
ENGROSSED SUBSTITUTE SENATE BILL 5411

State of Washington

52nd Legislature

1991 Regular Session

By Senate Committee on Agriculture & Water Resources (originally sponsored by Senators Bailey, Anderson, Hansen, Barr, McMullen, Conner and Skratek).

Read first time March 4, 1991.

1 AN ACT Relating to the alleviation of flood damage; amending RCW
2 86.16.120, 79.72.050, 79.90.130, 79.90.150, 79.90.300, 90.58.020,
3 90.58.030, 90.58.100, 75.20.100, 75.20.103, 75.10.130, 43.21C.020,
4 47.28.140, 79.01.135, 86.26.007, 36.32.290, 86.26.005, 86.26.040,
5 86.26.050, 86.26.060, 86.26.070, 86.26.100, and 86.26.105; adding a new
6 section to chapter 79.90 RCW; adding a new section to chapter 90.58
7 RCW; adding a new section to chapter 86.16 RCW; adding a new section to
8 chapter 86.26 RCW; adding a new section to chapter 43.21C RCW; creating
9 new sections; recodifying RCW 79.01.135; repealing RCW 79.90.140; and
10 declaring an emergency.

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

12 NEW SECTION. **Sec. 1.** The legislature finds that floods pose
13 threats to public health and to the safety of public and private
14 property including loss or endangerment to human life; damage to homes;
15 reduction of water quality; damage to public roads, highways, bridges,

1 and utilities; interruption of travel, communication, and commerce;
2 damage to fisheries, fish propagation facilities, and fish habitat;
3 harm to livestock; destruction or degradation of environmentally
4 sensitive areas; erosion of soil, stream banks and beds; and harmful
5 accumulation of soil and debris in the beds of streams or other bodies
6 of water and on public and private lands.

7 The legislature finds that the alleviation of flood damage to
8 public and private property and to the public health and safety is a
9 matter of public concern. The legislature further finds that most
10 actions that will be effective to prevent and minimize damage by floods
11 need to be planned and approved in advance of the time that a flood
12 occurs.

13 It is the policy of the state for state agencies to cooperate and
14 assist the public in actions which will prevent and minimize flood
15 damage.

16 The purpose of this act is to develop a coordinated state policy
17 that will provide a broader perspective to be applied in the
18 implementation of various state laws to require the inclusion of the
19 policy of alleviation of flood damage as a high priority.

20 **Sec. 2.** RCW 86.16.120 and 1935 c 159 s 2 are each amended to read
21 as follows:

22 Damages within the meaning of this chapter shall include loss of
23 human life and damages to homes and possessions; harmful
24 inundation((~~7~~)); water erosion of soil, stream banks and beds((~~7~~));
25 stream channel shifting and changes((~~7~~)); harmful deposition by water
26 of eroded and shifting soils, rocks, gravel, and debris upon property
27 or in the beds of streams or other bodies of water((~~7~~)); damages by
28 high water to public roads, highways, bridges, utilities and to works
29 built for protection against floods or inundation((~~7~~)); the

1 interruption by floods of travel, communication and commerce((~~7~~)); harm
2 to livestock by flood waters; reduction in the flow capacity of streams
3 due to the accumulation of deposited silt, soils, gravel, and other
4 materials in the beds of streams; the accumulations of deposited soils,
5 rocks, gravel, sand, and other materials on stream bars that may result
6 in a change in the flow direction of streams or erosion of stream
7 banks; damage to fisheries, fish propagation facilities, and fish
8 habitat; degradation of scenic, historic, and recreational values of
9 rivers; and all other high water influences and results which
10 injuriously affect the public health and the safety of property.

11 **Sec. 3.** RCW 79.72.050 and 1977 ex.s. c 161 s 5 are each amended to
12 read as follows:

13 (1) All state government agencies and local governments are hereby
14 directed to pursue policies with regard to their respective activities,
15 functions, powers, and duties which are designed to conserve and
16 enhance the conditions of rivers which have been included in the
17 system, in accordance with the management policies and the rules ((~~and~~
18 ~~regulations~~)) adopted by the department for such rivers. Local
19 agencies are directed to pursue such policies with respect to all lands
20 in the river area owned or leased by such local agencies. Nothing in
21 this chapter shall authorize the modification of a shoreline management
22 plan adopted by a local government and approved by the state pursuant
23 to chapter 90.58 RCW without the approval of the department of ecology
24 and local government. The policies adopted pursuant to this chapter
25 shall be integrated, as fully as possible, with those of the shoreline
26 management act of 1971.

27 (2) Nothing in this chapter shall grant to the committee of
28 participating agencies or the department the power to restrict the use
29 of private land without either the specific written consent of the

1 owner thereof or the acquisition of rights in real property authorized
2 by RCW 79.72.040.

3 (3) Nothing in this chapter shall prohibit the department of
4 natural resources from exercising its full responsibilities and
5 obligations for the management of state trust lands.

6 (4) Nothing in this chapter shall prohibit the state, any state
7 government agency, or local government from carrying out its duty to
8 protect the public health and welfare by preventing or minimizing flood
9 damages as defined in RCW 86.16.120. Further, no permit sought by any
10 person, for a project or activity on private land, pursuant to any
11 other chapter shall be conditioned or denied by any state government
12 agency or local government for the purpose of effecting the policies or
13 goals of this chapter.

