
SENATE BILL 6095

State of Washington

52nd Legislature

1992 Regular Session

By Senators Bailey, Skratek, Anderson and Barr

Read first time 01/15/92. Referred to Committee on Agriculture & Water Resources.

1 AN ACT Relating to flood control; amending RCW 43.21C.020,
2 75.20.100, 75.20.103, 79.01.134, 86.16.120, 86.26.007, 86.26.060,
3 90.58.030, and 90.58.100; adding a new section to chapter 43.21C RCW;
4 adding new sections to chapter 75.20 RCW; adding a new section to
5 chapter 79.01 RCW; adding a new section to chapter 86.26 RCW; and
6 declaring an emergency.

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

8 **Sec. 1.** RCW 43.21C.020 and 1971 ex.s. c 109 s 2 are each amended
9 to read as follows:

10 (1) The legislature, recognizing that ((man)) people depend((s)) on
11 ((his)) their biological and physical surroundings for food, shelter,
12 and other needs, and for cultural enrichment as well((+)), and
13 recognizing further the profound impact of ((man's)) human activity on
14 the interrelations of all components of the natural environment,

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

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

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

23 (b) Assure for all people of Washington safe, healthful,
24 productive, and esthetically and culturally pleasing surroundings;

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

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

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

3 (f) Achieve a balance between population and resource use which
4 will permit high standards of living and a wide sharing of life's
5 amenities; (~~and~~)

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

8 (h) Provide for the prevention and minimization of flood damage as
9 defined in RCW 86.16.120.

10 (3) The legislature recognizes that each person has a fundamental
11 and inalienable right to a healthful environment and that each person
12 has a responsibility to contribute to the preservation and enhancement
13 of the environment.

14 NEW SECTION. Sec. 2. A new section is added to chapter 43.21C RCW
15 to read as follows:

16 Any governmental agency, whether state, local, or municipal,
17 receiving an application for a project that is not a substantial
18 development as defined in RCW 90.58.030(3) and will aid in the
19 prevention or minimization of flood damages as defined in RCW
20 86.16.120, shall approve or disapprove the application within thirty
21 calendar days from the date the application is received. If the agency
22 determines that a detailed statement must be made, the agency shall
23 approve or disapprove the application within sixty days from the date
24 the application is received, unless, through the promulgation of a
25 formal order, the agency determines that the process cannot be
26 completed within such period.

27 Following a flood equal to or greater than a five-year flood event,
28 applications for projects to repair or enhance flood protection must be
29 approved or disapproved by the receiving governmental agency within

1 fifteen calendar days from the date the application is received. If
2 the agency determines that a detailed statement must be made, the
3 agency shall approve or disapprove the application within thirty days
4 from the date the application is received, unless, through the
5 promulgation of a formal order, the agency determines that the process
6 cannot be completed within such period.

7 **Sec. 3.** RCW 75.20.100 and 1991 c 322 s 30 are each amended to read
8 as follows:

9 In the event that any person or government agency desires to
10 construct any form of hydraulic project or perform other work that will
11 use, divert, obstruct, or change the natural flow or bed of any of the
12 salt or fresh waters of the state, such person or government agency
13 shall, before commencing construction or work thereon and to ensure the
14 proper protection of fish life, secure the written approval of the
15 department of fisheries or the department of wildlife as to the
16 adequacy of the means proposed for the protection of fish life. This
17 approval shall not be unreasonably withheld or conditioned. Except as
18 provided in RCW 75.20.1001 and 75.20.1002, the department of fisheries
19 or the department of wildlife shall grant or deny approval within
20 forty-five calendar days of the receipt of a complete application and
21 notice of compliance with any applicable requirements of the state
22 environmental policy act, made in the manner prescribed in this
23 section. The applicant may document receipt of application by filing
24 in person or by registered mail. A complete application for approval
25 shall contain general plans for the overall project, complete plans and
26 specifications of the proposed construction or work within the mean
27 higher high water line in salt water or within the ordinary high water
28 line in fresh water, and complete plans and specifications for the
29 proper protection of fish life. The department shall develop a

