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**ENGROSSED SUBSTITUTE HOUSE BILL 1441**

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**State of Washington**

**53rd Legislature**

**1993 Regular Session**

**By** House Committee on Environmental Affairs (originally sponsored by Representatives R. Johnson, Rust, Quall, Linville, Dunshee, Basich, Finkbeiner, Karahalios, J. Kohl, R. Meyers, Roland, Romero and Johanson)

Read first time 03/03/93.

1           AN ACT Relating to flood damage reduction; amending RCW 86.12.200,  
2 86.16.041, 86.16.045, 86.26.105, 86.26.010, 86.16.010, 86.16.020,  
3 86.26.050, 86.26.007, 86.15.030, 86.15.050, 86.15.160, 58.19.055,  
4 86.16.031, 86.12.210, 86.12.220, 86.16.160, 86.26.005, 86.26.010,  
5 86.26.040, 86.26.060, and 86.26.100; reenacting and amending RCW  
6 86.16.035; adding new sections to chapter 86.16 RCW; adding new  
7 sections to chapter 64.04 RCW; creating new sections; and repealing RCW  
8 86.16.025 and 86.26.090.

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

10           NEW SECTION. **Sec. 1.** The legislature finds that the flood events  
11 of 1990 caused flood damages in excess of one hundred sixty million  
12 dollars. The legislature finds that the climate and topography of this  
13 state create conditions that lead to frequent flood events throughout  
14 the state, and that several counties in the state have experienced  
15 severe and repeated floods. The legislature further finds that the  
16 protections afforded solely by federal law are inadequate to protect  
17 lives and property within the flood-prone counties of the state. The  
18 legislature therefore declares that flood-prone counties must reduce

1 the potential for flood damages through flood plain protections that  
2 are more stringent than federal law.

3 **PART I**

4 **ZERO-RISE FLOODWAY**

5 NEW SECTION. **Sec. 101.** A new section is added to chapter 86.16  
6 RCW to read as follows:

7 (1) By July 1, 1994, the department shall prepare a model  
8 ordinance, in consultation with affected local governments,  
9 establishing a zero-rise floodway policy for all incorporated and  
10 unincorporated areas within a flood-prone county. The policy shall  
11 provide that a new development or substantial improvement to an  
12 existing structure may not increase the base flood elevation or  
13 decrease the storage volume of the flood plain within the zero-rise  
14 floodway of a flood-prone county. Where a study has determined  
15 projected flows under future developed conditions, a county, city, or  
16 town may use the projected flows as the basis for determining the zero-  
17 rise floodway.

18 (2) The model ordinance shall:

19 (a) Include provisions allowing a project applicant to meet the  
20 requirements pertaining to base flood elevations through nonstructural  
21 means including, but not limited to, the purchase of the property,  
22 purchase of flood damage waivers, and physical protection of developed  
23 property except that this protection may not adversely affect another  
24 property or degrade fish habitat;

25 (b) Describe structural methods for residential, commercial, and  
26 industrial buildings to meet the objectives of subsection (1) of this  
27 section, including but not limited to post and pier construction, flow-  
28 through foundations, and similar construction practices;

29 (c) Allow public works projects to meet the requirements of  
30 subsection (1) of this section if the project reduces the existing base  
31 flood elevation;

32 (d) Establish a variance procedure. In establishing the procedure,  
33 the department shall develop a methodology to compare the anticipated  
34 flood damages over the life of a project compared to the costs of  
35 meeting the requirements of this subsection;

36 (e) Address differences between incorporated and unincorporated  
37 areas; and

1 (f) Exempt nonresidential structures on farm and agricultural land  
2 as defined in RCW 84.34.020(2)(a).

3 NEW SECTION. **Sec. 102.** A new section is added to chapter 86.16  
4 RCW to read as follows:

5 Unless the context clearly requires otherwise, the definitions in  
6 this section apply throughout this section and sections 101 and 103 of  
7 this act.

8 (1) "Base flood" or "one hundred year flood" means a flood having  
9 a one percent chance of being equaled or exceeded in any given year.

10 (2) "Department" means the department of ecology.

11 (3) "Federal emergency management agency floodway" means the  
12 channel of the stream and that portion of the adjoining flood plain  
13 that is necessary to contain and discharge the base flood flow without  
14 increasing the base flood elevation more than one foot.

15 (4) "Flood insurance study" means the official report provided by  
16 the federal insurance administration that includes flood profiles and  
17 the flood insurance rate map.

18 (5) "Flood insurance rate map" means the official map on which the  
19 federal insurance administration has delineated areas of flood hazard.

20 (6) "Flood plain" means any land area susceptible to being  
21 inundated by water from any inland or tidal waters creating a general  
22 and temporary condition of partial or complete inundation of normally  
23 dry land areas.

24 (7) "Flood-prone county" means a county, and all cities and towns  
25 within the county, having three or more federally declared flood  
26 disasters since January 1, 1979.

