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SENATE BILL 5810

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State of Washington

53rd Legislature

1993 Regular Session

By Senators Erwin and M. Rasmussen

Read first time 02/15/93. Referred to Committee on Natural Resources.

1 AN ACT Relating to flood damage reduction; amending RCW 43.21C.020,  
2 86.12.200, 86.16.025, 86.16.041, 86.26.105, 75.20.100, 75.20.103,  
3 75.20.130, 79.90.300, 90.58.030, 90.58.180, 47.28.140, 86.26.080,  
4 86.26.090, 86.26.007, 86.15.030, 86.15.050, 86.15.160, 58.19.055, and  
5 86.16.031; adding new sections to chapter 86.16 RCW; adding a new  
6 section to chapter 35.13 RCW; adding a new section to chapter 35A.14  
7 RCW; adding new sections to chapter 43.17 RCW; adding new sections to  
8 chapter 86.26 RCW; adding new sections to chapter 75.20 RCW; adding a  
9 new section to chapter 79.90 RCW; creating new sections; repealing RCW  
10 79.90.325; and declaring an emergency.

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

12 NEW SECTION. **Sec. 1.** The legislature finds that river and stream  
13 systems can threaten public and private property during flood events.  
14 The legislature therefore declares that reducing flood damage through  
15 the use of structural and nonstructural projects is in the public  
16 interest. Structural and nonstructural projects include but are not  
17 limited to: Streambank stabilization, river channel maintenance, land  
18 use restrictions, land buy-outs, flood easements, and emergency  
19 notification.

PART I  
LAND USE PLANNING

NEW SECTION. **Sec. 101.** A new section is added to chapter 86.16 RCW to read as follows:

The department shall adopt rules establishing zero-rise floodway by July 1, 1994, for all unincorporated areas designated as within the one hundred year flood plain on the most recent maps provided by the federal emergency management agency for the national flood insurance program. Where a county has conducted a special study to determine projected flows under future developed conditions, the county may use the projected flows as the basis for determining the zero-rise floodway. The rules adopted by the department shall meet the following minimum requirements:

(1) Except as provided in subsection (2) of this section, a development proposal within a designated flood plain including but not limited to, new or substantially improved structures may not cause an increase in the base flood elevation or a net decrease in the storage volume of the flood plain unless the following requirements are met:

(a) Amendments to the flood insurance rate map have been adopted by the federal emergency management agency to incorporate the increase in base flood elevations; and

(b) Appropriate legal documents are prepared in which all property owners affected by the increased flood elevations consent to the impacts on their property. These documents shall be filed with the title of record for the affected properties.

(2) The following are presumed to produce no increase in base flood elevation:

(a) Residential structures or substantial improvements to existing residential structures using a foundation of posts and piers or similar construction;

(b) Residential structures or substantial improvements meeting the following conditions:

(i) The residence is in existence before the effective date of this section;

(ii) The lot contains less than five thousand square feet of buildable land outside the zero-rise floodway; and

(iii) The total building footprint of all proposed structures on the lot is equal to or less than two thousand square feet. On a one-

1 time basis, a substantial improvement may increase the total building  
2 footprint beyond two thousand square feet if the improvement does not  
3 increase the total building footprint by more than twenty percent;

4 (c) Structures and installations that are dependent upon the  
5 floodway may be located in the floodway if the development proposal is  
6 approved by all agencies with jurisdiction. Such structures include,  
7 but are not limited to:

8 (i) Dams or diversions for water supply, flood control,  
9 hydroelectric production, irrigation, or fisheries management;

10 (ii) Flood damage reduction facilities, such as levees and pumping  
11 stations;

12 (iii) Stream bank stabilization structures where no feasible  
13 alternative exists for protecting public or private property; and

14 (iv) Storm water conveyance facilities;

15 (d) Farm and agricultural land as defined in RCW 84.34.020(2).

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

18 Unless the context clearly requires otherwise, the definitions in  
19 this section apply throughout this section and section 101 of this act.

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

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

23 (3) "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 (4) "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 (5) "Flood insurance rate map" means the official map on which the  
31 federal insurance administration has delineated areas of flood hazard.

32 (6) "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 (7) "Substantial improvement" means any maintenance, repair,  
37 structural modification, addition, or other improvement of a structure,  
38 the cost of which equals or exceeds fifty percent of the market value

1 of the structure either before the maintenance, repair, modification,  
2 or addition is started or before the damage occurred, if the structure  
3 has been damaged and is being restored.

4 (8) "Zero-rise floodway" means the channel of the stream and that  
5 portion of the adjoining flood plain that is necessary to contain and  
6 discharge the base flood flow without any measurable increase in flood  
7 heights. A measurable increase in base flood height means a calculated  
8 upward rise in the base flood elevation, equal to or greater than 0.01  
9 foot, resulting from a comparison of existing conditions and changed  
10 conditions directly attributable to development in the flood plain.  
11 This definition is broader than that of the federal emergency  
12 management agency floodway but always includes the federal emergency  
13 management agency floodway. The boundaries of the one hundred year  
14 flood plain as shown on the flood insurance study shall be considered  
15 the boundaries of the zero-rise floodway unless a special study has  
16 been conducted, that study has determined a different boundary, and the  
17 county in which the study was conducted has adopted the results of the  
18 study.

