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ENGROSSED SUBSTITUTE HOUSE BILL 2462

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State of Washington

53rd Legislature

1994 Regular Session

By House Committee on Environmental Affairs (originally sponsored by Representatives R. Johnson, Pruitt and Rust)

Read first time 02/04/94.

1 AN ACT Relating to flood damage reduction; amending RCW 86.16.041,  
2 86.12.200, 36.70A.280, 43.21B.110, 86.16.020, 86.16.045, 86.26.010,  
3 86.26.105, 86.26.050, 86.15.030, 86.15.050, 86.15.160, 58.19.055, and  
4 86.16.031; adding new sections to chapter 86.16 RCW; adding a new  
5 section to chapter 38.52 RCW; adding a new section to chapter 86.12  
6 RCW; adding a new section to chapter 86.26 RCW; adding new sections to  
7 chapter 64.04 RCW; creating new sections; and providing a contingent  
8 effective date.

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

10 PART I

11 FLOOD PLAIN MANAGEMENT

12 NEW SECTION. **Sec. 101.** (1) The legislature finds that:

13 (a) The climate and topography of the state create conditions that  
14 lead to frequent and severe flood events throughout the state;

15 (b) Nearly every county in the state has experienced at least one  
16 federally declared flood disaster and that several counties have  
17 experienced several federally declared flood disasters; and

1 (c) Minimum federal flood requirements are insufficient to reduce  
2 flood damages and may increase them.

3 (2) It is therefore the intent of the legislature to promote the  
4 wise use of public dollars by developing state flood funding criteria  
5 that encourage local governments to measure, quantify, and achieve  
6 numeric or narrative standards for the following outcomes:

7 (a) Reduce the risks that floods pose to human lives;

8 (b) Reduce flood damages to public and private property;

9 (c) Maintain a healthy river system that does not preclude periodic  
10 flooding; and

11 (d) Minimize long-term public costs.

12 NEW SECTION. **Sec. 102.** A new section is added to chapter 86.16  
13 RCW to read as follows:

14 Unless the context clearly requires otherwise, the definitions in  
15 this section apply throughout sections 101 through 103 of this act.

16 (1) "Base flood" or "one hundred year flood" means a flood having  
17 a one percent chance of being equaled or exceeded in any given year.

18 (2) "Department" means the department of ecology.

19 (3) "Erosion hazard area" means an area where channel migration can  
20 occur under existing hydrologic conditions that is specifically  
21 identified in a comprehensive flood hazard management plan or a  
22 federal, state, or local flood hazard map.

23 (4) "Federal emergency management agency floodway" means the  
24 channel of the stream and that portion of the adjoining flood plain  
25 that is necessary to contain and discharge the base flood flow without  
26 increasing the base flood elevation more than one foot.

27 (5) "Flood insurance study" means the official report provided by  
28 the federal insurance administration that includes flood profiles and  
29 the flood insurance rate map.

30 (6) "Flood insurance rate map" means the official map on which the  
31 federal insurance administration has delineated areas of flood hazard.

32 (7) "Flood plain" means any land area susceptible to being  
33 inundated by water from any inland or tidal waters creating a general  
34 and temporary condition of partial or complete inundation of normally  
35 dry land areas.

36 (8) "Flood-prone county" means a county, and all cities and towns  
37 within the county, having three or more federally declared flood  
38 disasters from January 1, 1974, to January 1, 1994.

1 (9) "Meander belt" means the present river channel, the portion of  
2 the river valley lying within the outside curves of a river channel,  
3 and any erosion hazard areas.

4 (10) "Substantial improvement" means any maintenance, repair,  
5 structural modification, addition, or other improvement of a structure  
6 that increases the footprint of a structure by fifty percent or more.

7 **Sec. 103.** RCW 86.16.041 and 1989 c 64 s 4 are each amended to read  
8 as follows:

9 (1) Beginning July 26, 1987, every county and incorporated city and  
10 town shall submit to the department of ecology any new flood plain  
11 management ordinance or amendment to any existing flood plain  
12 management ordinance. Such ordinance or amendment shall take effect  
13 thirty days from filing with the department unless the department  
14 disapproves such ordinance or amendment within that time period.