14 **Sec. 4.** RCW 79.90.130 and 1982 1st ex.s. c 21 s 19 are each
15 amended to read as follows:

16 ~~((Valuable materials situated within or upon tidelands, shorelands,~~
17 ~~or the beds of navigable waters belonging to the state may be sold~~
18 ~~separately from the land, when in the judgment of the department of~~
19 ~~natural resources, it is in the best interests of the state to sell the~~
20 ~~same. When application is made for the purchase of any valuable~~
21 ~~material, situated within or upon aquatic lands, the department shall~~
22 ~~inspect and appraise the value of the material applied for: PROVIDED,~~
23 ~~That no valuable material shall be sold for less than the appraised~~
24 ~~value thereof: PROVIDED FURTHER, That))~~ The department is authorized
25 and empowered to confer with and enter into any agreements with the
26 public authorities of the state of Oregon, which in the judgment of the
27 department will assist the state of Washington and the state of Oregon
28 in securing the maximum revenues for sand, gravel or other valuable

1 materials taken from the bed of the Columbia river where said river
2 forms the boundary line between said states.

3 **Sec. 5.** RCW 79.90.150 and 1982 1st ex.s. c 21 s 21 are each
4 amended to read as follows:

5 When gravel, rock, sand, silt or other material from any aquatic
6 lands is removed by any public agency or under public contract for
7 channel or harbor improvement, or flood control, or the prevention and
8 minimization of flood damages as defined in RCW 86.16.120, use of such
9 material may be authorized by the department of natural resources for
10 a public purpose on land owned or leased by the federal government,
11 state, or any municipality, county, city, town, or public corporation:
12 PROVIDED, That when no public land site is available for deposit of
13 such material, its deposit on private land with the landowner's
14 permission is authorized and may be designated by the department of
15 natural resources to be for a public purpose. Prior to removal and
16 use, the federal agency, state agency, municipality, county, city,
17 town, or public corporation contemplating or arranging such use shall
18 first obtain written permission from the department of natural
19 resources. No payment of royalty shall be required for such gravel,
20 rock, sand, silt, or other material used for such public purpose, but
21 a charge will be made if such material is subsequently sold or used for
22 some other purpose: PROVIDED, That the department may authorize such
23 public agency or private landowner to dispose of such material without
24 charge when necessary to implement disposal of material. No charge
25 shall be required for any use of the material obtained under the
26 provisions of this chapter when used solely on an authorized site.
27 Nothing in this section shall repeal or modify the provisions of RCW
28 75.20.100 or eliminate the necessity of obtaining a permit for such
29 removal from other state or federal agencies as otherwise required by

1 law. For the purpose of this section, "public purpose" includes, but
2 is not limited to, the construction, maintenance, improvement, or
3 repair of any public street, road, highway, dike, levee, or project
4 undertaken pursuant to chapter 86.26 RCW.

5 **Sec. 6.** RCW 79.90.300 and 1982 1st ex.s. c 21 s 36 are each
6 amended to read as follows:

7 The department of natural resources, upon application by any person
8 or when determined by the department to be in the best interest of the
9 state, may enter into a contract or lease providing for the removal and
10 sale of rock, gravel, sand, and silt, or other valuable materials
11 located within or upon beds of navigable waters, or upon any tidelands
12 or shorelands belonging to the state and providing for payment to be
13 made therefor by such royalty as the department may fix, by
14 negotiation, by sealed bid, or at public auction. If application is
15 made for the purchase of any valuable material situated within or upon
16 aquatic lands the department shall inspect and appraise the value of
17 the material in the application.

18 NEW SECTION. **Sec. 7.** RCW 79.01.135 as amended by this act is
19 recodified as a section in chapter 79.90 RCW.

20 NEW SECTION. **Sec. 8.** RCW 79.90.140 and 1982 1st ex.s. c 21 s
21 20 are each repealed.

22 **Sec. 9.** RCW 90.58.020 and 1982 1st ex.s. c 13 s 1 are each amended
23 to read as follows:

24 The legislature finds that the shorelines of the state are among
25 the most valuable and fragile of its natural resources and that there
26 is great concern throughout the state relating to their utilization,

1 protection, restoration, and preservation. In addition it finds that
2 ever increasing pressures of additional uses are being placed on the
3 shorelines necessitating increased coordination in the management and
4 development of the shorelines of the state. The legislature further
5 finds that much of the shorelines of the state and the uplands adjacent
6 thereto are in private ownership; that unrestricted construction on the
7 privately owned or publicly owned shorelines of the state is not in the
8 best public interest; and therefore, coordinated planning is necessary
9 in order to protect the public interest associated with the shorelines
10 of the state while, at the same time, recognizing and protecting
11 private property rights consistent with the public interest. There is,
12 therefor, a clear and urgent demand for a planned, rational, and
13 concerted effort, jointly performed by federal, state, and local
14 governments, to prevent the inherent harm in an uncoordinated and
15 piecemeal development of the state's shorelines.

16 It is the policy of the state to provide for the management of the
17 shorelines of the state by planning for and fostering all reasonable
18 and appropriate uses. This policy is designed to insure the
19 development of these shorelines in a manner which, while allowing for
20 limited reduction of rights of the public in the navigable waters, will
21 promote and enhance the public interest. This policy contemplates
22 protecting against adverse effects to the public health, the land and
23 its vegetation and wildlife, and the waters of the state and their
24 aquatic life, while protecting generally public rights of navigation
25 and corollary rights incidental thereto.

