

2 **ESHB 2628** - S AMD

3 By Senators Bailey, Skratek, Anderson and Barr

4

5 Strike everything after the enacting clause and insert the
6 following:

7 "NEW SECTION. **Sec. 1.** The legislature finds that fish and
8 wildlife resources are affected by changes in habitat caused by
9 flooding. The damage to productive habitat caused by swollen streams
10 and rivers that travel outside of the regular channel is tremendous.
11 Erosion of agricultural lands caused by flooding leads to excess
12 deposits of silt in streams which degrades both water quality and
13 habitat value. Further, urban development upstream of agricultural
14 lands leads to more frequent flooding and increased flood levels which
15 in turn impact agricultural lands and the habitat value they provide.
16 It is therefore in the best interests of the state, its citizens, and
17 the fish and wildlife of the state to properly maintain streams and
18 rivers within the state to minimize or prevent flooding on all lands,
19 especially agricultural and grazing lands. To accomplish this goal, it
20 is the intent of the legislature that all governmental agencies work
21 together with private property owners to provide the most effective
22 flood control possible for the state. It is also the intent of the
23 legislature that all aspects of flooding be addressed such that equal
24 consideration is given to the protection of human life, public land,
25 private property, and fish and wildlife."

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

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

1 reasons for the delay. If written notification is not provided to the
2 applicant within ten working days after the department's suspension
3 determination, the permit shall be deemed to have been approved and
4 shall become effective without departmental action after the ten days
5 have elapsed. Approval is valid for a period of up to five years from
6 date of issuance. The permittee must demonstrate substantial progress
7 on construction of that portion of the project relating to the approval
8 within two years of the date of issuance. If either the department of
9 fisheries or the department of wildlife denies approval, that
10 department shall provide the applicant, in writing, a statement of the
11 specific reasons why and how the proposed project would adversely
12 affect fish life. In determining permit approval, the department of
13 fisheries or the department of wildlife shall give equal consideration
14 to the protection of human life, public land or private property, or
15 both, and fish life as outlined in the state policy to minimize flood
16 damage described in chapter 86.16 RCW. For purposes of this section,
17 "equal consideration" means that if the department finds that a
18 proposed project provides a substantial benefit to the protection of
19 human life and private or public property and has a minor or unproven
20 impact on fish life, the project shall be approved. Protection of fish
21 life shall be the only ground upon which approval may be denied or
22 conditioned. When a project is denied or conditioned, the department
23 of fisheries or the department of wildlife shall provide the applicant
24 technical data supporting the denial or conditioning of the permit.
25 Chapter 34.05 RCW applies to any denial of project approval,
26 conditional approval, or requirements for project modification upon
27 which approval may be contingent. If any person or government agency
28 commences construction on any hydraulic works or projects subject to
29 this section without first having obtained written approval of the
30 department of fisheries or the department of wildlife as to the

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

10 For the purposes of this section and RCW 75.20.103, "bed" shall
11 mean the land below the ordinary high water lines of state waters.
12 This definition shall not include irrigation ditches, canals, storm
13 water run-off devices, or other artificial watercourses except where
14 they exist in a natural watercourse that has been altered by ~~((man))~~
15 people. For the purposes of this section and RCW 75.20.103,
16 "emergency" means an imminent threat to life, public land and private
17 property, or both, or an imminent threat of serious environmental
18 degradation.

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

25 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

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

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

16 Following a flood equal to or greater than a five-year flood event,
17 the department of fisheries or the department of wildlife shall approve
18 or deny applications for projects that will aid in the prevention or
19 minimization of flood damages as defined in RCW 86.16.120 within
20 fifteen calendar days of receipt of a complete application and notice
21 of compliance with any applicable requirements of the state
22 environmental policy act, made in the manner prescribed in this
23 section.

