

---

ENGROSSED SUBSTITUTE SENATE BILL 6095

---

State of Washington

52nd Legislature

1992 Regular Session

By Senate Committee on Ways & Means (originally sponsored by Senators Bailey, Skratek, Anderson and Barr)

Read first time 02/11/92.

1 AN ACT Relating to flood control; amending RCW 43.21C.020,  
2 75.20.100, 75.20.103, 79.90.300, 86.16.120, 86.26.060, 90.58.030, and  
3 90.58.100; adding a new section to chapter 43.21C RCW; adding new  
4 sections to chapter 75.20 RCW; adding a new section to chapter 79.90  
5 RCW; adding a new section to chapter 86.26 RCW; creating a new section;  
6 repealing RCW 79.90.325; and declaring an emergency.

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

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

10 (1) The legislature, recognizing that ~~((man))~~ people depend~~((s))~~ on  
11 ~~((his))~~ their biological and physical surroundings for food, shelter,  
12 and other needs, and for cultural enrichment as well~~((r))~~, and  
13 recognizing further the profound impact of ~~((man's))~~ human activity on  
14 the interrelations of all components of the natural environment,

1 particularly the profound influences of population growth, high-density  
2 urbanization, industrial expansion, resource utilization and  
3 exploitation, and new and expanding technological advances, and  
4 recognizing further the critical importance of restoring and  
5 maintaining environmental quality to the overall welfare and  
6 development of ~~((man))~~ people, declares that it is the continuing  
7 policy of the state of Washington, in cooperation with federal and  
8 local governments, and other concerned public and private  
9 organizations, to use all practicable means and measures, including  
10 financial and technical assistance, in a manner calculated to: (a)  
11 Foster and promote the general welfare; (b) ~~((to))~~ create and maintain  
12 conditions under which ~~((man))~~ people and nature can exist in  
13 productive harmony; and (c) fulfill the social, economic, and other  
14 requirements of present and future generations of Washington citizens.

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

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

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

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

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

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

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

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

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

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

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

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

27 Following a flood equal to or greater than a five-year flood event,  
28 applications for projects to repair or enhance flood protection must be  
29 approved or disapproved by the receiving governmental agency within

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

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

12 In the event that any person or government agency desires to  
13 construct any form of hydraulic project or perform other work that will  
14 use, divert, obstruct, or change the natural flow or bed of any of the  
15 salt or fresh waters of the state, such person or government agency  
16 shall, before commencing construction or work thereon and to ensure the  
17 proper protection of fish life, secure the written approval of the  
18 department of fisheries or the department of wildlife as to the  
19 adequacy of the means proposed for the protection of fish life. This  
20 approval shall not be unreasonably withheld or conditioned. Except as  
21 provided in RCW 75.20.1001 and 75.20.1002, the department of fisheries  
22 or the department of wildlife shall grant or deny approval within  
23 forty-five calendar days of the receipt of a complete application and  
24 notice of compliance with any applicable requirements of the state  
25 environmental policy act, made in the manner prescribed in this  
26 section. The applicant may document receipt of application by filing  
27 in person or by registered mail. A complete application for approval  
28 shall contain general plans for the overall project, complete plans and  
29 specifications of the proposed construction or work within the mean

1 higher high water line in salt water or within the ordinary high water  
2 line in fresh water, and complete plans and specifications for the  
3 proper protection of fish life. The department shall develop a  
4 checklist to be provided with each application outlining the items  
5 necessary to submit a complete application for approval. The  
6 forty-five day requirement shall be suspended if (1) after ten working  
7 days of receipt of the application, the applicant remains unavailable  
8 or unable to arrange for a timely field evaluation of the proposed  
9 project; (2) the site is physically inaccessible for inspection; or (3)  
10 the applicant requests delay. Immediately upon determination that the  
11 forty-five day period is suspended, the department of fisheries or the  
12 department of wildlife shall notify the applicant in writing of the  
13 reasons for the delay. If written notification is not provided to the  
14 applicant within ten working days after the department's suspension  
15 determination, the permit shall be deemed to have been approved and  
16 shall become effective without departmental action after the ten days  
17 have elapsed. Approval is valid for a period of up to five years from  
18 date of issuance. The permittee must demonstrate substantial progress  
19 on construction of that portion of the project relating to the approval  
20 within two years of the date of issuance. If either the department of  
21 fisheries or the department of wildlife denies approval, that  
22 department shall provide the applicant, in writing, a statement of the  
23 specific reasons why and how the proposed project would adversely  
24 affect fish life. In determining permit approval, the department of  
25 fisheries or the department of wildlife shall give equal consideration  
26 to the protection of human life, public land or private property, or  
27 both, and fish life as outlined in the state policy to minimize flood  
28 damage described in chapter 86.16 RCW. For purposes of this section,  
29 "equal consideration" means that if the department finds that a  
30 proposed project provides a substantial benefit to the protection of