1 checklist to be provided with each application outlining the items
2 necessary to submit a complete application for approval. The
3 forty-five day requirement shall be suspended if (1) after ten working
4 days of receipt of the application, the applicant remains unavailable
5 or unable to arrange for a timely field evaluation of the proposed
6 project; (2) the site is physically inaccessible for inspection; or (3)
7 the applicant requests delay. Immediately upon determination that the
8 forty-five day period is suspended, the department of fisheries or the
9 department of wildlife shall notify the applicant in writing of the
10 reasons for the delay. Approval is valid for a period of up to five
11 years from date of issuance. The permittee must demonstrate
12 substantial progress on construction of that portion of the project
13 relating to the approval within two years of the date of issuance. If
14 either the department of fisheries or the department of wildlife denies
15 approval, that department shall provide the applicant, in writing, a
16 statement of the specific reasons why and how the proposed project
17 would adversely affect fish life. In determining permit approval, the
18 department of fisheries or the department of wildlife shall give equal
19 consideration to the protection of human life, public land or private
20 property, or both, and fish life as outlined in the state policy to
21 minimize flood damage described in chapter 86.16 RCW. For purposes of
22 this section, "equal consideration" means that if the department finds
23 that a proposed project provides a substantial benefit to the
24 protection of human life and private or public property and has a minor
25 or unproven impact on fish life, the project shall be approved.
26 Protection of fish life shall be the only ground upon which approval
27 may be denied or conditioned. When a project is denied or conditioned,
28 the department of fisheries or the department of wildlife shall provide
29 the applicant technical data supporting the denial or conditioning of
30 the permit. Chapter 34.05 RCW applies to any denial of project

1 approval, conditional approval, or requirements for project
2 modification upon which approval may be contingent. If any person or
3 government agency commences construction on any hydraulic works or
4 projects subject to this section without first having obtained written
5 approval of the department of fisheries or the department of wildlife
6 as to the adequacy of the means proposed for the protection of fish
7 life, or if any person or government agency fails to follow or carry
8 out any of the requirements or conditions as are made a part of such
9 approval, the person or director of the agency is guilty of a gross
10 misdemeanor. If any such person or government agency is convicted of
11 violating any of the provisions of this section and continues
12 construction on any such works or projects without fully complying with
13 the provisions hereof, such works or projects are hereby declared a
14 public nuisance and shall be subject to abatement as such.

15 For the purposes of this section and RCW 75.20.103, "bed" shall
16 mean the land below the ordinary high water lines of state waters.
17 This definition shall not include irrigation ditches, canals, storm
18 water run-off devices, or other artificial watercourses except where
19 they exist in a natural watercourse that has been altered by ~~((man))~~
20 people. For the purposes of this section and RCW 75.20.103,
21 "emergency" means an imminent threat to life, public land and private
22 property, or both, or an imminent threat of serious environmental
23 degradation.

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

1 For each application, the department of fisheries and the
2 department of wildlife shall mutually agree on whether the department
3 of fisheries or the department of wildlife shall administer the
4 provisions of this section, in order to avoid duplication of effort.
5 The department designated to act shall cooperate with the other
6 department in order to protect all species of fish life found at the
7 project site. If the department of fisheries or the department of
8 wildlife receives an application concerning a site not in its
9 jurisdiction, it shall transmit the application to the other department
10 within three days and notify the applicant.

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

22 Following a flood equal to or greater than a five-year flood event,
23 the department of fisheries or the department of wildlife shall approve
24 or deny applications for projects that will aid in the prevention or
25 minimization of flood damages as defined in RCW 86.16.120 within
26 fifteen calendar days of receipt of a complete application and notice
27 of compliance with any applicable requirements of the state
28 environmental policy act, made in the manner prescribed in this
29 section.