27 (8) "Substantial improvement" means any maintenance, repair,  
28 structural modification, addition, or other improvement of a structure  
29 that increases the footprint of a structure by twenty percent or more.

30 (9) "Zero-rise floodway" means the channel of the stream and that  
31 portion of the adjoining flood plain that is necessary to contain and  
32 discharge the base flood flow without any measurable increase in flood  
33 heights. A measurable increase in base flood height means a calculated  
34 upward rise in the base flood elevation, equal to or greater than 0.01  
35 foot, resulting from a comparison of existing conditions and changed  
36 conditions directly attributable to development in the flood plain.  
37 This definition is broader than that of the federal emergency  
38 management agency floodway but always includes the federal emergency

1 management agency floodway. The boundaries of the one hundred year  
2 flood plain as shown on the most recent flood insurance rate maps shall  
3 be considered the boundaries of the zero-rise floodway unless a special  
4 study has been conducted, that study has determined a different  
5 boundary, and the county in which the study was conducted has adopted  
6 the results of the study.

7 NEW SECTION. **Sec. 103.** A new section is added to chapter 86.16  
8 RCW to read as follows:

9 (1) At least three times each year, the department shall convene a  
10 meeting with flood hazard officials from the flood-prone counties and  
11 any other interested cities and counties. The purpose of the meetings  
12 shall be to discuss issues relating to the implementation of zero-rise  
13 floodway policies and other policies designed to reduce flood damages  
14 or hazards.

15 (2) This section shall expire on July 1, 1998.

16 NEW SECTION. **Sec. 104.** A new section is added to chapter 86.16  
17 RCW to read as follows:

18 The legislative authority of a flood-prone county by ordinance may  
19 exempt the county, and the cities and towns within that county, from  
20 the requirements of RCW 86.12.200(4) and 86.16.041 (3) and (4).

21 **Sec. 105.** RCW 86.12.200 and 1991 c 322 s 3 are each amended to  
22 read as follows:

23 (1) Except as provided in subsection (4) of this section, the  
24 county legislative authority of any county may adopt a comprehensive  
25 flood ~~((control))~~ hazard management plan for any drainage basin that is  
26 located wholly or partially within the county.

27 (2) A comprehensive flood ~~((control))~~ hazard management plan shall  
28 include the following elements:

29 ~~((1))~~ (a) Designation of areas that are susceptible to periodic  
30 flooding, from inundation by bodies of water or surface water runoff,  
31 or both, including the river's meander belt or floodway;

32 ~~((2))~~ (b) Establishment of a comprehensive scheme of flood  
33 ~~((control))~~ hazard protection and improvements for the areas that are  
34 subject to such periodic flooding, that includes: ~~((a))~~ (i)  
35 Determining the need for, and desirable location of, flood ~~((control))~~  
36 hazard reduction improvements to protect or preclude flood damage to

1 structures, works, and improvements, based upon a ~~((cost/benefit))~~  
2 cost-benefit ratio between the expense of providing and maintaining  
3 these improvements and the benefits arising from these improvements;  
4 ~~((b))~~ (ii) establishing the level of flood protection that each  
5 portion of the system of flood ~~((control))~~ hazard reduction  
6 improvements will be permitted; ~~((e))~~ (iii) identifying potential  
7 impacts of in-stream flood hazard reduction work on the state's in-  
8 stream resources, meander belt, or floodway and considering  
9 alternatives to in-stream flood ~~((control))~~ hazard reduction work;  
10 ~~((d))~~ (iv) identifying areas where flood waters could be directed  
11 during a flood to avoid damage to buildings and other structures; ~~((and~~  
12 ~~e))~~ (v) identifying areas where a river may migrate into a new  
13 channel and considering alternatives to protect the new channel, and  
14 identifying practices that will avoid long-term accretion of sediments;  
15 and (vi) identifying sources of revenue that will be sufficient to  
16 finance the comprehensive scheme of flood ~~((control))~~ hazard protection  
17 and improvements;

18 ~~((3))~~ (c) Establishing land use regulations that preclude the  
19 location of structures, works, or improvements in critical portions of  
20 such areas subject to periodic flooding, including a river's meander  
21 belt or floodway, and permitting only flood-compatible land uses in  
22 such areas;

23 ~~((4))~~ (d) Establishing restrictions on construction activities in  
24 areas subject to periodic floods that require the flood proofing of  
25 those structures that are permitted to be constructed or remodeled; and

26 ~~((5))~~ (e) Establishing restrictions on land clearing activities  
27 and development practices that exacerbate flood problems by increasing  
28 the flow or accumulation of flood waters, or the intensity of drainage,  
29 on low-lying areas. Land clearing activities do not include forest  
30 practices as defined in chapter 76.09 RCW.