1 human life and private or public property and has a minor or unproven  
2 impact on fish life, the project shall be approved. Protection of fish  
3 life shall be the only ground upon which approval may be denied or  
4 conditioned. When a project is denied or conditioned, the department  
5 of fisheries or the department of wildlife shall provide the applicant  
6 technical data supporting the denial or conditioning of the permit.  
7 Chapter 34.05 RCW applies to any denial of project approval,  
8 conditional approval, or requirements for project modification upon  
9 which approval may be contingent. If any person or government agency  
10 commences construction on any hydraulic works or projects subject to  
11 this section without first having obtained written approval of the  
12 department of fisheries or the department of wildlife as to the  
13 adequacy of the means proposed for the protection of fish life, or if  
14 any person or government agency fails to follow or carry out any of the  
15 requirements or conditions as are made a part of such approval, the  
16 person or director of the agency is guilty of a gross misdemeanor. If  
17 any such person or government agency is convicted of violating any of  
18 the provisions of this section and continues construction on any such  
19 works or projects without fully complying with the provisions hereof,  
20 such works or projects are hereby declared a public nuisance and shall  
21 be subject to abatement as such.

22 For the purposes of this section and RCW 75.20.103, "bed" shall  
23 mean the land below the ordinary high water lines of state waters.  
24 This definition shall not include irrigation ditches, canals, storm  
25 water run-off devices, or other artificial watercourses except where  
26 they exist in a natural watercourse that has been altered by ((man))  
27 people. For the purposes of this section and RCW 75.20.103,  
28 "emergency" means an imminent threat to life, public land and private  
29 property, or both, or an imminent threat of serious environmental  
30 degradation.

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

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

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

28       Following a flood equal to or greater than a five-year flood event,  
29 the department of fisheries or the department of wildlife shall approve  
30 or deny applications for projects that will aid in the prevention or

1 minimization of flood damages as defined in RCW 86.16.120 within  
2 fifteen calendar days of receipt of a complete application and notice  
3 of compliance with any applicable requirements of the state  
4 environmental policy act, made in the manner prescribed in this  
5 section.

6 This section shall not apply to the construction of any form of  
7 hydraulic project or other work which diverts water for agricultural  
8 irrigation or stock watering purposes authorized under or recognized as  
9 being valid by the state's water codes, or when such hydraulic project  
10 or other work is associated with streambank stabilization (~~(to protect~~  
11 ~~farm and agricultural land))~~) as defined in RCW (~~(84.34.020)~~) 75.20.103.  
12 These irrigation or stock watering diversion and streambank  
13 stabilization projects shall be governed by RCW 75.20.103.

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

16 In the event that any person or government agency desires to  
17 construct any form of hydraulic project or other work that diverts  
18 water for agricultural irrigation or stock watering purposes, or when  
19 such hydraulic project or other work is associated with streambank  
20 stabilization (~~(to protect farm and agricultural land as defined in RCW~~  
21 ~~84.34.020))~~), and when such diversion or streambank stabilization will  
22 use, divert, obstruct, or change the natural flow or bed of any river  
23 or stream or will utilize any waters of the state or materials from the  
24 stream beds, the person or government agency shall, before commencing  
25 construction or work thereon and to ensure the proper protection of  
26 fish life, secure a written approval from the department of fisheries  
27 or the department of wildlife as to the adequacy of the means proposed  
28 for the protection of fish life. This approval shall not be  
29 unreasonably withheld or conditioned. Except as provided in RCW