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

9 **Sec. 4.** RCW 75.20.103 and 1991 c 322 s 31 are each amended to read
10 as follows:

11 In the event that any person or government agency desires to
12 construct any form of hydraulic project or other work that diverts
13 water for agricultural irrigation or stock watering purposes, or when
14 such hydraulic project or other work is associated with streambank
15 stabilization ((to protect farm and agricultural land as defined in RCW
16 84.34.020)), and when such diversion or streambank stabilization will
17 use, divert, obstruct, or change the natural flow or bed of any river
18 or stream or will utilize any waters of the state or materials from the
19 stream beds, the person or government agency shall, before commencing
20 construction or work thereon and to ensure the proper protection of
21 fish life, secure a written approval from the department of fisheries
22 or the department of wildlife as to the adequacy of the means proposed
23 for the protection of fish life. This approval shall not be
24 unreasonably withheld or conditioned. Except as provided in RCW
25 75.20.1001 and 75.20.1002, the department of fisheries or the
26 department of wildlife shall grant or deny the approval within
27 forty-five calendar days of the receipt of a complete application and
28 notice of compliance with any applicable requirements of the state
29 environmental policy act, made in the manner prescribed in this

1 section. The applicant may document receipt of application by filing
2 in person or by registered mail. A complete application for an
3 approval shall contain general plans for the overall project, complete
4 plans and specifications of the proposed construction or work within
5 ordinary high water line, and complete plans and specifications for the
6 proper protection of fish life. The department shall develop a
7 checklist to be provided with each application outlining the items
8 necessary to submit a complete application for approval. The
9 forty-five day requirement shall be suspended if (1) after ten working
10 days of receipt of the application, the applicant remains unavailable
11 or unable to arrange for a timely field evaluation of the proposed
12 project; (2) the site is physically inaccessible for inspection; or (3)
13 the applicant requests delay.

14 Immediately upon determination that the forty-five day period is
15 suspended, the department of fisheries or the department of wildlife
16 shall notify the applicant in writing of the reasons for the delay.

17 An approval shall remain in effect without need for periodic
18 renewal for projects that divert water for agricultural irrigation or
19 stock watering purposes and that involve seasonal construction or other
20 work. Approval for streambank stabilization projects shall remain in
21 effect without need for periodic renewal if the problem causing the
22 need for the streambank stabilization occurs on an annual or more
23 frequent basis. The permittee must notify the appropriate agency before
24 commencing the construction or other work within the area covered by
25 the approval.

26 The permittee must demonstrate substantial progress on construction
27 of that portion of the project relating to the approval within two
28 years of the date of issuance. If either the department of fisheries
29 or the department of wildlife denies approval, that department shall
30 provide the applicant, in writing, a statement of the specific reasons

1 why and how the proposed project would adversely affect fish life. In
2 determining permit approval, the department of fisheries or the
3 department of wildlife shall give equal consideration to the protection
4 of human life, public land or private property, or both, and fish life
5 as outlined in the state policy to minimize flood damage described in
6 chapter 86.16 RCW. For purposes of this section, "equal consideration"
7 means when the department finds that a proposed project provides a
8 substantial benefit to the protection of human life and private or
9 public property and has a minor or unproven impact on fish life, the
10 project shall be approved. Protection of fish life shall be the only
11 ground upon which approval may be denied or conditioned. When a
12 project is denied or conditioned, the department of fisheries or the
13 department of wildlife shall provide the applicant technical data
14 supporting the denial or conditioning of the permit. Issuance, denial,
15 conditioning, or modification shall be appealable to the hydraulic
16 appeals board established in RCW 43.21B.005 within thirty days of the
17 notice of decision. The burden shall be upon the department of
18 fisheries or the department of wildlife to show that the denial or
19 conditioning of an approval is solely aimed at the protection of fish
20 life.

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

28 A permittee may request modification of an approval due to changed
29 conditions. The request shall be processed within forty-five calendar
30 days of receipt of the written request. A decision by the department

1 that issued the approval may be appealed to the hydraulic appeals board
2 within thirty days of the notice of the decision. The burden is on the
3 permittee to show that changed conditions warrant the requested
4 modification and that such modification will not impair fish life.

5 If any person or government agency commences construction on any
6 hydraulic works or projects subject to this section without first
7 having obtained written approval of the department of fisheries or the
8 department of wildlife as to the adequacy of the means proposed for the
9 protection of fish life, or if any person or government agency fails to
10 follow or carry out any of the requirements or conditions as are made
11 a part of such approval, the person or director of the agency is guilty
12 of a gross misdemeanor. If any such person or government agency is
13 convicted of violating any of the provisions of this section and
14 continues construction on any such works or projects without fully
15 complying with the provisions hereof, such works or projects are hereby
16 declared a public nuisance and shall be subject to abatement as such.