19 **Sec. 103.** RCW 43.21C.020 and 1971 ex.s. c 109 s 2 are each amended  
20 to read as follows:

21 (1) The legislature, recognizing that ~~((man))~~ people depend~~((s))~~ on  
22 ~~((his))~~ their biological and physical surroundings for food, shelter,  
23 and other needs, and for cultural enrichment as well~~((r))~~, and  
24 recognizing further the profound impact of ~~((man's))~~ human activity on  
25 the interrelations of all components of the natural environment,  
26 particularly the profound influences of population growth, high-density  
27 urbanization, industrial expansion, resource utilization and  
28 exploitation, and new and expanding technological advances, and  
29 recognizing further the critical importance of restoring and  
30 maintaining environmental quality to the overall welfare and  
31 development of ~~((man))~~ people, declares that it is the continuing  
32 policy of the state of Washington, in cooperation with federal and  
33 local governments, and other concerned public and private  
34 organizations, to use all practicable means and measures, including  
35 financial and technical assistance, in a manner calculated to: (a)  
36 Foster and promote the general welfare; (b) ~~((to))~~ create and maintain  
37 conditions under which ~~((man))~~ people and nature can exist in

1 productive harmony; and (c) fulfill the social, economic, and other  
2 requirements of present and future generations of Washington citizens.

3 (2) In order to carry out the policy set forth in this chapter, it  
4 is the continuing responsibility of the state of Washington and all  
5 agencies of the state to use all practicable means, consistent with  
6 other essential considerations of state policy, to improve and  
7 coordinate plans, functions, programs, and resources to the end that  
8 the state and its citizens may:

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

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

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

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

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

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

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

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

27 (3) The legislature recognizes that each person has a fundamental  
28 and inalienable right to a healthful environment and that each person  
29 has a responsibility to contribute to the preservation and enhancement  
30 of the environment.

31 **Sec. 104.** RCW 86.12.200 and 1991 c 322 s 3 are each amended to  
32 read as follows:

33 The county legislative authority of any county may adopt a  
34 comprehensive flood (~~control~~) hazard management plan for any drainage  
35 basin that is located wholly or partially within the county.

36 A comprehensive flood (~~control~~) hazard management plan shall  
37 include the following elements:

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

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

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

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

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

37 A comprehensive flood ~~((control))~~ hazard management plan shall be  
38 subject to the minimum requirements for participation in the national  
39 flood insurance program, requirements exceeding the minimum national

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

9 **Sec. 105.** RCW 86.16.025 and 1989 c 64 s 2 are each amended to read  
10 as follows:

11 With respect to such features as may affect flood conditions, the  
12 department shall have authority to examine, approve or reject designs  
13 and plans for any structure or works, public or private, to be erected  
14 or built or to be reconstructed or modified upon the banks or in or  
15 over the channel or over and across the federal emergency management  
16 agency floodway of any stream or body of water in this state.

17 **Sec. 106.** RCW 86.16.041 and 1989 c 64 s 4 are each amended to read  
18 as follows:

19 (1) Beginning July 26, 1987, every county and incorporated city and  
20 town shall submit to the department of ecology any new flood plain  
21 management ordinance or amendment to any existing flood plain  
22 management ordinance. Such ordinance or amendment shall take effect  
23 thirty days from filing with the department unless the department  
24 disapproves such ordinance or amendment within that time period.

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

28 (a) Restriction of land uses within designated floodways including  
29 the prohibition of construction or reconstruction of residential  
30 structures except for: (i) Repairs, reconstruction, or improvements to  
31 a structure which do not increase the ground floor area; and (ii)  
32 repairs, reconstruction, or improvements to a structure the cost of  
33 which does not exceed fifty percent of the market value of the  
34 structure either, (A) before the repair, reconstruction, or repair is  
35 started, or (B) if the structure has been damaged, and is being  
36 restored, before the damage occurred. Work done on structures to  
37 comply with existing health, sanitary, or safety codes or to structures

1 identified as historic places shall not be included in the fifty  
2 percent determination;

3 (b) The minimum requirements of the national flood insurance  
4 program; and

5 (c) The minimum state requirements adopted pursuant to ((RCW  
6 86.16.031(8))) this chapter that are applicable to the particular  
7 county, city, or town.

8 **Sec. 107.** RCW 86.26.105 and 1986 c 46 s 5 are each amended to read  
9 as follows:

10 ~~((A comprehensive flood control management plan shall determine the  
11 need for flood control work, consider alternatives to in-stream flood  
12 control work, identify and consider potential impacts of in-stream  
13 flood control work on the state's in-stream resources, and identify the  
14 river's meander belt or floodway.))~~ A comprehensive flood ~~((control))~~  
15 hazard management plan shall be completed and adopted ~~((within at least  
16 three years of the certification that it is being prepared, as provided  
17 in RCW 86.26.050))~~ by December 31, 1997.

18 If after this ~~((three-year period))~~ date has elapsed such a  
19 comprehensive flood ~~((control))~~ hazard management plan has not been  
20 completed and adopted, grants for flood ~~((control maintenance))~~ hazard  
21 projects shall not be made to the county or municipal corporations in  
22 the county until a comprehensive flood ~~((control))~~ hazard management  
23 plan is completed and adopted by the appropriate local authority.  
24 These limitations on grants shall not preclude allocations for  
25 emergency purposes made pursuant to RCW 86.26.060.

26 NEW SECTION. **Sec. 108.** A new section is added to chapter 35.13  
27 RCW to read as follows:

28 (1) No city or town may annex territory located within the  
29 designated flood plain unless the city or town establishes zoning and  
30 use requirements for the territory to be annexed that are consistent  
31 with the comprehensive flood hazard management plan of the county of  
32 jurisdiction.

33 (2) As used in this section, "flood plain" means any land area  
34 susceptible to being inundated by water from any inland or tidal waters  
35 creating a general and temporary condition of partial or complete  
36 inundation of normally dry land areas.



1        NEW SECTION.    **Sec. 109.**    A new section is added to chapter 35A.14  
2    RCW to read as follows:

3        (1) No code city may annex territory located within the designated  
4    flood plain unless the city establishes zoning and use requirements for  
5    the territory to be annexed that are consistent with the comprehensive  
6    flood hazard management plan of the county of jurisdiction.

