove deposits to create some deeper pools and a
3 better flow pattern, that will help fish habitat as well as lessen
4 flood danger. The legislature therefore declares that reducing flood
5 damage through the use of structural and nonstructural projects is in
6 the public interest and that it is the duty of the state to assist in
7 funding flood control projects. Structural and nonstructural projects
8 include but are not limited to: Streambank stabilization, river
9 channel maintenance, land use restrictions, land buy-outs, flood
10 easements, and emergency notification. The legislature further
11 declares that counties be given the flexibility to make those decisions
12 that are best for their particular rivers, rather than prescribe or
13 constrain local government to the point where they cannot manage their
14 different types of rivers. The legislature further declares that local
15 governments should coordinate flood planning and flood projects so that
16 the projects do not cause flooding in other areas. Counties and cities
17 are encouraged to coordinate using watershed planning areas to provide
18 consistent planning throughout a water's course.

19 NEW SECTION. **Sec. 2.** A new section is added to chapter 36.70A RCW
20 to read as follows:

21 Each county, city, or town adopting or amending a comprehensive
22 plan or development regulations to implement that plan or protect
23 critical areas shall ensure that its plan or regulations, or both are
24 consistent with and coordinated with any plan to reduce flood hazards.

25 NEW SECTION. **Sec. 3.** A new section is added to chapter 86.09 RCW
26 to read as follows:

27 (1) Each county adopting or amending a comprehensive plan or
28 development regulations to implement that plan or protect critical
29 areas shall ensure that its plan or regulations, or both are consistent
30 with and coordinated with any plan adopted under this chapter to reduce
31 flood hazards.

32 (2) Each county, city, flood control district, or other local
33 entity planning under chapter 86.16 or 86.26 RCW must consult with
34 other jurisdictions within the watershed or watersheds to be planned,
35 before adoption of a plan. Any local government receiving state
36 funding for flood projects or flood planning must consult with the
37 other jurisdictions within the watershed in which the project is to be

1 done or in which planning is to take place, before proceeding with a
2 project or planning effort.

3 NEW SECTION. **Sec. 4.** A new section is added to chapter 86.12 RCW
4 to read as follows:

5 (1) Each county adopting or amending a comprehensive plan or
6 development regulations to implement that plan or protect critical
7 areas shall ensure that its plan or regulations, or both are consistent
8 with and coordinated with any plan adopted under this chapter to reduce
9 flood hazards.

10 (2) Each county, city, flood control district, or other local
11 entity planning under chapter 86.16 or 86.26 RCW must consult with
12 other jurisdictions within the watershed or watersheds to be planned,
13 before adoption of a plan. Any local government receiving state
14 funding for flood projects or flood planning must consult with the
15 other jurisdictions within the watershed in which the project is to be
16 done or in which planning is to take place, before proceeding with a
17 project or planning effort.

18 NEW SECTION. **Sec. 5.** A new section is added to chapter 86.13 RCW
19 to read as follows:

20 (1) Each county adopting or amending a comprehensive plan or
21 development regulations to implement that plan or protect critical
22 areas shall ensure that its plan or regulations, or both are consistent
23 with and coordinated with any plan adopted under this chapter to reduce
24 flood hazards.

25 (2) Each county, city, flood control district, or other local
26 entity planning under chapter 86.16 or 86.26 RCW must consult with
27 other jurisdictions within the watershed or watersheds to be planned,
28 before adoption of a plan. Any local government receiving state
29 funding for flood projects or flood planning must consult with the
30 other jurisdictions within the watershed in which the project is to be
31 done or in which planning is to take place, before proceeding with a
32 project or planning effort.

33 NEW SECTION. **Sec. 6.** A new section is added to chapter 86.15 RCW
34 to read as follows:

35 (1) Each county adopting or amending a comprehensive plan or
36 development regulations to implement that plan or protect critical

1 areas shall ensure that its plan or regulations, or both are consistent
2 with and coordinated with any plan adopted under this chapter to reduce
3 flood hazards.

4 (2) Each county, city, flood control district, or other local
5 entity planning under chapter 86.16 or 86.26 RCW must consult with
6 other jurisdictions within the watershed or watersheds to be planned,
7 before adoption of a plan. Any local government receiving state
8 funding for flood projects or flood planning must consult with the
9 other jurisdictions within the watershed in which the project is to be
10 done or in which planning is to take place, before proceeding with a
11 project or planning effort.

