
SENATE BILL 6248

State of Washington

53rd Legislature

1994 Regular Session

By Senators Erwin, Owen, Oke, Anderson, Hargrove, Snyder, Amondson, Roach, Sellar, Franklin and M. Rasmussen

Read first time 01/18/94. Referred to Committee on Ecology & Parks.

1 AN ACT Relating to flood damage reduction; amending RCW 43.21C.020,
2 86.12.200, 86.16.025, 86.26.105, 75.20.100, 75.20.100, 75.20.103,
3 75.20.103, 75.20.130, 75.20.130, 79.90.150, 79.90.300, 90.58.030,
4 90.58.180, 47.28.140, 86.15.030, 86.15.050, 86.15.160, and 86.16.031;
5 adding a new section to chapter 35.13 RCW; adding a new section to
6 chapter 35A.14 RCW; adding new sections to chapter 43.17 RCW; adding a
7 new section to chapter 86.26 RCW; adding new sections to chapter 75.20
8 RCW; adding a new section to chapter 79.90 RCW; creating new sections;
9 repealing RCW 79.90.325; providing an effective date; providing an
10 expiration date; 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 and that it is the duty of the state to properly fund flood
17 control projects. Structural and nonstructural projects include but
18 are not limited to: Streambank stabilization, storage facilities,

1 river channel maintenance, land use restrictions, land buy-outs, flood
2 easements, and emergency notification.

3 **PART I**

4 **LAND USE PLANNING**

5 **Sec. 101.** RCW 43.21C.020 and 1971 ex.s. c 109 s 2 are each amended
6 to read as follows:

7 (1) The legislature, recognizing that ~~((man))~~ people depend~~((s))~~ on
8 ~~((his))~~ their biological and physical surroundings for food, shelter,
9 and other needs, and for cultural enrichment as well~~((r))~~, and
10 recognizing further the profound impact of ~~((man's))~~ human activity on
11 the interrelations of all components of the natural environment,
12 particularly the profound influences of population growth, high-density
13 urbanization, industrial expansion, resource utilization and
14 exploitation, and new and expanding technological advances, and
15 recognizing further the critical importance of restoring and
16 maintaining environmental quality to the overall welfare and
17 development of ~~((man))~~ people, declares that it is the continuing
18 policy of the state of Washington, in cooperation with federal and
19 local governments, and other concerned public and private
20 organizations, to use all practicable means and measures, including
21 financial and technical assistance, in a manner calculated to: (a)
22 Foster and promote the general welfare; (b) ~~((to))~~ create and maintain
23 conditions under which ~~((man))~~ people and nature can exist in
24 productive harmony; and (c) fulfill the social, economic, and other
25 requirements of present and future generations of Washington citizens.

26 (2) In order to carry out the policy set forth in this chapter, it
27 is the continuing responsibility of the state of Washington and all
28 agencies of the state to use all practicable means, consistent with
29 other essential considerations of state policy, to improve and
30 coordinate plans, functions, programs, and resources to the end that
31 the state and its citizens may:

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

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

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

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

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

8 (f) Achieve a balance between population and resource use which
9 will permit high standards of living and a wide sharing of life's
10 amenities; ((and))

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

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

15 (3) The legislature recognizes that each person has a fundamental
16 and inalienable right to a healthful environment and that each person
17 has a responsibility to contribute to the preservation and enhancement
18 of the environment.

19 **Sec. 102.** RCW 86.12.200 and 1991 c 322 s 3 are each amended to
20 read as follows:

21 The county legislative authority of any county may adopt a
22 comprehensive flood control management plan for any drainage basin that
23 is located wholly or partially within the county.

24 A comprehensive flood control management plan shall include the
25 following elements:

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

29 (2) Establishment of a comprehensive scheme of flood control
30 protection and improvements for the areas that are subject to such
31 periodic flooding, that includes: (a) Determining the need for, and
32 desirable location of, flood control improvements to protect or
33 preclude flood damage to structures, works, and improvements, based
34 upon a ((cost/benefit)) cost-benefit ratio between the expense of
35 providing and maintaining these improvements and the benefits arising
36 from these improvements; (b) establishing the level of flood protection
37 that each portion of the system of flood control improvements will be
38 permitted; (c) identifying potential impacts of in-stream flood control

1 work on the state's in-stream resources, meander belt, or floodway and
2 considering alternatives to in-stream flood control work; (d)
3 identifying areas where flood waters could be directed during a flood
4 to avoid damage to buildings and other structures; ~~((and))~~ (e)
5 identifying areas where a river may migrate into a new channel and
6 developing options to prevent the creation of the new channel, and
7 identifying practices that will avoid long-term accretion of sediments;
8 and (f) identifying sources of revenue that will be sufficient to
9 finance the comprehensive scheme of flood control protection and
10 improvements;

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

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

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

23 A comprehensive flood control management plan shall be subject to
24 the minimum requirements for participation in the national flood
25 insurance program, requirements exceeding the minimum national flood
26 insurance program that have been adopted by the department of ecology
27 for a specific flood plain pursuant to RCW 86.16.031, and rules adopted
28 by the department of ecology pursuant to chapter 86.16 RCW and RCW
29 86.26.050 relating to flood plain management activities. When a county
30 plans under chapter 36.70A RCW, it ~~((may))~~ must incorporate the portion
31 of its comprehensive flood control management plan relating to land use
32 restrictions in its comprehensive plan and development regulations
33 adopted pursuant to chapter 36.70A RCW.

