
SENATE BILL 5928

State of Washington 53rd Legislature 1993 Regular Session

By Senators Anderson and M. Rasmussen

Read first time 02/26/93. Referred to Committee on Natural Resources.

1 AN ACT Relating to protection of agricultural lands from flood
2 damage; amending RCW 36.70A.060, 36.70A.070, 36.70A.170, 75.20.100,
3 75.20.103, 75.20.130, 79.90.150, 79.90.300, 86.15.030, 86.15.050,
4 86.15.160, 86.26.105, and 90.58.180; adding new sections to chapter
5 75.20 RCW; adding a new section to chapter 79.90 RCW; creating a new
6 section; repealing RCW 79.90.325; and declaring an emergency.

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

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

16 **Sec. 2.** RCW 36.70A.060 and 1991 sp.s. c 32 s 21 are each amended
17 to read as follows:

1 (1) Each county that is required or chooses to plan under RCW
2 36.70A.040, and each city within such county, shall adopt development
3 regulations on or before September 1, 1991, to assure the conservation
4 of agricultural, forest, and mineral resource lands designated under
5 RCW 36.70A.170. Regulations adopted under this subsection may not
6 prohibit uses legally existing on any parcel prior to their adoption
7 and shall remain in effect until the county or city adopts development
8 regulations pursuant to RCW 36.70A.120. Such regulations shall assure
9 that the use of lands adjacent to agricultural, forest, or mineral
10 resource lands shall not interfere with the continued use, in the
11 accustomed manner and in accordance with best management practices, of
12 these designated lands for the production of food, agricultural
13 products, or timber, or for the extraction of minerals. Counties and
14 cities shall require that all plats, short plats, development permits,
15 and building permits issued for development activities on, or within
16 three hundred feet of, lands designated as agricultural lands, forest
17 lands, or mineral resource lands, contain a notice that the subject
18 property is within or near designated agricultural lands, forest lands,
19 or mineral resource lands on which a variety of commercial activities
20 may occur that are not compatible with residential development for
21 certain periods of limited duration.

22 (2) Each county and city shall adopt development regulations that
23 protect critical areas that are required to be designated under RCW
24 36.70A.170. For counties and cities that are required or choose to
25 plan under RCW 36.70A.040, such development regulations shall be
26 adopted on or before September 1, 1991. For the remainder of the
27 counties and cities, such development regulations shall be adopted on
28 or before March 1, 1992.

29 (3) Such counties and cities shall review these designations and
30 development regulations when adopting their comprehensive plans under
31 RCW 36.70A.040 and implementing development regulations under RCW
32 36.70A.120 and may alter such designations and development regulations
33 to insure consistency.

34 (4) Forest land and agricultural land located within urban growth
35 areas shall not be designated by a county or city as forest land or
36 agricultural land of long-term commercial significance under RCW
37 36.70A.170 unless the city or county has enacted a program authorizing
38 transfer or purchase of development rights.

1 (5) All development regulations developed under this section shall
2 be consistent with the flood plain management plan adopted by the
3 county under RCW 86.26.105.

4 **Sec. 3.** RCW 36.70A.070 and 1990 1st ex.s. c 17 s 7 are each
5 amended to read as follows:

6 The comprehensive plan of a county or city that is required or
7 chooses to plan under RCW 36.70A.040 shall consist of a map or maps,
8 and descriptive text covering objectives, principles, and standards
9 used to develop the comprehensive plan. The plan shall be an
10 internally consistent document and all elements shall be consistent
11 with the future land use map, and the comprehensive flood plain
12 management plan adopted by the county under RCW 86.26.105. A
13 comprehensive plan shall be adopted and amended with public
14 participation as provided in RCW 36.70A.140.

15 Each comprehensive plan shall include a plan, scheme, or design for
16 each of the following:

17 (1) A land use element designating the proposed general
18 distribution and general location and extent of the uses of land, where
19 appropriate, for agriculture, timber production, housing, commerce,
20 industry, recreation, open spaces, public utilities, public facilities,
21 and other land uses. The land use element shall include population
22 densities, building intensities, and estimates of future population
23 growth. The land use element shall provide for protection of the
24 quality and quantity of ground water used for public water supplies.
25 Where applicable, the land use element shall review drainage, flooding,
26 and storm water run-off in the area and nearby jurisdictions and
27 provide guidance for corrective actions to mitigate or cleanse those
28 discharges that pollute waters of the state, including Puget Sound or
29 waters entering Puget Sound.

