
SUBSTITUTE HOUSE BILL 1441

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 alternative
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) Allow public works projects to meet the requirements of
26 subsection (1) of this section if the project reduces the existing base
27 flood elevation;

28 (c) Establish a variance procedure. In establishing the procedure,
29 the department shall develop a methodology to compare the anticipated
30 flood damages over the life of a project compared to the costs of
31 meeting the requirements of this subsection;

32 (d) Address differences between incorporated and unincorporated
33 areas; and

34 (e) Exempt structures on farm and agricultural land as defined in
35 RCW 84.34.020(2)(a).

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

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

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

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

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

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

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

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

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

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

28 (9) "Zero-rise floodway" means the channel of the stream and that
29 portion of the adjoining flood plain that is necessary to contain and
30 discharge the base flood flow without any measurable increase in flood
31 heights. A measurable increase in base flood height means a calculated
32 upward rise in the base flood elevation, equal to or greater than 0.01
33 foot, resulting from a comparison of existing conditions and changed
34 conditions directly attributable to development in the flood plain.
35 This definition is broader than that of the federal emergency
36 management agency floodway but always includes the federal emergency
37 management agency floodway. The boundaries of the one hundred year
38 flood plain as shown on the most recent flood insurance rate maps shall
39 be considered the boundaries of the zero-rise floodway unless a special

1 study has been conducted, that study has determined a different
2 boundary, and the county in which the study was conducted has adopted
3 the results of the study.

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

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

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

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

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

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

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

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

28 ~~((2))~~ (b) Establishment of a comprehensive scheme of flood
29 ~~((control))~~ hazard protection and improvements for the areas that are
30 subject to such periodic flooding, that includes: ~~((a))~~ (i)
31 Determining the need for, and desirable location of, flood ~~((control))~~
32 hazard reduction improvements to protect or preclude flood damage to
33 structures, works, and improvements, based upon a ~~((cost/benefit))~~
34 cost-benefit ratio between the expense of providing and maintaining
35 these improvements and the benefits arising from these improvements;
36 ~~((b))~~ (ii) establishing the level of flood protection that each

1 portion of the system of flood ~~((control))~~ hazard reduction
2 improvements will be permitted; ~~((e))~~ (iii) identifying potential
3 impacts of in-stream flood hazard reduction work on the state's in-
4 stream resources, meander belt, or floodway and considering
5 alternatives to in-stream flood ~~((control))~~ hazard reduction work;
6 ~~((d))~~ (iv) identifying areas where flood waters could be directed
7 during a flood to avoid damage to buildings and other structures; ~~((and~~
8 ~~(e))~~ (v) identifying areas where a river may migrate into a new
9 channel and considering alternatives to protect the new channel, and
10 identifying practices that will avoid long-term accretion of sediments;
11 and (vi) identifying sources of revenue that will be sufficient to
12 finance the comprehensive scheme of flood ~~((control))~~ hazard protection
13 and improvements;

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

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

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

27 (3) A comprehensive flood ~~((control))~~ hazard management plan shall
28 be subject to the minimum requirements for participation in the
29 national flood insurance program~~((7))~~ and any flood plain requirements
30 exceeding the minimum national flood insurance program ~~((that have been~~
31 adopted by the department of ecology for a specific flood plain
32 pursuant to RCW 86.16.031, and rules adopted by the department of
33 ecology pursuant to RCW 86.26.050 relating to flood plain management
34 activities)). When a county plans under chapter 36.70A RCW, it ~~((may))~~
35 shall incorporate the portion of its comprehensive flood ~~((control))~~
36 hazard management plan relating to land use restrictions in its
37 comprehensive plan and development regulations adopted pursuant to
38 chapter 36.70A RCW.

1 (4) A flood-prone county, as defined in section 102 of this act,
2 and all applicants within that county, are eligible for state matching
3 funds for the public assistance and mitigation programs under P.L. 93-
4 288 Secs. 404, 406, and 407 only if:

5 (a) The county legislative authority, pursuant to section 104 of
6 this act, has not exempted the county, and the cities and towns within
7 that county, from the requirements of section 101 of this act; and

8 (b) The county has submitted to the department of ecology and the
9 department has approved a flood hazard management plan meeting the
10 requirements of this section and section 101 of this act. The
11 requirement in this subsection (4)(b) shall not apply to a flood-prone
12 county until the later of July 1, 1997, or two years after the county
13 has been designated as a flood-prone county.

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

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

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

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

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

1 ~~sanitary, or safety codes or~~) to structures identified as historic
2 places shall not be included in the (~~fifty~~) twenty percent
3 determination;

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

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

9 (3) Unless the legislative authority of a flood-prone county has
10 exempted the county, and the cities and towns within that county, from
11 the provisions of section 101 of this act, the county legislative
12 authority of each flood-prone county shall submit an ordinance that
13 considers the zero-rise policies in section 101 of this act, by July 1,
14 1995, or within two years of becoming a flood-prone county, whichever
15 is later.