34 **Sec. 103.** RCW 86.16.025 and 1989 c 64 s 2 are each amended to read
35 as follows:

36 With respect to such features as may affect flood conditions, the
37 department shall have authority to examine, approve or reject designs
38 and plans for any structure or works, public or private, to be erected

1 or built or to be reconstructed or modified upon the banks or in or
2 over the channel or over and across the federal emergency management
3 agency floodway of any stream or body of water in this state.

4 **Sec. 104.** RCW 86.26.105 and 1986 c 46 s 5 are each amended to read
5 as follows:

6 ~~((A comprehensive flood control management plan shall determine the
7 need for flood control work, consider alternatives to in stream flood
8 control work, identify and consider potential impacts of in stream
9 flood control work on the state's in stream resources, and identify the
10 river's meander belt or floodway.))~~

11 (1) A comprehensive flood control management plan shall be
12 completed and adopted ~~((within at least three years of the
13 certification that it is being prepared, as provided in RCW 86.26.050))~~
14 by December 31, 1997. If after this ~~((three year period))~~ date has
15 elapsed such a comprehensive flood control plan has not been completed
16 and adopted, grants for flood control maintenance projects shall not be
17 made to the county or municipal corporations in the county until a
18 comprehensive flood control plan is completed and adopted by the
19 appropriate local authority. These limitations on grants shall not
20 preclude allocations for emergency purposes made pursuant to RCW
21 86.26.060.

22 (2) A county with two or more presidentially declared flood
23 disasters within the most recent ten-year period shall complete a
24 comprehensive flood control plan by December 31, 1997, or within two
25 years of a second presidentially declared flood disaster.

26 NEW SECTION. **Sec. 105.** 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 control management plan of the county of
32 jurisdiction.

33 (2) As used in this section, "flood plain" means land area
34 susceptible to being inundated by water from 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. 106.** 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 control management plan of the county of jurisdiction.

7 (2) As used in this section, "flood plain" means land area
8 susceptible to being inundated by water from 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. 107.** 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 In 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 the 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 the 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. 108.** 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 that 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. 109.** The department of transportation shall
16 assess all areas in the state in which road or bridge construction has
17 impacted the flood plain and the normal flow of flood waters. The
18 department shall report its findings and a plan for corrective action
19 to the legislature by December 31, 1994. The plan for corrective
20 action shall, to the greatest extent practicable, emphasize planned
21 renovation or reconstruction efforts for the roads and bridges outlined
22 in the assessment.

23 NEW SECTION. **Sec. 110.** RCW 79.90.325 and 1984 c 212 s 10 are
24 each repealed.

25 **PART II**
26 **PERMITTING**

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

29 Each appropriate agency shall actively seek to encourage through
30 permit requirements the removal of accumulated materials from rivers
31 and streams where there is a flood damage reduction benefit. Each
32 agency shall develop policies to accomplish this goal. Policies shall
33 be developed from a designed, open-channel hydraulic engineering

1 criteria to facilitate the natural downstream movement of detrimental
2 material.

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

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

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

12 (2) "Commercial" means a facility or building used for commerce,
13 including those used for agricultural or industrial purposes.

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

17 (4) "Local flood control agency" means a diking district, drainage
18 district, flood control zone district, or other similar flood control
19 entity.

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

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

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

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

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

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

34 (3) The permittee shall begin excavating at the excavation line and
35 proceed toward the bank, perpendicular to the alignment of the
36 watercourse.

1 (4) The permittee shall keep the maximum distance of excavation
2 toward the bank from the excavation line approximately equal throughout
3 the excavation zone. "Excavation zone" means the area between the
4 excavation line and the bank.

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

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

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

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

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

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

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

19 (12) The permittee shall be allowed to remove only that amount of
20 rock, sand, gravel, or silt that is naturally replenished on an annual
21 basis, except in instances where a lapse in material removal has
22 occurred. If a lapse has occurred, then an amount of material
23 equivalent to the amount estimated to have accumulated since the last
24 material removal operation, including debris and vegetation, may be
25 removed.

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

28 The departments of fish and wildlife, natural resources, and
29 ecology shall jointly develop a memorandum of understanding to
30 facilitate the consideration of projects that will aid in the
31 minimization or prevention of flood damage as defined in RCW 86.16.120.
32 To reduce the duplication of information required by a project's
33 permits, the departments must provide in their memorandum procedures to
34 share data to the extent practicable among themselves and with other
35 agencies that may be involved in approving or denying a permit
36 application. The departments' memorandum must provide a plan to
37 implement a comprehensive permit process that is streamlined and easily
38 understandable to permit applicants.

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

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

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

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

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

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

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

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

34 The phrase "to construct any form of hydraulic project or perform
35 other work" shall not include the act of driving across an established
36 ford. Driving across streams or on wetted stream beds at areas other
37 than established fords requires approval. Work within the ordinary
38 high water line of state waters to construct or repair a ford or
39 crossing requires approval.