7        (2) As used in this section, "flood plain" means any land area  
8    susceptible to being inundated by water from any inland or tidal waters  
9    creating a general and temporary condition of partial or complete  
10    inundation of normally dry land areas.

11       NEW SECTION.    **Sec. 110.**    A new section is added to chapter 43.17  
12    RCW to read as follows:

13        The heads of state agencies shall provide leadership in encouraging  
14    a broad and unified effort to prevent uneconomic uses and development  
15    of Washington flood plains and in particular, to promote the public  
16    health, safety, and welfare and to reduce the risk of flood losses in  
17    connection with Washington lands and installations and state-financed  
18    or state-supported improvements.

19        When planning the location for new facilities, state agencies  
20    directly responsible for the construction of state buildings,  
21    structures, highways, roads, recreational facilities, or other  
22    facilities shall evaluate flood hazards and as far as practicable shall  
23    preclude the uneconomic, hazardous, or unnecessary use of flood plains  
24    in connection with such facilities.

25        Whenever practical and economically feasible, floodproofing  
26    measures shall be applied to existing facilities to reduce flood damage  
27    potential.

28        State agencies responsible for the review or approval of sewage  
29    treatment plants, water treatment plants, interceptor sewers,  
30    subdivisions, trailer parks, and other facilities within the state  
31    shall evaluate flood hazards in writing in connection with such review  
32    and approval of facilities. These state agencies shall take measures  
33    to minimize the exposure to potential flood damage to facilities and  
34    development that the facilities may induce, and the need for future  
35    state expenditures for flood protection and flood disaster relief.

36        State agencies responsible for programs that entail land use  
37    planning shall take flood hazards into account when evaluating  
38    applications for planning grants and when reviewing water and

1 wastewater facility plans, area-wide wastewater management plans, and  
2 comprehensive land-use plans.

3 Requests for appropriations for state construction of new  
4 buildings, structures, roads, or other facilities by state agencies  
5 shall be accompanied by a statement on the findings of the agency's  
6 evaluation and consideration of flood hazards in development of such  
7 requests.

8 NEW SECTION. **Sec. 111.** A new section is added to chapter 86.26  
9 RCW to read as follows:

10 A flood protection project is work necessary to preserve, restore,  
11 or improve either natural or human-made stream banks or flood control  
12 facilities which repair or prevent flood damage as defined in RCW  
13 86.16.120 including but not limited to damage by erosion, stream flow,  
14 sheet runoff, or other damages by the sea or other bodies of water.

15 NEW SECTION. **Sec. 112.** The department of ecology shall create a  
16 watershed management task force. The task force may consist of local  
17 governments, Indian tribes, the appropriate state and federal agencies,  
18 and interested parties. The purpose of the task force is to design a  
19 framework that allows water resources to be managed on a watershed  
20 basis. The task force shall:

21 (1) Identify watershed basin planning areas or establish a  
22 mechanism for local governments to establish the areas;

23 (2) Establish a methodology to assess the needs and priorities of  
24 watershed planning areas;

25 (3) Identify a planning framework that coordinates and consolidates  
26 current planning requirements for water resources into a single plan.  
27 The planning framework must include, but no be limited to, water  
28 resource planning requirements of chapters 36.70A, 70.116, 86.12,  
29 86.13, 90.44, 90.48, 90.58, and 90.70 RCW;

30 (4) Identify a permitting framework that coordinates and, to the  
31 extent possible, consolidates the permitting requirements under  
32 chapters 36.70A, 70.116, 76.09, 75.20, 86.12, 86.13, 90.44, 90.48,  
33 90.58, and 90.70 RCW; and

34 (5) Coordinate with planning efforts required under chapter 90.54  
35 RCW.

1 On or before December 1, 1993, the task force shall submit a report  
2 of its findings to the appropriate standing committees of the  
3 legislature. The task force shall expire on June 30, 1994.

4 NEW SECTION. **Sec. 113.** The department of transportation shall  
5 assess all areas in the state in which road or bridge construction has  
6 impacted the flood plain and the normal flow of flood waters. The  
7 department shall report its findings and a plan for corrective action  
8 to the legislature by December 31, 1993. The plan for corrective  
9 action shall, to the greatest extent practicable, emphasize planned  
10 renovation or reconstruction efforts for the roads and bridges outlined  
11 in the assessment.

12 NEW SECTION. **Sec. 114.** RCW 79.90.325 and 1984 c 212 s 10 are each  
13 repealed.

14 **PART II**  
15 **PERMITTING**

16 NEW SECTION. **Sec. 201.** A new section is added to chapter 43.17  
17 RCW to read as follows:

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

22 NEW SECTION. **Sec. 202.** A new section is added to chapter 75.20  
23 RCW to read as follows:

24 Unless the context clearly requires otherwise, the definitions in  
25 this section apply to RCW 75.20.100, 75.20.103, and 75.20.130.

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

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

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

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

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

13 NEW SECTION. **Sec. 203.** A new section is added to chapter 75.20  
14 RCW to read as follows:

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

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

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

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

25 (4) The permittee shall keep the maximum distance of excavation  
26 toward the bank from the excavation line approximately equal throughout  
27 the excavation zone. "Excavation zone" means the area between the  
28 excavation line and the bank.

29 (5) The permittee shall identify the excavation zone with boundary  
30 markers.