26 The legislature declares that the interest of all of the people
27 shall be paramount in the management of shorelines of state-wide
28 significance. The department, in adopting guidelines for shorelines of
29 state-wide significance, and local government, in developing master

1 programs for shorelines of state-wide significance, shall give
2 preference to uses in the following order of preference which:

3 (1) Recognize and protect the state-wide interest over local
4 interest;

5 (2) Preserve the natural character of the shoreline;

6 (3) Result in long term over short term benefit;

7 (4) Protect the resources and ecology of the shoreline;

8 (5) Increase public access to publicly owned areas of the
9 shorelines;

10 (6) Increase recreational opportunities for the public in the
11 shoreline;

12 (7) Provide for any other element as defined in RCW 90.58.100
13 deemed appropriate or necessary.

14 In the implementation of this policy the public's opportunity to
15 enjoy the physical and aesthetic qualities of natural shorelines of the
16 state shall be preserved to the greatest extent feasible consistent
17 with the overall best interest of the state and the people generally
18 and the need to prevent and minimize flood damage. To this end uses
19 shall be preferred which are consistent with control of pollution and
20 prevention of damage to the natural environment, or are unique to or
21 dependent upon use of the state's shoreline. Alterations of the
22 natural condition of the shorelines of the state, in those limited
23 instances when authorized, shall be given priority for projects or
24 activities that have the primary purpose of preventing or minimizing
25 flood damages as defined in RCW 86.16.120, single family residences,
26 ports, shoreline recreational uses including but not limited to parks,
27 marinas, piers, and other improvements facilitating public access to
28 shorelines of the state, industrial and commercial developments which
29 are particularly dependent on their location on or use of the
30 shorelines of the state and other development that will provide an

1 opportunity for substantial numbers of the people to enjoy the
2 shorelines of the state. Alterations of the natural condition of the
3 shorelines and wetlands of the state shall be recognized by the
4 department. Shorelines and wetlands of the state shall be
5 appropriately classified and these classifications shall be revised
6 when circumstances warrant regardless of whether the change in
7 circumstances occurs through man-made causes or natural causes. Any
8 areas resulting from alterations of the natural condition of the
9 shorelines and wetlands of the state no longer meeting the definition
10 of "shorelines of the state" shall not be subject to the provisions of
11 chapter 90.58 RCW.

12 Permitted uses in the shorelines of the state shall be designed and
13 conducted in a manner to minimize, insofar as practical, any resultant
14 damage to the ecology and environment of the shoreline area and any
15 interference with the public's use of the water.

16 **Sec. 10.** RCW 90.58.030 and 1987 c 474 s 1 are each amended to read
17 as follows:

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

20 (1) Administration:

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

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

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

26 (d) "Person" means an individual, partnership, corporation,
27 association, organization, cooperative, public or municipal
28 corporation, or agency of the state or local governmental unit however
29 designated;

1 (e) "Hearing board" means the shoreline hearings board established
2 by this chapter.

3 (2) Geographical:

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

6 (b) "Ordinary high water mark" on all lakes, streams, and tidal
7 water is that mark that will be found by examining the bed and banks
8 and ascertaining where the presence and action of waters are so common
9 and usual, and so long continued in all ordinary years, as to mark upon
10 the soil a character distinct from that of the abutting upland, in
11 respect to vegetation as that condition exists on June 1, 1971, as it
12 may naturally change thereafter, or as it may change thereafter in
13 accordance with permits issued by a local government or the department:
14 PROVIDED, That in any area where the ordinary high water mark cannot be
15 found, the ordinary high water mark adjoining salt water shall be the
16 line of mean higher high tide and the ordinary high water mark
17 adjoining fresh water shall be the line of mean high water;

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

20 (d) "Shorelines" means all of the water areas of the state,
21 including reservoirs, and their associated wetlands, together with the
22 lands underlying them; except (i) shorelines of state-wide
23 significance; (ii) shorelines on segments of streams upstream of a
24 point where the mean annual flow is twenty cubic feet per second or
25 less and the wetlands associated with such upstream segments; and (iii)
26 shorelines on lakes less than twenty acres in size and wetlands
27 associated with such small lakes;

28 (e) "Shorelines of state-wide significance" means the following
29 shorelines of the state:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 (h) "Flood damage" shall have the same meaning as provided in RCW
24 86.16.120.

25 (3) Procedural terms:

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

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

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

8 (d) "Development" means a use consisting of the construction or
9 exterior alteration of structures; dredging; drilling; dumping;
10 filling; removal of any sand, gravel, or minerals; bulkheading; driving
11 of piling; placing of obstructions; or any project of a permanent or
12 temporary nature which interferes with the normal public use of the
13 surface of the waters overlying lands subject to this chapter at any
14 state of water level;

15 (e) "Substantial development" shall mean any development of which
16 the total cost or fair market value exceeds two thousand five hundred
17 dollars plus an amount to adjust for inflation, or any development
18 which materially interferes with the normal public use of the water or
19 shorelines of the state; except that the following shall not be
20 considered substantial developments for the purpose of this chapter.
21 The department shall adjust the amount subject to this subsection once
22 every five years commencing on January 1, 1991. The amount of the
23 inflation adjustment shall be based upon the inflation rate as measured
24 by the implicit price deflator index that has occurred since the last
25 increase:

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

28 (ii) Construction of the normal protective bulkhead common to
29 single family residences;

1 (iii) Emergency construction necessary to protect property from
2 damage by the elements;