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

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

23 (6) In granting approval for projects submitted by local flood
24 control agencies, the department shall grant a special duration
25 hydraulic permit approval if the submitted project is a multiyear
26 maintenance program. The approval shall be granted for up to five
27 years, or the actual number of years covered by the maintenance
28 program.

29 (7) This section shall not apply to a project involving the repair
30 of an existing flood control reduction facility if the project is
31 determined by the county to be:

32 (a) Consistent with a currently approved comprehensive flood
33 control management plan; and

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

35 (8) This section shall not apply to the construction of any form
36 of hydraulic project or other work which diverts water for agricultural
37 irrigation or stock watering purposes authorized under or recognized as
38 being valid by the state's water codes, or when such hydraulic project
39 or other work is associated with streambank stabilization to protect

1 farm and agricultural land as defined in RCW 84.34.020. These
2 irrigation or stock watering diversion and streambank stabilization
3 projects shall be governed by RCW 75.20.103.

4 **Sec. 206.** RCW 75.20.100 and 1993 sp.s. c 2 s 30 are each amended
5 to read 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 as to the adequacy of the means proposed for the protection
13 of fish life. This approval shall not be unreasonably withheld.
14 Except as provided in RCW 75.20.1001 (~~and 75.20.1002~~), the department
15 shall grant or deny approval within forty-five calendar days of the
16 receipt of a complete application and notice of compliance with any
17 applicable requirements of the state environmental policy act, made in
18 the manner prescribed in this section. The applicant may document
19 receipt of application by filing in person or by registered mail. A
20 complete application for approval shall contain general plans for the
21 overall project, complete plans and specifications of the proposed
22 construction or work within the mean higher high water line in salt
23 water or within the ordinary high water line in fresh water, and
24 complete plans and specifications for the proper protection of fish
25 life. The forty-five day requirement shall be suspended if ~~((+1))~~ (a)
26 after ten working days of receipt of the application, the applicant
27 remains unavailable or unable to arrange for a timely field evaluation
28 of the proposed project; ~~((+2))~~ (b) the site is physically inaccessi-
29 ble for inspection; or ~~((+3))~~ (c) the applicant requests delay.
30 Immediately upon determination that the forty-five day period is sus-
31 pended, the department shall notify the applicant in writing of the
32 reasons for the delay. Approval is valid for a period of up to five
33 years from date of issuance. The permittee must demonstrate
34 substantial progress on construction of that portion of the project
35 relating to the approval within two years of the date of issuance. If
36 the department denies approval, the department shall provide the
37 applicant, in writing, a statement of the specific reasons why and how
38 the proposed project would adversely affect fish life. Protection of

1 fish life shall be the only ground upon which approval may be denied or
2 conditioned.

3 (2) In making a decision as to whether fish life is protected, the
4 department shall determine if a project as proposed or modified:

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

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

13 The department shall approve a project if it determines that the
14 project meets either (a) or (b) of this subsection.

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

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

34 The phrase "to construct any form of hydraulic project or perform
35 other work" shall not include the act of driving across an established
36 ford. Driving across streams or on wetted stream beds at areas other
37 than established fords requires approval. Work within the ordinary
38 high water line of state waters to construct or repair a ford or
39 crossing requires approval.

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

13 (5) In granting approval for projects submitted by local flood
14 control agencies, the department shall grant a special duration
15 hydraulic permit approval if the submitted project is a multiyear
16 maintenance program. The approval shall be granted for up to five
17 years, or the actual number of years covered by the maintenance
18 program.

19 (6) This section shall not apply to a project involving the repair
20 of an existing flood control reduction facility if the project is
21 determined by the county to be:

22 (a) Consistent with a currently approved comprehensive flood
23 control management plan; and

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

25 (7) This section shall not apply to the construction of any form of
26 hydraulic project or other work which diverts water for agricultural
27 irrigation or stock watering purposes authorized under or recognized as
28 being valid by the state's water codes, or when such hydraulic project
29 or other work is associated with streambank stabilization to protect
30 farm and agricultural land as defined in RCW 84.34.020. These
31 irrigation or stock watering diversion and streambank stabilization
32 projects shall be governed by RCW 75.20.103.

33 **Sec. 207.** RCW 75.20.103 and 1991 c 322 s 31 are each amended to
34 read as follows:

35 (1) In the event that any person or government agency desires to
36 construct any form of hydraulic project or other work that diverts
37 water for agricultural irrigation or stock watering purposes, or when
38 such hydraulic project or other work is associated with streambank

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

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

19 (a) Contain general plans for the overall project, complete plans
20 and specifications of the proposed construction or work within ordinary
21 high water line, and complete plans and specifications for the proper
22 protection of fish life; and

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

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

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

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

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

36 (d) The applicant requests delay.

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

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

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

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

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

14 (6) An approval shall remain in effect without need for periodic
15 renewal for projects that divert water for agricultural irrigation or
16 stock watering purposes and that involve seasonal construction or other
17 work. Approval for streambank stabilization projects shall remain in
18 effect without need for periodic renewal if the problem causing the
19 need for the streambank stabilization occurs on an annual or more
20 frequent basis. The permittee must notify the appropriate agency
21 before commencing the construction or other work within the area
22 covered by the approval.