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

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

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

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

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

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

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

12 NEW SECTION. **Sec. 204.** A new section is added to chapter 75.20  
13 RCW to read as follows:

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

25 **Sec. 205.** RCW 75.20.100 and 1991 c 322 s 30 are each amended to  
26 read as follows:

27 (1) In the event that any person or government agency desires to  
28 construct any form of hydraulic project or perform other work that will  
29 use, divert, obstruct, or change the natural flow or bed of any of the  
30 salt or fresh waters of the state, such person or government agency  
31 shall, before commencing construction or work thereon and to ensure the  
32 proper protection of fish life, secure the written approval of the  
33 department of fisheries or the department of wildlife as to the  
34 adequacy of the means proposed for the protection of fish life. This  
35 approval shall not be unreasonably withheld. Except as provided in RCW  
36 75.20.1001 and 75.20.1002, the department of fisheries or the  
37 department of wildlife shall grant or deny approval within forty-five

1 calendar days of the receipt of a complete application and notice of  
2 compliance with any applicable requirements of the state environmental  
3 policy act, made in the manner prescribed in this section. The  
4 applicant may document receipt of application by filing in person or by  
5 registered mail. A complete application for approval shall contain  
6 general plans for the overall project, complete plans and  
7 specifications of the proposed construction or work within the mean  
8 higher high water line in salt water or within the ordinary high water  
9 line in fresh water, and complete plans and specifications for the  
10 proper protection of fish life. The forty-five day requirement shall  
11 be suspended if ~~((+1))~~ (a) after ten working days of receipt of the  
12 application, the applicant remains unavailable or unable to arrange for  
13 a timely field evaluation of the proposed project; ~~((+2))~~ (b) the site  
14 is physically inaccessible for inspection; or ~~((+3))~~ (c) the applicant  
15 requests delay. Immediately upon determination that the forty-five day  
16 period is suspended, the department of fisheries or the department of  
17 wildlife shall notify the applicant in writing of the reasons for the  
18 delay. Approval is valid for a period of up to five years from date of  
19 issuance. The permittee must demonstrate substantial progress on  
20 construction of that portion of the project relating to the approval  
21 within two years of the date of issuance. If either the department of  
22 fisheries or the department of wildlife denies approval, that  
23 department shall provide the applicant, in writing, a statement of the  
24 specific reasons why and how the proposed project would adversely  
25 affect fish life. Protection of fish life shall be the only ground  
26 upon which approval may be denied or conditioned.

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

30 (a) Improves fish life or habitat over the long term to compensate  
31 for any potential short-term losses; or

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

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

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

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

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

27       (4) For each application, the department of fisheries and the  
28 department of wildlife shall mutually agree on whether the department  
29 of fisheries or the department of wildlife shall administer the  
30 provisions of this section, in order to avoid duplication of effort.  
31 The department designated to act shall cooperate with the other  
32 department in order to protect all species of fish life found at the  
33 project site. If the department of fisheries or the department of  
34 wildlife receives an application concerning a site not in its  
35 jurisdiction, it shall transmit the application to the other department  
36 within three days and notify the applicant.

37       (5) In case of an emergency arising from weather or stream flow  
38 conditions or other natural conditions, upon request the department of  
39 fisheries or department of wildlife, through their authorized

1 representatives, shall ~~((issue))~~ grant immediately ~~((upon request))~~,  
2 oral approval for removing any obstructions, repairing existing  
3 structures, restoring stream banks, or ~~((to protect))~~ protecting  
4 property threatened by the stream or a change in the stream flow  
5 without ~~((the necessity of obtaining))~~ requiring a written approval  
6 prior to commencing work. Conditions of an oral approval shall be  
7 reduced to writing within thirty days and complied with as provided for  
8 in this section. ~~((Oral approval shall be granted immediately upon  
9 request, for a stream crossing during an emergency situation.))~~

10 (6) This section shall not apply to a project involving the repair  
11 of an existing flood hazard reduction facility if the project is  
12 determined by the county to be:

13 (a) Consistent with a currently approved comprehensive flood hazard  
14 management plan; and

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

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

24 **Sec. 206.** RCW 75.20.103 and 1991 c 322 s 31 are each amended to  
25 read as follows:

26 (1) In the event that any person or government agency desires to  
27 construct any form of hydraulic project or other work that diverts  
28 water for agricultural irrigation or stock watering purposes, or when  
29 such hydraulic project or other work is associated with streambank  
30 stabilization or flood damage reduction to protect farm and  
31 agricultural land as defined in RCW 84.34.020, and when such  
32 ~~((diversion or streambank stabilization))~~ hydraulic project will use,  
33 divert, obstruct, or change the natural flow or bed of any river or  
34 stream or will utilize any waters of the state or materials from the  
35 stream beds, the person or government agency shall, before commencing  
36 construction or work thereon and to ensure the proper protection of  
37 fish life, secure a written approval from the department of fisheries  
38 or the department of wildlife as to the adequacy of the means proposed



1 for the protection of fish life. This approval shall not be  
2 unreasonably withheld. Except as provided in RCW 75.20.1001 and  
3 75.20.1002, the department of fisheries or the department of wildlife  
4 shall grant or deny the approval within forty-five calendar days of the  
5 receipt of a complete application (~~((and notice of compliance with any  
6 applicable requirements of the state environmental policy act,))~~) made  
7 in the manner prescribed in this section. The applicant may document  
8 receipt of application by filing in person or by registered mail.

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

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

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

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

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

22 (~~((2))~~) (b) The site is physically inaccessible for inspection;  
23 (~~((or (3))~~)

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

27 (d) The applicant requests delay.

28 (4) Immediately upon determination that the forty-five day period  
29 is suspended, the department of fisheries or the department of wildlife  
30 shall notify the applicant in writing of the reasons for the delay.

31 (5) In making a decision as to whether fish life is protected, the  
32 department of fisheries or the department of wildlife shall determine  
33 if a project as proposed or modified:

34 (a) Improves fish life or habitat over the long term to compensate  
35 for any potential short-term losses; or

36 (b)(i) Protects a residential, commercial, or industrial facility  
37 or structure that the department determines is likely to incur  
38 significant flood damage during the next flood season if the project is  
39 not completed; and (ii) lessens the loss of fish life or habitat as

1 compared to a project resulting from an emergency request under this  
2 section.

