

2 **SHB 1597** - S COMM AMD
3 By Committee on Natural Resources

4

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

7 "NEW SECTION. **Sec. 1.** The legislature finds that river and stream
8 systems can threaten public and private property during flood events.
9 River systems react in different ways: When some rivers flood, they
10 scour; others fill in by sediment deposition. The legislature further
11 finds that when placing or removing organic debris in a river that
12 scours, it may be appropriate to place more debris for fish habitat; if
13 it is a river that deposits sediments and tends to fill in then it may
14 be appropriate to remove deposits to create some deeper pools and a
15 better flow pattern, that will help fish habitat as well as lessen
16 flood danger. The legislature therefore declares that reducing flood
17 damage through the use of structural and nonstructural projects is in
18 the public interest and that it is the duty of the state to assist in
19 funding flood control projects. Structural and nonstructural projects
20 include but are not limited to: Streambank stabilization, river
21 channel maintenance, land use restrictions, land buy-outs, flood
22 easements, and emergency notification. The legislature further
23 declares that counties be given the flexibility to make those decisions
24 that are best for their particular rivers, rather than prescribe or
25 constrain local government to the point where they cannot manage their
26 different types of rivers. The legislature further declares that local
27 governments should coordinate flood planning and flood projects so that
28 the projects do not cause flooding in other areas. Counties and cities
29 are encouraged to coordinate using watershed planning areas to provide
30 consistent planning throughout a water's course.

31 **Sec. 2.** RCW 36.70A.060 and 1991 sp.s. c 32 s 21 are each amended
32 to read as follows:

33 (1) Each county that is required or chooses to plan under RCW
34 36.70A.040, and each city within such county, shall adopt development
35 regulations on or before September 1, 1991, to assure the conservation

1 of agricultural, forest, and mineral resource lands designated under
2 RCW 36.70A.170. Regulations adopted under this subsection may not
3 prohibit uses legally existing on any parcel prior to their adoption
4 and shall remain in effect until the county or city adopts development
5 regulations pursuant to RCW 36.70A.120. Such regulations shall assure
6 that the use of lands adjacent to agricultural, forest, or mineral
7 resource lands shall not interfere with the continued use, in the
8 accustomed manner and in accordance with best management practices, of
9 these designated lands for the production of food, agricultural
10 products, or timber, or for the extraction of minerals. Counties and
11 cities shall require that all plats, short plats, development permits,
12 and building permits issued for development activities on, or within
13 three hundred feet of, lands designated as agricultural lands, forest
14 lands, or mineral resource lands, contain a notice that the subject
15 property is within or near designated agricultural lands, forest lands,
16 or mineral resource lands on which a variety of commercial activities
17 may occur that are not compatible with residential development for
18 certain periods of limited duration.

19 (2) Each county and city shall adopt development regulations that
20 protect critical areas that are required to be designated under RCW
21 36.70A.170. For counties and cities that are required or choose to
22 plan under RCW 36.70A.040, such development regulations shall be
23 adopted on or before September 1, 1991. For the remainder of the
24 counties and cities, such development regulations shall be adopted on
25 or before March 1, 1992.

26 (3) Such counties and cities shall review these designations and
27 development regulations when adopting their comprehensive plans under
28 RCW 36.70A.040 and implementing development regulations under RCW
29 36.70A.120 and may alter such designations and development regulations
30 to insure consistency.

31 (4) Forest land and agricultural land located within urban growth
32 areas shall not be designated by a county or city as forest land or
33 agricultural land of long-term commercial significance under RCW
34 36.70A.170 unless the city or county has enacted a program authorizing
35 transfer or purchase of development rights.

36 (5) All development regulations developed under this section shall
37 be consistent with the comprehensive flood control management plan
38 adopted by the county under RCW 86.26.105.

1 **Sec. 3.** RCW 36.70A.070 and 1990 1st ex.s. c 17 s 7 are each
2 amended to read as follows:

3 The comprehensive plan of a county or city that is required or
4 chooses to plan under RCW 36.70A.040 shall consist of a map or maps,
5 and descriptive text covering objectives, principles, and standards
6 used to develop the comprehensive plan. The plan shall be an
7 internally consistent document and all elements shall be consistent
8 with the future land use map, and the comprehensive flood control
9 management plan adopted by the county under RCW 86.26.105. A
10 comprehensive plan shall be adopted and amended with public
11 participation as provided in RCW 36.70A.140.