3 (iv) Construction and practices normal or necessary for farming,
4 irrigation, and ranching activities, including agricultural service
5 roads and utilities on wetlands, and the construction and maintenance
6 of irrigation structures including but not limited to head gates,
7 pumping facilities, and irrigation channels: PROVIDED, That a feedlot
8 of any size, all processing plants, other activities of a commercial
9 nature, alteration of the contour of the wetlands by leveling or
10 filling other than that which results from normal cultivation, shall
11 not be considered normal or necessary farming or ranching activities.
12 A feedlot shall be an enclosure or facility used or capable of being
13 used for feeding livestock hay, grain, silage, or other livestock feed,
14 but shall not include land for growing crops or vegetation for
15 livestock feeding and/or grazing, nor shall it include normal livestock
16 wintering operations;

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

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

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

1 (viii) Operation, maintenance, or construction of canals,
2 waterways, drains, reservoirs, or other facilities that now exist or
3 are hereafter created or developed as a part of an irrigation system
4 for the primary purpose of making use of system waters, including
5 return flow and artificially stored ground water for the irrigation of
6 lands;

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

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

14 (xi) Any action commenced prior to December 31, 1982, pertaining to
15 (A) the restoration of interim transportation services as may be
16 necessary as a consequence of the destruction of the Hood Canal bridge,
17 including, but not limited to, improvements to highways, development of
18 park and ride facilities, and development of ferry terminal facilities
19 until a new or reconstructed Hood Canal bridge is open to traffic; and
20 (B) the reconstruction of a permanent bridge at the site of the
21 original Hood Canal bridge.

22 **Sec. 11.** RCW 90.58.100 and 1971 ex.s. c 286 s 10 are each amended
23 to read as follows:

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

1 (a) Utilize a systematic interdisciplinary approach which will
2 insure the integrated use of the natural and social sciences and the
3 environmental design arts;

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

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

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

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

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

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

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

24 (b) A public access element making provision for public access to
25 publicly owned areas;

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

29 (d) A circulation element consisting of the general location and
30 extent of existing and proposed major thoroughfares, transportation

1 routes, terminals, and other public utilities and facilities, all
2 correlated with the shoreline use element;

3 (e) A use element which considers the proposed general distribution
4 and general location and extent of the use on shorelines and adjacent
5 land areas for housing, business, industry, transportation,
6 agriculture, natural resources, recreation, education, public buildings
7 and grounds, and other categories of public and private uses of the
8 land;

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

12 (g) An historic, cultural, scientific, and educational element for
13 the protection and restoration of buildings, sites, and areas having
14 historic, cultural, scientific, or educational values; ((and))

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

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

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

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

27 (5) Each master program shall contain provisions to allow for the
28 varying of the application of use regulations of the program, including
29 provisions for permits for conditional uses and variances, to insure
30 that strict implementation of a program will not create unnecessary

1 hardships or thwart the policy enumerated in RCW 90.58.020. Any such
2 varying shall be allowed only if extraordinary circumstances are shown
3 and the public interest suffers no substantial detrimental effect. The
4 concept of this subsection shall be incorporated in the rules adopted
5 by the department relating to the establishment of a permit system as
6 provided in RCW 90.58.140(3).

7 NEW SECTION. **Sec. 12.** A new section is added to chapter 90.58 RCW
8 to read as follows:

9 Within six months of the effective date of this act, the department
10 shall submit to local governments guidelines to incorporate the
11 policies of this chapter. Within nine months from receipt of such
12 guidelines, local governments shall submit to the department in writing
13 proposed changes to their master programs to incorporate the
14 requirements of this chapter.

15 **Sec. 13.** RCW 75.20.100 and 1988 c 272 s 1 and 1988 c 36 s 33 are
16 each amended to read as follows:

17 In the event that any person or government agency desires to
18 construct any form of hydraulic project or perform other work that will
19 use, divert, obstruct, or change the natural flow or bed of any of the
20 salt or fresh waters of the state, such person or government agency
21 shall, before commencing construction or work thereon and to ensure the
22 proper protection of fish life, secure the written approval of the
23 department of fisheries or the department of wildlife as to the
24 adequacy of the means proposed for the protection of fish life. This
25 approval shall not be unreasonably withheld. The department of
26 fisheries or the department of wildlife shall grant or deny approval
27 within forty-five calendar days of the receipt of a complete
28 application and notice of compliance with any applicable requirements

1 of the state environmental policy act, made in the manner prescribed in
2 this section. The applicant may document receipt of application by
3 filing in person or by registered mail. A complete application for
4 approval shall contain general plans for the overall project, complete
5 plans and specifications of the proposed construction or work within
6 the mean higher high water line in salt water or within the ordinary
7 high water line in fresh water, and complete plans and specifications
8 for the proper protection of fish life. The forty-five day requirement
9 shall be suspended if (1) after ten working days of receipt of the
10 application, the applicant remains unavailable or unable to arrange for
11 a timely field evaluation of the proposed project; (2) the site is
12 physically inaccessible for inspection; or (3) the applicant requests
13 delay. Immediately upon determination that the forty-five day period
14 is suspended, the department of fisheries or the department of wildlife
15 shall notify the applicant in writing of the reasons for the delay.
16 Approval is valid for a period of up to five years from date of
17 issuance. The permittee must demonstrate substantial progress on
18 construction of that portion of the project relating to the approval
19 within two years of the date of issuance. If either the department of
20 fisheries or the department of wildlife denies approval, that
21 department shall provide the applicant, in writing, a statement of the
22 specific reasons why and how the proposed project would adversely
23 affect fish life. In deliberating permit approval, the department of
24 fisheries or the department of wildlife shall give equal consideration
25 to the state policy to prevent or minimize flood damage as defined in
26 RCW 86.16.120. Protection of fish life shall be the only ground upon
27 which approval may be denied or conditioned. Chapter 34.05 RCW applies
28 to any denial of project approval, conditional approval, or
29 requirements for project modification upon which approval may be
30 contingent. If any person or government agency commences construction

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

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

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

26 For each application, the department of fisheries and the
27 department of wildlife shall mutually agree on whether the department
28 of fisheries or the department of wildlife shall administer the
29 provisions of this section, in order to avoid duplication of effort.
30 The department designated to act shall cooperate with the other

1 department in order to protect all species of fish life found at the
2 project site. If the department of fisheries or the department of
3 wildlife receives an application concerning a site not in its
4 jurisdiction, it shall transmit the application to the other department
5 within three days and notify the applicant.