15 (2) The department may disapprove any ordinance or amendment  
16 submitted to it under subsection (1) of this section if it finds that  
17 an ordinance or amendment does not comply with any of the following:

18 (a) Restriction of land uses within designated federal emergency  
19 management agency floodways including the prohibition of construction  
20 or reconstruction of residential structures except for: (i) Repairs,  
21 reconstruction, or improvements to a structure which do not increase  
22 the ground floor area; and (ii) repairs, reconstruction, or  
23 improvements to a structure the cost of which does not exceed fifty  
24 percent of the market value of the structure either, (A) before the  
25 repair, reconstruction, or repair is started, or (B) if the structure  
26 has been damaged, and is being restored, before the damage occurred.  
27 Work done (~~on structures to comply with existing health, sanitary, or~~  
28 ~~safety codes or~~) to structures identified as historic places shall not  
29 be included in the fifty percent determination; and

30 (b) The minimum requirements of the national flood insurance  
31 program(~~;~~ and

32 ~~(c) The minimum state requirements adopted pursuant to RCW~~  
33 ~~86.16.031(8) that are applicable to the particular county, city, or~~  
34 ~~town)). Within thirty days of receiving a local flood plain ordinance,  
35 the department shall make a decision as to whether or not the ordinance  
36 meets the criteria developed pursuant to section 104 of this act and  
37 transmit the decision to the applicable city or county and to the  
38 department of community, trade, and economic development. If the~~

1 department finds that an ordinance does not meet the criteria, it shall  
2 provide a specific written statement explaining the deficiencies of the  
3 ordinance.

4 NEW SECTION. Sec. 104. A new section is added to chapter 86.16  
5 RCW to read as follows:

6 (1) Not later than six months after approval under subsection (3)  
7 of this section, the department shall adopt by rule state criteria to  
8 evaluate local flood plain management ordinances adopted pursuant to  
9 chapter 36.70A RCW or this chapter solely for the purpose of making  
10 funding decisions.

11 (2) At a minimum, the criteria shall include the following:

12 (a) The outcomes identified under RCW 86.12.200(1);

13 (b) A method for measuring these outcomes;

14 (c) A numeric or narrative standard for each outcome; and

15 (d) A timetable for achieving the standard.

16 (3)(a) A flood hazard reduction task force is created to assist the  
17 department in establishing state funding criteria pursuant to  
18 subsection (1) of this section. The task force shall consist of one  
19 representative appointed by the department of ecology, one  
20 representative from the department of community, trade, and economic  
21 development, one representative appointed by the department of fish and  
22 wildlife, three representatives appointed by the association of  
23 Washington cities, and three representatives appointed by the  
24 Washington association of counties.

25 (b) Before the department adopts criteria required under subsection  
26 (1) of this section, at least seven members of the flood hazard task  
27 force shall approve the criteria. If by June 30, 1995, the flood  
28 hazard reduction task force has not approved the criteria, each town,  
29 city, and county in the state shall be ineligible for a grant or loan  
30 issued pursuant to chapter 86.26 RCW, and state matching funds for the  
31 public assistance and mitigation programs under P.L. 93-288 Secs. 404,  
32 406, and 407. Eligibility shall be reinstated when the department  
33 adopts rules under subsection (1) of this section.

34 (c) The task force created by (a) of this subsection shall expire  
35 thirty days after the department adopts the criteria approved by the  
36 task force pursuant to (b) of this subsection.

1        NEW SECTION.    **Sec. 105.**    A new section is added to chapter 86.16  
2 RCW to read as follows:

3        (1) The department may not issue a grant or loan to fund a flood  
4 hazard reduction project under chapter 86.26 RCW to a city or county  
5 that has not adopted a flood plain ordinance that has been accepted by  
6 the department as meeting the criteria established pursuant to section  
7 104(1) of this act.

8        (2) This section shall take effect June 30, 1997.

9        NEW SECTION.    **Sec. 106.**    A new section is added to chapter 38.52  
10 RCW to read as follows:

11        (1) An applicant for state matching funds for the public assistance  
12 and mitigation programs under P.L. 93-288 Secs. 404, 406, and 407, is  
13 eligible only if the department of community, trade, and economic  
14 development has received a statement from the department of ecology  
15 verifying that the county, city, or town has adopted a flood plain  
16 ordinance that meets the criteria established pursuant to section  
17 104(1) of this act.

18        (2) Within a flood-prone county, an applicant for state matching  
19 funds for the public assistance and mitigation programs under P.L. 93-  
20 288 Secs. 404, 406, and 407, is eligible only if the county has  
21 prepared, is preparing, or has formally notified the department of its  
22 intention to prepare a local comprehensive flood hazard management plan  
23 meeting the requirements of RCW 86.12.200. This requirement is in  
24 addition to the requirement under subsection (1) of this section.

25        (3) The department shall reference or incorporate in the state  
26 flood hazard mitigation plan each local ordinance that meets the  
27 criteria established pursuant to section 104(1) of this act.

28        (4) Nothing in subsection (2) of this section prohibits a state  
29 agency or tribal government from receiving state matching funds for the  
30 public assistance and mitigation programs under P.L. 93-288 Secs. 404,  
31 406, and 407.