1 75.20.1001 and 75.20.1002, the department of fisheries or the  
2 department of wildlife shall grant or deny the approval within  
3 forty-five calendar days of the receipt of a complete application and  
4 notice of compliance with any applicable requirements of the state  
5 environmental policy act, made in the manner prescribed in this  
6 section. The applicant may document receipt of application by filing  
7 in person or by registered mail. A complete application for an  
8 approval shall contain general plans for the overall project, complete  
9 plans and specifications of the proposed construction or work within  
10 ordinary high water line, and complete plans and specifications for the  
11 proper protection of fish life. The department shall develop a  
12 checklist to be provided with each application outlining the items  
13 necessary to submit a complete application for approval. The  
14 forty-five day requirement shall be suspended if (1) after ten working  
15 days of receipt of the application, the applicant remains unavailable  
16 or unable to arrange for a timely field evaluation of the proposed  
17 project; (2) the site is physically inaccessible for inspection; or (3)  
18 the applicant requests delay.

19 Immediately upon determination that the forty-five day period is  
20 suspended, the department of fisheries or the department of wildlife  
21 shall notify the applicant in writing of the reasons for the delay. If  
22 written notification is not provided to the applicant within ten  
23 working days after the department's suspension determination, the  
24 permit shall be deemed approved and shall become effective without  
25 departmental action after the ten days have elapsed.

26 An approval shall remain in effect without need for periodic  
27 renewal for projects that divert water for agricultural irrigation or  
28 stock watering purposes and that involve seasonal construction or other  
29 work. Approval for streambank stabilization projects shall remain in  
30 effect without need for periodic renewal if the problem causing the

1 need for the streambank stabilization occurs on an annual or more  
2 frequent basis. The permittee must notify the appropriate agency before  
3 commencing the construction or other work within the area covered by  
4 the approval.

5 The permittee must demonstrate substantial progress on construction  
6 of that portion of the project relating to the approval within two  
7 years of the date of issuance. If either the department of fisheries  
8 or the department of wildlife denies approval, that department shall  
9 provide the applicant, in writing, a statement of the specific reasons  
10 why and how the proposed project would adversely affect fish life. In  
11 determining permit approval, the department of fisheries or the  
12 department of wildlife shall give equal consideration to the protection  
13 of human life, public land or private property, or both, and fish life  
14 as outlined in the state policy to minimize flood damage described in  
15 chapter 86.16 RCW. For purposes of this section, "equal consideration"  
16 means when the department finds that a proposed project provides a  
17 substantial benefit to the protection of human life and private or  
18 public property and has a minor or unproven impact on fish life, the  
19 project shall be approved. Protection of fish life shall be the only  
20 ground upon which approval may be denied or conditioned. When a  
21 project is denied or conditioned, the department of fisheries or the  
22 department of wildlife shall provide the applicant technical data  
23 supporting the denial or conditioning of the permit. Issuance, denial,  
24 conditioning, or modification shall be appealable to the hydraulic  
25 appeals board established in RCW 43.21B.005 within thirty days of the  
26 notice of decision. The burden shall be upon the department of  
27 fisheries or the department of wildlife to show that the denial or  
28 conditioning of an approval is solely aimed at the protection of fish  
29 life.

1       The department granting approval may, after consultation with the  
2 permittee, modify an approval due to changed conditions. The  
3 modifications shall become effective unless appealed to the hydraulic  
4 appeals board within thirty days from the notice of the proposed  
5 modification. The burden is on the department issuing the approval to  
6 show that changed conditions warrant the modification in order to  
7 protect fish life.

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

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

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

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

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

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

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

1        NEW SECTION.    **Sec. 5.**    A new section is added to chapter 75.20 RCW  
2 to read as follows:

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

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

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

10       (3) The permittee shall begin excavating at the excavation line and  
11 proceed toward the bank, perpendicular to the alignment of the  
12 watercourse.

13       (4) The permittee shall keep the maximum distance of excavation  
14 toward the bank from the excavation line approximately equal throughout  
15 the excavation zone. "Excavation zone" means the area between the  
16 excavation line and the bank.