31 (3) A comprehensive flood ~~((control))~~ hazard management plan shall  
32 be subject to the minimum requirements for participation in the  
33 national flood insurance program~~((r))~~ and any flood plain requirements  
34 exceeding the minimum national flood insurance program ~~((that have been~~  
35 ~~adopted by the department of ecology for a specific flood plain~~  
36 ~~pursuant to RCW 86.16.031, and rules adopted by the department of~~  
37 ~~ecology pursuant to RCW 86.26.050 relating to flood plain management~~  
38 ~~activities))~~. When a county plans under chapter 36.70A RCW, it ~~((may))~~  
39 shall incorporate the portion of its comprehensive flood ~~((control))~~

1 hazard management plan relating to land use restrictions in its  
2 comprehensive plan and development regulations adopted pursuant to  
3 chapter 36.70A RCW.

4 (4) A flood-prone county shall submit to the department of ecology  
5 a flood hazard management plan consistent with the model ordinance  
6 developed pursuant to section 101 of this act by the later of July 1,  
7 1997, or two years after the county has been designated as a flood-  
8 prone county. A flood-prone county, and all applicants within that  
9 county, are eligible for state matching funds for the public assistance  
10 and mitigation programs under P.L. 93-288 Secs. 404, 406, and 407, only  
11 if the county has adopted a plan meeting the requirements of this  
12 subsection.

13 (5) Nothing in subsection (4) of this section shall prohibit a  
14 state agency from receiving state matching funds for the public  
15 assistance and mitigation programs under P.L. 93-288 Secs. 404, 406,  
16 and 407.

17 **Sec. 106.** RCW 86.16.041 and 1989 c 64 s 4 are each amended to read  
18 as follows:

19 (1) Beginning July 26, 1987, every county and incorporated city and  
20 town shall submit to the department of ecology any new flood plain  
21 management ordinance or amendment to any existing flood plain  
22 management ordinance. Such ordinance or amendment shall take effect  
23 thirty days from filing with the department unless the department  
24 disapproves such ordinance or amendment within that time period.

25 (2) The department may disapprove any ordinance or amendment  
26 submitted to it under subsection (1) of this section if it finds that  
27 an ordinance or amendment does not comply with any of the following:

28 (a) Restriction of land uses within designated federal emergency  
29 management agency floodways including the prohibition of construction  
30 or reconstruction of residential structures except for: (i) Repairs,  
31 reconstruction, or improvements to a structure which do not increase  
32 the ground floor area; and (ii) repairs, reconstruction, or  
33 improvements to a structure the cost of which does not exceed ((fifty))  
34 twenty percent of the market value of the structure either, (A) before  
35 the repair, reconstruction, or repair is started, or (B) if the  
36 structure has been damaged, and is being restored, before the damage  
37 occurred. Work done ((on structures to comply with existing health,  
38 sanitary, or safety codes or)) to structures identified as historic

1 places shall not be included in the (~~fifty~~) twenty percent  
2 determination;

3 (b) The minimum requirements of the national flood insurance  
4 program; and

5 (c) The minimum state requirements adopted pursuant to (~~RCW~~  
6 ~~86.16.031(8)~~) this chapter that are applicable to the particular  
7 county, city, or town.

8 (3) Unless the legislative authority of a flood-prone county has  
9 adopted an ordinance pursuant to section 104 of this act, the county  
10 legislative authority of each flood-prone county shall submit an  
11 ordinance no less stringent than the model ordinance developed pursuant  
12 to section 101 of this act, by the later of July 1, 1995, or within two  
13 years of becoming a flood-prone county. A flood-prone county and all  
14 applicants within the county are eligible for state matching funds for  
15 the public assistance and mitigation programs under P.L. 93-288 Secs.  
16 404, 406, and 407, only if the county has adopted an ordinance no less  
17 stringent than the model ordinance developed pursuant to section 101 of  
18 this act.

19 (4) Except as provided in subsection (5) of this section, a city or  
20 town within a flood-prone county, and all the applicants within that  
21 city or town, are eligible for state matching funds for the public  
22 assistance and mitigation programs under P.L. 93-288 Secs. 404, 406,  
23 and 407, only if the city or town has adopted an ordinance no less  
24 stringent than the model ordinance developed pursuant to section 101 of  
25 this act within one year  
26 of the adoption of the county flood hazard management plan.

27 (5) If prior to July 1, 1994, a county has adopted a plan  
28 consistent with the model ordinance developed pursuant to section 101  
29 of this act, a city or town may satisfy the requirements of subsection  
30 (4) of this section prior to July 1, 1995, by:

31 (a) Entering into an interlocal agreement with the county to ensure  
32 that development regulations for structures with a footprint of ten  
33 thousand square feet or more are consistent with an approved county  
34 flood hazard management plan; or

35 (b) Adopting an ordinance consistent with a county flood hazard  
36 management plan. An ordinance shall be deemed consistent if approved  
37 by the department.

38 (6) Nothing in subsection (4) of this section shall prohibit a  
39 state agency from receiving state matching funds for the public

1 assistance and mitigation programs under P.L. 93-288 Secs. 404, 406,  
2 and 407.