30 (2) A housing element recognizing the vitality and character of
31 established residential neighborhoods that: (a) Includes an inventory
32 and analysis of existing and projected housing needs; (b) includes a
33 statement of goals, policies, and objectives for the preservation,
34 improvement, and development of housing; (c) identifies sufficient land
35 for housing, including, but not limited to, government-assisted
36 housing, housing for low-income families, manufactured housing,
37 multifamily housing, and group homes and foster care facilities; and

1 (d) makes adequate provisions for existing and projected needs of all
2 economic segments of the community.

3 (3) A capital facilities plan element consisting of: (a) An
4 inventory of existing capital facilities owned by public entities,
5 showing the locations and capacities of the capital facilities; (b) a
6 forecast of the future needs for such capital facilities; (c) the
7 proposed locations and capacities of expanded or new capital
8 facilities; (d) at least a six-year plan that will finance such capital
9 facilities within projected funding capacities and clearly identifies
10 sources of public money for such purposes; and (e) a requirement to
11 reassess the land use element if probable funding falls short of
12 meeting existing needs and to ensure that the land use element, capital
13 facilities plan element, and financing plan within the capital
14 facilities plan element are coordinated and consistent.

15 (4) A utilities element consisting of the general location,
16 proposed location, and capacity of all existing and proposed utilities,
17 including, but not limited to, electrical lines, telecommunication
18 lines, and natural gas lines.

19 (5) Counties shall include a rural element including lands that are
20 not designated for urban growth, agriculture, forest, or mineral
21 resources. The rural element shall permit land uses that are
22 compatible with the rural character of such lands and provide for a
23 variety of rural densities.

24 (6) A transportation element that implements, and is consistent
25 with, the land use element. The transportation element shall include
26 the following subelements:

27 (a) Land use assumptions used in estimating travel;

28 (b) Facilities and services needs, including:

29 (i) An inventory of air, water, and land transportation facilities
30 and services, including transit alignments, to define existing capital
31 facilities and travel levels as a basis for future planning;

32 (ii) Level of service standards for all arterials and transit
33 routes to serve as a gauge to judge performance of the system. These
34 standards should be regionally coordinated;

35 (iii) Specific actions and requirements for bringing into
36 compliance any facilities or services that are below an established
37 level of service standard;

1 (iv) Forecasts of traffic for at least ten years based on the
2 adopted land use plan to provide information on the location, timing,
3 and capacity needs of future growth;

4 (v) Identification of system expansion needs and transportation
5 system management needs to meet current and future demands;

6 (c) Finance, including:

7 (i) An analysis of funding capability to judge needs against
8 probable funding resources;

9 (ii) A multiyear financing plan based on the needs identified in
10 the comprehensive plan, the appropriate parts of which shall serve as
11 the basis for the six-year street, road, or transit program required by
12 RCW 35.77.010 for cities, RCW 36.81.121 for counties, and RCW
13 35.58.2795 for public transportation systems;

14 (iii) If probable funding falls short of meeting identified needs,
15 a discussion of how additional funding will be raised, or how land use
16 assumptions will be reassessed to ensure that level of service
17 standards will be met;

18 (d) Intergovernmental coordination efforts, including an assessment
19 of the impacts of the transportation plan and land use assumptions on
20 the transportation systems of adjacent jurisdictions;

21 (e) Demand-management strategies.

22 After adoption of the comprehensive plan by jurisdictions required
23 to plan or who choose to plan under RCW 36.70A.040, local jurisdictions
24 must adopt and enforce ordinances which prohibit development approval
25 if the development causes the level of service on a transportation
26 facility to decline below the standards adopted in the transportation
27 element of the comprehensive plan, unless transportation improvements
28 or strategies to accommodate the impacts of development are made
29 concurrent with the development. These strategies may include
30 increased public transportation service, ride sharing programs, demand
31 management, and other transportation systems management strategies.
32 For the purposes of this subsection (6) "concurrent with the
33 development" shall mean that improvements or strategies are in place at
34 the time of development, or that a financial commitment is in place to
35 complete the improvements or strategies within six years.