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

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

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

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

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

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

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

1 (12) The permittee shall be allowed to remove only that amount of  
2 rock, sand, gravel, or silt which is naturally replenished on an annual  
3 basis, except in instances where a lapse in material removal has  
4 occurred. If such lapse has occurred, then an amount of material  
5 equivalent to the amount estimated to have accumulated since the last  
6 material removal operation, including debris and vegetation, may be  
7 removed.

8 NEW SECTION. **Sec. 6.** A new section is added to chapter 75.20 RCW  
9 to read as follows:

10 The departments of fisheries, wildlife, natural resources, and  
11 ecology shall jointly develop a memorandum of understanding to  
12 facilitate the consideration of projects that will aid in the  
13 minimization or prevention of flood damage as defined in RCW 86.16.120.  
14 To reduce the duplication of information required by a project's  
15 permits, the departments must provide in their memorandum procedures to  
16 share data to the extent practicable among themselves and with other  
17 agencies that may be involved in approving or denying a permit  
18 application. The departments' memorandum must provide a plan to  
19 implement a comprehensive permit process that is streamlined and easily  
20 understandable to permit applicants.

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

23 The department of natural resources, upon application by any person  
24 or when determined by the department to be in the best interest of the  
25 state, may enter into a contract or lease providing for the removal and  
26 sale of rock, gravel, sand, and silt, or other valuable materials  
27 located within or upon beds of navigable waters, or upon any tidelands  
28 or shorelands belonging to the state and providing for payment to be

1 made therefor by such royalty as the department may fix, by  
2 negotiation, by sealed bid, or at public auction. If application is  
3 made for the purchase of any valuable material situated within or upon  
4 aquatic lands the department shall inspect and appraise the value of  
5 the material in the application. The department may reduce or  
6 eliminate royalties in areas prone to flooding. Removal of material  
7 from within the ordinary high water mark shall be construed as being  
8 removed for flood control purposes. The department may include a  
9 provision in contracts for the removal of rock, gravel, sand, or silt  
10 which allows for payment to be made as the material is sold.

11 NEW SECTION. **Sec. 8.** A new section is added to chapter 79.90 RCW  
12 to read as follows:

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

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

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

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

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

24 (d) Recognize natural plant and animal communities and other  
25 features that provide an ecological balance to a streamway in  
26 evaluating competing human uses and require protection from significant  
27 human impact; and

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

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

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

12 (5) The department may permit river channel relocations only when  
13 an overriding public benefit can be shown. Filling, grading,  
14 lagooning, or dredging which would result in substantial detriment to  
15 navigable waters by reason of erosion, sedimentation, or impairment of  
16 fish and aquatic life are not authorized.

17 (6) No person may remove sand and gravel below the wetted perimeter  
18 of navigable rivers unless authorized by a hydraulics permit issued by  
19 either the department of fisheries or department of wildlife under RCW  
20 75.20.100 and 75.20.103. These removals may be authorized for  
21 maintenance and improvement of navigational channels or for creating  
22 backwater channels for fish rearing or improvement of the flow capacity  
23 of the channels.

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

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

29 (b) The removal provides recreational benefits;

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

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

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

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

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

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

13 (c) Removal will impact esthetics of nearby recreational  
14 facilities.

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

17 (10) The department shall condition sand and gravel removal leases  
18 to allow removal of only that amount which is naturally replenished on  
19 an annual basis, except in instances where a lapse in material removal  
20 has occurred. If such a 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. 9.** RCW 79.90.325 and 1984 c 212 s 10 are  
25 each repealed.

26 **Sec. 10.** RCW 86.16.120 and 1935 c 159 s 2 are each amended to read  
27 as follows:

1 Damages within the meaning of this chapter (~~shall~~) include loss  
2 of human life and damages to homes and possessions; harmful  
3 inundation((~~τ~~)); water erosion of soil, stream banks, and beds((~~τ~~));  
4 stream channel shifting and changes((~~τ~~)); harmful deposition by water  
5 of eroded and shifting soils, rocks, gravel, and debris upon property  
6 or in the beds of streams or other bodies of water((~~τ~~)); damages by  
7 high water to public roads, highways, bridges, utilities, and to works  
8 built for protection against floods or inundation((~~τ~~)); the  
9 interruption by floods of travel, communication, and commerce((~~τ~~));  
10 harm to livestock by flood waters; reduction in the flow capacity of  
11 streams due to the accumulation of deposited silt, soils, gravel, and  
12 other materials in the beds of streams; the accumulations of deposited  
13 soils, rocks, gravel, sand, and other materials on stream bars that may  
14 result in a change in the flow direction of streams or erosion of  
15 stream banks; damage to fisheries, fish propagation facilities, and  
16 fish habitat; degradation of scenic, historic, and recreational values  
17 of rivers; and all other high water influences and results which  
18 injuriously affect the public health and the safety of property.