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

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

25 **Sec. 14.** RCW 75.20.103 and 1988 c 272 s 2 and 1988 c 36 s 34 are
26 each amended to read as follows:

27 In the event that any person or government agency desires to
28 construct any form of hydraulic project or other work that diverts
29 water for agricultural irrigation or stock watering purposes, or when

1 such hydraulic project or other work is associated with streambank
2 stabilization ((to protect farm and agricultural land as defined in RCW
3 84.34.020)), and when such diversion or streambank stabilization will
4 use, divert, obstruct, or change the natural flow or bed of any river
5 or stream or will utilize any waters of the state or materials from the
6 stream beds, the person or government agency shall, before commencing
7 construction or work thereon and to ensure the proper protection of
8 fish life, secure a written approval from the department of fisheries
9 or the department of wildlife as to the adequacy of the means proposed
10 for the protection of fish life. This approval shall not be
11 unreasonably withheld. The department of fisheries or the department
12 of wildlife shall grant or deny the approval within forty-five calendar
13 days of the receipt of a complete application and notice of compliance
14 with any applicable requirements of the state environmental policy act,
15 made in the manner prescribed in this section. The applicant may
16 document receipt of application by filing in person or by registered
17 mail. A complete application for an approval shall contain general
18 plans for the overall project, complete plans and specifications of the
19 proposed construction or work within ordinary high water line, and
20 complete plans and specifications for the proper protection of fish
21 life. The forty-five day requirement shall be suspended if (1) after
22 ten working days of receipt of the application, the applicant remains
23 unavailable or unable to arrange for a timely field evaluation of the
24 proposed project; (2) the site is physically inaccessible for
25 inspection; or (3) the applicant requests delay.

26 Immediately upon determination that the forty-five day period is
27 suspended, the department of fisheries or the department of wildlife
28 shall notify the applicant in writing of the reasons for the delay.

29 An approval shall remain in effect without need for periodic
30 renewal for projects that divert water for agricultural irrigation or

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

8 The permittee must demonstrate substantial progress on construction
9 of that portion of the project relating to the approval within two
10 years of the date of issuance. If either the department of fisheries
11 or the department of wildlife denies approval, that department shall
12 provide the applicant, in writing, a statement of the specific reasons
13 why and how the proposed project would adversely affect fish life. In
14 deliberating permit approval, the department of fisheries or the
15 department of wildlife shall give equal consideration to the state
16 policy to prevent or minimize flood damage as defined in RCW 86.16.120.
17 Protection of fish life shall be the only ground upon which approval
18 may be denied or conditioned. Issuance, denial, conditioning, or
19 modification shall be appealable to the hydraulic appeals board
20 established in RCW 43.21B.005 within thirty days of the notice of
21 decision. The burden shall be upon the department of fisheries or the
22 department of wildlife to show that the denial or conditioning of an
23 approval is solely aimed at the protection of fish life.

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

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

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

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

1 In case of an emergency arising from weather or stream flow
2 conditions or other natural conditions, the department of fisheries or
3 department of wildlife, through their authorized representatives, shall
4 issue immediately upon request oral approval for removing any
5 obstructions, repairing existing structures, restoring stream banks, or
6 to protect property threatened by the stream or a change in the stream
7 flow without the necessity of obtaining a written approval prior to
8 commencing work. Conditions of an oral approval shall be reduced to
9 writing within thirty days and complied with as provided for 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 **Sec. 15.** RCW 75.10.130 and 1989 c 175 s 160 are each amended to
16 read as follows:

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

20 (2) The hydraulic appeals board shall consist of three members:
21 The director of the department of ecology or the director's designee,
22 the director of the department of agriculture or the director's
23 designee, (~~and the director or the director's designee of the~~
24 ~~department whose action is appealed under subsection (6) of this~~
25 ~~section)) and a member of the county legislative authority appointed by
26 the chair of that authority from the county where the project in
27 question is situated. A decision must be agreed to by at least two
28 members of the board to be final.~~

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

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

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

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

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

23 NEW SECTION. **Sec. 16.** A new section is added to chapter 86.16 RCW
24 to read as follows:

25 Local governments that have adopted flood plain management
26 regulations pursuant to this chapter shall include provisions that
27 allow for the establishment of livestock flood sanctuary areas at a
28 convenient location within a farming unit that contains domestic
29 livestock. Local governments may limit the size and configuration of

1 the livestock flood sanctuary areas, but such limitation shall provide
2 adequate space for the expected number of livestock on the farming unit
3 and shall be at an adequate elevation to protect livestock.
4 Modification to flood plain management regulations required pursuant to
5 this section shall be within the minimum federal requirements necessary
6 to maintain coverage under the national flood insurance program.

7 NEW SECTION. **Sec. 17.** A new section is added to chapter 86.26 RCW
8 to read as follows:

9 Flood protection project is the work necessary to preserve,
10 restore, or improve either natural or human-made flood control
11 facilities to repair or prevent flood damage as defined in RCW
12 86.16.120 including but not limited to action by erosion, stream flow,
13 sheet runoff, or other damages by the sea or other bodies of water.