17 For each application, the department of fisheries and the
18 department of wildlife shall mutually agree on whether the department
19 of fisheries or the department of wildlife shall administer the
20 provisions of this section, in order to avoid duplication of effort.
21 The department designated to act shall cooperate with the other
22 department in order to protect all species of fish life found at the
23 project site. If the department of fisheries or the department of
24 wildlife receives an application concerning a site not in its
25 jurisdiction, it shall transmit the application to the other department
26 within three days and notify the applicant.

27 In case of an emergency arising from weather or stream flow
28 conditions or other natural conditions, the department of fisheries or
29 department of wildlife, through their authorized representatives, shall
30 issue immediately upon request oral approval for removing any

1 obstructions, repairing existing structures, restoring stream banks, or
2 to protect property threatened by the stream or a change in the stream
3 flow without the necessity of obtaining a written approval prior to
4 commencing work. Conditions of an oral approval shall be reduced to
5 writing within thirty days and complied with as provided for in this
6 section.

7 Following a flood equal to or greater than a five-year flood event,
8 the department of fisheries or the department of wildlife shall approve
9 or deny applications for projects that will aid in the prevention or
10 minimization of flood damages as defined in RCW 86.16.120 within
11 fifteen calendar days of the receipt of a complete application and
12 notice of compliance with any applicable requirements of the state
13 environmental policy act, made in the manner prescribed in this
14 section.

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

19 NEW SECTION. Sec. 5. 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.

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

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

8 (5) The permittee shall identify the excavation zone with boundary
9 markers.

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

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

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

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

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

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

22 NEW SECTION. **Sec. 6.** A new section is added to chapter 75.20 RCW
23 to read as follows:

24 The departments of fisheries, wildlife, natural resources, and
25 ecology shall jointly develop a memorandum of understanding to
26 facilitate the consideration of projects that will aid in the
27 minimization or prevention of flood damage as defined in RCW 86.16.120.
28 To reduce the duplication of information required by a project's
29 permits, the departments must provide in their memorandum procedures to

1 share data to the extent practicable among themselves and with other
2 agencies that may be involved in approving or denying a permit
3 application. The departments' memorandum must provide a plan to
4 implement a comprehensive permit process that is streamlined and easily
5 understandable to permit applicants.

6 **Sec. 7.** RCW 79.01.134 and 1985 c 197 s 1 are each amended to read
7 as follows:

8 The department of natural resources, upon application by any
9 person, firm or corporation, may enter into a contract providing for
10 the sale and removal of rock, gravel, sand and silt located upon state
11 lands or state forest lands, and providing for payment to be made
12 therefor on a royalty basis. The issuance of a contract shall be made
13 after public auction and such contract shall not be issued for less
14 than the appraised value of the material unless the material is to be
15 removed for flood control purposes. In such instances the department
16 may reduce or eliminate royalties. In areas prone to flooding, removal
17 of material from within the ordinary high water mark shall be construed
18 as being removed for flood control purposes.

19 Each application made pursuant to this section shall set forth the
20 estimated quantity and kind of materials desired to be removed and
21 shall be accompanied by a map or plat showing the area from which the
22 applicant wishes to remove such materials. The department of natural
23 resources may in its discretion include in any contract entered into
24 pursuant to this section, such terms and conditions protecting the
25 interests of the state as it may require. In each such contract the
26 department of natural resources shall provide for a right of forfeiture
27 by the state, upon a failure to operate under the contract or pay
28 royalties for periods therein stipulated, and ((he)) may require a bond
29 with a surety company authorized to transact a surety business in this

1 state, as surety, to secure the performance of the terms and conditions
2 of such contract including the payment of royalties. The right of
3 forfeiture shall be exercised by entry of a declaration of forfeiture
4 in the records of the department of natural resources. The amount of
5 rock, gravel, sand, or silt taken under the contract shall be reported
6 monthly by the purchaser to the department of natural resources and
7 payment therefor made on the basis of the royalty provided in the
8 contract. The department may include a provision in the contract
9 allowing payment to be made as the material is sold.