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

37 (8) The department granting approval may, after consultation with
38 the permittee, modify an approval due to changed conditions. The
39 modifications shall become effective unless appealed to the hydraulic

1 appeals board within thirty days from the notice of the proposed
2 modification. The burden is on the department issuing the approval to
3 show that changed conditions warrant the modification in order to
4 protect fish life.

5 (9) A permittee may request modification of an approval due to
6 changed conditions. The request shall be processed within forty-five
7 calendar days of receipt of the written request. A decision by the
8 department that issued the approval may be appealed to the hydraulic
9 appeals board within thirty days of the notice of the decision. The
10 burden is on the permittee to show that changed conditions warrant the
11 requested modification and that such modification will not impair fish
12 life.

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

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

35 (12) In case of an emergency arising from weather or stream flow
36 conditions or other natural conditions, the department of fisheries or
37 department of wildlife, through their authorized representatives, shall
38 issue immediately upon request oral approval for removing any
39 obstructions, repairing existing structures, restoring stream banks, or

1 to protect property threatened by the stream or a change in the stream
2 flow without the necessity of obtaining a written approval prior to
3 commencing work. Conditions of an oral approval shall be reduced to
4 writing within thirty days and complied with as provided for in this
5 section. Oral approval shall be granted immediately upon request, for
6 a stream crossing during an emergency.

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

11 (13) In granting approval for projects submitted by local flood
12 control agencies, the department shall grant a special duration
13 hydraulic permit approval if the submitted project is a multiyear
14 maintenance program. The approval shall be granted for up to five
15 years, or the actual number of years covered by the maintenance
16 program.

17 (14) This section shall not apply to a project involving the repair
18 of an existing flood control facility if the project is determined by
19 the county to be:

20 (a) Consistent with a previously approved comprehensive flood
21 control management plan; and

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

23 **Sec. 208.** RCW 75.20.103 and 1993 sp.s. c 2 s 32 are each amended
24 to read as follows:

25 (1) In the event that any person or government agency desires to
26 construct any form of hydraulic project or other work that diverts
27 water for agricultural irrigation or stock watering purposes, or when
28 such hydraulic project or other work is associated with streambank
29 stabilization or flood damage reduction to protect farm and
30 agricultural land as defined in RCW 84.34.020, and when such
31 (~~diversion or streambank stabilization~~) hydraulic project will use,
32 divert, obstruct, or change the natural flow or bed of any river or
33 stream or will utilize any waters of the state or materials from the
34 stream beds, the person or government agency shall, before commencing
35 construction or work thereon and to ensure the proper protection of
36 fish life, secure a written approval from the department as to the
37 adequacy of the means proposed for the protection of fish life. This
38 approval shall not be unreasonably withheld. Except as provided in RCW

1 75.20.1001 (~~and 75.20.1002~~), the department shall grant or deny the
2 approval within forty-five calendar days of the receipt of a complete
3 application (~~and notice of compliance with any applicable requirements~~
4 ~~of the state environmental policy act,~~) made in the manner prescribed
5 in this section. The applicant may document receipt of application by
6 filing in person or by registered mail.

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

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

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

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

17 (a) After ten working days of receipt of the application, the
18 applicant remains unavailable or unable to arrange for a timely field
19 evaluation of the proposed project; (~~(2)~~)

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

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

24 (d) The applicant requests delay.

25 (4) Immediately upon determination that the forty-five day period
26 is suspended, the department shall notify the applicant in writing of
27 the reasons for the delay.

28 (5) In making a decision as to whether fish life is protected, the
29 department shall determine 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 shall approve a project if it determines that the
39 project meets either (a) or (b) of this subsection.

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

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

22 (8) The department may, after consultation with the permittee,
23 modify an approval due to changed conditions. The modifications shall
24 become effective unless appealed to the hydraulic appeals board within
25 thirty days from the notice of the proposed modification. The burden
26 is on the department to show that changed conditions warrant the
27 modification in order to protect fish life.

28 (9) A permittee may request modification of an approval due to
29 changed conditions. The request shall be processed within forty-five
30 calendar days of receipt of the written request. A decision by the
31 department may be appealed to the hydraulic appeals board within thirty
32 days of the notice of the decision. The burden is on the permittee to
33 show that changed conditions warrant the requested modification and
34 that such modification will not impair fish life.

35 (10) If any person or government agency commences construction on
36 any hydraulic works or projects subject to this section without first
37 having obtained written approval of the department as to the adequacy
38 of the means proposed for the protection of fish life, or if any person
39 or government agency fails to follow or carry out any of the

1 requirements or conditions as are made a part of such approval, the
2 person or director of the agency is guilty of a gross misdemeanor. If
3 any such person or government agency is convicted of violating any of
4 the provisions of this section and continues construction on any such
5 works or projects without fully complying with the provisions hereof,
6 such works or projects are hereby declared a public nuisance and shall
7 be subject to abatement as such.

8 (11) In granting approval for projects submitted by local flood
9 control agencies, the department shall grant a special duration
10 hydraulic permit approval if the submitted project is a multiyear
11 maintenance program. The approval shall be granted for up to five
12 years, or the actual number of years covered by the maintenance
13 program.