32        (5) This section shall take effect June 30, 1997.

33        **Sec. 107.**    RCW 86.12.200 and 1991 c 322 s 3 are each amended to  
34 read as follows:

35        (1) Except as provided in RCW 86.26.105, the county legislative  
36 authority of any county may adopt a comprehensive flood (~~control~~)  
37 hazard management plan for any drainage basin that is located wholly or

1 partially within the county. The plan elements under subsection (2) of  
2 this section shall, to the maximum extent possible, achieve the  
3 following goals:

4 (a) Reduce the risks that floods pose to human lives;

5 (b) Reduce flood damages to public and private property;

6 (c) Maintain a healthy river system that does not preclude periodic  
7 flooding; and

8 (d) Minimize long-term public costs.

9 (2) A comprehensive flood (~~control~~) hazard management plan shall  
10 include the following elements:

11 ~~((1))~~ (a) Designation of areas that are susceptible to periodic  
12 flooding, from inundation by bodies of water or surface water runoff,  
13 or both, including the river's meander belt or floodway;

14 ~~((2))~~ (b) Establishment of a comprehensive scheme of flood  
15 ~~(control)~~ hazard protection and improvements for the areas that are  
16 subject to such periodic flooding, that includes: ~~((a))~~

17 (i) Determining the need for, and desirable location of, flood  
18 ~~(control)~~ hazard reduction improvements to protect or preclude flood  
19 damage to structures, works, and improvements, based upon a  
20 ~~(cost/benefit)~~ cost-benefit ratio between the expense of providing  
21 and maintaining these improvements and the benefits arising from these  
22 improvements; ~~((b))~~

23 (ii) Establishing the level of flood protection that each portion  
24 of the system of flood ~~(control)~~ hazard reduction improvements will  
25 be permitted; ~~((c))~~

26 (iii) Identifying the positive and negative impacts of periodic  
27 flooding to riparian natural resources;

28 (iv) Identifying potential impacts of in-stream flood hazard  
29 reduction work on the state's in-stream resources, meander belt, or  
30 floodway and considering alternatives to in-stream flood ~~(control)~~  
31 hazard reduction work; ~~((d))~~

32 (v) Identifying flood storage areas where flood waters could be  
33 directed during a flood to avoid damage to buildings and other  
34 structures; ~~(and (e))~~

35 (vi) Identifying areas where a river may migrate into a new channel  
36 and considering alternatives to protect the new channel;

37 (vii) Identifying practices that will avoid long-term accretion of  
38 sediments; and

1 (viii) Identifying sources of revenue that will be sufficient to  
2 finance the comprehensive scheme of flood ((control)) hazard management  
3 protection and improvements, including but not limited to compensating  
4 owners of land designated as a flood storage area;

5 ((3) Establishing)) (c) Establishment of land use regulations,  
6 within a river's meander belt or floodway that ((preclude the location  
7 of structures, works, or improvements in critical portions of such  
8 areas subject to periodic flooding, including a river's meander belt or  
9 floodway, and permitting only flood-compatible land uses in such areas;

10 (4) Establishing restrictions on): (i) Allow only flood-  
11 compatible land-uses. These uses may include, but shall not be limited  
12 to agriculture, recreation, and transportation; (ii) restrict  
13 construction activities ((in areas subject to periodic floods that  
14 require the flood proofing of those structures that are permitted to be  
15 constructed or remodeled; and

16 (5) Establishing)); and (iii) establish restrictions on land  
17 clearing activities and development practices that exacerbate flood  
18 problems by increasing the flow or accumulation of flood waters, or the  
19 intensity of drainage, on low-lying areas. Land clearing activities do  
20 not include forest practices as defined in chapter 76.09 RCW.

21 (3) Each comprehensive flood hazard management plan prepared by a  
22 city, town, or special district shall be consistent with the county  
23 flood hazard management plan. Each plan prepared by a county shall  
24 include criteria to judge consistency. At a minimum, the criteria  
25 shall be based on the ability of the plan to:

26 (a) Protect existing flood storage and conveyance;

27 (b) Control storm water runoff; and

28 (c) Meet the goals of subsection (1) of this section.

29 (4) Inconsistencies between a county flood hazard management plan  
30 and a city, town, or special district comprehensive flood hazard  
31 management plan shall be resolved by a growth planning hearings board.

32 (5) A comprehensive flood ((control)) hazard management plan shall  
33 be subject to the minimum requirements for participation in the  
34 national flood insurance program((7)) and any flood plain requirements  
35 exceeding the minimum national flood insurance program ((that have been  
36 adopted by the department of ecology for a specific flood plain  
37 pursuant to RCW 86.16.031, and rules adopted by the department of  
38 ecology pursuant to RCW 86.26.050 relating to flood plain management  
39 activities)).