12 NEW SECTION. **Sec. 7.** A new section is added to chapter 86.16 RCW
13 to read as follows:

14 (1) Each county, city, or town adopting or amending a comprehensive
15 plan or development regulations, or both to implement that plan or
16 protect critical areas shall ensure that its plan or regulations, or
17 both are consistent with and coordinated with any plan to reduce flood
18 hazards.

19 (2) Each county, city, flood control district, or other local
20 entity planning under this chapter or chapter 86.26 RCW must consult
21 with other jurisdictions within the watershed or watersheds to be
22 planned, before adoption of a plan. Any local government receiving
23 state funding for flood projects or flood planning must consult with
24 the other jurisdictions within the watershed in which the project is to
25 be done or in which planning is to take place, before proceeding with
26 a project or planning effort.

27 NEW SECTION. **Sec. 8.** A new section is added to chapter 35.13 RCW
28 to read as follows:

29 No city or town may annex territory located within the designated
30 flood plain unless the city or town establishes zoning and use
31 requirements for the territory to be annexed that are consistent with
32 the comprehensive plan, critical area regulations, and flood plain
33 management plan of the county of jurisdiction.

34 NEW SECTION. **Sec. 9.** A new section is added to chapter 35A.14 RCW
35 to read as follows:

1 No city or town may annex territory located within the designated
2 flood plain unless the city or town establishes zoning and use
3 requirements for the territory to be annexed that are consistent with
4 the comprehensive plan, critical area regulations, and flood plain
5 management plan of the county of jurisdiction.

6 **Sec. 10.** RCW 43.21C.020 and 1971 ex.s. c 109 s 2 are each amended
7 to read as follows:

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

27 (2) In order to carry out the policy set forth in this chapter, it
28 is the continuing responsibility of the state of Washington and all
29 agencies of the state to use all practicable means, consistent with
30 other essential considerations of state policy, to improve and
31 coordinate plans, functions, programs, and resources to the end that
32 the state and its citizens may:

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

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

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

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

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

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

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

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

15 (3) The legislature recognizes that each person has a fundamental
16 and inalienable right to a healthful environment and that each person
17 has a responsibility to contribute to the preservation and enhancement
18 of the environment.

19 NEW SECTION. Sec. 11. A new section is added to chapter 75.20 RCW
20 to read as follows:

21 The permitting department may impose the following conditions on
22 persons applying under RCW 75.20.100 or 75.20.103:

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

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

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

31 (4) The permittee shall keep the maximum distance of excavation
32 toward the bank from the excavation line approximately equal throughout
33 the excavation zone. "Excavation zone" means the area between the
34 excavation line and the bank.

35 (5) The permittee shall identify the excavation zone with boundary
36 markers.

37 (6) The permittee shall maintain a minimum one percent gradient
38 upward from the excavation line in the excavation zone.

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

3 (8) The permittee shall not stockpile or spoil excavated materials
4 within the ordinary high water line except from June 15 to September
5 15.

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

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

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

12 (12) The permittee shall be allowed to remove only that amount of
13 rock, sand, gravel, or silt which is anticipated to be naturally
14 replenished by a flood of at least a ten-year magnitude, except in
15 instances where a lapse in material removal has occurred. If such
16 lapse has occurred, then an amount of material equivalent to the amount
17 estimated to have accumulated since the last material removal
18 operation, including debris and vegetation, may be removed.

19 **Sec. 12.** RCW 75.20.130 and 1996 c 276 s 2 are each amended to read
20 as follows:

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

24 (2) The hydraulic appeals board shall consist of three members:
25 The director of the department of ecology or the director's designee,
26 the director of the department of agriculture or the director's
27 designee, and the director or the director's designee of the department
28 whose action is appealed under subsection (6) of this section. A
29 decision must be agreed to by at least two members of the board to be
30 final.

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

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

1 (5) The board has exclusive jurisdiction to hear appeals arising
2 from the approval, denial, conditioning, or modification of a hydraulic
3 approval issued by the department: (a) Under the authority granted in
4 RCW 75.20.103 for the diversion of water for agricultural irrigation or
5 stock watering purposes or when associated with streambank
6 stabilization to protect farm and agricultural land as defined in RCW
7 84.34.020; or (b) under the authority granted in RCW 75.20.190 for off-
8 site mitigation proposals.