12 Each comprehensive plan shall include a plan, scheme, or design for
13 each of the following:

14 (1) A land use element designating the proposed general
15 distribution and general location and extent of the uses of land, where
16 appropriate, for agriculture, timber production, housing, commerce,
17 industry, recreation, open spaces, public utilities, public facilities,
18 and other land uses. The land use element shall include population
19 densities, building intensities, and estimates of future population
20 growth. The land use element shall provide for protection of the
21 quality and quantity of ground water used for public water supplies.
22 Where applicable, the land use element shall review drainage, flooding,
23 and storm water run-off in the area and nearby jurisdictions and
24 provide guidance for corrective actions to mitigate or cleanse those
25 discharges that pollute waters of the state, including Puget Sound or
26 waters entering Puget Sound.

27 (2) A housing element recognizing the vitality and character of
28 established residential neighborhoods that: (a) Includes an inventory
29 and analysis of existing and projected housing needs; (b) includes a
30 statement of goals, policies, and objectives for the preservation,
31 improvement, and development of housing; (c) identifies sufficient land
32 for housing, including, but not limited to, government-assisted
33 housing, housing for low-income families, manufactured housing,
34 multifamily housing, and group homes and foster care facilities; and
35 (d) makes adequate provisions for existing and projected needs of all
36 economic segments of the community.

37 (3) A capital facilities plan element consisting of: (a) An
38 inventory of existing capital facilities owned by public entities,
39 showing the locations and capacities of the capital facilities; (b) a

1 forecast of the future needs for such capital facilities; (c) the
2 proposed locations and capacities of expanded or new capital
3 facilities; (d) at least a six-year plan that will finance such capital
4 facilities within projected funding capacities and clearly identifies
5 sources of public money for such purposes; and (e) a requirement to
6 reassess the land use element if probable funding falls short of
7 meeting existing needs and to ensure that the land use element, capital
8 facilities plan element, and financing plan within the capital
9 facilities plan element are coordinated and consistent.

10 (4) A utilities element consisting of the general location,
11 proposed location, and capacity of all existing and proposed utilities,
12 including, but not limited to, electrical lines, telecommunication
13 lines, and natural gas lines.

14 (5) Counties shall include a rural element including lands that are
15 not designated for urban growth, agriculture, forest, or mineral
16 resources. The rural element shall permit land uses that are
17 compatible with the rural character of such lands and provide for a
18 variety of rural densities.

19 (6) A transportation element that implements, and is consistent
20 with, the land use element. The transportation element shall include
21 the following subelements:

22 (a) Land use assumptions used in estimating travel;

23 (b) Facilities and services needs, including:

24 (i) An inventory of air, water, and land transportation facilities
25 and services, including transit alignments, to define existing capital
26 facilities and travel levels as a basis for future planning;

27 (ii) Level of service standards for all arterials and transit
28 routes to serve as a gauge to judge performance of the system. These
29 standards should be regionally coordinated;

30 (iii) Specific actions and requirements for bringing into
31 compliance any facilities or services that are below an established
32 level of service standard;

33 (iv) Forecasts of traffic for at least ten years based on the
34 adopted land use plan to provide information on the location, timing,
35 and capacity needs of future growth;

36 (v) Identification of system expansion needs and transportation
37 system management needs to meet current and future demands;

38 (c) Finance, including:

1 (i) An analysis of funding capability to judge needs against
2 probable funding resources;

3 (ii) A multiyear financing plan based on the needs identified in
4 the comprehensive plan, the appropriate parts of which shall serve as
5 the basis for the six-year street, road, or transit program required by
6 RCW 35.77.010 for cities, RCW 36.81.121 for counties, and RCW
7 35.58.2795 for public transportation systems;

8 (iii) If probable funding falls short of meeting identified needs,
9 a discussion of how additional funding will be raised, or how land use
10 assumptions will be reassessed to ensure that level of service
11 standards will be met;

12 (d) Intergovernmental coordination efforts, including an assessment
13 of the impacts of the transportation plan and land use assumptions on
14 the transportation systems of adjacent jurisdictions;

15 (e) Demand-management strategies.