10 The department of natural resources may inspect and audit books,
11 contracts and accounts of each person removing rock, gravel, sand, or
12 silt pursuant to any such contract and make such other investigation
13 and secure or receive any other evidence necessary to determine whether
14 or not the state is being paid the full amount payable to it for the
15 removal of such materials.

16 NEW SECTION. **Sec. 8.** A new section is added to chapter 79.01 RCW
17 to read as follows:

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

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

22 (a) Give priority consideration to the preservation of the
23 streamway environment with special attention given to preservation of
24 those areas considered aesthetically or environmentally unique;

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

27 (c) Encourage research to develop alternative methods of channel
28 control, utilizing natural systems of stabilization; and

1 (d) Recognize natural plant and animal communities and other
2 features that provide an ecological balance to a streamway in
3 evaluating competing human uses and require protection from significant
4 human impact.

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

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

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

16 (5) The department, commissioner, and board shall protect braided
17 and meandering channels from development.

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

23 (7) No person may remove sand and gravel below the wetted perimeter
24 of navigable rivers unless authorized by a hydraulics permit issued by
25 either the department of fisheries or department of wildlife under RCW
26 75.20.100 and 75.20.103. These removals may be authorized for
27 maintenance and improvement of navigational channels or for creating
28 backwater channels for fish rearing or improvement of the flow capacity
29 of the channels.

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

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

6 (b) The removal provides recreational benefits;

7 (c) The removal will aid in reducing a detrimental accumulation of
8 aggregates in downstream lakes and reservoirs;

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

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

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

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

17 (b) Removal will cause unstable hydraulic conditions detrimental to
18 fish, wildlife, public health, and safety;

19 (c) Removal will impact esthetics of nearby recreational
20 facilities; or

21 (d) Removal will result in negative water quality according to
22 department of ecology standards.

23 (10) No person may perform bank dumping or junk revetment on
24 aquatic lands.

25 (11) The department shall condition sand and gravel removal leases
26 to allow removal of only that amount which is naturally replenished on
27 an annual basis, except in instances where a lapse in material removal
28 has occurred. If such a lapse has occurred, then an amount of material
29 equivalent to the amount estimated to have accumulated since the last

1 material removal operation, including debris and vegetation, may be
2 removed.

3 **Sec. 9.** RCW 86.16.120 and 1935 c 159 s 2 are each amended to read
4 as follows:

5 Damages within the meaning of this chapter (~~shall~~) include loss
6 of human life and damages to homes and possessions; harmful
7 inundation(~~()~~); water erosion of soil, stream banks, and beds(~~()~~);
8 stream channel shifting and changes(~~()~~); harmful deposition by water
9 of eroded and shifting soils, rocks, gravel, and debris upon property
10 or in the beds of streams or other bodies of water(~~()~~); damages by
11 high water to public roads, highways, bridges, utilities, and to works
12 built for protection against floods or inundation(~~()~~); the
13 interruption by floods of travel, communication, and commerce(~~()~~);
14 harm to livestock by flood waters; reduction in the flow capacity of
15 streams due to the accumulation of deposited silt, soils, gravel, and
16 other materials in the beds of streams; the accumulations of deposited
17 soils, rocks, gravel, sand, and other materials on stream bars that may
18 result in a change in the flow direction of streams or erosion of
19 stream banks; damage to fisheries, fish propagation facilities, and
20 fish habitat; degradation of scenic, historic, and recreational values
21 of rivers; and all other high water influences and results which
22 injuriously affect the public health and the safety of property.

23 **Sec. 10.** RCW 86.26.007 and 1991 sp.s. c 13 s 24 are each amended
24 to read as follows:

25 The flood control assistance account is hereby established in the
26 state treasury. At the beginning of each biennium the state treasurer
27 shall transfer from the general fund to the flood control assistance
28 account an amount of money which, when combined with money remaining in

1 the account from the previous biennium, will equal (~~four~~) six million
2 dollars. Moneys in the flood control assistance account may be spent
3 only after appropriation for purposes specified under this chapter.