3 **Sec. 107.** RCW 86.16.045 and 1989 c 64 s 6 are each amended to read  
4 as follows:

5 A county, city, or town may adopt flood plain management ordinances  
6 or requirements that exceed state requirements or the minimum federal  
7 requirements of the national flood insurance program ((without  
8 following the procedures provided in RCW 86.16.031(8)))).

9 **Sec. 108.** RCW 86.26.105 and 1986 c 46 s 5 are each amended to read  
10 as follows:

11 ~~((A comprehensive flood control management plan shall determine the~~  
12 ~~need for flood control work, consider alternatives to in stream flood~~  
13 ~~control work, identify and consider potential impacts of in stream~~  
14 ~~flood control work on the state's in stream resources, and identify the~~  
15 ~~river's meander belt or floodway.)) A comprehensive flood ~~((control))~~  
16 hazard management plan shall be completed and adopted ~~((within at least~~  
17 ~~three years of the certification that it is being prepared, as provided~~  
18 ~~in RCW 86.26.050))~~ by July 1, 1997.~~

19 If after this ~~((three year period))~~ date has elapsed such a  
20 comprehensive flood ~~((control))~~ hazard management plan has not been  
21 completed and adopted, grants for flood management planning or flood  
22 ~~((control maintenance))~~ hazard reduction projects shall not be made to  
23 the county or municipal corporations in the county until a  
24 comprehensive flood ~~((control))~~ hazard management plan is completed and  
25 adopted by the appropriate local authority. These limitations on  
26 grants shall not preclude allocations for emergency purposes made  
27 pursuant to RCW 86.26.060.

28 **Sec. 109.** RCW 86.26.010 and 1984 c 212 s 2 are each amended to  
29 read as follows:

30 The department of ecology shall have charge for the state of the  
31 administration and enforcement of all laws relating to flood  
32 ~~((control))~~ hazard management and shall adopt rules as necessary to  
33 implement the provisions of this chapter.

34 **Sec. 110.** RCW 86.16.010 and 1987 c 523 s 1 are each amended to  
35 read as follows:



1 The legislature finds that the alleviation of recurring flood  
2 damages to public and private property and to the public health and  
3 safety is a matter of public concern. (~~As an aid in effecting such~~  
4 ~~alleviation the state of Washington, in the exercise of its sovereign~~  
5 ~~and police powers, hereby assumes full regulatory control over the~~  
6 ~~navigable and nonnavigable waters flowing or lying within the borders~~  
7 ~~of the state subject always to the federal control of navigation, to~~  
8 ~~the extent necessary to accomplish the objects of this chapter. In~~  
9 ~~addition,~~) In an effort to alleviate flood damage and expenditures of  
10 government funds, the federal government adopted the national flood  
11 insurance act of 1968 and subsequently the flood disaster protection  
12 act of 1973. The department of ecology is the state agency in  
13 Washington responsible for coordinating the flood plain management  
14 regulation elements aspects of the national flood insurance program and  
15 other state flood plain requirements.

16 **Sec. 111.** RCW 86.16.020 and 1989 c 64 s 1 are each amended to read  
17 as follows:

18 State-wide flood plain management regulation shall be exercised  
19 through: (1) Local governments' administration of the national flood  
20 insurance program regulation requirements, (2) the establishment of  
21 minimum state requirements for flood plain management that (~~equal~~)  
22 include the minimum federal requirements for the national flood  
23 insurance program, and (3) the issuance of regulatory orders. This  
24 regulation shall be exercised over the planning, construction,  
25 operation and maintenance of any works, structures and improvements,  
26 private or public, which might, if improperly planned, constructed,  
27 operated and maintained, adversely influence the regimen of a stream or  
28 body of water or might adversely affect the security of life, health  
29 and property against damage by flood water.

30 NEW SECTION. **Sec. 112.** The following acts or parts of acts are  
31 each repealed:

32 (1) RCW 86.16.025 and 1989 c 64 s 2, 1987 c 109 s 50, 1939 c 85 s  
33 1, & 1935 c 159 s 6; and

34 (2) RCW 86.26.090 and 1991 c 322 s 7, 1984 c 212 s 7, & 1951 c 240  
35 s 11.

1 PART II

2 FUNDING

3 Sec. 201. RCW 86.26.050 and 1991 c 322 s 6 are each amended to  
4 read as follows:

5 (1) State participation shall be in such preparation of  
6 comprehensive flood (~~control~~) hazard management plans under this  
7 chapter and chapter 86.12 RCW, cost sharing feasibility studies for new  
8 flood (~~control~~) hazard reduction projects, (~~projects pursuant to~~  
9 ~~section 33, chapter 322, Laws of 1991,~~) and flood (~~control~~  
10 ~~maintenance~~) hazard reduction projects as are affected with a general  
11 public and state interest, as differentiated from a private interest,  
12 and as are likely to bring about public benefits commensurate with the  
13 amount of state funds allocated thereto.