16 After adoption of the comprehensive plan by jurisdictions required
17 to plan or who choose to plan under RCW 36.70A.040, local jurisdictions
18 must adopt and enforce ordinances which prohibit development approval
19 if the development causes the level of service on a transportation
20 facility to decline below the standards adopted in the transportation
21 element of the comprehensive plan, unless transportation improvements
22 or strategies to accommodate the impacts of development are made
23 concurrent with the development. These strategies may include
24 increased public transportation service, ride sharing programs, demand
25 management, and other transportation systems management strategies.
26 For the purposes of this subsection (6) "concurrent with the
27 development" shall mean that improvements or strategies are in place at
28 the time of development, or that a financial commitment is in place to
29 complete the improvements or strategies within six years.

30 The transportation element described in this subsection, and the
31 six-year plans required by RCW 35.77.010 for cities, RCW 36.81.121 for
32 counties, and RCW 35.58.2795 for public transportation systems, must be
33 consistent.

34 **Sec. 4.** RCW 36.70A.170 and 1990 1st ex.s. c 17 s 17 are each
35 amended to read as follows:

36 (1) On or before September 1, 1991, each county, and each city,
37 shall designate where appropriate:

1 (a) Agricultural lands that are not already characterized by urban
2 growth and that have long-term significance for the commercial
3 production of food or other agricultural products;

4 (b) Forest lands that are not already characterized by urban growth
5 and that have long-term significance for the commercial production of
6 timber;

7 (c) Mineral resource lands that are not already characterized by
8 urban growth and that have long-term significance for the extraction of
9 minerals; and

10 (d) Critical areas.

11 (2) In making the designations required by this section, counties
12 and cities shall consider the guidelines established pursuant to RCW
13 36.70A.050, and shall make such designations so that they are
14 consistent with the comprehensive flood control management plan adopted
15 by the county under RCW 86.26.105.

16 **Sec. 5.** RCW 43.21C.020 and 1971 ex.s. c 109 s 2 are each amended
17 to read as follows:

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

37 (2) In order to carry out the policy set forth in this chapter, it
38 is the continuing responsibility of the state of Washington and all

1 agencies of the state to use all practicable means, consistent with
2 other essential considerations of state policy, to improve and
3 coordinate plans, functions, programs, and resources to the end that
4 the state and its citizens may:

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

7 (b) Assure for all people of Washington safe, healthful,
8 productive, and aesthetically and culturally pleasing surroundings;

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

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

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

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

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

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

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

27 NEW SECTION. Sec. 6. A new section is added to chapter 75.20 RCW
28 to read as follows:

29 Unless the context clearly requires otherwise, the definitions in
30 this section apply to RCW 75.20.100, 75.20.103, and 75.20.130.

31 (1) "Bed" means the land below the ordinary high water lines of
32 state waters. This definition does not include irrigation ditches,
33 canals, storm water run-off devices, or other artificial watercourses
34 except where they exist in a natural watercourse that has been altered
35 by humans.

36 (2) "Commercial" means any facility or building used for commerce,
37 including those used for agricultural or industrial purposes.

1 (3) "Emergency" means an immediate threat to life, public land, or
2 private property, or an immediate threat of serious environmental
3 degradation.

4 (4) "Streambank stabilization" includes but is not limited to log
5 and debris removal; bank protection including riprap, jetties, and
6 groins; gravel removal; and erosion control.

7 (5) "To construct any form of hydraulic project or perform other
8 work" does not include the act of driving across an established ford.
9 Driving across streams or on wetted stream beds at areas other than
10 established fords requires approval. Work within the ordinary high
11 water line of state waters to construct or repair a ford or crossing
12 requires approval.

13 NEW SECTION. **Sec. 7.** A new section is added to chapter 75.20 RCW
14 to read as follows:

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

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

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

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

25 (4) The permittee shall keep the maximum distance of excavation
26 toward the bank from the excavation line approximately equal throughout
27 the excavation zone. "Excavation zone" means the area between the
28 excavation line and the bank.

29 (5) The permittee shall identify the excavation zone with boundary
30 markers.