4 **Sec. 11.** RCW 86.26.060 and 1984 c 212 s 5 are each amended to read
5 as follows:

6 Grants for flood control maintenance shall be so employed that as
7 far as possible, funds will be on hand to meet unusual, unforeseeable
8 and emergent flood conditions. Allocations by the department of
9 ecology, for emergency purposes, shall in each instance be in amounts
10 which together with funds provided by local authority, if any, under
11 reasonable exercise of its emergency powers, shall be adequate for the
12 preservation of life and property, and with due regard to similar needs
13 elsewhere in the state. The department shall place a higher priority
14 in allocating funds on flood damage repair projects than all other
15 requests except for work required on flood control management plans
16 under RCW 86.26.050.

17 NEW SECTION. **Sec. 12.** A new section is added to chapter 86.26 RCW
18 to read as follows:

19 A flood protection project is work necessary to preserve, restore,
20 or improve either natural or human-made stream banks or flood control
21 facilities which repair or prevent flood damage as defined in RCW
22 86.16.120 including but not limited to damage by erosion, stream flow,
23 sheet runoff, or other damages by the sea or other bodies of water.

24 **Sec. 13.** RCW 90.58.030 and 1987 c 474 s 1 are each amended to read
25 as follows:

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

1 (1) Administration:

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

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

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

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

11 (e) "Hearing board" means the shoreline hearings board established
12 by this chapter.

13 (2) Geographical:

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

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

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

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

9 (e) "Shorelines of state-wide significance" means the following
10 shorelines of the state:

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

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

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

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

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

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

21 and

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

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

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

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

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

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

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

11 (f) "Wetlands" or "wetland areas" means those lands extending
12 landward for two hundred feet in all directions as measured on a
13 horizontal plane from the ordinary high water mark; floodways and
14 contiguous floodplain areas landward two hundred feet from such
15 floodways; and all marshes, bogs, swamps, and river deltas associated
16 with the streams, lakes, and tidal waters which are subject to the
17 provisions of this chapter; the same to be designated as to location by
18 the department of ecology(~~(: PROVIDED, That)~~). However, any county or
19 city may determine that portion of a one-hundred-year-flood plain to be
20 included in its master program as long as such portion includes, as a
21 minimum, the floodway and the adjacent land extending landward two
22 hundred feet ((therefrom)). The county or city shall take into account
23 any modifications to the floodway or adjacent land made by the
24 establishment of a flood zone density flood plain or density fringe
25 flood plain, as approved by the department of ecology;

26 (g) "Floodway" means those portions of the area of a river valley
27 lying streamward from the outer limits of a watercourse upon which
28 flood waters are carried during periods of flooding that occur with
29 reasonable regularity, although not necessarily annually, said floodway
30 being identified, under normal condition, by changes in surface soil

1 conditions or changes in types or quality of vegetative ground cover
2 condition. The floodway shall not include those lands that can
3 reasonably be expected to be protected from flood waters by flood
4 control devices maintained by or maintained under license from the
5 federal government, the state, or a political subdivision of the state.

6 (3) Procedural terms:

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

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

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

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

26 (e) "Substantial development" shall mean any development of which
27 the total cost or fair market value exceeds ~~((two thousand five
28 hundred))~~ five thousand dollars, or any development which materially
29 ~~interferes with the normal public use of the water or shorelines of the~~

1 state; except that the following shall not be considered substantial
2 developments for the purpose of this chapter:

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

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

7 (iii) Emergency construction, including flood control and
8 restoration, necessary to protect property from damage by the elements;

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

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

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

1 ~~(vii) Construction of a dock, including a community dock, designed~~
2 ~~for pleasure craft only, for the private noncommercial use of the~~
3 ~~owner, lessee, or contract purchaser of single and multiple family~~
4 ~~residences, the cost of which does not exceed two thousand five hundred~~
5 ~~dollars;~~

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

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

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

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

27 **Sec. 14.** ~~RCW 90.58.100 and 1991 c 322 s 32 are each amended to~~
28 ~~read as follows:~~

1 ~~(1) The master programs provided for in this chapter, when adopted~~
2 ~~and approved by the department, as appropriate, shall constitute use~~
3 ~~regulations for the various shorelines of the state. In preparing the~~
4 ~~master programs, and any amendments thereto, the department and local~~
5 ~~governments shall to the extent feasible:~~