36 The transportation element described in this subsection, and the
37 six-year plans required by RCW 35.77.010 for cities, RCW 36.81.121 for
38 counties, and RCW 35.58.2795 for public transportation systems, must be
39 consistent.

1 **Sec. 4.** RCW 36.70A.170 and 1990 1st ex.s. c 17 s 17 are each
2 amended to read as follows:

3 (1) On or before September 1, 1991, each county, and each city,
4 shall designate where appropriate:

5 (a) Agricultural lands that are not already characterized by urban
6 growth and that have long-term significance for the commercial
7 production of food or other agricultural products;

8 (b) Forest lands that are not already characterized by urban growth
9 and that have long-term significance for the commercial production of
10 timber;

11 (c) Mineral resource lands that are not already characterized by
12 urban growth and that have long-term significance for the extraction of
13 minerals; and

14 (d) Critical areas.

15 (2) In making the designations required by this section, counties
16 and cities shall consider the guidelines established pursuant to RCW
17 36.70A.050, and shall make such designations so that they are
18 consistent with the flood plain management plan adopted by the county
19 under RCW 86.26.105.

20 NEW SECTION. **Sec. 5.** A new section is added to chapter 75.20 RCW
21 to read as follows:

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

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

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

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

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

37 (5) "To construct any form of hydraulic project or perform other
38 work" does not include the act of driving across an established ford.

1 Driving across streams or on wetted stream beds at areas other than
2 established fords requires approval. Work within the ordinary high
3 water line of state waters to construct or repair a ford or crossing
4 requires approval.

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

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

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

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

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

17 (4) The permittee shall keep the maximum distance of excavation
18 toward the bank from the excavation line approximately equal throughout
19 the excavation zone. "Excavation zone" means the area between the
20 excavation line and the bank.

21 (5) The permittee shall identify the excavation zone with boundary
22 markers.

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

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

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

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

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

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

35 (12) The permittee shall be allowed to remove only that amount of
36 rock, sand, gravel, or silt which is naturally replenished on an annual
37 basis, except in instances where a lapse in material removal has
38 occurred. If such lapse has occurred, then an amount of material

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

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

6 (1) In the event that any person or government agency desires to
7 construct any form of hydraulic project or perform other work that will
8 use, divert, obstruct, or change the natural flow or bed of any of the
9 salt or fresh waters of the state, such person or government agency
10 shall, before commencing construction or work thereon and to ensure the
11 proper protection of fish life, secure the written approval of the
12 department of fisheries or the department of wildlife as to the
13 adequacy of the means proposed for the protection of fish life. This
14 approval shall not be unreasonably withheld. Except as provided in RCW
15 75.20.1001 and 75.20.1002, the department of fisheries or the
16 department of wildlife shall grant or deny approval within forty-five
17 calendar days of the receipt of a complete application and notice of
18 compliance with any applicable requirements of the state environmental
19 policy act, made in the manner prescribed in this section. The
20 applicant may document receipt of application by filing in person or by
21 registered mail. A complete application for approval shall contain
22 general plans for the overall project, complete plans and
23 specifications of the proposed construction or work within the mean
24 higher high water line in salt water or within the ordinary high water
25 line in fresh water, and complete plans and specifications for the
26 proper protection of fish life. The forty-five day requirement shall
27 be suspended if ~~((+1))~~ (a) after ten working days of receipt of the
28 application, the applicant remains unavailable or unable to arrange for
29 a timely field evaluation of the proposed project; ~~((+2))~~ (b) the site
30 is physically inaccessible for inspection; or ~~((+3))~~ (c) the applicant
31 requests delay. Immediately upon determination that the forty-five day
32 period is suspended, the department of fisheries or the department of
33 wildlife shall notify the applicant in writing of the reasons for the
34 delay. Approval is valid for a period of up to five years from date of
35 issuance. The permittee must demonstrate substantial progress on
36 construction of that portion of the project relating to the approval
37 within two years of the date of issuance. If either the department of
38 fisheries or the department of wildlife denies approval, that

1 department shall provide the applicant, in writing, a statement of the
2 specific reasons why and how the proposed project would adversely
3 affect fish life. Protection of fish life shall be the only ground
4 upon which approval may be denied or conditioned.