19 **Sec. 11.** RCW 86.26.060 and 1984 c 212 s 5 are each amended to read  
20 as follows:

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

1 requests except for work required on flood control management plans  
2 under RCW 86.26.050.

3 NEW SECTION. **Sec. 12.** A new section is added to chapter 86.26 RCW  
4 to read as follows:

5 A flood protection project is work necessary to preserve, restore,  
6 or improve either natural or human-made stream banks or flood control  
7 facilities which repair or prevent flood damage as defined in RCW  
8 86.16.120 including but not limited to damage by erosion, stream flow,  
9 sheet runoff, or other damages by the sea or other bodies of water."

10 **Sec. 13.** RCW 90.58.030 and 1987 c 474 s 1 are each amended to read  
11 as follows:

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

14 (1) Administration:

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

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

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

20 (d) "Person" means an individual, partnership, corporation,  
21 association, organization, cooperative, public or municipal  
22 corporation, or agency of the state or local governmental unit however  
23 designated;

24 (e) "Hearing board" means the shoreline hearings board established  
25 by this chapter.

26 (2) Geographical:

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

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

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

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

23 (e) "Shorelines of state-wide significance" means the following  
24 shorelines of the state:

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

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

1 (A) Nisqually Delta--from DeWolf Bight to Tatsolo Point,  
2 (B) Birch Bay--from Point Whitehorn to Birch Point,  
3 (C) Hood Canal--from Tala Point to Foulweather Bluff,  
4 (D) Skagit Bay and adjacent area--from Brown Point to Yokeko Point,  
5 and

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

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

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

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

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

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

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

24 (f) "Wetlands" or "wetland areas" means those lands extending  
25 landward for two hundred feet in all directions as measured on a  
26 horizontal plane from the ordinary high water mark; floodways and  
27 contiguous floodplain areas landward two hundred feet from such  
28 floodways; and all marshes, bogs, swamps, and river deltas associated  
29 with the streams, lakes, and tidal waters which are subject to the  
30 provisions of this chapter; the same to be designated as to location by

1 the department of ecology(~~(: PROVIDED, That)~~). However, any county or  
2 city may determine that portion of a one-hundred-year-flood plain to be  
3 included in its master program as long as such portion includes, as a  
4 minimum, the floodway and the adjacent land extending landward two  
5 hundred feet ((therefrom)). The county or city shall take into account  
6 any modifications to the floodway or adjacent land made by the  
7 establishment of a flood zone density flood plain or density fringe  
8 flood plain, as approved by the department of ecology;

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

19 (3) Procedural terms:

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

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

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

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

10 (e) "Substantial development" shall mean any development of which  
11 the total cost or fair market value exceeds ~~((two thousand five  
12 hundred))~~ five thousand dollars, or any development which materially  
13 interferes with the normal public use of the water or shorelines of the  
14 state; except that the following shall not be considered substantial  
15 developments for the purpose of this chapter:

16 ~~(i) Normal maintenance or repair of existing structures or  
17 developments, including damage by accident, fire, or elements;~~

18 ~~(ii) Construction of the normal protective bulkhead common to  
19 single family residences;~~

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

22 ~~(iv) Construction and practices normal or necessary for farming,  
23 irrigation, and ranching activities, including agricultural service  
24 roads and utilities on wetlands, and the construction and maintenance  
25 of irrigation structures including but not limited to head gates,  
26 pumping facilities, and irrigation channels: PROVIDED, That a feedlot  
27 of any size, all processing plants, other activities of a commercial  
28 nature, alteration of the contour of the wetlands by leveling or  
29 filling other than that which results from normal cultivation, shall  
30 not be considered normal or necessary farming or ranching activities.~~