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

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

28 (13) This section shall not apply to a project involving the repair
29 of an existing flood control facility if the project is determined by
30 the county to be:

31 (a) Consistent with a previously approved comprehensive flood
32 control management plan; and

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

34 **Sec. 209.** RCW 75.20.130 and 1989 c 175 s 160 are each amended to
35 read as follows:

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

1 (2) The hydraulic appeals board shall consist of three members:
2 The director of the department of ecology or the director's designee,
3 the director of the department of agriculture or the director's
4 designee, and the director or the director's designee of the department
5 whose action is appealed under subsection (6) of this section. A
6 decision must be agreed to by at least two members of the board to be
7 final.

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

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

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

22 (6)(a) Any person aggrieved by the approval, denial, conditioning,
23 or modification of a hydraulic approval pursuant to RCW 75.20.103 may
24 seek review from the board by filing a request for the same within
25 thirty days of notice of the approval, denial, conditioning, or
26 modification of such approval.

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

30 (c) If a review proceeding authorized in (a) of this subsection
31 finds for the aggrieved permit applicant, the applicant may be awarded
32 any legal and engineering costs involved in challenging the permit
33 decision.

34 **Sec. 210.** RCW 75.20.130 and 1993 sp.s. c 2 s 37 are each amended
35 to read as follows:

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

1 (2) The hydraulic appeals board shall consist of three members:
2 The director of the department of ecology or the director's designee,
3 the director of the department of agriculture or the director's
4 designee, and the director or the director's designee of the department
5 whose action is appealed under subsection (6) of this section. A
6 decision must be agreed to by at least two members of the board to be
7 final.

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

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

15 (5) The board has exclusive jurisdiction to hear appeals arising
16 from the approval, denial, conditioning, or modification of a hydraulic
17 approval issued by the department under the authority granted in RCW
18 75.20.103 for the diversion of water for agricultural irrigation or
19 stock watering purposes or when associated with streambank
20 stabilization to protect farm and agricultural land as defined in RCW
21 84.34.020.

22 (6)(a) Any person aggrieved by the approval, denial, conditioning,
23 or modification of a hydraulic approval pursuant to RCW 75.20.103 may
24 seek review from the board by filing a request for the same within
25 thirty days of notice of the approval, denial, conditioning, or
26 modification of such approval.

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

30 (c) If a review proceeding authorized in (a) of this subsection
31 finds for the aggrieved permit applicant, the applicant may be awarded
32 any legal and engineering costs involved in challenging the permit
33 decision.

34 NEW SECTION. Sec. 211. A new section is added to chapter 79.90
35 RCW to read as follows:

36 (1) Use or modification, or both, of a river system shall involve
37 basic hydraulic principles, as well as harmonize as much as possible
38 with existing aquatic ecosystems, and human needs.

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

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

5 (b) Encourage bank and island stabilization programs that rely
6 mainly on natural vegetative systems as holding elements;

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

9 (d) Recognize natural plant and animal communities and other
10 features that provide an ecological balance to a streamway in
11 evaluating competing human uses and require protection from significant
12 human impact; and

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

16 (3) No person may remove normal stream depositions of logs,
17 uprooted tree snags, and stumps that abut on shorelands and do not
18 intrude on the navigational channel or reduce flow, or adversely
19 redirect a river course, and are not harmful to life and property
20 without the department's permission but the department must consider
21 the need to protect the resultant dependent aquatic systems.

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

24 (5) The department shall encourage and may permit river channel
25 relocations and improvements when public benefit can be shown.
26 Filling, grading, lagooning, or dredging that would result in
27 substantial detriment to navigable waters by reason of erosion,
28 sedimentation, or impairment of fish and aquatic life are not
29 authorized.

30 (6) No person may remove sand and gravel below the wetted perimeter
31 of navigable rivers unless authorized by a hydraulics permit issued by
32 the department of fish and wildlife under RCW 75.20.100 and 75.20.103.
33 These removals may be authorized for maintenance and improvement of
34 navigational channels or for creating backwater channels for fish
35 rearing or improvement of the flow capacity of the channels.

36 (7) The department may allow sand and gravel removals above the
37 wetted perimeter of a navigable river that are not harmful to public
38 health and safety if any or all of the following situations exist:

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

3 (b) The removal provides recreational benefits;

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

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

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

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

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

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

16 (c) Removal will impact esthetics of nearby recreational
17 facilities.

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

20 (10) The department shall condition sand and gravel removal leases
21 to allow removal of only that amount that is naturally replenished on
22 an annual basis, except in instances where a lapse in material removal
23 has occurred. If such a lapse has occurred, then an amount of material
24 equivalent to the amount estimated to have accumulated since the last
25 material removal operation, including debris and vegetation, may be
26 removed.