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

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

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

28 (8) The department granting approval may, after consultation with  
29 the permittee, modify an approval due to changed conditions. The  
30 modifications shall become effective unless appealed to the hydraulic  
31 appeals board within thirty days from the notice of the proposed  
32 modification. The burden is on the department issuing the approval to  
33 show that changed conditions warrant the modification in order to  
34 protect fish life.

35 (9) A permittee may request modification of an approval due to  
36 changed conditions. The request shall be processed within forty-five  
37 calendar days of receipt of the written request. A decision by the  
38 department that issued the approval may be appealed to the hydraulic  
39 appeals board within thirty days of the notice of the decision. The

1 burden is on the permittee to show that changed conditions warrant the  
2 requested modification and that such modification will not impair fish  
3 life.

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

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

26 (12) In case of an emergency arising from weather or stream flow  
27 conditions or other natural conditions, the department of fisheries or  
28 department of wildlife, through their authorized representatives, shall  
29 issue immediately upon request oral approval for removing any  
30 obstructions, repairing existing structures, restoring stream banks, or  
31 to protect property threatened by the stream or a change in the stream  
32 flow without the necessity of obtaining a written approval prior to  
33 commencing work. Conditions of an oral approval shall be reduced to  
34 writing within thirty days and complied with as provided for in this  
35 section. Oral approval shall be granted immediately upon request, for  
36 a stream crossing during an emergency.

37 ~~((For purposes of this chapter, "streambank stabilization" shall~~  
38 ~~include but not be limited to log and debris removal, bank protection~~

1 (~~including riprap, jetties, and groins~~), ~~gravel removal and erosion~~  
2 ~~control.~~)

3 (13) This section shall not apply to a project involving the repair  
4 of an existing flood hazard facility if the project is determined by  
5 the county to be:

6 (a) Consistent with a previously approved comprehensive flood  
7 hazard management plan; and

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

9 **Sec. 207.** RCW 75.20.130 and 1989 c 175 s 160 are each amended to  
10 read as follows:

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

14 (2) The hydraulic appeals board shall consist of three members:  
15 The director of the department of ecology or the director's designee,  
16 the director of the department of agriculture or the director's  
17 designee, and the director or the director's designee of the department  
18 whose action is appealed under subsection (6) of this section. A  
19 decision must be agreed to by at least two members of the board to be  
20 final.

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

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

28 (5) The board has exclusive jurisdiction to hear appeals arising  
29 from the approval, denial, conditioning, or modification of a hydraulic  
30 approval issued by either the department of fisheries or the department  
31 of wildlife under the authority granted in RCW 75.20.103 for the  
32 diversion of water for agricultural irrigation or stock watering  
33 purposes or when associated with streambank stabilization to protect  
34 farm and agricultural land as defined in RCW 84.34.020.

35 (6)(a) Any person aggrieved by the approval, denial, conditioning,  
36 or modification of a hydraulic approval pursuant to RCW 75.20.103 may  
37 seek review from the board by filing a request for the same within

1 thirty days of notice of the approval, denial, conditioning, or  
2 modification of such approval.

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

6 (c) If a review proceeding authorized in (a) of this subsection  
7 finds for the aggrieved permit applicant, the applicant may be awarded  
8 any legal and engineering costs involved in challenging the permit  
9 decision.

10 NEW SECTION. Sec. 208. A new section is added to chapter 79.90  
11 RCW to read as follows:

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

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

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

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

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

23 (d) Recognize natural plant and animal communities and other  
24 features that provide an ecological balance to a streamway in  
25 evaluating competing human uses and require protection from significant  
26 human impact; and

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

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

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

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

6 (6) No person may remove sand and gravel below the wetted perimeter  
7 of navigable rivers unless authorized by a hydraulics permit issued by  
8 either the department of fisheries or department of wildlife under RCW  
9 75.20.100 and 75.20.103. These removals may be authorized for  
10 maintenance and improvement of navigational channels or for creating  
11 backwater channels for fish rearing or improvement of the flow capacity  
12 of the channels.

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

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

18 (b) The removal provides recreational benefits;

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

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

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

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

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

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

31 (c) Removal will impact esthetics of nearby recreational  
32 facilities.

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

35 (10) The department shall condition sand and gravel removal leases  
36 to allow removal of only that amount which is naturally replenished on  
37 an annual basis, except in instances where a lapse in material removal  
38 has occurred. If such a lapse has occurred, then an amount of material  
39 equivalent to the amount estimated to have accumulated since the last

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

3 **Sec. 209.** RCW 79.90.300 and 1991 c 322 s 26 are each amended to  
4 read as follows:

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

21 (2) The department shall actively seek to encourage through permit  
22 requirements and adjusted fees the removal of accumulated materials  
23 from rivers and streams where there is a flood damage reduction  
24 benefit. The department shall develop policies to accomplish this  
25 goal.

26 **NEW SECTION. Sec. 210.** A new section is added to chapter 86.26  
27 RCW to read as follows:

28 The department of community development shall designate a lead  
29 agency for the state's flood plan.

30 **Sec. 211.** RCW 90.58.030 and 1987 c 474 s 1 are each amended to  
31 read as follows:

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

34 (1) Administration:

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

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

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

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

8 (e) "Hearing board" means the shoreline hearings board established  
9 by this chapter.