1       (6) When a county plans under chapter 36.70A RCW, it (~~may~~) shall  
2 incorporate the portion of its comprehensive flood control management  
3 plan relating to land use restrictions in its comprehensive plan and  
4 development regulations adopted pursuant to chapter 36.70A RCW.

5       NEW SECTION. Sec. 108. A new section is added to chapter 86.12  
6 RCW to read as follows:

7       (1) Each county comprehensive flood hazard management plan shall be  
8 consistent with any other county flood hazard management plan prepared  
9 for the same watershed.

10       (2) Inconsistencies between a county comprehensive flood management  
11 plan and another county comprehensive flood management plan prepared  
12 for the same watershed shall be resolved by a growth planning hearings  
13 board upon petition of the department of ecology, a local government  
14 within the watershed, or twenty-five or more citizens in the area of  
15 the watershed.

16       **Sec. 109.** RCW 36.70A.280 and 1991 sp.s. c 32 s 9 are each amended  
17 to read as follows:

18       (1) A growth planning hearings board shall hear and determine only  
19 those petitions alleging (~~either~~): (a) That a state agency, county,  
20 or city is not in compliance with the requirements of this chapter, or  
21 chapter 43.21C RCW as it relates to plans, regulations, and amendments  
22 thereto, adopted under RCW 36.70A.040; (~~or~~) (b) that the twenty-year  
23 growth management planning population projections adopted by the office  
24 of financial management pursuant to RCW 43.62.035 should be adjusted;  
25 or (c) that comprehensive flood hazard reduction plans prepared for the  
26 same watershed are inconsistent.

27       (2) A petition may be filed only by the state, a county or city  
28 that plans under this chapter, a person who has either appeared before  
29 the county or city regarding the matter on which a review is being  
30 requested or is certified by the governor within sixty days of filing  
31 the request with the board, or a person qualified pursuant to RCW  
32 34.05.530.

33       (3) For purposes of this section "person" means any individual,  
34 partnership, corporation, association, governmental subdivision or unit  
35 thereof, or public or private organization or entity of any character.

36       (4) When considering a possible adjustment to a growth management  
37 planning population projection prepared by the office of financial



1 management, a board shall consider the implications of any such  
2 adjustment to the population forecast for the entire state.

3 The rationale for any adjustment that is adopted by a board must be  
4 documented and filed with the office of financial management within ten  
5 working days after adoption.

6 If adjusted by a board, a county growth management planning  
7 population projection shall only be used for the planning purposes set  
8 forth in this chapter and shall be known as a "board adjusted  
9 population projection". None of these changes shall affect the  
10 official state and county population forecasts prepared by the office  
11 of financial management, which shall continue to be used for state  
12 budget and planning purposes.

13 **Sec. 110.** RCW 43.21B.110 and 1993 c 387 s 22 are each amended to  
14 read as follows:

15 (1) The hearings board shall only have jurisdiction to hear and  
16 decide appeals from the following decisions of the department, the  
17 director, the administrator of the office of marine safety, and the air  
18 pollution control boards or authorities as established pursuant to  
19 chapter 70.94 RCW, or local health departments:

20 (a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431,  
21 70.105.080, 70.107.050, 88.46.090, 90.03.600, 90.48.144, 90.56.310, and  
22 90.56.330(~~(-)~~)*i*

23 (b) Orders issued pursuant to RCW 18.104.043, 18.104.060,  
24 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070,  
25 90.14.130, and 90.48.120(~~(-)~~)*i*

26 (c) The issuance, modification, or termination of any permit,  
27 certificate, or license by the department or any air authority in the  
28 exercise of its jurisdiction, including the issuance or termination of  
29 a waste disposal permit, the denial of an application for a waste  
30 disposal permit, or the modification of the conditions or the terms of  
31 a waste disposal permit(~~(-)~~)*i*

32 (d) Decisions of local health departments regarding the grant or  
33 denial of solid waste permits pursuant to chapter 70.95 RCW(~~(-)~~)*i*

34 (e) Decisions of local health departments regarding the issuance  
35 and enforcement of permits to use or dispose of biosolids under RCW  
36 70.95J.080(~~(-)~~)*i*

37 (f) Decisions of the department regarding the grant or denial of  
38 local flood plain ordinances pursuant to chapter 86.16 RCW or

1 comprehensive flood hazard management plans pursuant to chapter 86.26  
2 RCW; and

3 (g) Any other decision by the department, the administrator of the  
4 office of marine safety, or an air authority which pursuant to law must  
5 be decided as an adjudicative proceeding under chapter 34.05 RCW.