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

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

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

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

18 (3) Chapter 34.05 RCW applies to any denial of project approval,
19 conditional approval, or requirements for project modification upon
20 which approval may be contingent. If any person or government agency
21 commences construction on any hydraulic works or projects subject to
22 this section without first having obtained written approval of the
23 department of fisheries or the department of wildlife as to the
24 adequacy of the means proposed for the protection of fish life, or if
25 any person or government agency fails to follow or carry out any of the
26 requirements or conditions as are made a part of such approval, the
27 person or director of the agency is guilty of a gross misdemeanor. If
28 any such person or government agency is convicted of violating any of
29 the provisions of this section and continues construction on any such
30 works or projects without fully complying with the provisions hereof,
31 such works or projects are hereby declared a public nuisance and shall
32 be subject to abatement as such.

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

38 ~~The phrase "to construct any form of hydraulic project or perform~~
39 ~~other work" shall not include the act of driving across an established~~

1 ford. ~~Driving across streams or on wetted stream beds at areas other~~
2 ~~than established fords requires approval. Work within the ordinary~~
3 ~~high water line of state waters to construct or repair a ford or~~
4 ~~crossing requires approval.))~~

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

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

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

30 (a) Consistent with a currently approved comprehensive flood hazard
31 management plan; and

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

33 (7) This section shall not apply to the construction of any form of
34 hydraulic project or other work which diverts water for agricultural
35 irrigation or stock watering purposes authorized under or recognized as
36 being valid by the state's water codes, or when such hydraulic project
37 or other work is associated with streambank stabilization to protect
38 farm and agricultural land as defined in RCW 84.34.020. These

1 irrigation or stock watering diversion and streambank stabilization
2 projects shall be governed by RCW 75.20.103.

3 **Sec. 8.** RCW 75.20.103 and 1991 c 322 s 31 are each amended to read
4 as follows:

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

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

27 (a) Contain general plans for the overall project, complete plans
28 and specifications of the proposed construction or work within ordinary
29 high water line, and complete plans and specifications for the proper
30 protection of fish life; and

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

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

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

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

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

6 (d) The applicant requests delay.

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

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

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

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

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

23 (6) An approval shall remain in effect without need for periodic
24 renewal for projects that divert water for agricultural irrigation or
25 stock watering purposes and that involve seasonal construction or other
26 work. Approval for streambank stabilization projects shall remain in
27 effect without need for periodic renewal if the problem causing the
28 need for the streambank stabilization occurs on an annual or more
29 frequent basis. The permittee must notify the appropriate agency
30 before commencing the construction or other work within the area
31 covered by the approval.

32 (7) The permittee must demonstrate substantial progress on
33 construction of that portion of the project relating to the approval
34 within two years of the date of issuance. If either the department of
35 fisheries or the department of wildlife denies approval, that
36 department shall provide the applicant, in writing, a statement of the
37 specific reasons why and how the proposed project would adversely
38 affect fish life. Protection of fish life shall be the only ground
39 upon which approval may be denied or conditioned. Issuance, denial,

1 conditioning, or modification shall be appealable to the hydraulic
2 appeals board established in RCW 43.21B.005 within thirty days of the
3 notice of decision. The burden shall be upon the department of
4 fisheries or the department of wildlife to show that the denial or
5 conditioning of an approval is solely aimed at the protection of fish
6 life.

7 (8) The department granting approval may, after consultation with
8 the permittee, modify an approval due to changed conditions. The
9 modifications shall become effective unless appealed to the hydraulic
10 appeals board within thirty days from the notice of the proposed
11 modification. The burden is on the department issuing the approval to
12 show that changed conditions warrant the modification in order to
13 protect fish life.