9 (6)(a) Any person aggrieved by the approval, denial, conditioning,
10 or modification of a hydraulic approval pursuant to RCW 75.20.103 may
11 seek review from the board by filing a request for the same within
12 thirty days of notice of the approval, denial, conditioning, or
13 modification of such approval.

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

17 (c) If a review proceeding authorized in (a) of this subsection
18 finds for the aggrieved permit applicant, the applicant may be awarded
19 any legal and engineering costs involved in challenging the permit
20 decision.

21 NEW SECTION. Sec. 13. A new section is added to chapter 79.90 RCW
22 to read as follows:

23 (1) The department must allow sand and gravel removals above the
24 wetted perimeter of a navigable river which are not harmful to public
25 health and safety when any or all of the following situations exist:

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

28 (b) The removal provides recreational benefits;

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

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

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

35 (2) The department must allow sand and gravel removal leases to
36 allow removal of that amount which is anticipated to be naturally
37 replenished by a flood of at least a ten-year magnitude, except in
38 instances where a lapse in material removal has occurred. If such a

1 lapse has occurred, then an amount of material equivalent to the amount
2 estimated to have accumulated since the last material removal
3 operation, including debris and vegetation, may be removed.

4 **Sec. 14.** RCW 79.90.150 and 1991 c 337 s 1 are each amended to read
5 as follows:

6 When gravel, rock, sand, silt or other material from any aquatic
7 lands is removed by any public agency or under public contract for
8 channel or harbor improvement, or flood control, use of such material
9 may be authorized by the department of natural resources for a public
10 purpose on land owned or leased by the state or any municipality,
11 county, or public corporation: PROVIDED, That when no public land site
12 is available for deposit of such material, its deposit on private land
13 with the landowner's permission is authorized and may be designated by
14 the department of natural resources to be for a public purpose. Prior
15 to removal and use, the state agency, municipality, county, or public
16 corporation contemplating or arranging such use shall first obtain
17 written permission from the department of natural resources. No
18 payment of royalty shall be required for such gravel, rock, sand, silt,
19 or other material used for such public purpose, but a charge will be
20 made if such material is subsequently sold or used for some other
21 purpose: PROVIDED, That the department may authorize such public
22 agency or private landowner to dispose of such material without charge
23 when necessary to implement disposal of material. No charge shall be
24 required for any use of the material obtained under the provisions of
25 this chapter when used solely on an authorized site. No charge shall
26 be required for any use of the material obtained under the provisions
27 of this chapter if the material is used for public purposes by local
28 governments. No charge may be required for removal or use of such
29 material if the removal of the material is directed by a local
30 government and if it is determined by the local government to be for
31 flood control purposes. Public purposes include, but are not limited
32 to, construction and maintenance of roads, dikes, and levies. Nothing
33 in this section shall repeal or modify the provisions of RCW 75.20.100
34 or eliminate the necessity of obtaining a permit for such removal from
35 other state or federal agencies as otherwise required by law.

36 **Sec. 15.** RCW 79.90.300 and 1991 c 322 s 26 are each amended to
37 read as follows:

1 (1) The department of natural resources, upon application by any
2 person or when determined by the department to be in the best interest
3 of the state, may enter into a contract or lease providing for the
4 removal and sale of rock, gravel, sand, and silt, or other valuable
5 materials located within or upon beds of navigable waters, or upon any
6 tidelands or shorelands belonging to the state and providing for
7 payment to be made therefor by such royalty as the department may fix,
8 by negotiation, by sealed bid, or at public auction. If application is
9 made for the purchase of any valuable material situated within or upon
10 aquatic lands the department shall inspect and appraise the value of
11 the material in the application. The department may reduce or
12 eliminate royalties in areas prone to flooding. The department may
13 include a provision in contracts for the removal of rock, gravel, sand,
14 or silt that allows for payment to be made as the material is sold.

15 (2) The department shall actively seek to encourage through permit
16 requirements and adjusted fees the removal of accumulated materials
17 from rivers and streams where there is a flood damage reduction
18 benefit. The department shall develop policies to accomplish this
19 goal.