14 (2) No participation for flood (~~control-maintenance~~) hazard  
15 reduction projects may occur with a county or other municipal  
16 corporation unless the director of ecology has approved the flood plain  
17 management activities of the county, city, or town having planning  
18 jurisdiction over the area where the flood (~~control-maintenance~~)  
19 hazard reduction project will be, on the one hundred year flood plain  
20 surrounding such area.

21 The department of ecology shall adopt rules concerning the flood  
22 plain management activities of a county, city, or town that are  
23 adequate to protect or preclude flood damage to structures, works, and  
24 improvements, including the restriction of land uses within a river's  
25 meander belt or floodway to only flood-compatible uses. Whenever the  
26 department has approved county, city, and town flood plain management  
27 activities, as a condition of receiving an allocation of funds under  
28 this chapter, each revision to the flood plain management activities  
29 must be approved by the department of ecology, in consultation with the  
30 department of fisheries and the department of wildlife.

31 (3) No participation with a county or other municipal corporation  
32 for flood (~~control-maintenance~~) hazard reduction projects may occur  
33 unless the county engineer of the county within which the flood  
34 (~~control-maintenance~~) hazard reduction project is located certifies  
35 that a comprehensive flood (~~control~~) hazard management plan has been  
36 completed and adopted by the appropriate local authority, or is being  
37 prepared for all portions of the river basin or other area, within

1 which the project is located in that county, that are subject to  
2 flooding with a frequency of one hundred years or less.

3 ~~((3))~~ (4) No participation with a county or other municipal  
4 corporation may occur for the construction or reparation of a dike or  
5 levee unless the design of the dike or levee is approved by the  
6 department of ecology. In approving dike and levee designs, the  
7 department of ecology shall give strong preference to dikes and levees  
8 that provide public access and that allow flood waters to safely  
9 overtop the crown of the dike or levee.

10 (5) No participation with a county or other municipal corporation  
11 may occur for dredging projects unless the county or municipal  
12 corporation agrees to monitor sediment accumulation for a period of not  
13 less than five years after completion of the dredging project.

14 (6) No participation with a flood-prone county may occur after July  
15 1, 1995, unless the county has adopted an ordinance no less stringent  
16 than the model ordinance developed pursuant to section 101 of this act.

17 (7) No participation with a city, town, or other municipal  
18 corporation within a flood-prone county may occur after July 1, 1998,  
19 unless the city, town, or municipal corporation has adopted an  
20 ordinance no less stringent than the model ordinance developed pursuant  
21 to section 101 of this act.

22 (8) Participation for flood ~~((control—maintenance))~~ hazard  
23 reduction projects and preparation of comprehensive flood ~~((control))~~  
24 hazard management plans shall be made from grants made by the  
25 department of ecology from the flood ~~((control))~~ hazard reduction  
26 assistance account. Comprehensive flood ~~((control))~~ hazard management  
27 plans, and any revisions to the plans, must be approved by the  
28 department of ecology, in consultation with affected Indian tribes, the  
29 department of transportation, the department of fisheries, and the  
30 department of wildlife. The department may only grant financial  
31 assistance to local governments that, in the opinion of the department,  
32 are making good faith efforts to ~~((take advantage of, or))~~ comply  
33 with ~~((7))~~ federal and state flood ~~((control))~~ hazard reduction  
34 programs.

35 (9) For purposes of this section, "dredging" means the removal of  
36 accumulated sediments from a river or stream channel from below the  
37 water surface.

1        (10) For purposes of this section, "flood hazard reduction project"  
2 means any structural or nonstructural project consistent with a county  
3 comprehensive flood hazard management plan.

4        **Sec. 202.** RCW 86.26.007 and 1991 sp.s. c 13 s 24 are each amended  
5 to read as follows:

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

14        **Sec. 203.** RCW 86.15.030 and 1969 ex.s. c 195 s 2 are each amended  
15 to read as follows:

16        Upon receipt of a petition asking that a zone be created, or upon  
17 motion of the board, the board shall adopt a resolution which shall  
18 describe the boundaries of such proposed zone; describe in general  
19 terms the flood control needs or requirements within the zone; set a  
20 date for public hearing upon the creation of such zone, which shall be  
21 not more than thirty days after the adoption of such resolution.  
22 Notice of such hearing and publication shall be had in the manner  
23 provided in RCW 36.32.120(7).

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

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

4           **Sec. 204.** RCW 86.15.050 and 1961 c 153 s 5 are each amended to  
5 read as follows:

6           The board (~~of county commissioners of each county~~) shall be ex  
7 officio, by virtue of their office, supervisors of the zones created in  
8 each county. The supervisors of the district shall conduct the  
9 business of the flood control zone district according to the regular  
10 rules and procedures that it adopts.

