

1 6095 AMS AWR S3870.1

2 **SB 6095** - S COMM AMD

3 By Committee on Agriculture & Water Resources

4

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

7 **"Sec. 1.** RCW 43.21C.020 and 1971 ex.s. c 109 s 2 are each amended  
8 to read as follows:

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

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

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

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

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

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

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

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

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

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

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

1        "NEW SECTION. Sec. 2. A new section is added to chapter 43.21C  
2 RCW to read as follows:

3        Any governmental agency, whether state, local, or municipal,  
4 receiving a permit application for a project that is not a substantial  
5 development as defined in RCW 90.58.030(3) and will aid in the  
6 prevention or minimization of flood damages as defined in RCW  
7 86.16.120, shall approve or disapprove the application within thirty  
8 calendar days from the date the application is received. If the agency  
9 determines that a detailed statement must be made, the agency shall  
10 approve or disapprove the application within sixty days from the date  
11 the application is received, unless, through the promulgation of a  
12 formal order, the agency determines that the process cannot be  
13 completed within such period.

14        Following a flood equal to or greater than a five-year flood event,  
15 applications for projects to repair or enhance flood protection must be  
16 approved or disapproved by the receiving governmental agency within  
17 fifteen calendar days from the date the application is received. If  
18 the agency determines that a detailed statement must be made, the  
19 agency shall approve or disapprove the application within thirty days  
20 from the date the application is received, unless, through the  
21 promulgation of a formal order, the agency determines that the process  
22 cannot be completed within such period. When a project is disapproved  
23 or conditioned, the department shall provide the applicant sufficient  
24 technical data to support disapproval or conditioning of the permit  
25 application."

26        **"Sec. 3.** RCW 75.20.100 and 1991 c 322 s 30 are each amended to  
27 read as follows:

28        In the event that any person or government agency desires to  
29 construct any form of hydraulic project or perform other work that will

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

1 determination, the permit shall be deemed to have been approved and  
2 shall become effective without departmental action after the ten days  
3 have elapsed. Approval is valid for a period of up to five years from  
4 date of issuance. The permittee must demonstrate substantial progress  
5 on construction of that portion of the project relating to the approval  
6 within two years of the date of issuance. If either the department of  
7 fisheries or the department of wildlife denies approval, that  
8 department shall provide the applicant, in writing, a statement of the  
9 specific reasons why and how the proposed project would adversely  
10 affect fish life. In determining permit approval, the department of  
11 fisheries or the department of wildlife shall give equal consideration  
12 to the protection of human life, public land or private property, or  
13 both, and fish life as outlined in the state policy to minimize flood  
14 damage described in chapter 86.16 RCW. For purposes of this section,  
15 "equal consideration" means that if the department finds that a  
16 proposed project provides a substantial benefit to the protection of  
17 human life and private or public property and has a minor or unproven  
18 impact on fish life, the project shall be approved. Protection of fish  
19 life shall be the only ground upon which approval may be denied or  
20 conditioned. When a project is denied or conditioned, the department  
21 of fisheries or the department of wildlife shall provide the applicant  
22 technical data supporting the denial or conditioning of the permit.  
23 Chapter 34.05 RCW applies to any denial of project approval,  
24 conditional approval, or requirements for project modification upon  
25 which approval may be contingent. If any person or government agency  
26 commences construction on any hydraulic works or projects subject to  
27 this section without first having obtained written approval of the  
28 department of fisheries or the department of wildlife as to the  
29 adequacy of the means proposed for the protection of fish life, or if  
30 any person 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 For the purposes of this section and RCW 75.20.103, "bed" shall  
9 mean the land below the ordinary high water lines of state waters.  
10 This definition shall not include irrigation ditches, canals, storm  
11 water run-off devices, or other artificial watercourses except where  
12 they exist in a natural watercourse that has been altered by ~~((man))~~  
13 people. For the purposes of this section and RCW 75.20.103,  
14 "emergency" means an imminent threat to life, public land and private  
15 property, or both, or an imminent threat of serious environmental  
16 degradation.

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

23 For each application, the department of fisheries and the  
24 department of wildlife shall mutually agree on whether the department  
25 of fisheries or the department of wildlife shall administer the  
26 provisions of this section, in order to avoid duplication of effort.  
27 The department designated to act shall cooperate with the other  
28 department in order to protect all species of fish life found at the  
29 project site. If the department of fisheries or the department of  
30 wildlife receives an application concerning a site not in its

1 jurisdiction, it shall transmit the application to the other department  
2 within three days and notify the applicant.