10 (2) Geographical:

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

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

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

27 (d) "Shorelines" means all of the water areas of the state,  
28 including reservoirs, and their associated wetlands, together with the  
29 lands underlying them; except (i) shorelines of state-wide  
30 significance; (ii) shorelines on segments of streams upstream of a  
31 point where the mean annual flow is twenty cubic feet per second or  
32 less and the wetlands associated with such upstream segments; and (iii)  
33 shorelines on lakes less than twenty acres in size and wetlands  
34 associated with such small lakes;

35 (e) "Shorelines of state-wide significance" means the following  
36 shorelines of the state:

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



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

- 4 (A) Nisqually Delta--from DeWolf Bight to Tatsolo Point,
- 5 (B) Birch Bay--from Point Whitehorn to Birch Point,
- 6 (C) Hood Canal--from Tala Point to Foulweather Bluff,
- 7 (D) Skagit Bay and adjacent area--from Brown Point to Yokeko Point,
- 8 and
- 9 (E) Padilla Bay--from March Point to William Point;

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

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

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

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

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

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

27 (f) "Wetlands" or "wetland areas" means those lands extending  
28 landward for two hundred feet in all directions as measured on a  
29 horizontal plane from the ordinary high water mark; floodways and  
30 contiguous floodplain areas landward two hundred feet from such  
31 floodways; and all marshes, bogs, swamps, and river deltas associated  
32 with the streams, lakes, and tidal waters which are subject to the  
33 provisions of this chapter; the same to be designated as to location by  
34 the department of ecology(~~(: PROVIDED, That)~~). However, any county or  
35 city may determine that portion of a one-hundred-year-flood plain to be  
36 included in its master program as long as such portion includes, as a  
37 minimum, the floodway and the adjacent land extending landward two  
38 hundred feet (~~(therefrom)~~);

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

11 (3) Procedural terms:

12 (a) "Guidelines" means those standards adopted to implement the  
13 policy of this chapter for regulation of use of the shorelines of the  
14 state prior to adoption of master programs. Such standards shall also  
15 provide criteria to local governments and the department in developing  
16 master programs;

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

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

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

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

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

1       (ii) Reconstruction or improvements to dikes and levees if the  
2 reconstruction or improvement is determined by a county to be  
3 consistent with a flood hazard management plan developed under chapter  
4 86.26 RCW;

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

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

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

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

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

32       (~~(vii)~~) (viii) Construction of a dock, including a community  
33 dock, designed for pleasure craft only, for the private noncommercial  
34 use of the owner, lessee, or contract purchaser of single and multiple  
35 family residences, the cost of which does not exceed two thousand five  
36 hundred dollars;

37       (~~(viii)~~) (ix) Operation, maintenance, or construction of canals,  
38 waterways, drains, reservoirs, or other facilities that now exist or  
39 are hereafter created or developed as a part of an irrigation system

1 for the primary purpose of making use of system waters, including  
2 return flow and artificially stored ground water for the irrigation of  
3 lands;

4 (~~(i)~~) (x) The marking of property lines or corners on state  
5 owned lands, when such marking does not significantly interfere with  
6 normal public use of the surface of the water;

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

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

19 **Sec. 212.** RCW 90.58.180 and 1989 c 175 s 183 are each amended to  
20 read as follows:

21 (1) Any person aggrieved by the granting, denying, or rescinding of  
22 a permit on shorelines of the state pursuant to RCW 90.58.140 may seek  
23 review from the shorelines hearings board by filing a request for the  
24 same within thirty days of the date of filing as defined in RCW  
25 90.58.140(6).

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

1 insure that the provisions of this chapter are complied with at any  
2 time within fifteen days from the date of the receipt by the department  
3 or the attorney general of a copy of the request for review filed  
4 pursuant to this section. The shorelines hearings board shall  
5 initially schedule review proceedings on such requests for review  
6 without regard as to whether such requests have or have not been  
7 certified or as to whether the period for the department or the  
8 attorney general to intervene has or has not expired, unless such  
9 review is to begin within thirty days of such scheduling. If at the  
10 end of the thirty day period for certification neither the department  
11 nor the attorney general has certified a request for review, the  
12 hearings board shall remove the request from its review schedule.

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

19 (3) The review proceedings authorized in subsections (1) and (2) of  
20 this section are subject to the provisions of chapter 34.05 RCW  
21 pertaining to procedures in adjudicative proceedings. Judicial review  
22 of such proceedings of the shorelines hearings board may be had as  
23 provided in chapter 34.05 RCW.

24 (4) If the review proceedings authorized in subsection (1) of this  
25 section find for the requestor, the requestor may be awarded any legal  
26 and engineering costs involved in challenging the permit decision.

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

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

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

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

36 (c) Is arbitrary and capricious; or

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

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

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

10 ~~((+5))~~ (6) Rules, regulations, and guidelines shall be subject to  
11 review in superior court, if authorized pursuant to RCW ~~((34.05.538))~~  
12 34.05.570(2): PROVIDED, That no review shall be granted by a superior  
13 court on petition from a local government unless the local government  
14 shall first have obtained review under subsection ~~((+4))~~ (5) of this  
15 section is filed within three months after the date of final decision  
16 by the shorelines hearings board.