14 (9) A permittee may request modification of an approval due to
15 changed conditions. The request shall be processed within forty-five
16 calendar days of receipt of the written request. A decision by the
17 department that issued the approval may be appealed to the hydraulic
18 appeals board within thirty days of the notice of the decision. The
19 burden is on the permittee to show that changed conditions warrant the
20 requested modification and that such modification will not impair fish
21 life.

22 (10) If any person or government agency commences construction on
23 any hydraulic works or projects subject to this section without first
24 having obtained written approval of the department of fisheries or the
25 department of wildlife as to the adequacy of the means proposed for the
26 protection of fish life, or if any person or government agency fails to
27 follow or carry out any of the requirements or conditions as are made
28 a part of such approval, the person or director of the agency is guilty
29 of a gross misdemeanor. If any such person or government agency is
30 convicted of violating any of the provisions of this section and
31 continues construction on any such works or projects without fully
32 complying with the provisions hereof, such works or projects are hereby
33 declared a public nuisance and shall be subject to abatement as such.

34 (11) For each application, the department of fisheries and the
35 department of wildlife shall mutually agree on whether the department
36 of fisheries or the department of wildlife shall administer the
37 provisions of this section, in order to avoid duplication of effort.
38 The department designated to act shall cooperate with the other
39 department in order to protect all species of fish life found at the

1 project site. If the department of fisheries or the department of
2 wildlife receives an application concerning a site not in its
3 jurisdiction, it shall transmit the application to the other department
4 within three days and notify the applicant.

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

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

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

23 (a) Consistent with a previously approved comprehensive flood
24 hazard management plan; and

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

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

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

31 (2) The hydraulic appeals board shall consist of three members:
32 The director of the department of ecology or the director's designee,
33 the director of the department of agriculture or the director's
34 designee, and the director or the director's designee of the department
35 whose action is appealed under subsection (6) of this section. A
36 decision must be agreed to by at least two members of the board to be
37 final.

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

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

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

15 (6)(a) Any person aggrieved by the approval, denial, conditioning,
16 or modification of a hydraulic approval pursuant to RCW 75.20.103 may
17 seek review from the board by filing a request for the same within
18 thirty days of notice of the approval, denial, conditioning, or
19 modification of such approval.

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

23 (c) If a review proceeding authorized in (a) of this subsection
24 finds for the aggrieved permit applicant, the applicant may be awarded
25 any legal and engineering costs involved in challenging the permit
26 decision.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35 (b) The removal provides recreational benefits;

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

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

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

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

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

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

9 (c) Removal will impact esthetics of nearby recreational
10 facilities.

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

13 (10) The department shall condition sand and gravel removal leases
14 to allow removal of only that amount which is naturally replenished on
15 an annual basis, except in instances where a lapse in material removal
16 has occurred. If such a lapse has occurred, then an amount of material
17 equivalent to the amount estimated to have accumulated since the last
18 material removal operation, including debris and vegetation, may be
19 removed.

20 **Sec. 11.** RCW 79.90.150 and 1991 c 337 s 1 are each amended to read
21 as follows:

22 When gravel, rock, sand, silt or other material from any aquatic
23 lands is removed by any public agency or under public contract for
24 channel or harbor improvement, or flood control, use of such material
25 may be authorized by the department of natural resources for a public
26 purpose on land owned or leased by the state or any municipality,
27 county, or public corporation: PROVIDED, That when no public land site
28 is available for deposit of such material, its deposit on private land
29 with the landowner's permission is authorized and may be designated by
30 the department of natural resources to be for a public purpose. Prior
31 to removal and use, the state agency, municipality, county, or public
32 corporation contemplating or arranging such use shall first obtain
33 written permission from the department of natural resources. No
34 payment of royalty shall be required for such gravel, rock, sand, silt,
35 or other material used for such public purpose, but a charge will be
36 made if such material is subsequently sold or used for some other
37 purpose: PROVIDED, That the department may authorize such public
38 agency or private landowner to dispose of such material without charge

1 when necessary to implement disposal of material. No charge shall be
2 required for any use of the material obtained under the provisions of
3 this chapter when used solely on an authorized site. No charge shall
4 be required for any use of the material obtained under the provisions
5 of this chapter if the material is used for public purposes by local
6 governments. No charge may be required for removal or use of such
7 material if the removal of the material is determined by the local
8 government to be for flood control purposes. Public purposes include,
9 but are not limited to, construction and maintenance of roads, dikes,
10 and levies. Nothing in this section shall repeal or modify the
11 provisions of RCW 75.20.100 or eliminate the necessity of obtaining a
12 permit for such removal from other state or federal agencies as
13 otherwise required by law.