14 **Sec. 18.** RCW 43.21C.020 and 1971 ex.s. c 109 s 2 are each amended
15 to read as follows:

16 (1) The legislature, recognizing that (~~man~~) people depend(~~s~~) on
17 (~~his~~) biological and physical surroundings for food, shelter, and
18 other needs, and for cultural enrichment as well; and recognizing
19 further the profound impact of man's activity on the interrelations of
20 all components of the natural environment, particularly the profound
21 influences of population growth, high-density urbanization, industrial
22 expansion, resource utilization and exploitation, and new and expanding
23 technological advances and recognizing further the critical importance
24 of restoring and maintaining environmental quality to the overall
25 welfare and development of man, declares that it is the continuing
26 policy of the state of Washington, in cooperation with federal and
27 local governments, and other concerned public and private
28 organizations, to use all practicable means and measures, including

1 financial and technical assistance, in a manner calculated to: (a)
2 Foster and promote the general welfare; (b) to create and maintain
3 conditions under which man and nature can exist in productive harmony;
4 and (c) fulfill the social, economic, and other requirements of present
5 and future generations of Washington citizens.

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

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

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

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

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

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

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

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

28 (h) Provide for the prevention and minimization of flood damage as
29 defined in RCW 86.16.120.

1 (3) The legislature recognizes that each person has a fundamental
2 and inalienable right to a healthful environment and that each person
3 has a responsibility to contribute to the preservation and enhancement
4 of the environment.

5 NEW SECTION. **Sec. 19.** A new section is added to chapter 43.21C
6 RCW to read as follows:

7 Decisions pertaining to applications for projects that are not a
8 substantial development as defined in RCW 90.58.030(3)(e) and will aid
9 in the prevention or minimization of flood damages as defined in RCW
10 86.16.120, shall be approved or disapproved within thirty calendar days
11 from the date the application is received, unless it is determined that
12 a detailed statement must be made, in which case the application must
13 be approved or disapproved within sixty days from the date the
14 application is received, unless, through the promulgation of a formal
15 order, it is determined that the process cannot be completed within
16 such period.

17 **Sec. 20.** RCW 47.28.140 and 1984 c 7 s 174 are each amended to read
18 as follows:

19 When in the opinion of the governing authorities representing the
20 department and any agency, instrumentality, municipal corporation, or
21 political subdivision of the state of Washington, any highway, road, or
22 street will be benefited or improved by constructing, reconstructing,
23 locating, relocating, laying out, repairing, surveying, altering,
24 improving, or maintaining, or by the establishment adjacent to, under,
25 upon, within, or above any portion of any such highway, road, or street
26 of an urban public transportation system, by either the department or
27 any agency, instrumentality, municipal corporation, or political
28 subdivision of the state, and it is in the public interest to do so,

1 the authorities may enter into cooperative agreements wherein either
2 agrees to perform the work and furnish the materials necessary and pay
3 the cost thereof, including necessary engineering assistance, which
4 costs and expenses shall be reimbursed by the party whose
5 responsibility it was to do or perform the work or improvement in the
6 first instance. The work may be done by either day labor or contract,
7 and the cooperative agreement between the parties shall provide for the
8 method of reimbursement. In the case of some special benefit or
9 improvement to a state highway derived from any project that assists in
10 the prevention or minimization of flood damages as defined in RCW
11 86.16.120 or from the construction of any public works project,
12 including any urban public transportation system, the department may
13 contribute to the cost thereof by making direct payment to the
14 particular state department, agency, instrumentality, municipal
15 corporation, or political subdivision on the basis of benefits
16 received, but such payment shall be made only after a cooperative
17 agreement has been entered into for a specified amount or on an actual
18 cost basis prior to the commencement of the particular public works
19 project.

20 **Sec. 21.** RCW 79.01.135 and 1984 c 212 s 10 are each amended to
21 read as follows:

22 Whenever, pursuant to RCW 79.01.134, the commissioner of public
23 lands enters into a contract for the sale and removal of rock, gravel,
24 sand, or silt out of a riverbed, the commissioner shall, when
25 establishing a royalty, take into consideration flood protection value
26 to the public such as the prevention and minimization of flood damage
27 as defined in RCW 86.16.120 that will arise as a result of such
28 removal.

1 **Sec. 22.** RCW 86.26.007 and 1986 c 46 s 1 are each amended to read
2 as follows:

3 The flood control assistance account is hereby established in the
4 state treasury. At the beginning of each biennium after June 30, 1985,
5 the state treasurer shall transfer from the general fund to the flood
6 control assistance account an amount of money which, when combined with
7 money remaining in the account from the previous biennium, will equal
8 a minimum of four million dollars plus any additional amounts
9 appropriated to the flood control assistance account by the
10 legislature. Moneys in the flood control assistance account may be
11 spent only after appropriation for purposes specified under this
12 chapter. All earnings of investments of balances in the flood control
13 assistance account shall be credited to the general fund.

14 **Sec. 23.** RCW 36.32.290 and 1963 c 4 s 36.32.290 are each amended
15 to read as follows:

16 When the board of county commissioners of any county deems it
17 essential to the public interest for flood prevention purposes it may
18 remove drifts, jams, logs, debris, gravel, earth, stone or bars forming
19 obstructions to the stream, or other material from the beds, channels,
20 and banks of watercourses in any manner deemed expedient, including the
21 deposit thereof on bars not forming obstructions to the stream, or on
22 subsidiary or high water channels of such watercourses.