17 **PART III**

18 **FUNDING**

19 **Sec. 301.** RCW 47.28.140 and 1991 c 322 s 29 are each amended to  
20 read as follows:

21 When in the opinion of the governing authorities representing the  
22 department and any agency, instrumentality, municipal corporation, or  
23 political subdivision of the state of Washington, any highway, road, or  
24 street will be benefited or improved by constructing, reconstructing,  
25 locating, relocating, laying out, repairing, surveying, altering,  
26 improving, or maintaining, or by the establishment adjacent to, under,  
27 upon, within, or above any portion of any such highway, road, or street  
28 of an urban public transportation system, by either the department or  
29 any agency, instrumentality, municipal corporation, or political  
30 subdivision of the state, and it is in the public interest to do so,  
31 the authorities may enter into cooperative agreements wherein either  
32 agrees to perform the work and furnish the materials necessary and pay  
33 the cost thereof, including necessary engineering assistance, which  
34 costs and expenses shall be reimbursed by the party whose  
35 responsibility it was to do or perform the work or improvement in the  
36 first instance. The work may be done by either day labor or contract,  
37 and the cooperative agreement between the parties shall provide for the

1 method of reimbursement. In the case of some special benefit or  
2 improvement to a state highway derived from (~~any project that assists~~  
3 ~~in preventing or minimizing flood damages as defined in RCW 86.16.120~~  
4 ~~or from~~) the construction of any public works project, including any  
5 urban public transportation system, the department may contribute to  
6 the cost thereof by making direct payment to the particular state  
7 department, agency, instrumentality, municipal corporation, or  
8 political subdivision on the basis of benefits received, but such  
9 payment shall be made only after a cooperative agreement has been  
10 entered into for a specified amount or on an actual cost basis prior to  
11 the commencement of the particular public works project.

12 In the case of a special benefit or improvement to a state highway  
13 derived from a project that assists in preventing or reducing flood  
14 damages as defined in RCW 86.16.120, the department shall contribute to  
15 the cost of the benefit or improvement by making direct payment to the  
16 particular state department, agency, instrumentality, municipal  
17 corporation, or political subdivision on the basis of contribution to  
18 the problem or benefits received. The department may make payment only  
19 after an agreement has been entered into between the department and the  
20 appropriate state or local government entity. The department may not  
21 make the contribution less than ten percent of the total project cost.

22 **Sec. 302.** RCW 86.26.080 and 1984 c 212 s 6 are each amended to  
23 read as follows:

24 Any municipal corporation intending to seek state participating  
25 funds shall, within thirty days after final adoption of its annual  
26 budget for flood control purposes, report the amount thereof, to the  
27 engineer of the county within whose boundaries the municipal  
28 corporation lies. The county engineer shall submit such reports,  
29 together with reports from the county itself, to the department of  
30 ecology. On the basis of all such budget reports received, the  
31 department may thereupon prepare a tentative and preliminary plan for  
32 the orderly and most beneficial allocation of funds from the flood  
33 (~~control~~) hazard reduction assistance account for the ensuing  
34 calendar year. Soil conservation districts shall be exempted from the  
35 provisions of this section.

36 **Sec. 303.** RCW 86.26.090 and 1991 c 322 s 7 are each amended to  
37 read as follows:

1 The state shall participate with eligible local authorities in  
2 maintaining and restoring the normal and reasonably stable river and  
3 stream channel alignment and the normal and reasonably stable river and  
4 stream channel capacity for carrying off flood waters with a minimum of  
5 damage from bank erosion or overflow of adjacent lands and property;  
6 and in restoring, maintaining and repairing natural conditions, works  
7 and structures for the maintenance of such conditions. State  
8 participation in the repair of flood control facilities may include the  
9 enhancement of such facilities. The state shall likewise participate  
10 in the restoration and maintenance of natural conditions, works or  
11 structures for the protection of lands and other property from  
12 inundation or other damage by the sea or other bodies of water. Funds  
13 from the flood ((~~control~~)) hazard reduction assistance account shall  
14 not be available for maintenance of works or structures maintained  
15 solely for the detention or storage of flood waters.

16 **Sec. 304.** RCW 86.26.007 and 1991 sp.s. c 13 s 24 are each amended  
17 to read as follows:

18 The flood ((~~control~~)) hazard reduction assistance account is hereby  
19 established in the state treasury. At the beginning of each biennium  
20 the state treasurer shall transfer ten million dollars from the general  
21 fund to the flood ((~~control~~)) hazard reduction assistance account ((~~an~~  
22 ~~amount of money which, when combined with money remaining in the~~  
23 ~~account from the previous biennium, will equal four million dollars~~)).  
24 Moneys in the flood ((~~control~~)) hazard reduction assistance account may  
25 be spent only after appropriation for purposes specified under this  
26 chapter.

27 **Sec. 305.** RCW 86.15.030 and 1969 ex.s. c 195 s 2 are each amended  
28 to read as follows:

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



1 At the hearing scheduled upon the resolution, the board shall  
2 permit all interested parties to be heard. Thereafter, the board may  
3 reject the resolution or it may modify the boundaries of such zone and  
4 make such other corrections or additions to the resolutions as they  
5 deem necessary to the accomplishment of the purpose of this chapter:  
6 PROVIDED, That if the boundaries of such zone are enlarged, the board  
7 shall hold an additional hearing following publication and notice of  
8 such new boundaries: PROVIDED FURTHER, That the boundaries of any zone  
9 shall generally follow the boundaries of the watershed area affected:  
10 PROVIDED FURTHER, That the immediately preceding proviso shall in no  
11 way limit or be construed to prohibit the formation of a county-wide  
12 flood control zone district authorized to be created by RCW 86.15.025.  
13 Within (~~ten~~) thirty days after final hearing on a resolution, the  
14 board shall issue its (~~order~~) ordinance creating the flood control  
15 zone district.

16 **Sec. 306.** RCW 86.15.050 and 1961 c 153 s 5 are each amended to  
17 read as follows:

18 The board (~~(of county commissioners of each county)~~) shall be ex  
19 officio, by virtue of their office, supervisors of the zones created in  
20 each county. The supervisors of the district shall conduct the  
21 business of the flood control zone district according to the regular  
22 rules and procedures that it adopts.