20 **Sec. 16.** RCW 86.15.030 and 1969 ex.s. c 195 s 2 are each amended
21 to read as follows:

22 Upon receipt of a petition asking that a zone be created, or upon
23 motion of the board, the board shall adopt a resolution which shall
24 describe the boundaries of such proposed zone; describe in general
25 terms the flood control needs or requirements within the zone; set a
26 date for public hearing upon the creation of such zone, which shall be
27 not more than thirty days after the adoption of such resolution.
28 Notice of such hearing and publication shall be had in the manner
29 provided in RCW 36.32.120(7).

30 At the hearing scheduled upon the resolution, the board shall
31 permit all interested parties to be heard. Thereafter, the board may
32 reject the resolution or it may modify the boundaries of such zone and
33 make such other corrections or additions to the resolutions as they
34 deem necessary to the accomplishment of the purpose of this chapter:
35 PROVIDED, That if the boundaries of such zone are enlarged, the board
36 shall hold an additional hearing following publication and notice of
37 such new boundaries: PROVIDED FURTHER, That the boundaries of any zone
38 shall generally follow the boundaries of the watershed area affected:

1 PROVIDED FURTHER, That the immediately preceding proviso shall in no
2 way limit or be construed to prohibit the formation of a county-wide
3 flood control zone district authorized to be created by RCW 86.15.025.

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

7 **Sec. 17.** RCW 86.15.050 and 1961 c 153 s 5 are each amended to read
8 as follows:

9 The board (~~of county commissioners of each county~~) shall be ex
10 officio, by virtue of their office, supervisors of the zones created in
11 each county. The supervisors of the district shall conduct the
12 business of the flood control zone district according to the regular
13 rules and procedures that it adopts.

14 **Sec. 18.** RCW 86.15.160 and 1986 c 278 s 60 are each amended to
15 read as follows:

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

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

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

23 (3) Within any zone or participating zones an annual ad valorem
24 property tax levy of not to exceed fifty cents per thousand dollars of
25 assessed value when the levy will not take dollar rates that other
26 taxing districts may lawfully claim and that will not cause the
27 combined levies to exceed the constitutional and/or statutory
28 limitations, and the additional levy, or any portion thereof, may also
29 be made when dollar rates of other taxing units is released therefor by
30 agreement with the other taxing units from their authorized levies
31 under chapter 39.67 RCW;

32 (4) A charge, under RCW 36.89.080 through 36.89.100, for the
33 furnishing of service to those who are receiving or will receive
34 benefits from storm water control facilities (~~and~~) or who are
35 contributing to an increase in surface water runoff. Except as
36 otherwise provided in RCW 90.03.525, any public entity and public
37 property, including the state and state property, shall be liable for

1 the charges to the same extent a private person and privately owned
2 property is liable for the charges, and in setting these rates and
3 charges, consideration may be made of in-kind services, such as stream
4 improvements or donation of property;

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

11 **Sec. 19.** RCW 86.26.105 and 1986 c 46 s 5 are each amended to read
12 as follows:

13 (~~(A comprehensive flood control management plan shall determine the
14 need for flood control work, consider alternatives to in stream flood
15 control work, identify and consider potential impacts of in stream
16 flood control work on the state's in stream resources, and identify the
17 river's meander belt or floodway.))~~ (1) A comprehensive flood control
18 management plan shall be completed and adopted (~~(within at least three
19 years of the certification that it is being prepared, as provided in
20 RCW 86.26.050))~~ by any county that has experienced at least two
21 presidentially declared flood disasters within the most recent ten-year
22 period by December 31, 2001, or within two years of a second
23 presidentially declared flood disaster.

24 (2) If (~~(after this three year period has elapsed))~~, by December
25 31, 2001, or within two years of a second presidentially declared flood
26 disaster, such a comprehensive flood control plan has not been
27 completed and adopted, grants for flood control maintenance projects
28 shall not be made to the county or municipal corporations in the county
29 until a comprehensive flood control plan is completed and adopted by
30 the appropriate local authority. These limitations on grants shall not
31 preclude allocations for emergency purposes made pursuant to RCW
32 86.26.060, however, priority consideration for emergency assistance
33 shall be given to those counties that are required to plan, and have
34 completed a plan, as required under this section.

35 **Sec. 20.** RCW 90.58.180 and 1995 c 347 s 310 are each amended to
36 read as follows:

1 (1) Any person aggrieved by the granting, denying, or rescinding of
2 a permit on shorelines of the state pursuant to RCW 90.58.140 may seek
3 review from the shorelines hearings board by filing a petition for
4 review within twenty-one days of the date of filing as defined in RCW
5 90.58.140(6).