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

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

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

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

1 checklist to be provided with each application outlining the items
2 necessary to submit a complete application for approval. The
3 forty-five day requirement shall be suspended if (1) after ten working
4 days of receipt of the application, the applicant remains unavailable
5 or unable to arrange for a timely field evaluation of the proposed
6 project; (2) the site is physically inaccessible for inspection; or (3)
7 the applicant requests delay.

8 Immediately upon determination that the forty-five day period is
9 suspended, the department of fisheries or the department of wildlife
10 shall notify the applicant in writing of the reasons for the delay. If
11 written notification is not provided to the applicant within ten
12 working days after the department's suspension determination, the
13 permit shall be deemed approved and shall become effective without
14 departmental action after the ten days have elapsed.

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

24 The permittee must demonstrate substantial progress on construction
25 of that portion of the project relating to the approval within two
26 years of the date of issuance. If either the department of fisheries
27 or the department of wildlife denies approval, that department shall
28 provide the applicant, in writing, a statement of the specific reasons
29 why and how the proposed project would adversely affect fish life. In
30 determining permit approval, the department of fisheries or the

1 department of wildlife shall give equal consideration to the protection
2 of human life, public land or private property, or both, and fish life
3 as outlined in the state policy to minimize flood damage described in
4 chapter 86.16 RCW. For purposes of this section, "equal consideration"
5 means when the department finds that a proposed project provides a
6 substantial benefit to the protection of human life and private or
7 public property and has a minor or unproven impact on fish life, the
8 project shall be approved. Protection of fish life shall be the only
9 ground upon which approval may be denied or conditioned. When a
10 project is denied or conditioned, the department of fisheries or the
11 department of wildlife shall provide the applicant technical data
12 supporting the denial or conditioning of the permit. Issuance, denial,
13 conditioning, or modification shall be appealable to the hydraulic
14 appeals board established in RCW 43.21B.005 within thirty days of the
15 notice of decision. The burden shall be upon the department of
16 fisheries or the department of wildlife to show that the denial or
17 conditioning of an approval is solely aimed at the protection of fish
18 life.

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

26 A permittee may request modification of an approval due to changed
27 conditions. The request shall be processed within forty-five calendar
28 days of receipt of the written request. A decision by the department
29 that issued the approval may be appealed to the hydraulic appeals board
30 within thirty days of the notice of the decision. The burden is on the

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

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

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

25 In case of an emergency arising from weather or stream flow
26 conditions or other natural conditions, the department of fisheries or
27 department of wildlife, through their authorized representatives, shall
28 issue immediately upon request oral approval for removing any
29 obstructions, repairing existing structures, restoring stream banks, or
30 to protect property threatened by the stream or a change in the stream

1 flow without the necessity of obtaining a written approval prior to
2 commencing work. Conditions of an oral approval shall be reduced to
3 writing within thirty days and complied with as provided for in this
4 section.

5 Following a flood equal to or greater than a five-year flood event,
6 the department of fisheries or the department of wildlife shall approve
7 or deny applications for projects that will aid in the prevention or
8 minimization of flood damages as defined in RCW 86.16.120 within
9 fifteen calendar days of the receipt of a complete application and
10 notice of compliance with any applicable requirements of the state
11 environmental policy act, made in the manner prescribed in this
12 section.

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

17 "NEW SECTION. Sec. 4. A new section is added to chapter 75.20 RCW
18 to read as follows:

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

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

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

26 (3) The permittee shall begin excavating at the excavation line and
27 proceed toward the bank, perpendicular to the alignment of the
28 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 which is naturally replenished on an annual
21 basis, except in instances where a lapse in material removal has
22 occurred. If such 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. 5.** A new section is added to chapter 75.20 RCW
27 to read as follows:

28 The departments of fisheries, wildlife, natural resources, and
29 ecology shall jointly develop a memorandum of understanding to

1 facilitate the consideration of projects that will aid in the
2 minimization or prevention of flood damage as defined in RCW 86.16.120.
3 To reduce the duplication of information required by a project's
4 permits, the departments must provide in their memorandum procedures to
5 share data to the extent practicable among themselves and with other
6 agencies that may be involved in approving or denying a permit
7 application. The departments' memorandum must provide a plan to
8 implement a comprehensive permit process that is streamlined and easily
9 understandable to permit applicants."

