

VETO MESSAGE ON SB 5632-S2

May 16, 1995

To the Honorable President and Members,
The Senate of the State of Washington
Ladies and Gentlemen:

I am returning herewith, without my approval as to sections 6, 7, 8, 9, 10, 19, 20, and 29, Engrossed Second Substitute Senate Bill No. 5632 entitled:

"AN ACT Relating to flood damage reduction;"

Engrossed Second Substitute Senate Bill No. 5632 makes changes to the way local governments and state agencies are to plan for and to prevent flooding. The intent and much of the content of the bill is laudable. We do need to work together to reduce the likelihood of damage from future floods. I commend the members of the legislature for their hard work on this difficult task.

I am concerned, however, that this bill removes or significantly weakens many protections for our environment in favor of allowing nearly unfettered dredging and diking of our rivers. Instead, we must take a balanced approach that includes adapting our land use practices to reduce flood damage.

Section 6 adds definitions to the hydraulic code which is a primary tool for protecting fish habitat. These changes would have the effect of limiting the application of the code and would cause confusion to the applications. It could also make it harder to deal with real emergencies.

Section 7 places portions of the hydraulic code rules in statute with changes that would be detrimental to fish habitat, including changing the minimum gradient required in hydraulic excavations. This change reduces flexibility of the Department of Fish and Wildlife and decreases the opportunities to work with permittees to consider site specific conditions.

Sections 8 and 9 amend the hydraulic code and require the Department of Fish and Wildlife to approve a hydraulic application if the project protects a structure that is likely to incur significant flood damage during the next flood season. Approval is also mandated if the project provides fish habitat productivity equivalent to pre-project conditions within two years. This requirement places an unreasonable burden on the Department of Fish and Wildlife to predict future floods. It could also place certain fish runs at grave risk.

The overall effect of sections 6, 7, 8, and 9 would be to reduce the effectiveness of the Department of Fish and Wildlife in working with permittees to ensure that instream projects do little harm to fish habitat. At a time when we have so much to do to restore and protect salmon runs in our state, it is inappropriate to further limit one of the few tools we have to protect salmon habitat. I believe strongly that the Department of Fish and Wildlife should continue to extend the utmost cooperation to permit applicants, especially for projects to reduce flood damage. I am directing the Department of Fish and Wildlife, along with my staff, to review the permitting process and to suggest ways to make the hydraulic code more user-friendly.

Sections 10 and 19 award legal and engineering costs to aggrieved permit applicants but not to others who might appeal a

permitting decision. An applicant might want to raise a flood control dike with the effect of shifting floodwater to a landowner downstream. That downstream landowner should have the same possibility of being awarded costs upon successful appeal as the permit applicant. Sections 901-904 of Engrossed Substitute House Bill No. 1010 allow a broader range of individuals to recover up to \$25,000 of the cost of appealing an agency action -- including permit decisions.

Section 20 directs "each appropriate agency" to encourage the removal of gravel where there is a flood damage reduction benefit. The same agencies are to "consider the benefits of a designed, open-channel hydraulic engineering criteria to facilitate the natural downstream movement of detrimental material." This directive is contrary to agencies' missions elsewhere in statute, such as protecting fish and wildlife and conserving shorelines.

Section 29 is an emergency clause providing that this bill take effect immediately upon my signing. This legislation addresses issues of overwhelming importance to the people of this state. Preventing this bill from being subject to a referendum under Article II, section 1 (b) of the state Constitution unnecessarily denies the people of this state their power, at their own option, to approve or reject this bill at the polls.

For these reasons, I have vetoed sections 6, 7, 8, 9, 10, 19, 20, and 29 of Engrossed Second Substitute Senate Bill No. 5632.

With the exception of sections 6, 7, 8, 9, 10, 19, 20, and 29, Engrossed Second Substitute Senate Bill No. 5632 is approved.

Respectfully submitted,
Mike Lowry
Governor