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

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

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

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

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

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

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

12 **Sec. 8.** RCW 75.20.100 and 1993 sp.s. c 2 s 30 are each amended to
13 read as follows:

14 (1) In the event that any person or government agency desires to
15 construct any form of hydraulic project or perform other work that will
16 use, divert, obstruct, or change the natural flow or bed of any of the
17 salt or fresh waters of the state, such person or government agency
18 shall, before commencing construction or work thereon and to ensure the
19 proper protection of fish life, secure the written approval of the
20 department as to the adequacy of the means proposed for the protection
21 of fish life. The department may not limit, condition, or otherwise
22 affect the amount, timing, or delivery method of water diverted under
23 chapter 90.03 RCW after the water leaves the stream channel and before
24 it is returned to the stream. This approval shall not be unreasonably
25 withheld. Except as provided in RCW 75.20.1001 (~~and 75.20.1002~~), the
26 department shall grant or deny approval within forty-five calendar days
27 of the receipt of a complete application and notice of compliance with
28 any applicable requirements of the state environmental policy act, made
29 in the manner prescribed in this section. The applicant may document
30 receipt of application by filing in person or by registered mail. A
31 complete application for approval shall contain general plans for the
32 overall project, complete plans and specifications of the proposed
33 construction or work within the mean higher high water line in salt
34 water or within the ordinary high water line in fresh water, and
35 complete plans and specifications for the proper protection of fish
36 life. The forty-five day requirement shall be suspended if ~~((+1))~~ (a)
37 after ten working days of receipt of the application, the applicant
38 remains unavailable or unable to arrange for a timely field evaluation

1 of the proposed project; ~~((+2))~~ (b) the site is physically
2 inaccessible for inspection; or ~~((+3))~~ (c) the applicant requests
3 delay. Immediately upon determination that the forty-five day period
4 is suspended, the department shall notify the applicant in writing of
5 the reasons for the delay. Approval is valid for a period of up to
6 five years from date of issuance. The permittee must demonstrate
7 substantial progress on construction of that portion of the project
8 relating to the approval within two years of the date of issuance. If
9 the department denies approval, the department shall provide the
10 applicant, in writing, a statement of the specific reasons why and how
11 the proposed project would adversely affect fish life. Protection of
12 fish life shall be the only ground upon which approval may be denied or
13 conditioned.

14 (2) In making a decision as to whether fish life is protected, the
15 department of fish and wildlife shall determine if a project as
16 proposed or modified:

17 (a) Presents no substantial risk to fish life and provides fish
18 habitat productivity equivalent to preproject conditions at the project
19 site within two years of the project's completion; or

20 (b)(i) Protects a residential, commercial, industrial, or public
21 facility or structure that is likely to incur significant flood damage
22 during the next flood season if the project is not completed; and (ii)
23 lessens the loss of fish life or habitat as compared to a project
24 resulting from an emergency request under this section.

25 The department with jurisdiction shall approve a project if it
26 determines that the project meets either (a) or (b) of this subsection.

27 (3) Chapter 34.05 RCW applies to any denial of project approval,
28 conditional approval, or requirements for project modification upon
29 which approval may be contingent. If any person or government agency
30 commences construction on any hydraulic works or projects subject to
31 this section without first having obtained written approval of the
32 department as to the adequacy of the means proposed for the protection
33 of fish life, or if any person or government agency fails to follow or
34 carry out any of the requirements or conditions as are made a part of
35 such approval, the person or director of the agency is guilty of a
36 gross misdemeanor. If any such person or government agency is
37 convicted of violating any of the provisions of this section and
38 continues construction on any such works or projects without fully

1 complying with the provisions hereof, such works or projects are hereby
2 declared a public nuisance and shall be subject to abatement as such.

3 ~~((For the purposes of this section and RCW 75.20.103, "bed" shall
4 mean the land below the ordinary high water lines of state waters.
5 This definition shall not include irrigation ditches, canals, storm
6 water run-off devices, or other artificial watercourses except where
7 they exist in a natural watercourse that has been altered by man.~~

8 ~~The phrase "to construct any form of hydraulic project or perform
9 other work" shall not include the act of driving across an established
10 ford. Driving across streams or on wetted stream beds at areas other
11 than established fords requires approval. Work within the ordinary
12 high water line of state waters to construct or repair a ford or
13 crossing requires approval.))~~

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

26 (5) This section shall not apply to the repair of an existing flood
27 control project if the project is determined by the county to be:

28 (a) Consistent with a currently approved comprehensive flood
29 control management plan; and

30 (b) Necessary to avoid flood damage during the next flood season.

31 (6) This section shall not apply to the construction of any form of
32 hydraulic project or other work which diverts water for agricultural
33 irrigation or stock watering purposes authorized under or recognized as
34 being valid by the state's water codes, or when such hydraulic project
35 or other work is associated with streambank stabilization to protect
36 farm and agricultural land as defined in RCW 84.34.020. These
37 irrigation or stock watering diversion and streambank stabilization
38 projects shall be governed by RCW 75.20.103.