6 (2) The following hearings shall not be conducted by the hearings  
7 board:

8 (a) Hearings required by law to be conducted by the shorelines  
9 hearings board pursuant to chapter 90.58 RCW(~~(-)~~);

10 (b) Hearings conducted by the department pursuant to RCW 70.94.332,  
11 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and  
12 90.44.180(~~(-)~~);

13 (c) Proceedings by the department relating to general adjudications  
14 of water rights pursuant to chapter 90.03 or 90.44 RCW(~~(-)~~); and

15 (d) Hearings conducted by the department to adopt, modify, or  
16 repeal rules.

17 (3) Review of rules and regulations adopted by the hearings board  
18 shall be subject to review in accordance with the provisions of the  
19 Administrative Procedure Act, chapter 34.05 RCW.

20 **Sec. 111.** RCW 86.16.020 and 1989 c 64 s 1 are each amended to read  
21 as follows:

22 State-wide flood plain management regulation shall be exercised  
23 through: (1) Local governments' administration of the national flood  
24 insurance program regulation requirements, (2) the establishment of  
25 minimum state requirements for flood plain management that (~~equal~~)  
26 include the minimum federal requirements for the national flood  
27 insurance program, and (3) the issuance of regulatory orders. This  
28 regulation shall be exercised over the planning, construction,  
29 operation and maintenance of any works, structures and improvements,  
30 private or public, which might, if improperly planned, constructed,  
31 operated and maintained, adversely influence the regimen of a stream or  
32 body of water or might adversely affect the security of life, health  
33 and property against damage by flood water.

34 **Sec. 112.** RCW 86.16.045 and 1989 c 64 s 6 are each amended to read  
35 as follows:

36 A county, city, or town may adopt flood plain management ordinances  
37 or requirements that exceed state requirements or the minimum federal

1 requirements of the national flood insurance program ((without  
2 following the procedures provided in RCW 86.16.031(8))).

3 **Sec. 113.** RCW 86.26.010 and 1984 c 212 s 2 are each amended to  
4 read as follows:

5 The department of ecology shall have charge for the state of the  
6 administration and enforcement of all laws relating to flood  
7 ((control)) hazard management and shall adopt rules as necessary to  
8 implement the provisions of this chapter.

9 **Sec. 114.** RCW 86.26.105 and 1986 c 46 s 5 are each amended to read  
10 as follows:

11 ((A comprehensive flood control management plan shall determine the  
12 need for flood control work, consider alternatives to in-stream flood  
13 control work, identify and consider potential impacts of in-stream  
14 flood control work on the state's in-stream resources, and identify the  
15 river's meander belt or floodway.)) (1) By June 30, 1995, the  
16 department shall prepare a six-year plan to schedule financial  
17 assistance to flood-prone counties preparing a comprehensive flood  
18 hazard reduction plan. The six-year plan shall include formal  
19 agreements between the department and each flood-prone county intending  
20 to prepare a comprehensive flood hazard reduction plan. The six-year  
21 plan shall specify the timing and funding of a comprehensive flood  
22 hazard management plan. A comprehensive flood ((control)) hazard  
23 management plan shall be completed and adopted within at least three  
24 years of the certification that it is being prepared, as provided in  
25 RCW 86.26.050.

26 ((If after this three year period has elapsed such a comprehensive  
27 flood control plan has not been completed and adopted, grants for flood  
28 control maintenance projects shall not be made to the county or  
29 municipal corporations in the county until a comprehensive flood  
30 control plan is completed and adopted by the appropriate local  
31 authority.)) Each flood-prone county shall, and each city within a  
32 flood-prone county may, notify the department, in writing, of its  
33 intentions to prepare a comprehensive flood hazard management plan by  
34 January 1, 1995.

35 (2) The department may not issue a grant or loan to fund a flood  
36 hazard reduction project under this chapter to a city or county that is  
37 in violation of subsection (1) of this section. These limitations on

1 grants shall not preclude allocations for emergency purposes made  
2 pursuant to RCW 86.26.060.

3 **PART II**  
4 **FUNDING**

5 **Sec. 201.** RCW 86.26.050 and 1991 c 322 s 6 are each amended to  
6 read as follows:

7 (1) State participation shall be in such preparation of  
8 comprehensive flood ~~((control))~~ hazard management plans under this  
9 chapter and chapter 86.12 RCW, cost sharing feasibility studies for new  
10 flood ~~((control))~~ hazard reduction projects, ~~((projects pursuant to~~  
11 ~~section 33, chapter 322, Laws of 1991,))~~ and flood ~~((control~~  
12 ~~maintenance))~~ hazard reduction projects as are affected with a general  
13 public and state interest, as differentiated from a private interest,  
14 and as are likely to bring about public benefits commensurate with the  
15 amount of state funds allocated thereto.