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

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

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

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

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



1 days of receipt of the application, the applicant remains unavailable  
2 or unable to arrange for a timely field evaluation of the proposed  
3 project; (2) the site is physically inaccessible for inspection; or (3)  
4 the applicant requests delay.

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

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

21 The permittee must demonstrate substantial progress on construction  
22 of that portion of the project relating to the approval within two  
23 years of the date of issuance. If either the department of fisheries  
24 or the department of wildlife denies approval, that department shall  
25 provide the applicant, in writing, a statement of the specific reasons  
26 why and how the proposed project would adversely affect fish life. In  
27 determining permit approval, the department of fisheries or the  
28 department of wildlife shall give equal consideration to the protection  
29 of human life, public land or private property, or both, and fish life  
30 as outlined in the state policy to minimize flood damage described in

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

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

23 A permittee may request modification of an approval due to changed  
24 conditions. The request shall be processed within forty-five calendar  
25 days of receipt of the written request. A decision by the department  
26 that issued the approval may be appealed to the hydraulic appeals board  
27 within thirty days of the notice of the decision. The burden is on the  
28 permittee to show that changed conditions warrant the requested  
29 modification and that such modification will not impair fish life.

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

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

23        In case of an emergency arising from weather or stream flow  
24 conditions or other natural conditions, the department of fisheries or  
25 department of wildlife, through their authorized representatives, shall  
26 issue immediately upon request oral approval for removing any  
27 obstructions, repairing existing structures, restoring stream banks, or  
28 to protect property threatened by the stream or a change in the stream  
29 flow without the necessity of obtaining a written approval prior to  
30 commencing work. Conditions of an oral approval shall be reduced to

1 writing within thirty days and complied with as provided for in this  
2 section.

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

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

15 "NEW SECTION. Sec. 5. A new section is added to chapter 75.20 RCW  
16 to read as follows:

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

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

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

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

27 (4) The permittee shall keep the maximum distance of excavation  
28 toward the bank from the excavation line approximately equal throughout

1 the excavation zone. "Excavation zone" means the area between the  
2 excavation line and the bank.

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

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

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

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

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

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

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

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

24 "NEW SECTION. Sec. 6. A new section is added to chapter 75.20 RCW  
25 to read as follows:

26 The departments of fisheries, wildlife, natural resources, and  
27 ecology shall jointly develop a memorandum of understanding to  
28 facilitate the consideration of projects that will aid in the  
29 minimization or prevention of flood damage as defined in RCW 86.16.120.

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

8 **"Sec. 7.** RCW 79.90.300 and 1991 c 322 s 26 are each amended to  
9 read as follows:

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

26 "NEW SECTION. **Sec. 8.** A new section is added to chapter 79.90 RCW  
27 to read as follows:

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

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

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

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

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

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

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

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

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

27 (5) The department may permit river channel relocations only when  
28 an overriding public benefit can be shown. Filling, grading,  
29 lagooning, or dredging which would result in substantial detriment to

1 navigable waters by reason of erosion, sedimentation, or impairment of  
2 fish and aquatic life are not authorized.

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

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

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

15 (b) The removal provides recreational benefits;

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

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

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

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

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

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

28 (c) Removal will impact esthetics of nearby recreational  
29 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. 9. RCW 79.90.325 and 1984 c 212 s 10 are  
11 each repealed."

12 **"Sec. 10.** RCW 86.16.120 and 1935 c 159 s 2 are each amended to  
13 read 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((~~τ~~)); water erosion of soil, stream banks, and beds((~~τ~~));  
17 stream channel shifting and changes((~~τ~~)); 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((~~τ~~)); damages by  
20 high water to public roads, highways, bridges, utilities, and to works  
21 built for protection against floods or inundation((~~τ~~)); the  
22 interruption by floods of travel, communication, and commerce((~~τ~~));  
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. 11.** 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. 12.** 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. 13.** 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. 14.** 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. 15.** 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 "NEW SECTION. Sec. 16. This act is necessary for the immediate  
21 preservation of the public peace, health, or safety, or support of the  
22 state government and its existing public institutions, and shall take  
23 effect immediately."

24 **SB 6095** - S COMM AMD  
25 By Committee on Agriculture & Water Resources

26  
27 On page 1, line 1 of the title, after "control;" strike the  
28 remainder of the title and insert "amending RCW 43.21C.020, 75.20.100,

1 75.20.103, 79.90.300, 86.16.120, 86.26.007, 86.26.060, 90.58.030, and  
2 90.58.100; adding a new section to chapter 43.21C RCW; adding new  
3 sections to chapter 75.20 RCW; adding a new section to chapter 79.90  
4 RCW; adding a new section to chapter 86.26 RCW; repealing RCW  
5 79.90.325; and declaring an emergency."