23 Prior to any person or agency placing wooded debris within a stream
24 channel or flood way, a permit must be obtained from the county
25 government in the county that placement is proposed. The county may
26 approve, deny, or place conditions on the permit to assure that any
27 flood hazard caused by such debris is minimized.

1 **Sec. 24.** RCW 86.26.005 and 1951 c 240 s 2 are each amended to read
2 as follows:

3 It is the purpose of the state in the exercise of its sovereign and
4 police powers and in the interest of public welfare, to establish a
5 state and local participating flood (~~(control maintenance)~~) protection
6 policy.

7 **Sec. 25.** RCW 86.26.040 and 1988 c 36 s 63 are each amended to read
8 as follows:

9 Whenever state grants under this chapter are used in a flood
10 (~~(control maintenance)~~) protection project, the engineer of the county
11 within which the project is located shall approve all plans for the
12 specific project and shall supervise the work. The approval of such
13 plans, construction and expenditures by the department of ecology, in
14 consultation with the department of fisheries and the department of
15 wildlife, shall be a condition precedent to state participation in the
16 cost of any project beyond planning and designing the specific project.

17 Additionally, state grants may be made to counties for preparation
18 of a comprehensive flood (~~(control management)~~) protection plan
19 required to be prepared under RCW 86.26.050.

20 **Sec. 26.** RCW 86.26.050 and 1988 c 36 s 64 are each amended to read
21 as follows:

22 (1) State participation shall be in such preparation of
23 comprehensive flood (~~(control management)~~) protection plans and flood
24 (~~(control maintenance)~~) protection projects as are affected with a
25 general public and state interest, as differentiated from a private
26 interest, and as are likely to bring about public benefits commensurate
27 with the amount of state funds allocated thereto.

1 (2) No participation for flood (~~control-maintenance~~) protection
2 projects may occur with a county or other municipal corporation unless
3 the director of ecology has approved the flood plain management
4 activities of the county, city, or town having planning jurisdiction
5 over the area where the flood (~~control-maintenance~~) protection
6 project will be, on the one hundred year flood plain surrounding such
7 area.

8 The department of ecology shall adopt rules concerning the flood
9 plain management activities of a county, city, or town that are
10 adequate to protect or preclude flood damage to structures, works, and
11 improvements, including the restriction of land uses within a river's
12 meander belt or floodway to only flood-compatible uses. Whenever the
13 department has approved county, city, and town flood plain management
14 activities, as a condition of receiving an allocation of funds under
15 this chapter, each revision to the flood plain management activities
16 must be approved by the department of ecology, in consultation with the
17 department of fisheries and the department of wildlife.

18 No participation with a county or other municipal corporation for
19 flood (~~control-maintenance~~) protection projects may occur unless the
20 county engineer of the county within which the flood (~~control-~~
21 ~~maintenance~~) protection project is located certifies that a
22 comprehensive flood (~~control-management~~) protection plan has been
23 completed and adopted by the appropriate local authority, or is being
24 prepared for all portions of the river basin or other area, within
25 which the project is located in that county, that are subject to
26 flooding with a frequency of one hundred years or less.

27 (3) Participation for flood (~~control-maintenance~~) protection
28 projects and preparation of comprehensive flood (~~control-management~~)
29 protection plans shall be made from grants made by the department of
30 ecology from the flood control assistance account. Comprehensive flood

1 ((~~control management~~)) protection plans, and any revisions to the
2 plans, must be approved by the department of ecology, in consultation
3 with the department of fisheries and the department of wildlife.

4 **Sec. 27.** RCW 86.26.060 and 1984 c 212 s 5 are each amended to read
5 as follows:

6 Grants for flood ((~~control maintenance~~)) protection shall be so
7 employed that as far as possible, funds will be on hand to meet
8 unusual, unforeseeable and emergent flood conditions. Allocations by
9 the department of ecology, for emergency purposes, shall in each
10 instance be in amounts which together with funds provided by local
11 authority, if any, under reasonable exercise of its emergency powers,
12 shall be adequate for the preservation of life and property, and with
13 due regard to similar needs elsewhere in the state.

14 **Sec. 28.** RCW 86.26.070 and 1951 c 240 s 9 are each amended to read
15 as follows:

16 Any municipal corporation subject to flood conditions, may
17 establish in its treasury a flood ((~~control maintenance~~)) protection
18 fund. Such fund may be maintained by transfer thereto of moneys
19 derived from regular or special lawful levies for flood ((~~control~~))
20 protection purposes, moneys which may be lawfully transferred to it
21 from any other municipal fund; and gifts and contributions received for
22 flood ((~~control~~)) protection purposes. All costs and expenses for
23 flood ((~~control maintenance~~)) protection purposes shall be paid out of
24 said flood ((~~control maintenance~~)) protection fund, which fund shall
25 not be used for any other purpose.

26 **Sec. 29.** RCW 86.26.100 and 1986 c 46 s 4 are each amended to read
27 as follows:

1 State participation in the cost of any flood (~~control~~
2 ~~maintenance~~) protection project shall be provided for by a written
3 memorandum agreement between the director of ecology and the
4 legislative authority of the county submitting the request, which
5 agreement, among other things, shall state the estimated cost and the
6 percentage thereof to be borne by the state. In no instance, except on
7 emergency projects, shall the state's share exceed one-half the cost of
8 the project, to include project planning and design. However, grants
9 to prepare a comprehensive flood (~~control~~) protection management plan
10 required under RCW 86.26.050 shall not exceed seventy-five percent of
11 the full planning costs, but not to exceed amounts for either purpose
12 specified in rule and regulation by the department of ecology.