11           **Sec. 205.** RCW 86.15.160 and 1986 c 278 s 60 are each amended to  
12 read as follows:

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

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

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

20           (3) Within any zone or participating zones an annual ad valorem  
21 property tax levy of not to exceed fifty cents per thousand dollars of  
22 assessed value when the levy will not take dollar rates that other  
23 taxing districts may lawfully claim and that will not cause the  
24 combined levies to exceed the constitutional and/or statutory  
25 limitations, and the additional levy, or any portion thereof, may also  
26 be made when dollar rates of other taxing units is released therefor by  
27 agreement with the other taxing units from their authorized levies  
28 under chapter 39.67 RCW;

29           (4) A charge, under RCW 36.89.080 through 36.89.100, for the  
30 furnishing of service to those who are receiving or will receive  
31 benefits from storm water control facilities (~~and~~) or who are  
32 contributing to an increase in surface water runoff. Except as  
33 otherwise provided in RCW 90.03.525, any public entity and public  
34 property, including the state and state property, shall be liable for  
35 the charges to the same extent a private person and privately owned  
36 property is liable for the charges, and in setting these rates and

1 charges, consideration may be made of in-kind services, such as stream  
2 improvements or donation of property;

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

9 **PART III**

10 **FLOOD HAZARD INFORMATION**

11 **Sec. 301.** RCW 58.19.055 and 1992 c 191 s 5 are each amended to  
12 read as follows:

13 (1) A public offering statement shall contain the following  
14 information:

15 (a) The name, and the address or approximate location, of the  
16 development;

17 (b) The name and address of the developer;

18 (c) The name and address of the management company, if any, for the  
19 development;

20 (d) The relationship of the management company to the developer, if  
21 any;

22 (e) The nature of the interest being offered for sale;

23 (f) A brief description of the permitted uses and use restrictions  
24 pertaining to the development and the purchaser's interest therein;

25 (g) The number of existing lots, parcels, units, or interests in  
26 the development and either the maximum number that may be added to the  
27 development or the fact that such maximum number has not yet been  
28 determined;

29 (h) A list of the principal common amenities in the development  
30 which materially affect the value of the development and those that  
31 will or may be added to the development;

32 (i) The identification of any real property not in the development,  
33 the owner of which has access to any of the development, and a  
34 description of the terms of such access;

35 (j) The identification of any real property not in the development  
36 to which owners in the development have access and a description of the  
37 terms of such access;

- 1 (k) The status of construction of improvements in the development,  
2 including either the estimated dates of completion if not completed or  
3 the fact that such estimated completion dates have not yet been  
4 determined; and the estimated costs, if any, to be paid by the  
5 purchaser;
- 6 (l) The estimated current owners' association expense, if any, for  
7 which a purchaser would be liable;
- 8 (m) An estimate of any payment with respect to any owners'  
9 association expense for which the purchaser would be liable at closing;
- 10 (n) The estimated current amount and purpose of any fees not  
11 included in any owners' association assessments and charged by the  
12 developer or any owners' association for the use of any of the  
13 development or improvements thereto;
- 14 (o) Any assessments which have been agreed to or are known to the  
15 developer and which, if not paid, may constitute a lien against any  
16 portion of the development in favor of any governmental agency;
- 17 (p) The identification of any parts of the development which any  
18 purchaser will have the responsibility for maintaining;
- 19 (q) A brief description of any blanket encumbrance which is subject  
20 to the provisions of RCW 58.19.180;
- 21 (r) A list of any physical hazards known to the developer which  
22 particularly affect the development or the immediate vicinity in which  
23 the development is located and which are not readily ascertainable by  
24 the purchaser;
- 25 (s) A brief description of any construction warranties to be  
26 provided to the purchaser;
- 27 (t) Any building code violation citations received by the developer  
28 in connection with the development which have not been corrected;
- 29 (u) A statement of any unsatisfied judgments or pending suits  
30 against any owners' association involved in the development and a  
31 statement of the status of any pending suits material to the  
32 development of which the developer has actual knowledge;
- 33 (v) A notice which describes a purchaser's right to cancel the  
34 purchase agreement or extend the closing under RCW 58.19.045(3),  
35 including applicable time frames and procedures;
- 36 (w) A list of the documents which the prospective purchaser is  
37 entitled to receive from the developer before the rescission period  
38 commences;
- 39 (x) A notice which states:

1 "A purchaser may not rely on any representation or express warranty  
2 unless it is contained in the public offering statement or made in  
3 writing signed by the developer or by any person identified in the  
4 public offering statement as the declarant's agent";

5 (y) A notice which states:

6 "This public offering statement is only a summary of some of the  
7 significant aspects of purchasing an interest in this development and  
8 any documents which may govern or affect the development may be  
9 complex, may contain other important information, and create binding  
10 legal obligations. You should consider seeking assistance of legal  
11 counsel"; and

12 (z) Any other information and cross-references which the developer  
13 believes will be helpful in describing the development to the  
14 recipients of the public offering statement, all of which may be  
15 included or not included at the option of the developer.