1 ~~A feedlot shall be an enclosure or facility used or capable of being~~  
2 ~~used for feeding livestock hay, grain, silage, or other livestock feed,~~  
3 ~~but shall not include land for growing crops or vegetation for~~  
4 ~~livestock feeding and/or grazing, nor shall it include normal livestock~~  
5 ~~wintering operations;~~

6 ~~(v) Construction or modification of navigational aids such as~~  
7 ~~channel markers and anchor buoys;~~

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

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

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

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

28 ~~(x) Operation and maintenance of any system of dikes, ditches,~~  
29 ~~drains, or other facilities existing on September 8, 1975, which were~~

1 created, developed, or utilized primarily as a part of an agricultural  
2 drainage or diking system;

3 (xi) Any action commenced prior to December 31, 1982, pertaining to  
4 (A) the restoration of interim transportation services as may be  
5 necessary as a consequence of the destruction of the Hood Canal bridge,  
6 including, but not limited to, improvements to highways, development of  
7 park and ride facilities, and development of ferry terminal facilities  
8 until a new or reconstructed Hood Canal bridge is open to traffic; and  
9 (B) the reconstruction of a permanent bridge at the site of the  
10 original Hood Canal bridge.

11 **Sec. 14.** RCW 90.58.100 and 1991 c 322 s 32 are each amended to  
12 read as follows:

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

18 (a) Utilize a systematic interdisciplinary approach which will  
19 insure the integrated use of the natural and social sciences and the  
20 environmental design arts;

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

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

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

1       ~~(e) Utilize all available information regarding hydrology,~~  
2 ~~geography, topography, ecology, economics, and other pertinent data;~~

3       ~~(f) Employ, when feasible, all appropriate, modern scientific data~~  
4 ~~processing and computer techniques to store, index, analyze, and manage~~  
5 ~~the information gathered.~~

6       ~~(2) The master programs shall include, when appropriate, the~~  
7 ~~following:~~

8       ~~(a) An economic development element for the location and design of~~  
9 ~~industries, transportation facilities, port facilities, tourist~~  
10 ~~facilities, commerce and other developments that are particularly~~  
11 ~~dependent on their location on or use of the shorelines of the state;~~

12       ~~(b) A public access element making provision for public access to~~  
13 ~~publicly owned areas;~~

14       ~~(c) A recreational element for the preservation and enlargement of~~  
15 ~~recreational opportunities, including but not limited to parks,~~  
16 ~~tidelands, beaches, and recreational areas;~~

17       ~~(d) A circulation element consisting of the general location and~~  
18 ~~extent of existing and proposed major thoroughfares, transportation~~  
19 ~~routes, terminals, and other public utilities and facilities, all~~  
20 ~~correlated with the shoreline use element;~~

21       ~~(e) A use element which considers the proposed general distribution~~  
22 ~~and general location and extent of the use on shorelines and adjacent~~  
23 ~~land areas for housing, business, industry, transportation,~~  
24 ~~agriculture, natural resources, recreation, education, public buildings~~  
25 ~~and grounds, and other categories of public and private uses of the~~  
26 ~~land;~~

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

1       ~~(g) An historic, cultural, scientific, and educational element for~~  
2 ~~the protection and restoration of buildings, sites, and areas having~~  
3 ~~historic, cultural, scientific, or educational values;~~

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

7       ~~(i) Any other element deemed appropriate or necessary to effectuate~~  
8 ~~the policy of this chapter.~~

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

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

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

26       ~~NEW SECTION. **Sec. 15.** If specific funding for the purposes of~~  
27 ~~sections 2, 3, and 4 of this act, referencing sections 2, 3, and 4 of~~  
28 ~~this act by bill and section number, is not provided by June 30, 1992,~~

1 ~~in the omnibus appropriations act, sections 2, 3, and 4 of this act~~  
2 ~~shall be null and void.~~

3 ~~NEW SECTION. **Sec. 16.** — This act is necessary for the immediate~~  
4 ~~preservation of the public peace, health, or safety, or support of the~~  
5 ~~state government and its existing public institutions, and shall take~~  
6 ~~effect immediately.~~