23 **Sec. 307.** RCW 86.15.160 and 1986 c 278 s 60 are each amended to  
24 read as follows:

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

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

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

32 (3) Within any zone or participating zones an annual ad valorem  
33 property tax levy of not to exceed fifty cents per thousand dollars of  
34 assessed value when the levy will not take dollar rates that other  
35 taxing districts may lawfully claim and that will not cause the  
36 combined levies to exceed the constitutional and/or statutory  
37 limitations, and the additional levy, or any portion thereof, may also

1 be made when dollar rates of other taxing units is released therefor by  
2 agreement with the other taxing units from their authorized levies  
3 under chapter 39.67 RCW;

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

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

20 **PART IV**

21 **FLOOD HAZARD INFORMATION**

22 **Sec. 401.** RCW 58.19.055 and 1992 c 191 s 5 are each amended to  
23 read as follows:

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

26 (a) The name, and the address or approximate location, of the  
27 development;

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

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

31 (d) The relationship of the management company to the developer, if  
32 any;

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

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

36 (g) The number of existing lots, parcels, units, or interests in  
37 the development and either the maximum number that may be added to the

1 development or the fact that such maximum number has not yet been  
2 determined;

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

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

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

12 (k) The status of construction of improvements in the development,  
13 including either the estimated dates of completion if not completed or  
14 the fact that such estimated completion dates have not yet been  
15 determined; and the estimated costs, if any, to be paid by the  
16 purchaser;

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

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

21 (n) The estimated current amount and purpose of any fees not  
22 included in any owners' association assessments and charged by the  
23 developer or any owners' association for the use of any of the  
24 development or improvements thereto;

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

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

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

32 (r) A list of any physical hazards known to the developer which  
33 particularly affect the development or the immediate vicinity in which  
34 the development is located and which are not readily ascertainable by  
35 the purchaser;

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

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

1 (u) A statement of any unsatisfied judgments or pending suits  
2 against any owners' association involved in the development and a  
3 statement of the status of any pending suits material to the  
4 development of which the developer has actual knowledge;

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

8 (w) A list of the documents which the prospective purchaser is  
9 entitled to receive from the developer before the rescission period  
10 commences;

11 (x) A notice which states:

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

16 (y) A notice which states:

17 "This public offering statement is only a summary of some of the  
18 significant aspects of purchasing an interest in this development and  
19 any documents which may govern or affect the development may be  
20 complex, may contain other important information, and create binding  
21 legal obligations. You should consider seeking assistance of legal  
22 counsel"; and

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

27 (2) The public offering statement shall include copies of each of  
28 the following documents: Any declaration of covenants, conditions,  
29 restrictions, and reservations affecting the development; any survey,  
30 plat, or subdivision map; the articles of incorporation of any owners'  
31 association; the bylaws of any owners' association; the rules and  
32 regulations, if any, of any owners' association; current or proposed  
33 budget for any owners' association; and the balance sheet of any  
34 owners' association current within ninety days if assessments have been  
35 collected for ninety days or more.

36 If any of the foregoing documents listed in this subsection are not  
37 available because they have not yet been executed, adopted, or

1 recorded, drafts of such documents shall be provided with the public  
2 offering statement, and, before closing the sale of an interest in the  
3 development, the purchaser shall be given copies of any material  
4 changes between the draft of the proposed documents and the final  
5 documents.

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

10 (4) The disclosures required by subsection (1)(r) of this section  
11 shall be listed on a separate page from the other disclosures required  
12 by this section and shall be printed or typed in ten-point bold face  
13 type. If the development or any portion of the development described  
14 in the public offering statement is located within the area mapped as  
15 the one hundred year flood plain as shown on flood insurance rate maps  
16 provided by the federal emergency management agency for the national  
17 flood insurance program, this shall be listed as a physical hazard  
18 under subsection (1)(r) of this section. For properties located within  
19 the flood plain as described in this subsection, notice of the  
20 availability of federal flood insurance and a contact address and phone  
21 number shall be listed with the defects under subsection (1)(r) of this  
22 section.

23 **Sec. 402.** RCW 86.16.031 and 1989 c 64 s 3 are each amended to read  
24 as follows:

25 The department of ecology shall:

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

28 (2) When requested, provide guidance and assistance to local  
29 governments in development and amendment of their flood plain  
30 management ordinances;

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

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

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

1 (6) Establish state ((minimum)) requirements that ((equal minimum))  
2 include federal requirements for the national flood insurance program;  
3 (7) Assist counties, cities, and towns in identifying the location  
4 of the one hundred year flood plain, and petitioning the federal  
5 government to alter its designations of where the one hundred year  
6 flood plain is located if the federally recognized location of the one  
7 hundred year flood plain is found to be inaccurate; and  
8 (8) ~~((Establish minimum state requirements for specific flood  
9 plains that exceed the minimum federal requirements for the national  
10 flood insurance program, but only if:~~  
11 ~~(a) The location of the one hundred year flood plain has been  
12 reexamined and is certified by the department as being accurate;~~  
13 ~~(b) negotiations have been held with the affected county, city, or  
14 town over these regulations;~~  
15 ~~(c) public input from the affected community has been obtained; and  
16 (d) the department makes a finding that these increased  
17 requirements are necessary due to local circumstances and general  
18 public safety))~~ File copies of the flood insurance rate maps, provided  
19 by the federal emergency management authority for the national flood  
20 insurance program, with the county auditor in each county in which  
21 property shown on the maps is located. The department shall, on an  
22 annual basis, file revised maps with each county auditor in counties  
23 for which the maps are revised.

24 **PART V**  
25 **MISCELLANEOUS**

26 NEW SECTION. **Sec. 501.** Part headings as used in this act  
27 constitute no part of the law.

28 NEW SECTION. **Sec. 502.** Sections 102 through 501 of this act are  
29 necessary for the immediate preservation of the public peace, health,  
30 or safety, or support of the state government and its existing public  
31 institutions, and shall take effect immediately.

--- END ---