27 **Sec. 212.** RCW 79.90.150 and 1991 c 337 s 1 are each amended to
28 read as follows:

29 When gravel, rock, sand, silt or other material from any aquatic
30 lands is removed by any public agency or under public contract for
31 channel or harbor improvement, or flood control, use of such material
32 may be authorized by the department of natural resources for a public
33 purpose on land owned or leased by the state or any municipality,
34 county, or public corporation: PROVIDED, That when no public land site
35 is available for deposit of such material, its deposit on private land
36 with the landowner's permission is authorized and may be designated by
37 the department of natural resources to be for a public purpose. Prior
38 to removal and use, the state agency, municipality, county, or public

1 corporation contemplating or arranging such use shall first obtain
2 written permission from the department of natural resources. No
3 payment of royalty shall be required for such gravel, rock, sand, silt,
4 or other material used for such public purpose, but a charge will be
5 made if such material is subsequently sold or used for some other
6 purpose: PROVIDED, That the department may authorize such public
7 agency or private landowner to dispose of such material without charge
8 when necessary to implement disposal of material. No charge shall be
9 required for any use of the material obtained under the provisions of
10 this chapter when used solely on an authorized site. No charge shall
11 be required for any use of the material obtained under the provisions
12 of this chapter if the material is used for public purposes by local
13 governments. No charge may be required for removal or use of such
14 material if the removal of the material is determined by the local
15 government to be for flood control purposes. Public purposes include,
16 but are not limited to, construction and maintenance of roads, dikes,
17 and levies. Nothing in this section shall repeal or modify the
18 provisions of RCW 75.20.100 or eliminate the necessity of obtaining a
19 permit for such removal from other state or federal agencies as
20 otherwise required by law.

21 **Sec. 213.** RCW 79.90.300 and 1991 c 322 s 26 are each amended to
22 read as follows:

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

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

6 **Sec. 214.** RCW 90.58.030 and 1987 c 474 s 1 are each amended to
7 read as follows:

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

10 (1) Administration:

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

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

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

16 (d) "Person" means an individual, partnership, corporation,
17 association, organization, cooperative, public or municipal
18 corporation, or agency of the state or local governmental unit however
19 designated;

20 (e) "Hearing board" means the shoreline hearings board established
21 by this chapter.

22 (2) Geographical:

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

25 (b) "Ordinary high water mark" on all lakes, streams, and tidal
26 water is that mark that will be found by examining the bed and banks
27 and ascertaining where the presence and action of waters are so common
28 and usual, and so long continued in all ordinary years, as to mark upon
29 the soil a character distinct from that of the abutting upland, in
30 respect to vegetation as that condition exists on June 1, 1971, as it
31 may naturally change thereafter, or as it may change thereafter in
32 accordance with permits issued by a local government or the department:
33 PROVIDED, That in any area where the ordinary high water mark cannot be
34 found, the ordinary high water mark adjoining salt water shall be the
35 line of mean higher high tide and the ordinary high water mark
36 adjoining fresh water shall be the line of mean high water;

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

1 (d) "Shorelines" means all of the water areas of the state,
2 including reservoirs, and their associated wetlands, together with the
3 lands underlying them; except (i) shorelines of state-wide
4 significance; (ii) shorelines on segments of streams upstream of a
5 point where the mean annual flow is twenty cubic feet per second or
6 less and the wetlands associated with such upstream segments; and (iii)
7 shorelines on lakes less than twenty acres in size and wetlands
8 associated with such small lakes;

9 (e) "Shorelines of state-wide significance" means the following
10 shorelines of the state:

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

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

17 (A) Nisqually Delta--from DeWolf Bight to Tatsolo Point,

18 (B) Birch Bay--from Point Whitehorn to Birch Point,

19 (C) Hood Canal--from Tala Point to Foulweather Bluff,

20 (D) Skagit Bay and adjacent area--from Brown Point to Yokeko Point,
21 and

22 (E) Padilla Bay--from March Point to William Point;

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

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

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

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

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

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

1 (f) "Wetlands" or "wetland areas" means those lands extending
2 landward for two hundred feet in all directions as measured on a
3 horizontal plane from the ordinary high water mark; floodways and
4 contiguous floodplain areas landward two hundred feet from such
5 floodways; and all marshes, bogs, swamps, and river deltas associated
6 with the streams, lakes, and tidal waters which are subject to the
7 provisions of this chapter; the same to be designated as to location by
8 the department of ecology(~~(:—PROVIDED, That)~~). However, any county or
9 city may determine that portion of a one-hundred-year-flood plain to be
10 included in its master program as long as such portion includes, as a
11 minimum, the floodway and the adjacent land extending landward two
12 hundred feet (~~(therefrom)~~);

13 (g) "Floodway" means those portions of the area of a river valley
14 lying streamward from the outer limits of a watercourse upon which
15 flood waters are carried during periods of flooding that occur with
16 reasonable regularity, although not necessarily annually, said floodway
17 being identified, under normal condition, by changes in surface soil
18 conditions or changes in types or quality of vegetative ground cover
19 condition. The floodway shall not include those lands that can
20 reasonably be expected to be protected from flood waters by flood
21 control devices maintained by or maintained under license from the
22 federal government, the state, or a political subdivision of the state.