10 "Sec. 6. RCW 79.90.300 and 1991 c 322 s 26 are each amended to
11 read as follows:

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

1 "NEW SECTION. **Sec. 7.** A new section is added to chapter 79.90 RCW
2 to read as follows:

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

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

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

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

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

14 (d) Recognize natural plant and animal communities and other
15 features that provide an ecological balance to a streamway in
16 evaluating competing human uses and require protection from significant
17 human impact; and

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

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

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

29 (5) The department may permit river channel relocations only when
30 an overriding public benefit can be shown. Filling, grading,

1 lagooning, or dredging which would result in substantial detriment to
2 navigable waters by reason of erosion, sedimentation, or impairment of
3 fish and aquatic life are not authorized.

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

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

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

16 (b) The removal provides recreational benefits;

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

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

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

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

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

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

29 (c) Removal will impact esthetics of nearby recreational
30 facilities.

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

3 (10) The department shall condition sand and gravel removal leases
4 to allow removal of only that amount which is naturally replenished on
5 an annual basis, except in instances where a lapse in material removal
6 has occurred. If such a lapse has occurred, then an amount of material
7 equivalent to the amount estimated to have accumulated since the last
8 material removal operation, including debris and vegetation, may be
9 removed."

10 "NEW SECTION. Sec. 8. RCW 79.90.325 and 1984 c 212 s 10 are
11 each repealed."

12 "**Sec. 9.** RCW 86.16.120 and 1935 c 159 s 2 are each amended to read
13 as follows:

14 Damages within the meaning of this chapter (~~shall~~) include loss
15 of human life and damages to homes and possessions; harmful
16 inundation(~~()~~); water erosion of soil, stream banks, and beds(~~()~~);
17 stream channel shifting and changes(~~()~~); harmful deposition by water
18 of eroded and shifting soils, rocks, gravel, and debris upon property
19 or in the beds of streams or other bodies of water(~~()~~); damages by
20 high water to public roads, highways, bridges, utilities, and to works
21 built for protection against floods or inundation(~~()~~); the
22 interruption by floods of travel, communication, and commerce(~~()~~);
23 harm to livestock by flood waters; reduction in the flow capacity of
24 streams due to the accumulation of deposited silt, soils, gravel, and
25 other materials in the beds of streams; the accumulations of deposited
26 soils, rocks, gravel, sand, and other materials on stream bars that may
27 result in a change in the flow direction of streams or erosion of
28 stream banks; damage to fisheries, fish propagation facilities, and

1 fish habitat; degradation of scenic, historic, and recreational values
2 of rivers; and all other high water influences and results which
3 injuriously affect the public health and the safety of property."

4 "Sec. 10. RCW 86.26.007 and 1991 sp.s. c 13 s 24 are each amended
5 to read as follows:

6 The flood control assistance account is hereby established in the
7 state treasury. At the beginning of each biennium the state treasurer
8 shall transfer from the general fund to the flood control assistance
9 account an amount of money which, when combined with money remaining in
10 the account from the previous biennium, will equal (~~four~~) six million
11 dollars. Moneys in the flood control assistance account may be spent
12 only after appropriation for purposes specified under this chapter."

13 "Sec. 11. RCW 86.26.060 and 1984 c 212 s 5 are each amended to
14 read as follows:

15 Grants for flood control maintenance shall be so employed that as
16 far as possible, funds will be on hand to meet unusual, unforeseeable
17 and emergent flood conditions. Allocations by the department of
18 ecology, for emergency purposes, shall in each instance be in amounts
19 which together with funds provided by local authority, if any, under
20 reasonable exercise of its emergency powers, shall be adequate for the
21 preservation of life and property, and with due regard to similar needs
22 elsewhere in the state. The department shall place a higher priority
23 in allocating funds on flood damage repair projects than all other
24 requests except for work required on flood control management plans
25 under RCW 86.26.050."