6 Within seven days of the filing of any petition for review with the
7 board as provided in this section pertaining to a final decision of a
8 local government, the petitioner shall serve copies of the petition on
9 the department and the office of the attorney general. The department
10 and the attorney general may intervene to protect the public interest
11 and insure that the provisions of this chapter are complied with at any
12 time within fifteen days from the date of the receipt by the department
13 or the attorney general of a copy of the petition for review filed
14 pursuant to this section. The shorelines hearings board shall schedule
15 review proceedings on the petition for review without regard as to
16 whether the period for the department or the attorney general to
17 intervene has or has not expired.

18 (2) The department or the attorney general may obtain review of any
19 final decision granting a permit, or granting or denying an application
20 for a permit issued by a local government by filing a written petition
21 with the shorelines hearings board and the appropriate local government
22 within twenty-one days from the date the final decision was filed as
23 provided in RCW 90.58.140(6).

24 (3) The review proceedings authorized in subsections (1) and (2) of
25 this section are subject to the provisions of chapter 34.05 RCW
26 pertaining to procedures in adjudicative proceedings. Judicial review
27 of such proceedings of the shorelines hearings board is governed by
28 chapter 34.05 RCW. The board shall issue its decision on the appeal
29 authorized under subsections (1) and (2) of this section within one
30 hundred eighty days after the date the petition is filed with the board
31 or a petition to intervene is filed by the department or the attorney
32 general, whichever is later. The time period may be extended by the
33 board for a period of thirty days upon a showing of good cause or may
34 be waived by the parties.

35 (4) Any person may appeal any rules, regulations, or guidelines
36 adopted or approved by the department within thirty days of the date of
37 the adoption or approval. The board shall make a final decision within
38 sixty days following the hearing held thereon.

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

5 (6) The board shall find the rule, regulation, or guideline to be
6 valid and enter a final decision to that effect unless it determines
7 that the rule, regulation, or guideline:

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

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

11 (c) Is arbitrary and capricious; or

12 (d) Was developed without fully considering and evaluating all
13 material submitted to the department during public review and comment;
14 or

15 (e) Was not adopted in accordance with required procedures.

16 (~~(6)~~) (7) If the board makes a determination under subsection
17 (~~(5)~~) (6)(a) through (e) of this section, it shall enter a final
18 decision declaring the rule, regulation, or guideline invalid,
19 remanding the rule, regulation, or guideline to the department with a
20 statement of the reasons in support of the determination, and directing
21 the department to adopt, after a thorough consultation with the
22 affected local government and any other interested party, a new rule,
23 regulation, or guideline consistent with the board's decision.

24 (~~(7)~~) (8) A decision of the board on the validity of a rule,
25 regulation, or guideline shall be subject to review in superior court,
26 if authorized pursuant to chapter 34.05 RCW. A petition for review of
27 the decision of the shorelines hearings board on a rule, regulation, or
28 guideline shall be filed within thirty days after the date of final
29 decision by the shorelines hearings board.

30 NEW SECTION. Sec. 21. A new section is added to chapter 43.17 RCW
31 to read as follows:

32 Each appropriate agency shall actively seek to encourage through
33 permit requirements the removal of accumulated materials from rivers
34 and streams where there is a flood damage reduction benefit. Each
35 agency shall develop policies to accomplish this goal.

36 **Sec. 22.** RCW 86.12.200 and 1991 c 322 s 3 are each amended to read
37 as follows:

1 The county legislative authority of any county may adopt a
2 comprehensive flood control management plan for any drainage basin that
3 is located wholly or partially within the county.