16 (2) The department of ecology shall adopt rules concerning the  
17 flood plain management activities of a county, city, or town that are  
18 adequate to protect or preclude flood damage to structures, works, and  
19 improvements, including the restriction of land uses within a river's  
20 meander belt or floodway to only flood-compatible uses.

21 (3) No participation for flood ~~((control maintenance))~~ hazard  
22 reduction projects may occur with a county or other municipal  
23 corporation unless the director of ecology has approved the flood plain  
24 management ~~((activities))~~ ordinances of the county, city, or town  
25 having planning jurisdiction over the area where the flood ~~((control~~  
26 ~~maintenance))~~ hazard reduction project will be, on the one hundred year  
27 flood plain surrounding such area.

28 ~~((The department of ecology shall adopt rules concerning the flood~~  
29 ~~plain management activities of a county, city, or town that are~~  
30 ~~adequate to protect or preclude flood damage to structures, works, and~~  
31 ~~improvements, including the restriction of land uses within a river's~~  
32 ~~meander belt or floodway to only flood-compatible uses. Whenever the~~  
33 ~~department has approved county, city, and town flood plain management~~  
34 ~~activities, as a condition of receiving an allocation of funds under~~  
35 ~~this chapter, each revision to the flood plain management activities~~  
36 ~~must be approved by the department of ecology, in consultation with the~~  
37 ~~department of fisheries and the department of wildlife.))~~

1       (4) No participation with a county or other municipal corporation  
2 for flood (~~control maintenance~~) hazard reduction projects may occur  
3 unless the county engineer of the county within which the flood  
4 (~~control maintenance~~) hazard reduction project is located certifies  
5 that a comprehensive flood (~~control~~) hazard management plan has been  
6 completed and adopted by the appropriate local authority, or is being  
7 prepared for all portions of the river basin or other area, within  
8 which the project is located in that county, that are subject to  
9 flooding with a frequency of one hundred years or less.

10       (~~(3)~~) (5) Participation for flood (~~control maintenance~~) hazard  
11 reduction projects and preparation of comprehensive flood (~~control~~)  
12 hazard management plans shall be made from grants made by the  
13 department of ecology from the flood (~~control~~) hazard reduction  
14 assistance account. In making allocation decisions on planning grants,  
15 the department shall give first priority to counties that have been  
16 designated as flood prone. The comprehensive flood (~~control~~) hazard  
17 management plans, and any revisions to the plans, must be approved by  
18 the department of ecology, in consultation with affected Indian tribes,  
19 the department of transportation, and the department of (~~fisheries and~~  
20 the department of) fish and wildlife as a condition of receiving funds  
21 for hazard reduction projects under this chapter. (~~The department may~~  
22 only grant financial assistance to local governments that, in the  
23 opinion of the department, are making good faith efforts to take  
24 advantage of, or comply with, federal and state flood control  
25 programs.)

26       (6) For purposes of this section, "flood hazard reduction project"  
27 means any structural or nonstructural project.

28       NEW SECTION. Sec. 202. A new section is added to chapter 86.26  
29 RCW to read as follows:

30       (1) In awarding grants under this chapter, the department of  
31 ecology shall give strong preference to local governments that have:  
32 (a) Implemented, or are in the process of implementing, an ordinance  
33 that establishes a flood plain policy that is substantially more  
34 stringent than minimum federal requirements; (b) completed, or are in  
35 the process of completing, a comprehensive flood hazard management plan  
36 meeting the requirements of RCW 86.12.200; or (c) constructed, or are  
37 in the process of constructing, a system of overtopping dikes or levees  
38 that allow public access.

1 (2) This section shall expire June 30, 1997, if rules are adopted  
2 under section 104 of this act.