1 **Sec. 9.** RCW 75.20.103 and 1993 sp.s. c 2 s 32 are each amended to
2 read as follows:

3 (1) In the event that any person or government agency desires to
4 construct any form of hydraulic project or other work that diverts
5 water for agricultural irrigation or stock watering purposes, or when
6 such hydraulic project or other work is associated with streambank
7 stabilization or flood damage reduction to protect farm and
8 agricultural land as defined in RCW 84.34.020, and when such
9 ~~((diversion or streambank stabilization))~~ hydraulic project will use,
10 divert, obstruct, or change the natural flow or bed of any river or
11 stream or will utilize any waters of the state or materials from the
12 stream beds, the person or government agency shall, before commencing
13 construction or work thereon and to ensure the proper protection of
14 fish life, secure a written approval from the department as to the
15 adequacy of the means proposed for the protection of fish life. The
16 department may not limit, condition, or otherwise affect the amount,
17 timing, or delivery method of water diverted under chapter 90.03 RCW
18 after the water leaves the stream channel and before it is returned to
19 the stream. This approval shall not be unreasonably withheld. Except
20 as provided in RCW 75.20.1001 ~~((and 75.20.1002))~~, the department shall
21 grant or deny the approval within forty-five calendar days of the
22 receipt of a complete application ~~((and notice of compliance with any~~
23 ~~applicable requirements of the state environmental policy act,))~~ made
24 in the manner prescribed in this section. The applicant may document
25 receipt of application by filing in person or by registered mail.

26 (2) A complete application for an approval shall:

27 (a) Contain general plans for the overall project, complete plans
28 and specifications of the proposed construction or work within ordinary
29 high water line, and complete plans and specifications for the proper
30 protection of fish life; and

31 (b) Not be required to include notice of compliance with any
32 applicable requirements of the state environmental policy act. Final
33 approval of a project may not be granted until any applicable
34 requirements of the state environmental policy act have been satisfied.

35 (3) The forty-five day requirement shall be suspended if ~~((+1))~~:

36 (a) After ten working days of receipt of the application, the
37 applicant remains unavailable or unable to arrange for a timely field
38 evaluation of the proposed project; ~~((+2))~~

1 (b) The site is physically inaccessible for inspection; ((or-(3)))

2 (c) After forty-four days of receipt of a complete application, a
3 notice of compliance with the state environmental policy act has not
4 been issued; or

5 (d) The applicant requests delay.

6 (4) Immediately upon determination that the forty-five day period
7 is suspended, the department shall notify the applicant in writing of
8 the reasons for the delay.

9 (5) In making a decision as to whether fish life is protected, the
10 department shall determine if a project as proposed or modified:

11 (a) Presents no substantial risk to fish life and provides fish
12 habitat productivity equivalent to preproject conditions at the project
13 site within two years of the project's completion; or

14 (b)(i) Protects a residential, commercial, industrial, or public
15 facility or structure that is likely to incur significant flood damage
16 during the next flood season if the project is not completed; and (ii)
17 lessens the loss of fish life or habitat as compared to a project
18 resulting from an emergency request under this section.

19 The department shall approve a project if it determines that the
20 project meets either (a) or (b) of this subsection.

21 (6) An approval shall remain in effect without need for periodic
22 renewal for projects that divert water for agricultural irrigation or
23 stock watering purposes and that involve seasonal construction or other
24 work. Approval for streambank stabilization projects shall remain in
25 effect without need for periodic renewal if the problem causing the
26 need for the streambank stabilization occurs on an annual or more
27 frequent basis. The permittee must notify the appropriate agency
28 before commencing the construction or other work within the area
29 covered by the approval.

30 (7) The permittee must demonstrate substantial progress on
31 construction of that portion of the project relating to the approval
32 within two years of the date of issuance. If the department denies
33 approval, the department shall provide the applicant, in writing, a
34 statement of the specific reasons why and how the proposed project
35 would adversely affect fish life. Protection of fish life shall be the
36 only ground upon which approval may be denied or conditioned.
37 Issuance, denial, conditioning, or modification shall be appealable to
38 the hydraulic appeals board established in RCW 43.21B.005 within thirty
39 days of the notice of decision. The burden shall be upon the

1 department to show that the denial or conditioning of an approval is
2 solely aimed at the protection of fish life.