16 (4) Unless the legislative authority of a flood-prone county has
17 exempted the county, and the cities and towns within that county, from
18 the provisions of section 101 of this act, each city and town within a
19 flood-prone county shall submit an ordinance to the department,
20 consistent with the county flood hazard management plan in which the
21 city is located, within one year of the adoption of the county flood
22 hazard management plan. In no event shall a city or town be required
23 to adopt an ordinance prior to July 1, 1995.

24 (5) A flood-prone county and all applicants within the county are
25 eligible for state matching funds for the public assistance and
26 mitigation programs under P.L. 93-288 Secs. 404, 406, and 407 only if:

27 (a) The county legislative authority, pursuant to section 104 of
28 this act, has not exempted the county, and the cities and towns within
29 that county, from the requirements of section 101 of this act; and

30 (b) The county has adopted an ordinance no less stringent than the
31 model ordinance provided for in section 101 of this act.

32 (6) A city or town within a flood-prone county, and all the
33 applicants within that city or town, are eligible for state matching
34 funds for the public assistance and mitigation programs under P.L. 93-
35 288 Secs. 404, 406, and 407 only if:

36 (a) The county legislative authority, pursuant to section 104 of
37 this act, has not exempted the county, and the cities and towns within
38 that county, from the requirements of section 101 of this act; and

1 (b) The city or town has adopted an ordinance no less stringent
2 than the model ordinance provided for in section 101 of this act.

3 (7) Nothing in subsections (5) or (6) of this section shall
4 prohibit a state agency from receiving state matching funds for the
5 public assistance and mitigation programs under P.L. 93-288 Secs. 404,
6 406, and 407.

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

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

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

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

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

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

34 The department of ecology shall have charge for the state of the
35 administration and enforcement of all laws relating to flood

1 ~~((control))~~ hazard management and shall adopt rules as necessary to
2 implement the provisions of this chapter.

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

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

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

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

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

1 (1) RCW 86.16.025 and 1989 c 64 s 2, 1987 c 109 s 50, 1939 c 85 s
2 1, & 1935 c 159 s 6; and
3 (2) RCW 86.26.090 and 1991 c 322 s 7, 1984 c 212 s 7, & 1951 c 240
4 s 11.

5 **PART II**
6 **FUNDING**

7 **Sec. 201.** RCW 86.26.050 and 1991 c 322 s 6 are each amended to
8 read as follows:

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

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

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

35 (3) No participation with a county or other municipal corporation
36 for flood (~~control maintenance~~) hazard reduction projects may occur
37 unless the county engineer of the county within which the flood

1 (~~control maintenance~~) hazard reduction project is located certifies
2 that a comprehensive flood (~~control~~) hazard management plan has been
3 completed and adopted by the appropriate local authority, or is being
4 prepared for all portions of the river basin or other area, within
5 which the project is located in that county, that are subject to
6 flooding with a frequency of one hundred years or less.

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

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

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

31 (7) For purposes of this section, "dredging" means the removal of
32 accumulated sediments from a river or stream channel from below the
33 water surface.

34 (8) For purposes of this section, "flood hazard reduction project"
35 means any structural or nonstructural project consistent with a county
36 comprehensive flood hazard management plan.

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

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

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

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

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

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

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

1 The board (~~(of county commissioners of each county)~~) shall be ex
2 officio, by virtue of their office, supervisors of the zones created in
3 each county. The supervisors of the district shall conduct the
4 business of the flood control zone district according to the regular
5 rules and procedures that it adopts.

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

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

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

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

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

24 (4) A charge, under RCW 36.89.080 through 36.89.100, for the
25 furnishing of service to those who are receiving or will receive
26 benefits from storm water control facilities (~~and~~) or who are
27 contributing to an increase in surface water runoff. Except as
28 otherwise provided in RCW 90.03.525, any public entity and public
29 property, including the state and state property, shall be liable for
30 the charges to the same extent a private person and privately owned
31 property is liable for the charges, and in setting these rates and
32 charges, consideration may be made of in-kind services, such as stream
33 improvements or donation of property;

34 (5) The creation of local improvement districts and utility local
35 improvement districts, the issuance of improvement district bonds and
36 warrants, and the imposition, collection, and enforcement of special
37 assessments on all property, including any state-owned or other

1 publicly-owned property, specially benefited from improvements in the
2 same manner as provided for counties by chapter 36.94 RCW.