13 **Sec. 30.** RCW 86.26.105 and 1986 c 45 s 5 are each amended to read
14 as follows:

15 A comprehensive flood (~~control-management~~) protection plan shall
16 determine the need for flood (~~control~~) protection work, consider
17 alternatives to in-stream flood (~~control~~) protection work, identify
18 and consider potential impacts of in-stream flood (~~control~~)
19 protection work on the state's in-stream resources, and identify the
20 river's meander belt or floodway. A comprehensive flood (~~control~~)
21 protection management plan shall be completed and adopted within at
22 least three years of the certification that it is being prepared, as
23 provided in RCW 86.26.050.

24 If after this three-year period has elapsed such a comprehensive
25 flood (~~control~~) protection plan has not been completed and adopted,
26 grants for flood (~~control-maintenance~~) protection projects shall not
27 be made to the county or municipal corporations in the county until a
28 comprehensive flood (~~control~~) protection plan is completed and
29 adopted by the appropriate local authority. These limitations on

1 grants shall not preclude allocations for emergency purposes made
2 pursuant to RCW 86.26.060.

3 NEW SECTION. **Sec. 31.** (1) The department of community
4 development shall form a watercourse management task force to provide
5 for the implementation of the policy of this act to protect the public
6 health and safety by protecting and minimizing flood damage and to
7 provide for the incorporation of these policies in various
8 administrative rules. The department to the extent possible, should
9 solicit the appointment of members to the task force who have
10 experienced damage by flooding. The task force is assigned the
11 following duties:

12 (a) Work cooperatively with the corps of engineers to develop a
13 memorandum of agreement that will resolve the conflicts between federal
14 "minimum acceptable performance level" vegetation management guidelines
15 that are designed to prevent washout and damage to dikes in order that
16 dike owners are eligible for coverage under P.L. 84-99, and state
17 requirements established pursuant to RCW 75.20.100 and 75.20.103
18 established to protect fish life. If a memorandum of agreement is not
19 completed by February 1, 1992, the federal "minimum acceptable
20 performance level" requirements shall take precedence.

21 (b) Review and modify the Washington Administrative Code rules
22 adopted to implement RCW 75.20.100 and 75.20.103 to provide for the
23 improved ability to protect streambanks from erosion, to maintain the
24 capacity of the watercourses to handle floodwaters including gravel bar
25 removal and dredging where appropriate, and other provisions that
26 affect the ability to undertake activities to prevent and minimize
27 flood damage while protecting fish life.

28 (c) Establish a streamlined permit processing procedure that will
29 assure applicants timely action on permit issuance including

1 modification of the emergency provisions to assure that applications
2 are processed in time to allow the applicant to take the necessary
3 action in sufficient time prior to the time the damage occurs.

4 (d) Develop an informational brochure that provides information as
5 to when permits are required for flood damage prevention and
6 minimization projects, and to recommend ways to best proceed through
7 the various regulatory program permitting processes.

8 (e) Provide recommendations to the department of ecology on
9 guidelines to local governments developed pursuant to section 12 of
10 this act.

11 (2) The task force shall be composed of the following:

12 (a) Three persons who own land damaged by flooding within the area
13 declared as a national disaster in 1990 to be nominated by state-wide
14 agricultural organizations;

15 (b) One person from the department of fisheries;

16 (c) One person from the department of wildlife;

17 (d) One person from the department of ecology knowledgeable about
18 flood control;

19 (e) Two persons representing county government selected from
20 counties which were declared as national disaster areas in 1990 with
21 knowledge and experience in flood control issues;

22 (f) One person from the department of natural resources;

23 (g) Two persons representing tribal governments as determined by
24 the Northwest Indian Fisheries Commission;

25 (h) Two representatives for diking and drainage districts damaged
26 by flooding and located within the area declared as a national disaster
27 area in 1990;

28 (i) One person from the department of community development; and

29 (j) One person from a company with knowledge and experience in the
30 removal of accumulated material from watercourses.

1 (3) The federal corps of engineers shall be invited to attend and
2 participate in the meeting of the task force and to assist in the
3 development of policies that help reduce the damage from future
4 flooding while protecting the natural resources of the state.

5 (4) The department of community development shall provide for the
6 election of a chair from the members of the task force at either the
7 first or second meeting of the task force. The department of community
8 development shall provide staff assistance to the task force. The task
9 force members shall be eligible to receive reimbursement for travel
10 expenses in accordance with RCW 43.03.050.

11 (5) In addition, the speaker of the house of representatives and
12 the president of the senate shall appoint one member from each caucus
13 to serve as ex officio members of the task force who shall be eligible
14 to receive compensation in accordance with chapter 44.04 RCW.

15 (6) The task force shall be assembled by the department of
16 community development and have its first meeting by June 1, 1991. The
17 task force shall develop a report by December 15, 1991, containing its
18 findings and recommendations to the secretary of the senate and to the
19 chief clerk of the house of representatives.

20 NEW SECTION. **Sec. 32.** Section 12 of this act is necessary for
21 the immediate preservation of the public peace, health, or safety, or
22 support of the state government and its existing public institutions,
23 and shall take effect immediately.

24 NEW SECTION. **Sec. 33.** If specific funding for the purposes of
25 sections 12, 13, 14, 16, 19, 23, and 31 of this act, referencing this
26 act by bill number, is not provided by June 30, 1991, in the omnibus
27 appropriations act, sections 12, 13, 14, 16, 19, 23, and 31 of this act
28 shall be null and void.