26 "NEW SECTION. Sec. 12. A new section is added to chapter 86.26
27 RCW to read as follows:

1 A flood protection project is work necessary to preserve, restore,
2 or improve either natural or human-made stream banks or flood control
3 facilities which repair or prevent flood damage as defined in RCW
4 86.16.120 including but not limited to damage by erosion, stream flow,
5 sheet runoff, or other damages by the sea or other bodies of water."

6 "Sec. 13. 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

1 respect to vegetation as that condition exists on June 1, 1971, as it
2 may naturally change thereafter, or as it may change thereafter in
3 accordance with permits issued by a local government or the department:
4 PROVIDED, That in any area where the ordinary high water mark cannot be
5 found, the ordinary high water mark adjoining salt water shall be the
6 line of mean higher high tide and the ordinary high water mark
7 adjoining fresh water shall be the line of mean high water;

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

10 (d) "Shorelines" means all of the water areas of the state,
11 including reservoirs, and their associated wetlands, together with the
12 lands underlying them; except (i) shorelines of state-wide
13 significance; (ii) shorelines on segments of streams upstream of a
14 point where the mean annual flow is twenty cubic feet per second or
15 less and the wetlands associated with such upstream segments; and (iii)
16 shorelines on lakes less than twenty acres in size and wetlands
17 associated with such small lakes;

18 (e) "Shorelines of state-wide significance" means the following
19 shorelines of the state:

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

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

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

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

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

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

30 and

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

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

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

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

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

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

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

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

1 any modifications to the floodway or adjacent land made by the
2 establishment of a flood zone density flood plain or density fringe
3 flood plain, as approved by the department of ecology;

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

14 (3) Procedural terms:

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

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

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

27 (d) "Development" means a use consisting of the construction or
28 exterior alteration of structures; dredging; drilling; dumping;
29 filling; removal of any sand, gravel, or minerals; bulkheading; driving
30 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~~
6 ~~hundred~~) five thousand dollars, or any development which materially
7 interferes with the normal public use of the water or shorelines of the
8 state; except that the following shall not be considered substantial
9 developments for the 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) Construction of the normal protective bulkhead common to
13 single family residences;

14 (iii) Emergency construction, including flood control and
15 restoration, necessary to protect property from damage by the elements;

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

1 (v) Construction or modification of navigational aids such as
2 channel markers and anchor buoys;

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

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

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

20 (ix) The marking of property lines or corners on state owned lands,
21 when such marking does not significantly interfere with normal public
22 use of the surface of the water;

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

27 (xi) Any action commenced prior to December 31, 1982, pertaining to
28 (A) the restoration of interim transportation services as may be
29 necessary as a consequence of the destruction of the Hood Canal bridge,
30 including, but not limited to, improvements to highways, development of

1 park and ride facilities, and development of ferry terminal facilities
2 until a new or reconstructed Hood Canal bridge is open to traffic; and
3 (B) the reconstruction of a permanent bridge at the site of the
4 original Hood Canal bridge."

5 "Sec. 14. RCW 90.58.100 and 1991 c 322 s 32 are each amended to
6 read as follows:

7 (1) The master programs provided for in this chapter, when adopted
8 and approved by the department, as appropriate, shall constitute use
9 regulations for the various shorelines of the state. In preparing the
10 master programs, and any amendments thereto, the department and local
11 governments shall to the extent feasible:

12 (a) Utilize a systematic interdisciplinary approach which will
13 insure the integrated use of the natural and social sciences and the
14 environmental design arts;

15 (b) Consult with and obtain the comments of any federal, state,
16 regional, or local agency having any special expertise with respect to
17 any environmental impact;

18 (c) Consider all plans, studies, surveys, inventories, and systems
19 of classification made or being made by federal, state, regional, or
20 local agencies, by private individuals, or by organizations dealing
21 with pertinent shorelines of the state;

22 (d) Conduct or support such further research, studies, surveys, and
23 interviews as are deemed necessary;

24 (e) Utilize all available information regarding hydrology,
25 geography, topography, ecology, economics, and other pertinent data;

26 (f) Employ, when feasible, all appropriate, modern scientific data
27 processing and computer techniques to store, index, analyze, and manage
28 the information gathered.