4 A comprehensive flood control management plan shall include the
5 following elements:

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

9 (2) Establishment of a comprehensive scheme of flood control
10 protection and improvements for the areas that are subject to such
11 periodic flooding, that includes: (a) Determining the need for, and
12 desirable location of, flood control improvements to protect or
13 preclude flood damage to structures, works, and improvements, based
14 upon a ~~((cost/benefit))~~ cost-benefit ratio between the expense of
15 providing and maintaining these improvements and the benefits arising
16 from these improvements; (b) establishing the level of flood protection
17 that each portion of the system of flood control improvements will be
18 permitted; (c) identifying alternatives to in-stream flood control
19 work; (d) identifying areas where flood waters could be directed during
20 a flood to avoid damage to buildings and other structures; ~~((and))~~ (e)
21 identifying areas where a river may migrate into a new channel and
22 developing options to prevent the creation of the new channel, and
23 identifying practices that will avoid long-term accretion of sediments;
24 and (f) identifying sources of revenue that will be sufficient to
25 finance the comprehensive scheme of flood control protection and
26 improvements;

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

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

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

1 A comprehensive flood control management plan shall be subject to
2 the minimum requirements for participation in the national flood
3 insurance program, requirements exceeding the minimum national flood
4 insurance program that have been adopted by the department of ecology
5 for a specific flood plain pursuant to RCW 86.16.031, and rules adopted
6 by the department of ecology pursuant to chapter 86.16 RCW and RCW
7 86.26.050 relating to flood plain management activities. When a county
8 plans under chapter 36.70A RCW, it (~~may~~) must incorporate the portion
9 of its comprehensive flood control management plan relating to land use
10 restrictions in its comprehensive plan and development regulations
11 adopted pursuant to chapter 36.70A RCW.

12 **Sec. 23.** RCW 90.58.030 and 1996 c 265 s 1 are each amended to read
13 as follows:

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

16 (1) Administration:

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

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

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

22 (d) "Person" means an individual, partnership, corporation,
23 association, organization, cooperative, public or municipal
24 corporation, or agency of the state or local governmental unit however
25 designated;

26 (e) "Hearing board" means the shoreline hearings board established
27 by this chapter.

28 (2) Geographical:

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

31 (b) "Ordinary high water mark" on all lakes, streams, and tidal
32 water is that mark that will be found by examining the bed and banks
33 and ascertaining where the presence and action of waters are so common
34 and usual, and so long continued in all ordinary years, as to mark upon
35 the soil a character distinct from that of the abutting upland, in
36 respect to vegetation as that condition exists on June 1, 1971, as it
37 may naturally change thereafter, or as it may change thereafter in
38 accordance with permits issued by a local government or the department:

1 PROVIDED, That in any area where the ordinary high water mark cannot be
2 found, the ordinary high water mark adjoining salt water shall be the
3 line of mean higher high tide and the ordinary high water mark
4 adjoining fresh water shall be the line of mean high water;

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

7 (d) "Shorelines" means all of the water areas of the state,
8 including reservoirs, and their associated shorelands, together with
9 the lands underlying them; except (i) shorelines of state-wide
10 significance; (ii) shorelines on segments of streams upstream of a
11 point where the mean annual flow is twenty cubic feet per second or
12 less and the wetlands associated with such upstream segments; and (iii)
13 shorelines on lakes less than twenty acres in size and wetlands
14 associated with such small lakes;

15 (e) "Shorelines of state-wide significance" means the following
16 shorelines of the state:

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

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

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

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

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

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

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

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

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

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

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

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

6 (vi) Those shorelands associated with (i), (ii), (iv), and (v) of
7 this subsection (2)(e);

8 (f) "Shorelands" or "shoreland areas" means those lands extending
9 landward for two hundred feet in all directions as measured on a
10 horizontal plane from the ordinary high water mark; floodways and
11 contiguous floodplain areas landward two hundred feet from such
12 floodways; and all wetlands and river deltas associated with the
13 streams, lakes, and tidal waters which are subject to the provisions of
14 this chapter; the same to be designated as to location by the
15 department of ecology. Any county or city may determine that portion
16 of a one-hundred-year-flood plain to be included in its master program
17 as long as such portion includes, as a minimum, the floodway and the
18 adjacent land extending landward two hundred feet therefrom;

19 (g) "Floodway" means those portions of the area of a river valley
20 lying streamward from the outer limits of a watercourse upon which
21 flood waters are carried during periods of flooding that occur with
22 reasonable regularity, although not necessarily annually, said floodway
23 being identified, under normal condition, by changes in surface soil
24 conditions or changes in types or quality of vegetative ground cover
25 condition. The floodway shall not include those lands that can
26 reasonably be expected to be protected from flood waters by flood
27 control devices maintained by or maintained under license from the
28 federal government, the state, or a political subdivision of the state;

29 (h) "Wetlands" means areas that are inundated or saturated by
30 surface water or ground water at a frequency and duration sufficient to
31 support, and that under normal circumstances do support, a prevalence
32 of vegetation typically adapted for life in saturated soil conditions.
33 Wetlands generally include swamps, marshes, bogs, and similar areas.
34 Wetlands do not include those artificial wetlands intentionally created
35 from nonwetland sites, including, but not limited to, irrigation and
36 drainage ditches, grass-lined swales, canals, detention facilities,
37 wastewater treatment facilities, farm ponds, and landscape amenities,
38 or those wetlands created after July 1, 1990, that were unintentionally
39 created as a result of the construction of a road, street, or highway.