23 (3) Procedural terms:

24 (a) "Guidelines" means those standards adopted to implement the
25 policy of this chapter for regulation of use of the shorelines of the
26 state prior to adoption of master programs. Such standards shall also
27 provide criteria to local governments and the department in developing
28 master programs;

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

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

36 (d) "Development" means a use consisting of the construction or
37 exterior alteration of structures; dredging; drilling; dumping;
38 filling; removal of any sand, gravel, or minerals; bulkheading; driving
39 of piling; placing of obstructions; or any project of a permanent or

1 temporary nature which interferes with the normal public use of the
2 surface of the waters overlying lands subject to this chapter at any
3 state of water level;

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

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

12 (ii) Reconstruction or improvements to dikes and levees if the
13 reconstruction or improvement is determined by a county to be
14 consistent with a flood control management plan developed under chapter
15 86.26 RCW;

16 (iii) Streambed maintenance including sediment removal, sediment
17 disposal, and streambank stabilization if performed to provide public
18 flood control benefit as determined by the appropriate county
19 legislative authority;

20 (iv) Construction of stream flow regulation, retention, or
21 detention facilities if consistent with a flood control management plan
22 developed under chapter 86.26 RCW;

23 (v) Construction of the normal protective bulkhead common to single
24 family residences;

25 ~~((iii))~~ (vi) Emergency construction necessary to protect property
26 from damage by the elements;

27 ~~((iv))~~ (vii) Construction and practices normal or necessary for
28 farming, irrigation, and ranching activities, including agricultural
29 service roads and utilities on wetlands, and the construction and
30 maintenance of irrigation structures including but not limited to head
31 gates, pumping facilities, and irrigation channels: PROVIDED, That a
32 feedlot of any size, all processing plants, other activities of a
33 commercial nature, alteration of the contour of the wetlands by
34 leveling or filling other than that which results from normal
35 cultivation, shall not be considered normal or necessary farming or
36 ranching activities. A feedlot shall be an enclosure or facility used
37 or capable of being used for feeding livestock hay, grain, silage, or
38 other livestock feed, but shall not include land for growing crops or

1 vegetation for livestock feeding and/or grazing, nor shall it include
2 normal livestock wintering operations;

3 ~~((v))~~ (viii) Construction or modification of navigational aids
4 such as channel markers and anchor buoys;

5 ~~((vi))~~ (ix) Construction on wetlands by an owner, lessee, or
6 contract purchaser of a single family residence for his own use or for
7 the use of his family, which residence does not exceed a height of
8 thirty-five feet above average grade level and which meets all
9 requirements of the state agency or local government having
10 jurisdiction thereof, other than requirements imposed pursuant to this
11 chapter;

12 ~~((vii))~~ (x) Construction of a dock, including a community dock,
13 designed for pleasure craft only, for the private noncommercial use of
14 the owner, lessee, or contract purchaser of single and multiple family
15 residences, the cost of which does not exceed two thousand five hundred
16 dollars;

17 ~~((viii))~~ (xi) Operation, maintenance, or construction of canals,
18 waterways, drains, reservoirs, or other facilities that now exist or
19 are hereafter created or developed as a part of an irrigation system
20 for the primary purpose of making use of system waters, including
21 return flow and artificially stored ground water for the irrigation of
22 lands;

23 ~~((ix))~~ (xii) The marking of property lines or corners on state
24 owned lands, when such marking does not significantly interfere with
25 normal public use of the surface of the water;

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

30 ~~((xi))~~ (xiv) Any action commenced prior to December 31, 1982,
31 pertaining to (A) the restoration of interim transportation services as
32 may be necessary as a consequence of the destruction of the Hood Canal
33 bridge, including, but not limited to, improvements to highways,
34 development of park and ride facilities, and development of ferry
35 terminal facilities until a new or reconstructed Hood Canal bridge is
36 open to traffic; and (B) the reconstruction of a permanent bridge at
37 the site of the original Hood Canal bridge.

1 **Sec. 215.** RCW 90.58.180 and 1989 c 175 s 183 are each amended to
2 read as follows:

3 (1) Any person aggrieved by the granting, denying, or rescinding of
4 a permit on shorelines of the state pursuant to RCW 90.58.140 may seek
5 review from the shorelines hearings board by filing a request for the
6 same within thirty days of the date of filing as defined in RCW
7 90.58.140(6).

8 Concurrently with the filing of any request for review with the
9 board as provided in this section pertaining to a final order of a
10 local government, the requestor shall file a copy of his request with
11 the department and the attorney general. If it appears to the
12 department or the attorney general that the requestor has valid reasons
13 to seek review, either the department or the attorney general may
14 certify the request within thirty days after its receipt to the
15 shorelines hearings board following which the board shall then, but not
16 otherwise, review the matter covered by the requestor: PROVIDED, That
17 the failure to obtain such certification shall not preclude the
18 requestor from obtaining a review in the superior court under any right
19 to review otherwise available to the requestor. The department and the
20 attorney general may intervene to protect the public interest and
21 insure that the provisions of this chapter are complied with at any
22 time within fifteen days from the date of the receipt by the department
23 or the attorney general of a copy of the request for review filed
24 pursuant to this section. The shorelines hearings board shall
25 initially schedule review proceedings on such requests for review
26 without regard as to whether such requests have or have not been
27 certified or as to whether the period for the department or the
28 attorney general to intervene has or has not expired, unless such
29 review is to begin within thirty days of such scheduling. If at the
30 end of the thirty day period for certification neither the department
31 nor the attorney general has certified a request for review, the
32 hearings board shall remove the request from its review schedule.

