
SUBSTITUTE HOUSE BILL 2462

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 portion of the river valley that can be identified by previous
4 river channels.

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

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

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

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

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

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

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

1 department of community, trade, and economic development. If the
2 department finds that an ordinance does not meet the criteria, it shall
3 provide a specific written statement explaining the deficiencies of the
4 ordinance.

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

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

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

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

14 (b) A method for measuring these outcomes;

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

16 (d) A timetable for achieving the standard.

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

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

35 (c) The task force created by (a) of this subsection shall expire
36 thirty days after the department adopts the criteria approved by the
37 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((-)) 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(~~(-)~~);

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(~~(-)~~);

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(~~(-)~~);

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

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(~~(-)~~);

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 of flood-prone counties, and any revisions to the
18 plans, must be approved by the department of ecology, in consultation
19 with affected Indian tribes, the department of transportation, and the
20 department of (~~fisheries and the department of~~) fish and wildlife as
21 a condition of receiving funds for hazard reduction projects under this
22 chapter. (~~The department may only grant financial assistance to local~~
23 governments that, in the opinion of the department, are making good
24 faith efforts to take advantage of, or comply with, federal and state
25 flood control 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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