1 Wetlands may include those artificial wetlands intentionally created
2 from nonwetland areas to mitigate the conversion of wetlands.

3 (3) Procedural terms:

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

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

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

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

23 (e) "Substantial development" shall mean any development of which
24 the total cost or fair market value exceeds two thousand five hundred
25 dollars, or any development which materially interferes with the normal
26 public use of the water or shorelines of the state; except that the
27 following shall not be considered substantial developments for the
28 purpose of this chapter:

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

31 (ii) Improvements to dikes and levees if the improvement is
32 determined by a county to be consistent with a flood control management
33 plan developed under chapter 86.26 RCW;

34 (iii) Streambed maintenance including sediment removal, sediment
35 disposal, and streambank stabilization if performed to provide public
36 flood control benefit as determined by the appropriate county
37 legislative authority;

1 (iv) Construction of stream flow regulation, retention, or
2 detention facilities if consistent with a flood control management plan
3 developed under chapter 86.26 RCW;

4 (v) Construction of the normal protective bulkhead common to single
5 family residences;

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

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

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

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

31 ~~((vii))~~ (x) Construction of a dock, including a community dock,
32 designed for pleasure craft only, for the private noncommercial use of
33 the owner, lessee, or contract purchaser of single and multiple family
34 residences. This exception applies if either: (A) In salt waters, the
35 fair market value of the dock does not exceed two thousand five hundred
36 dollars; or (B) in fresh waters, the fair market value of the dock does
37 not exceed ten thousand dollars, but if subsequent construction having
38 a fair market value exceeding two thousand five hundred dollars occurs
39 within five years of completion of the prior construction, the

1 subsequent construction shall be considered a substantial development
2 for the purpose of this chapter;

3 ~~((viii))~~ (xi) 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))~~ (xii) 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))~~ (xiii) 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))~~ (xiv) Site exploration and investigation activities that
17 are prerequisite to preparation of an application for development
18 authorization under this chapter, if:

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

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

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

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

32 (E) The activity is not subject to the permit requirements of RCW
33 90.58.550;

34 ~~((xii))~~ (xv) The process of removing or controlling an aquatic
35 noxious weed, as defined in RCW 17.26.020, through the use of an
36 herbicide or other treatment methods applicable to weed control that
37 are recommended by a final environmental impact statement published by
38 the department of agriculture or the department jointly with other
39 state agencies under chapter 43.21C RCW.

1 NEW SECTION. **Sec. 24.** A new section is added to chapter 86.26 RCW
2 to read as follows:

3 A flood protection project is work necessary to preserve, restore,
4 or improve either natural or human-made stream banks or flood control
5 facilities that repair or prevent flood damage as defined in RCW
6 86.16.120 including but not limited to damage by erosion, stream flow,
7 sheet runoff, or other damages by the sea or other bodies of water.

8 NEW SECTION. **Sec. 25.** A new section is added to chapter 86.12 RCW
9 to read as follows:

10 Upon request by a county or city preparing a comprehensive flood
11 management plan under this chapter, the department of transportation
12 shall:

13 (1) Provide an inventory of all state highways and bridges located
14 in a floodplain as designated by the federal emergency management
15 agency;

16 (2) Identify any state roads or bridges that may cause a
17 constriction to the natural flow of flood waters;

18 (3) Identify state roads that, either by themselves or in
19 conjunction with levees or other structures in the floodplain, may
20 entrap floodwaters in areas originally intended to be flood-proofed;
21 and

22 (4) Provide any other information available to the department to
23 assist in preventing or minimizing flood damages.

24 NEW SECTION. **Sec. 26.** RCW 79.90.325 and 1984 c 212 s 10 are each
25 repealed.

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

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