6 ~~(a) Utilize a systematic interdisciplinary approach which will~~
7 ~~insure the integrated use of the natural and social sciences and the~~
8 ~~environmental design arts;~~

9 ~~(b) Consult with and obtain the comments of any federal, state,~~
10 ~~regional, or local agency having any special expertise with respect to~~
11 ~~any environmental impact;~~

12 ~~(c) Consider all plans, studies, surveys, inventories, and systems~~
13 ~~of classification made or being made by federal, state, regional, or~~
14 ~~local agencies, by private individuals, or by organizations dealing~~
15 ~~with pertinent shorelines of the state;~~

16 ~~(d) Conduct or support such further research, studies, surveys, and~~
17 ~~interviews as are deemed necessary;~~

18 ~~(e) Utilize all available information regarding hydrology,~~
19 ~~geography, topography, ecology, economics, and other pertinent data;~~

20 ~~(f) Employ, when feasible, all appropriate, modern scientific data~~
21 ~~processing and computer techniques to store, index, analyze, and manage~~
22 ~~the information gathered.~~

23 ~~(2) The master programs shall include, when appropriate, the~~
24 ~~following:~~

25 ~~(a) An economic development element for the location and design of~~
26 ~~industries, transportation facilities, port facilities, tourist~~
27 ~~facilities, commerce and other developments that are particularly~~
28 ~~dependent on their location on or use of the shorelines of the state;~~

29 ~~(b) A public access element making provision for public access to~~
30 ~~publicly owned areas;~~

1 ~~(c) A recreational element for the preservation and enlargement of~~
2 ~~recreational opportunities, including but not limited to parks,~~
3 ~~tidelands, beaches, and recreational areas;~~

4 ~~(d) A circulation element consisting of the general location and~~
5 ~~extent of existing and proposed major thoroughfares, transportation~~
6 ~~routes, terminals, and other public utilities and facilities, all~~
7 ~~correlated with the shoreline use element;~~

8 ~~(e) A use element which considers the proposed general distribution~~
9 ~~and general location and extent of the use on shorelines and adjacent~~
10 ~~land areas for housing, business, industry, transportation,~~
11 ~~agriculture, natural resources, recreation, education, public buildings~~
12 ~~and grounds, and other categories of public and private uses of the~~
13 ~~land;~~

14 ~~(f) A conservation element for the preservation of natural~~
15 ~~resources, including but not limited to scenic vistas, aesthetics, and~~
16 ~~vital estuarine areas for fisheries and wildlife protection;~~

17 ~~(g) An historic, cultural, scientific, and educational element for~~
18 ~~the protection and restoration of buildings, sites, and areas having~~
19 ~~historic, cultural, scientific, or educational values;~~

20 ~~(h) An element that gives the same consideration to the state-wide~~
21 ~~interest in the prevention and minimization of flood damages as defined~~
22 ~~in RCW 86.16.120 as that given any other master program element; and~~

23 ~~(i) Any other element deemed appropriate or necessary to effectuate~~
24 ~~the policy of this chapter.~~

25 ~~(3) The master programs shall include such map or maps, descriptive~~
26 ~~text, diagrams and charts, or other descriptive material as are~~
27 ~~necessary to provide for ease of understanding.~~

28 ~~(4) Master programs will reflect that state-owned shorelines of the~~
29 ~~state are particularly adapted to providing wilderness beaches,~~

1 ecological study areas, and other recreational activities for the
2 public and will give appropriate special consideration to same.

3 (5) Each master program shall contain provisions to allow for the
4 varying of the application of use regulations of the program, including
5 provisions for permits for conditional uses and variances, to insure
6 that strict implementation of a program will not create unnecessary
7 hardships or thwart the policy enumerated in RCW 90.58.020. Any such
8 varying shall be allowed only if extraordinary circumstances are shown
9 and the public interest suffers no substantial detrimental effect. The
10 concept of this subsection shall be incorporated in the rules adopted
11 by the department relating to the establishment of a permit system as
12 provided in RCW 90.58.140(3).

13 NEW SECTION. **Sec. 15.** — This act is necessary for the immediate
14 preservation of the public peace, health, or safety, or support of the
15 state government and its existing public institutions, and shall take
16 effect immediately.