3 **Sec. 203.** RCW 86.15.030 and 1969 ex.s. c 195 s 2 are each amended  
4 to read as follows:

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

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

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

28 **Sec. 204.** RCW 86.15.050 and 1961 c 153 s 5 are each amended to  
29 read as follows:

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

35 **Sec. 205.** RCW 86.15.160 and 1986 c 278 s 60 are each amended to  
36 read as follows:

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

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

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

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

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

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

33 **PART III**

34 **FLOOD HAZARD INFORMATION**

35 **Sec. 301.** RCW 58.19.055 and 1992 c 191 s 5 are each amended to  
36 read as follows:

1 (1) A public offering statement shall contain the following  
2 information:

3 (a) The name, and the address or approximate location, of the  
4 development;

5 (b) The name and address of the developer;

6 (c) The name and address of the management company, if any, for the  
7 development;

8 (d) The relationship of the management company to the developer, if  
9 any;

10 (e) The nature of the interest being offered for sale;

11 (f) A brief description of the permitted uses and use restrictions  
12 pertaining to the development and the purchaser's interest therein;

13 (g) The number of existing lots, parcels, units, or interests in  
14 the development and either the maximum number that may be added to the  
15 development or the fact that such maximum number has not yet been  
16 determined;

17 (h) A list of the principal common amenities in the development  
18 which materially affect the value of the development and those that  
19 will or may be added to the development;

20 (i) The identification of any real property not in the development,  
21 the owner of which has access to any of the development, and a  
22 description of the terms of such access;

23 (j) The identification of any real property not in the development  
24 to which owners in the development have access and a description of the  
25 terms of such access;

26 (k) The status of construction of improvements in the development,  
27 including either the estimated dates of completion if not completed or  
28 the fact that such estimated completion dates have not yet been  
29 determined; and the estimated costs, if any, to be paid by the  
30 purchaser;

31 (l) The estimated current owners' association expense, if any, for  
32 which a purchaser would be liable;

33 (m) An estimate of any payment with respect to any owners'  
34 association expense for which the purchaser would be liable at closing;

35 (n) The estimated current amount and purpose of any fees not  
36 included in any owners' association assessments and charged by the  
37 developer or any owners' association for the use of any of the  
38 development or improvements thereto;



1 (o) Any assessments which have been agreed to or are known to the  
2 developer and which, if not paid, may constitute a lien against any  
3 portion of the development in favor of any governmental agency;

4 (p) The identification of any parts of the development which any  
5 purchaser will have the responsibility for maintaining;

6 (q) A brief description of any blanket encumbrance which is subject  
7 to the provisions of RCW 58.19.180;

8 (r) A list of any physical hazards known to the developer which  
9 particularly affect the development or the immediate vicinity in which  
10 the development is located and which are not readily ascertainable by  
11 the purchaser;

12 (s) A brief description of any construction warranties to be  
13 provided to the purchaser;

14 (t) Any building code violation citations received by the developer  
15 in connection with the development which have not been corrected;

16 (u) A statement of any unsatisfied judgments or pending suits  
17 against any owners' association involved in the development and a  
18 statement of the status of any pending suits material to the  
19 development of which the developer has actual knowledge;

20 (v) A notice which describes a purchaser's right to cancel the  
21 purchase agreement or extend the closing under RCW 58.19.045(3),  
22 including applicable time frames and procedures;

23 (w) A list of the documents which the prospective purchaser is  
24 entitled to receive from the developer before the rescission period  
25 commences;

26 (x) A notice which states:

27 "A purchaser may not rely on any representation or express warranty  
28 unless it is contained in the public offering statement or made in  
29 writing signed by the developer or by any person identified in the  
30 public offering statement as the declarant's agent";

31 (y) A notice which states:

32 "This public offering statement is only a summary of some of the  
33 significant aspects of purchasing an interest in this development and  
34 any documents which may govern or affect the development may be  
35 complex, may contain other important information, and create binding  
36 legal obligations. You should consider seeking assistance of legal  
37 counsel"; and

1 (z) Any other information and cross-references which the developer  
2 believes will be helpful in describing the development to the  
3 recipients of the public offering statement, all of which may be  
4 included or not included at the option of the developer.

5 (2) The public offering statement shall include copies of each of  
6 the following documents: Any declaration of covenants, conditions,  
7 restrictions, and reservations affecting the development; any survey,  
8 plat, or subdivision map; the articles of incorporation of any owners'  
9 association; the bylaws of any owners' association; the rules and  
10 regulations, if any, of any owners' association; current or proposed  
11 budget for any owners' association; and the balance sheet of any  
12 owners' association current within ninety days if assessments have been  
13 collected for ninety days or more.

14 If any of the foregoing documents listed in this subsection are not  
15 available because they have not yet been executed, adopted, or  
16 recorded, drafts of such documents shall be provided with the public  
17 offering statement, and, before closing the sale of an interest in the  
18 development, the purchaser shall be given copies of any material  
19 changes between the draft of the proposed documents and the final  
20 documents.

21 (3) The disclosures required by subsection (1)(v), (x), and (y) of  
22 this section shall be located at the top of the first page of the  
23 public offering statement and be typed or printed in ten-point bold  
24 face type size.