3 **PART III**

4 **FLOOD HAZARD INFORMATION**

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

7 (1) A public offering statement shall contain the following
8 information:

9 (a) The name, and the address or approximate location, of the
10 development;

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

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

14 (d) The relationship of the management company to the developer, if
15 any;

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

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

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

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

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

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

32 (k) The status of construction of improvements in the development,
33 including either the estimated dates of completion if not completed or
34 the fact that such estimated completion dates have not yet been
35 determined; and the estimated costs, if any, to be paid by the
36 purchaser;

1 (l) The estimated current owners' association expense, if any, for
2 which a purchaser would be liable;

3 (m) An estimate of any payment with respect to any owners'
4 association expense for which the purchaser would be liable at closing;

5 (n) The estimated current amount and purpose of any fees not
6 included in any owners' association assessments and charged by the
7 developer or any owners' association for the use of any of the
8 development or improvements thereto;

9 (o) Any assessments which have been agreed to or are known to the
10 developer and which, if not paid, may constitute a lien against any
11 portion of the development in favor of any governmental agency;

12 (p) The identification of any parts of the development which any
13 purchaser will have the responsibility for maintaining;

14 (q) A brief description of any blanket encumbrance which is subject
15 to the provisions of RCW 58.19.180;

16 (r) A list of any physical hazards known to the developer which
17 particularly affect the development or the immediate vicinity in which
18 the development is located and which are not readily ascertainable by
19 the purchaser;

20 (s) A brief description of any construction warranties to be
21 provided to the purchaser;

22 (t) Any building code violation citations received by the developer
23 in connection with the development which have not been corrected;

24 (u) A statement of any unsatisfied judgments or pending suits
25 against any owners' association involved in the development and a
26 statement of the status of any pending suits material to the
27 development of which the developer has actual knowledge;

28 (v) A notice which describes a purchaser's right to cancel the
29 purchase agreement or extend the closing under RCW 58.19.045(3),
30 including applicable time frames and procedures;

31 (w) A list of the documents which the prospective purchaser is
32 entitled to receive from the developer before the rescission period
33 commences;

34 (x) A notice which states:

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

1 (y) A notice which states:

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

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

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

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

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

32 (4) The disclosures required by subsection (1)(r) of this section
33 shall be listed on a separate page from the other disclosures required
34 by this section and shall be printed or typed in ten-point type. If
35 the development or any portion of the development described in the
36 public offering statement is located within the area mapped as the one
37 hundred year flood plain as shown on flood insurance rate maps provided
38 by the federal emergency management agency for the national flood

1 insurance program, this shall be listed as a physical hazard under
2 subsection (1)(r) of this section.

3 NEW SECTION. Sec. 302. A new section is added to chapter 64.04
4 RCW to read as follows:

5 The seller of real property located in an area mapped in the one
6 hundred year flood plain, as shown on the most recent flood insurance
7 rate maps provided by the federal emergency management agency for the
8 national flood insurance program, shall inform the buyer in writing
9 prior to closing that the property is located in the one hundred year
10 flood plain and may be subject to land use restrictions. Proof of
11 notification prior to closing is the responsibility of the seller.

12 NEW SECTION. Sec. 303. A new section is added to chapter 64.04
13 RCW to read as follows:

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

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

22 The department of ecology shall:

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

25 (2) When requested, provide guidance and assistance to local
26 governments in development and amendment of their flood plain
27 management ordinances;

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

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

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

1 (6) Establish state minimum requirements that (~~equal minimum~~)
2 include federal requirements for the national flood insurance program;
3 (7) Assist counties, cities, and towns in identifying the location
4 of the one hundred year flood plain, and petitioning the federal
5 government to alter its designations of where the one hundred year
6 flood plain is located if the federally recognized location of the one
7 hundred year flood plain is found to be inaccurate; and
8 (8) (~~Establish minimum state requirements for specific flood~~
9 ~~plains that exceed the minimum federal requirements for the national~~
10 ~~flood insurance program, but only if:~~
11 (a) ~~The location of the one hundred year flood plain has been~~
12 ~~reexamined and is certified by the department as being accurate;~~
13 (b) ~~negotiations have been held with the affected county, city, or~~
14 ~~town over these regulations;~~
15 (c) ~~public input from the affected community has been obtained; and~~
16 (d) ~~the department makes a finding that these increased~~
17 ~~requirements are necessary due to local circumstances and general~~
18 ~~public safety)) File copies of the flood insurance rate maps, provided
19 by the federal emergency management agency for the national flood
20 insurance program, with the county auditor in each county in which
21 property shown on the maps is located. The department shall, on an
22 annual basis, file revised maps with each county auditor in counties
23 for which the maps are revised.~~

24
25

PART IV
TECHNICAL AMENDMENTS

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

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

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

35 A comprehensive flood (~~control~~) hazard management plan that
36 includes an area within which a city or town, or a special district

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

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

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

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

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

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

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

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

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

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

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

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

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

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

32 Grants for flood (~~control-maintenance~~) hazard reduction projects
33 shall be so employed that as far as possible, funds will be on hand to
34 meet unusual, unforeseeable and emergent flood conditions. Allocations
35 by the department of ecology, for emergency purposes, shall in each

1 instance be in amounts which together with funds provided by local
2 authority, if any, under reasonable exercise of its emergency powers,
3 shall be adequate for the preservation of life and property, and with
4 due regard to similar needs elsewhere in the state.

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

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

23

PART V

24

MISCELLANEOUS

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

--- END ---