1 (2) The master programs shall include, when appropriate, the
2 following:

3 (a) An economic development element for the location and design of
4 industries, transportation facilities, port facilities, tourist
5 facilities, commerce and other developments that are particularly
6 dependent on their location on or use of the shorelines of the state;

7 (b) A public access element making provision for public access to
8 publicly owned areas;

9 (c) A recreational element for the preservation and enlargement of
10 recreational opportunities, including but not limited to parks,
11 tidelands, beaches, and recreational areas;

12 (d) A circulation element consisting of the general location and
13 extent of existing and proposed major thoroughfares, transportation
14 routes, terminals, and other public utilities and facilities, all
15 correlated with the shoreline use element;

16 (e) A use element which considers the proposed general distribution
17 and general location and extent of the use on shorelines and adjacent
18 land areas for housing, business, industry, transportation,
19 agriculture, natural resources, recreation, education, public buildings
20 and grounds, and other categories of public and private uses of the
21 land;

22 (f) A conservation element for the preservation of natural
23 resources, including but not limited to scenic vistas, aesthetics, and
24 vital estuarine areas for fisheries and wildlife protection;

25 (g) An historic, cultural, scientific, and educational element for
26 the protection and restoration of buildings, sites, and areas having
27 historic, cultural, scientific, or educational values;

28 (h) An element that gives the same consideration to the state-wide
29 interest in the prevention and minimization of flood damages as defined
30 in RCW 86.16.120 as that given any other master program element; and

1 (i) Any other element deemed appropriate or necessary to effectuate
2 the policy of this chapter.

3 (3) The master programs shall include such map or maps, descriptive
4 text, diagrams and charts, or other descriptive material as are
5 necessary to provide for ease of understanding.

6 (4) Master programs will reflect that state-owned shorelines of the
7 state are particularly adapted to providing wilderness beaches,
8 ecological study areas, and other recreational activities for the
9 public and will give appropriate special consideration to same.

10 (5) Each master program shall contain provisions to allow for the
11 varying of the application of use regulations of the program, including
12 provisions for permits for conditional uses and variances, to insure
13 that strict implementation of a program will not create unnecessary
14 hardships or thwart the policy enumerated in RCW 90.58.020. Any such
15 varying shall be allowed only if extraordinary circumstances are shown
16 and the public interest suffers no substantial detrimental effect. The
17 concept of this subsection shall be incorporated in the rules adopted
18 by the department relating to the establishment of a permit system as
19 provided in RCW 90.58.140(3)."

20 "Sec. 15. RCW 43.21C.020 and 1971 ex.s. c 109 s 2 are each amended
21 to read as follows:

22 (1) The legislature, recognizing that ((man)) people depend((s)) on
23 ((his)) their biological and physical surroundings for food, shelter,
24 and other needs, and for cultural enrichment as well((+)), and
25 recognizing further the profound impact of ((man's)) human activity on
26 the interrelations of all components of the natural environment,
27 particularly the profound influences of population growth, high-density
28 urbanization, industrial expansion, resource utilization and
29 exploitation, and new and expanding technological advances, and

1 recognizing further the critical importance of restoring and
2 maintaining environmental quality to the overall welfare and
3 development of ((man)) people, declares that it is the continuing
4 policy of the state of Washington, in cooperation with federal and
5 local governments, and other concerned public and private
6 organizations, to use all practicable means and measures, including
7 financial and technical assistance, in a manner calculated to: (a)
8 Foster and promote the general welfare; (b) ((tə)) create and maintain
9 conditions under which ((man)) people and nature can exist in
10 productive harmony; and (c) fulfill the social, economic, and other
11 requirements of present and future generations of Washington citizens.