16 (2) The public offering statement shall include copies of each of  
17 the following documents: Any declaration of covenants, conditions,  
18 restrictions, and reservations affecting the development; any survey,  
19 plat, or subdivision map; the articles of incorporation of any owners'  
20 association; the bylaws of any owners' association; the rules and  
21 regulations, if any, of any owners' association; current or proposed  
22 budget for any owners' association; and the balance sheet of any  
23 owners' association current within ninety days if assessments have been  
24 collected for ninety days or more.

25 If any of the foregoing documents listed in this subsection are not  
26 available because they have not yet been executed, adopted, or  
27 recorded, drafts of such documents shall be provided with the public  
28 offering statement, and, before closing the sale of an interest in the  
29 development, the purchaser shall be given copies of any material  
30 changes between the draft of the proposed documents and the final  
31 documents.

32 (3) The disclosures required by subsection (1)(v), (x), and (y) of  
33 this section shall be located at the top of the first page of the  
34 public offering statement and be typed or printed in ten-point bold  
35 face type size.

36 (4) The disclosures required by subsection (1)(r) of this section  
37 shall be listed on a separate page from the other disclosures required  
38 by this section and shall be printed or typed in ten-point type. If



1 the development or any portion of the development described in the  
2 public offering statement is located within the area mapped as the one  
3 hundred year flood plain as shown on flood insurance rate maps provided  
4 by the federal emergency management agency for the national flood  
5 insurance program, this shall be listed as a physical hazard under  
6 subsection (1)(r) of this section.

7 NEW SECTION. **Sec. 302.** A new section is added to chapter 64.04  
8 RCW to read as follows:

9 The seller of real property located in an area mapped in the one  
10 hundred year flood plain, as shown on the most recent flood insurance  
11 rate maps provided by the federal emergency management agency for the  
12 national flood insurance program, shall inform the buyer that the  
13 property is located in the one hundred year flood plain and may be  
14 subject to land use restrictions. The seller shall inform the buyer in  
15 the first written document constituting an agreement of sale. Proof of  
16 notification prior to closing is the responsibility of the seller.

17 NEW SECTION. **Sec. 303.** A new section is added to chapter 64.04  
18 RCW to read as follows:

19 The location of real property within the area mapped as the one  
20 hundred year flood plain, as shown on flood insurance rate maps  
21 provided by the federal emergency management agency for the national  
22 flood insurance program, is declared to be a hidden defect in the real  
23 property that shall be disclosed by the seller of the real property or  
24 an ownership interest in the real property.

25 **Sec. 304.** RCW 86.16.031 and 1989 c 64 s 3 are each amended to read  
26 as follows:

27 The department of ecology shall:

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

30 (2) When requested, provide guidance and assistance to local  
31 governments in development and amendment of their flood plain  
32 management ordinances;

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

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

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

5 (6) Establish state minimum requirements that (~~equal minimum~~)  
6 include federal requirements for the national flood insurance program;

7 (7) Assist counties, cities, and towns in identifying the location  
8 of the one hundred year flood plain, and petitioning the federal  
9 government to alter its designations of where the one hundred year  
10 flood plain is located if the federally recognized location of the one  
11 hundred year flood plain is found to be inaccurate; and

12 (8) (~~Establish minimum state requirements for specific flood~~  
13 ~~plains that exceed the minimum federal requirements for the national~~  
14 ~~flood insurance program, but only if:~~

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

17 ~~(b) negotiations have been held with the affected county, city, or~~  
18 ~~town over these regulations;~~

19 ~~(c) public input from the affected community has been obtained; and~~

20 ~~(d) the department makes a finding that these increased~~  
21 ~~requirements are necessary due to local circumstances and general~~  
22 ~~public safety)) File copies of the flood insurance rate maps, provided  
23 by the federal emergency management agency for the national flood  
24 insurance program, with the county auditor in each county in which  
25 property shown on the maps is located. The department shall, on an  
26 annual basis, file revised maps with each county auditor in counties  
27 for which the maps are revised.~~

28 **PART IV**

29 **TECHNICAL AMENDMENTS**

30 **Sec. 401.** RCW 86.16.035 and 1987 c 523 s 9 and 1987 c 109 s 53 are  
31 each reenacted and amended to read as follows:

32 The department of ecology shall have supervision and control over  
33 all dams and obstructions in streams, and may make reasonable  
34 regulations with respect thereto concerning the flow of water which  
35 (~~he deems~~) is deemed necessary for the protection to life and  
36 property below such works from flood waters.

1       **Sec. 402.** RCW 86.12.210 and 1991 c 322 s 4 are each amended to  
2 read as follows:

3       A comprehensive flood (~~control~~) hazard management plan that  
4 includes an area within which a city or town, or a special district  
5 subject to chapter 85.38 RCW, is located shall be developed by the  
6 county with the full participation of officials from the city, town, or  
7 special district, including conservation districts, and appropriate  
8 state and federal agencies. Where a comprehensive flood (~~control~~)  
9 hazard management plan is being prepared for a river basin that is part  
10 of the common boundary between two counties, the county legislative  
11 authority of the county preparing the plan may allow participation by  
12 officials of the adjacently located county.