14 **Sec. 12.** RCW 79.90.300 and 1991 c 322 s 26 are each amended to
15 read as follows:

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

32 (2) The department shall actively seek to encourage through permit
33 requirements and adjusted fees the removal of accumulated materials
34 from rivers and streams where there is a flood damage reduction
35 benefit. The department shall develop policies to accomplish this
36 goal.

1 **Sec. 13.** RCW 86.15.030 and 1969 ex.s. c 195 s 2 are each amended
2 to read as follows:

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

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

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

26 **Sec. 14.** RCW 86.15.050 and 1961 c 153 s 5 are each amended to read
27 as follows:

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

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

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

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

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

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

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

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

32 **Sec. 16.** RCW 86.26.105 and 1986 c 46 s 5 are each amended to read
33 as follows:

34 ((A comprehensive flood control management plan shall determine the
35 need for flood control work, consider alternatives to in-stream flood
36 control work, identify and consider potential impacts of in-stream
37 flood control work on the state's in-stream resources, and identify the
38 river's meander belt or floodway.)) A comprehensive flood control

1 management plan shall be completed and adopted (~~(within at least three~~
2 ~~years of the certification that it is being prepared, as provided in~~
3 ~~RCW 86.26.050)~~).

4 If (~~(after this three year period has elapsed)~~), by December 31,
5 1997, such a comprehensive flood control plan has not been completed
6 and adopted, grants for flood control maintenance projects shall not be
7 made to the county or municipal corporations in the county until a
8 comprehensive flood control plan is completed and adopted by the
9 appropriate local authority. These limitations on grants shall not
10 preclude allocations for emergency purposes made pursuant to RCW
11 86.26.060.

12 (2) A county with two or more presidentially declared flood
13 disasters within the most recent ten-year period shall complete a
14 comprehensive flood hazard management plan by December 31, 1997, or
15 within two years of a second presidentially declared flood disaster.

16 **Sec. 17.** RCW 90.58.180 and 1989 c 175 s 183 are each amended to
17 read as follows:

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

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

1 pursuant to this section. The shorelines hearings board shall
2 initially schedule review proceedings on such requests for review
3 without regard as to whether such requests have or have not been
4 certified or as to whether the period for the department or the
5 attorney general to intervene has or has not expired, unless such
6 review is to begin within thirty days of such scheduling. If at the
7 end of the thirty day period for certification neither the department
8 nor the attorney general has certified a request for review, the
9 hearings board shall remove the request from its review schedule.

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

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

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

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

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

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

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

33 (c) Is arbitrary and capricious; or

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

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

37 the board shall enter a final decision declaring the rule, regulation,
38 or guideline invalid, remanding the rule, regulation, or guideline to
39 the department with a statement of the reasons in support of the

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

7 ~~((+5))~~ (6) Rules, regulations, and guidelines shall be subject to
8 review in superior court, if authorized pursuant to RCW ~~((34.05.538))~~
9 34.05.570(2): PROVIDED, That no review shall be granted by a superior
10 court on petition from a local government unless the local government
11 shall first have obtained review under subsection ~~((+4))~~ (5) of this
12 section is filed within three months after the date of final decision
13 by the shorelines hearings board.

14 NEW SECTION. Sec. 18. RCW 79.90.325 and 1984 c 212 s 10 are each
15 repealed.

16 NEW SECTION. Sec. 19. This act is necessary for the immediate
17 preservation of the public peace, health, or safety, or support of the
18 state government and its existing public institutions, and shall take
19 effect immediately.

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