12 (2) In order to carry out the policy set forth in this chapter, it
13 is the continuing responsibility of the state of Washington and all
14 agencies of the state to use all practicable means, consistent with
15 other essential considerations of state policy, to improve and
16 coordinate plans, functions, programs, and resources to the end that
17 the state and its citizens may:

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

20 (b) Assure for all people of Washington safe, healthful,
21 productive, and esthetically and culturally pleasing surroundings;

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

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

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

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

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

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

8 (3) The legislature recognizes that each person has a fundamental
9 and inalienable right to a healthful environment and that each person
10 has a responsibility to contribute to the preservation and enhancement
11 of the environment."

12 "NEW SECTION. Sec. 16. A new section is added to chapter 43.21C
13 RCW to read as follows:

14 Any governmental agency, whether state, local, or municipal,
15 receiving a permit application for a project that is not a substantial
16 development as defined in RCW 90.58.030(3) and will aid in the
17 prevention or minimization of flood damages as defined in RCW
18 86.16.120, shall approve or disapprove the application within thirty
19 calendar days from the date the application is received. If the agency
20 determines that a detailed statement must be made, the agency shall
21 approve or disapprove the application within sixty days from the date
22 the application is received, unless, through the promulgation of a
23 formal order, the agency determines that the process cannot be
24 completed within such period.

25 Following a flood equal to or greater than a five-year flood event,
26 applications for projects to repair or enhance flood protection must be
27 approved or disapproved by the receiving governmental agency within
28 fifteen calendar days from the date the application is received. If
29 the agency determines that a detailed statement must be made, the

1 agency shall approve or disapprove the application within thirty days
2 from the date the application is received, unless, through the
3 promulgation of a formal order, the agency determines that the process
4 cannot be completed within such period. When a project is disapproved
5 or conditioned, the department shall provide the applicant sufficient
6 technical data to support disapproval or conditioning of the permit
7 application."

8 "Sec. 17. RCW 86.15.160 and 1986 c 278 s 60 are each amended to
9 read as follows:

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

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

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

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

25 (4) A charge, under RCW 36.89.080, for the furnishing of service to
26 those who are receiving or will receive benefits from storm water
27 control facilities (~~and~~) or who are contributing to an increase in
28 surface water runoff. Except as otherwise provided in RCW 90.03.525,
29 any public entity and public property, including the state and state

1 property, shall be liable for the charges to the same extent a private
2 person and privately owned property is liable for the charges, and in
3 setting these rates and charges, consideration may be made of in-kind
4 services, such as stream improvements or donation of property;

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

11 "NEW SECTION. **Sec. 18.** If specific funding for the purposes of
12 sections 2, 3, and 16 of this act, referencing sections 2, 3, and 16 of
13 this act by bill and section number, is not provided by June 30, 1992,
14 in the omnibus appropriations act, sections 2, 3, and 16 of this act
15 shall be null and void."

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

20 **ESHB 2628** - S AMD

21 By Senators Bailey, Skratek, Anderson and Barr

22

23 On page 1, line 2 of the title, after "lands;" strike the remainder
24 of the title and insert "amending RCW 43.21C.020, 75.20.100, 75.20.103,
25 79.90.300, 86.16.120, 86.26.007, 86.26.060, 90.58.030, 90.58.100, and
26 86.15.160; adding a new section to chapter 43.21C RCW; adding new
27 sections to chapter 75.20 RCW; adding a new section to chapter 79.90

- 1 RCW; adding a new section to chapter 86.26 RCW; creating new sections;
- 2 repealing RCW 79.90.325; and declaring an emergency."