13       Following adoption by the county, city, or town, a comprehensive  
14 flood (~~control~~) hazard management plan shall be binding on each  
15 jurisdiction and special district that is located within an area  
16 included in the plan. If within one hundred twenty days of the  
17 county's adoption, a city or town does not adopt the comprehensive  
18 flood (~~control~~) hazard management plan, the city or county shall  
19 request arbitration on the issue or issues in dispute. If parties  
20 cannot agree to the selection of an arbitrator, the arbitrator shall be  
21 selected according to the process described in RCW 7.04.050. The cost  
22 of the arbitrator shall be shared equally by the participating parties  
23 and the arbitrator's decision shall be binding. Any land use  
24 regulations and restrictions on construction activities contained in a  
25 comprehensive flood (~~control~~) hazard management plan applicable to a  
26 city or town shall be minimum standards that the city or town may  
27 exceed. A city or town undertaking flood or storm water control  
28 activities consistent with the comprehensive flood (~~control~~) hazard  
29 management plan shall retain authority over such activities.

30       **Sec. 403.** RCW 86.12.220 and 1991 c 322 s 5 are each amended to  
31 read as follows:

32       A county may create one or more advisory committees to assist in  
33 the development of proposed comprehensive flood (~~control~~) hazard  
34 management plans and to provide general advice on flood problems. The  
35 advisory committees may include city and town officials, officials of  
36 special districts subject to chapter 85.38 RCW, conservation districts,  
37 appropriate state and federal officials, and officials of other  
38 counties and other interested persons.

1       **Sec. 404.** RCW 86.16.160 and 1973 c 75 s 2 are each amended to read  
2 as follows:

3       Nothing in this chapter shall prevent any county, city or town from  
4 establishing, pursuant to any authority otherwise available to them,  
5 flood ((~~control~~)) management regulation programs and related land use  
6 control measures in areas which are subject to flooding or flood  
7 damages.

8       **Sec. 405.** RCW 86.26.005 and 1951 c 240 s 2 are each amended to  
9 read as follows:

10       It is the purpose of the state in the exercise of its sovereign and  
11 police powers and in the interest of public welfare, to establish a  
12 state and local participating flood ((~~control-maintenance~~)) hazard  
13 reduction policy.

14       **Sec. 406.** RCW 86.26.010 and 1984 c 212 s 2 are each amended to  
15 read as follows:

16       The department of ecology shall have charge for the state of the  
17 administration and enforcement of all laws relating to flood  
18 ((~~control~~)) management.

19       **Sec. 407.** RCW 86.26.040 and 1988 c 36 s 63 are each amended to  
20 read as follows:

21       Whenever state grants under this chapter are used in a flood  
22 ((~~control-maintenance~~)) hazard reduction project, the engineer of the  
23 county within which the project is located shall approve all plans for  
24 the specific project and shall supervise the work. The approval of  
25 such plans, construction and expenditures by the department of ecology,  
26 in consultation with the department of fisheries and the department of  
27 wildlife, shall be a condition precedent to state participation in the  
28 cost of any project beyond planning and designing the specific project.

29       Additionally, state grants may be made to counties for preparation  
30 of a comprehensive flood control management plan required to be  
31 prepared under RCW 86.26.050.

32       **Sec. 408.** RCW 86.26.060 and 1984 c 212 s 5 are each amended to  
33 read as follows:

34       Grants for flood ((~~control-maintenance~~)) hazard reduction projects  
35 shall be so employed that as far as possible, funds will be on hand to

1 meet unusual, unforeseeable and emergent flood conditions. Allocations  
2 by the department of ecology, for emergency purposes, shall in each  
3 instance be in amounts which together with funds provided by local  
4 authority, if any, under reasonable exercise of its emergency powers,  
5 shall be adequate for the preservation of life and property, and with  
6 due regard to similar needs elsewhere in the state.

7 **Sec. 409.** RCW 86.26.100 and 1991 c 322 s 8 are each amended to  
8 read as follows:

9 State participation in the cost of any flood (~~control~~  
10 ~~maintenance~~) hazard reduction project shall be provided for by a  
11 written memorandum agreement between the director of ecology and the  
12 legislative authority of the county submitting the request, which  
13 agreement, among other things, shall state the estimated cost and the  
14 percentage thereof to be borne by the state. In no instance, except on  
15 emergency projects, shall the state's share exceed one-half the cost of  
16 the project, to include project planning and design. Grants for cost  
17 sharing feasibility studies for new flood control projects shall not  
18 exceed fifty percent of the matching funds that are required by the  
19 federal government, and shall not exceed twenty-five percent of the  
20 total costs of the feasibility study. However, grants to prepare a  
21 comprehensive flood control management plan required under RCW  
22 86.26.050 shall not exceed seventy-five percent of the full planning  
23 costs, but not to exceed amounts for either purpose specified in rule  
24 and regulation by the department of ecology.

25 **PART V**

26 **MISCELLANEOUS**

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

--- END ---