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

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

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

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

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

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

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

18 (c) Is arbitrary and capricious; or

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

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

22 the board shall enter a final decision declaring the rule, regulation,
23 or guideline invalid, remanding the rule, regulation, or guideline to
24 the department with a statement of the reasons in support of the
25 determination, and directing the department to adopt, after a thorough
26 consultation with the affected local government, a new rule,
27 regulation, or guideline. Unless the board makes one or more of the
28 determinations as hereinbefore provided, the board shall find the rule,
29 regulation, or guideline to be valid and enter a final decision to that
30 effect.

31 ~~((+5))~~ (6) Rules, regulations, and guidelines shall be subject to
32 review in superior court, if authorized pursuant to RCW ~~((34.05.538))~~
33 34.05.570(2): PROVIDED, That no review shall be granted by a superior
34 court on petition from a local government unless the local government
35 shall first have obtained review under subsection ~~((+4))~~ (5) of this
36 section is filed within three months after the date of final decision
37 by the shorelines hearings board.

1 **PART III**

2 **FUNDING**

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

5 When in the opinion of the governing authorities representing the
6 department and any agency, instrumentality, municipal corporation, or
7 political subdivision of the state of Washington, any highway, road, or
8 street will be benefited or improved by constructing, reconstructing,
9 locating, relocating, laying out, repairing, surveying, altering,
10 improving, or maintaining, or by the establishment adjacent to, under,
11 upon, within, or above any portion of any such highway, road, or street
12 of an urban public transportation system, by either the department or
13 any agency, instrumentality, municipal corporation, or political
14 subdivision of the state, and it is in the public interest to do so,
15 the authorities may enter into cooperative agreements wherein either
16 agrees to perform the work and furnish the materials necessary and pay
17 the cost thereof, including necessary engineering assistance, which
18 costs and expenses shall be reimbursed by the party whose
19 responsibility it was to do or perform the work or improvement in the
20 first instance. The work may be done by either day labor or contract,
21 and the cooperative agreement between the parties shall provide for the
22 method of reimbursement. In the case of some special benefit or
23 improvement to a state highway derived from (~~any project that assists~~
24 ~~in preventing or minimizing flood damages as defined in RCW 86.16.120~~
25 ~~or from~~)) the construction of any public works project, including any
26 urban public transportation system, the department may contribute to
27 the cost thereof by making direct payment to the particular state
28 department, agency, instrumentality, municipal corporation, or
29 political subdivision on the basis of benefits received, but such
30 payment shall be made only after a cooperative agreement has been
31 entered into for a specified amount or on an actual cost basis prior to
32 the commencement of the particular public works project.

33 In the case of a special benefit or improvement to a state highway
34 derived from a project that assists in preventing or reducing flood
35 damages as defined in RCW 86.16.120, the department shall contribute to
36 the cost of the benefit or improvement by making direct payment to the
37 particular state department, agency, instrumentality, municipal
38 corporation, or political subdivision on the basis of contribution to

1 the problem or benefits received. The department may make payment only
2 after an agreement has been entered into between the department and the
3 appropriate state or local government entity. The department may not
4 make the contribution less than ten percent of the total project cost.

5 **Sec. 302.** RCW 86.15.030 and 1969 ex.s. c 195 s 2 are each amended
6 to read as follows:

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

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

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

30 **Sec. 303.** RCW 86.15.050 and 1961 c 153 s 5 are each amended to
31 read as follows:

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

1 **Sec. 304.** RCW 86.15.160 and 1986 c 278 s 60 are each amended to
2 read as follows:

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

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

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

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

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

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

35

PART IV

36

FLOOD HAZARD INFORMATION

1 **Sec. 401.** RCW 86.16.031 and 1989 c 64 s 3 are each amended to read
2 as follows:

3 The department of ecology shall:

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

6 (2) When requested, provide guidance and assistance to local
7 governments in development and amendment of their flood plain
8 management ordinances;

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

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

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

17 (6) Establish state minimum requirements that equal minimum federal
18 requirements for the national flood insurance program;

19 (7) Assist counties, cities, and towns in identifying the location
20 of the one hundred year flood plain, and petitioning the federal
21 government to alter its designations of where the one hundred year
22 flood plain is located if the federally recognized location of the one
23 hundred year flood plain is found to be inaccurate; ~~((and))~~

24 (8) Establish minimum state requirements for specific flood plains
25 that exceed the minimum federal requirements for the national flood
26 insurance program, but only if:

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

29 (b) Negotiations have been held with the affected county, city, or
30 town over these regulations;

31 (c) Public input from the affected community has been obtained; and

32 (d) The department makes a finding that these increased
33 requirements are necessary due to local circumstances and general
34 public safety; and

35 (9) File copies of the flood insurance rate maps, provided by the
36 federal emergency management authority for the national flood insurance
37 program, with the county auditor in each county in which property shown
38 on the maps is located. The department shall, on an annual basis,

1 file revised maps with each county auditor in counties for which the
2 maps are revised.

3 **PART V**
4 **MISCELLANEOUS**

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

7 NEW SECTION. **Sec. 502.** (1) Sections 101 through 205, 207, 209,
8 and 211 through 501 of this act are necessary for the immediate
9 preservation of the public peace, health, or safety, or support of the
10 state government and its existing public institutions, and shall take
11 effect immediately.

12 (2) Sections 205, 207, and 209 of this act expire June 30, 1994.

13 (3) Sections 206, 208, and 210 of this act take effect July 1,
14 1994.

--- END ---