25 (4) The disclosures required by subsection (1)(r) of this section  
26 shall be listed on a separate page from the other disclosures required  
27 by this section and shall be printed or typed in ten-point type. If  
28 the development or any portion of the development described in the  
29 public offering statement is located within an erosion hazard area or  
30 the one hundred year flood plain as shown on flood insurance rate maps  
31 provided by the federal emergency management agency for the national  
32 flood insurance program, this shall be listed as a physical hazard  
33 under subsection (1)(r) of this section.

34 NEW SECTION. Sec. 302. A new section is added to chapter 64.04  
35 RCW to read as follows:

36 The seller of real property located in an erosion hazard area or  
37 the area mapped in the one hundred year flood plain, as shown on the  
38 most recent flood insurance rate maps provided by the federal emergency

1 management agency for the national flood insurance program, shall  
2 inform the buyer that the property is located in an erosion hazard area  
3 or the one hundred year flood plain and may be subject to land use  
4 restrictions. The seller shall inform the buyer in the first written  
5 document constituting an agreement of sale. Proof of notification  
6 prior to closing is the responsibility of the seller.

7 As used in this section, "erosion hazard area" has the meaning in  
8 section 102 of this act.

9 NEW SECTION. **Sec. 303.** A new section is added to chapter 64.04  
10 RCW to read as follows:

11 The location of real property within an erosion hazard area or the  
12 area mapped as the one hundred year flood plain, as shown on flood  
13 insurance rate maps provided by the federal emergency management agency  
14 for the national flood insurance program, is declared to be a hidden  
15 defect in the real property that shall be disclosed by the seller of  
16 the real property or an ownership interest in the real property.

17 As used in this section, "erosion hazard area" has the meaning in  
18 section 102 of this act.

19 **Sec. 304.** RCW 86.16.031 and 1989 c 64 s 3 are each amended to read  
20 as follows:

21 The department of ecology shall:

22 (1) Review and approve county, city, or town flood plain management  
23 ordinances pursuant to RCW 86.16.041;

24 (2) When requested, provide guidance and assistance to local  
25 governments in development and amendment of their flood plain  
26 management ordinances;

27 (3) Provide technical assistance to local governments in the  
28 administration of their flood plain management ordinances;

29 (4) Provide local governments and the general public with  
30 information related to the national flood insurance program;

31 (5) When requested, provide assistance to local governments in  
32 enforcement actions against any individual or individuals performing  
33 activities within the flood plain that are not in compliance with  
34 local, state, or federal flood plain management requirements;

35 (6) Establish state minimum requirements that (~~equal minimum~~)  
36 include federal requirements for the national flood insurance program;

1 (7) Assist counties, cities, and towns in identifying the location  
2 of the one hundred year flood plain, and petitioning the federal  
3 government to alter its designations of where the one hundred year  
4 flood plain is located if the federally recognized location of the one  
5 hundred year flood plain is found to be inaccurate; and

6 (8) (~~Establish minimum state requirements for specific flood~~  
7 ~~plains that exceed the minimum federal requirements for the national~~  
8 ~~flood insurance program, but only if:~~

9 (a) ~~The location of the one hundred year flood plain has been~~  
10 ~~reexamined and is certified by the department as being accurate;~~

11 (b) ~~negotiations have been held with the affected county, city, or~~  
12 ~~town over these regulations;~~

13 (c) ~~public input from the affected community has been obtained; and~~

14 (d) ~~the department makes a finding that these increased~~  
15 ~~requirements are necessary due to local circumstances and general~~  
16 ~~public safety)) File copies of the flood insurance rate maps, provided  
17 by the federal emergency management agency for the national flood  
18 insurance program, with the county auditor in each county in which  
19 property shown on the maps is located. The department shall, on an  
20 annual basis, file revised maps with each county auditor in counties  
21 for which the maps are revised.~~

22 NEW SECTION. Sec. 305. Sections 302 and 303 of this act shall  
23 take effect July 1, 1994, unless a version of Senate Bill No. 6283  
24 relating to real estate disclosures takes effect by June 30, 1994, and  
25 contains specific language requiring disclosures for property in the  
26 one hundred year flood plain and an erosion hazard area. If a version  
27 of Senate Bill No. 6283 containing these specific disclosure provisions  
28 takes effect by June 30, 1994, then sections 302 and 303 of this act  
29 are null and void.

30 **PART IV**  
31 **MISCELLANEOUS**

32 NEW SECTION. Sec. 401. Part headings as used in this act  
33 constitute no part of the law.

34 NEW SECTION. Sec. 402. If any provision of this act or its  
35 application to any person or circumstance is held invalid, the

1 remainder of the act or the application of the provision to other  
2 persons or circumstances is not affected.

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