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

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

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

28 (11) In case of an emergency arising from weather or stream flow
29 conditions or other natural conditions, the department, through its
30 authorized representatives, shall issue immediately upon request oral
31 approval for removing any obstructions, repairing existing structures,
32 restoring stream banks, or to protect property threatened by the stream
33 or a change in the stream flow without the necessity of obtaining a
34 written approval prior to commencing work. Conditions of an oral
35 approval shall be reduced to writing within thirty days and complied
36 with as provided for in this section. Oral approval shall be granted
37 immediately upon request, for a stream crossing during an emergency.

38 (~~For purposes of this chapter, "streambank stabilization" shall~~
39 ~~include but not be limited to log and debris removal, bank protection~~

1 (~~including riprap, jetties, and groins~~), ~~gravel removal and erosion~~
2 ~~control.~~)

3 (12) This section shall not apply to a project involving the repair
4 of an existing flood control facility if the project is determined by
5 the county to be:

6 (a) Consistent with a previously approved comprehensive flood
7 control management plan; and

8 (b) Necessary to avoid flood damage during the next flood season.

9 **Sec. 10.** RCW 75.20.130 and 1993 sp.s. c 2 s 37 are each amended to
10 read as follows:

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

14 (2) The hydraulic appeals board shall consist of three members:
15 The director of the department of ecology or the director's designee,
16 the director of the department of agriculture or the director's
17 designee, and the director or the director's designee of the department
18 whose action is appealed under subsection (6) of this section. A
19 decision must be agreed to by at least two members of the board to be
20 final.

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

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

28 (5) The board has exclusive jurisdiction to hear appeals arising
29 from the approval, denial, conditioning, or modification of a hydraulic
30 approval issued by the department under the authority granted in RCW
31 75.20.103 for the diversion of water for agricultural irrigation or
32 stock watering purposes or when associated with streambank
33 stabilization to protect farm and agricultural land as defined in RCW
34 84.34.020.

35 (6)(a) Any person aggrieved by the approval, denial, conditioning,
36 or modification of a hydraulic approval pursuant to RCW 75.20.103 may
37 seek review from the board by filing a request for the same within

1 thirty days of notice of the approval, denial, conditioning, or
2 modification of such approval.

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

6 (c) If a review proceeding authorized in (a) of this subsection
7 finds for the aggrieved permit applicant, the applicant may be awarded
8 any legal and engineering costs involved in challenging the permit
9 decision.

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

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

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

16 (a) Give priority consideration to the preservation of the
17 streamway environment with special attention given to preservation of
18 those areas considered aesthetically or environmentally unique for
19 stream segments with a naturally unconfined channel;

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

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

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

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

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

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

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

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

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

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

18 (b) The removal provides recreational benefits;

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

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

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

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

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

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

31 (c) Removal will impact esthetics of nearby recreational
32 facilities.

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

35 (10) The department shall condition sand and gravel removal leases
36 to allow removal of only that amount which is naturally replenished on
37 an annual basis, except in instances where a lapse in material removal
38 has occurred. If such a lapse has occurred, then an amount of material
39 equivalent to the amount estimated to have accumulated since the last

1 material removal operation, including debris and vegetation, may be
2 removed if consistent with the county comprehensive flood control
3 management plan.

4 **Sec. 12.** RCW 79.90.150 and 1991 c 337 s 1 are each amended to read
5 as follows:

6 When gravel, rock, sand, silt or other material from any aquatic
7 lands is removed by any public agency or under public contract for
8 channel or harbor improvement, or flood control, use of such material
9 may be authorized by the department of natural resources for a public
10 purpose on land owned or leased by the state or any municipality,
11 county, or public corporation: PROVIDED, That when no public land site
12 is available for deposit of such material, its deposit on private land
13 with the landowner's permission is authorized and may be designated by
14 the department of natural resources to be for a public purpose. Prior
15 to removal and use, the state agency, municipality, county, or public
16 corporation contemplating or arranging such use shall first obtain
17 written permission from the department of natural resources. No
18 payment of royalty shall be required for such gravel, rock, sand, silt,
19 or other material used for such public purpose, but a charge will be
20 made if such material is subsequently sold or used for some other
21 purpose: PROVIDED, That the department may authorize such public
22 agency or private landowner to dispose of such material without charge
23 when necessary to implement disposal of material. No charge shall be
24 required for any use of the material obtained under the provisions of
25 this chapter when used solely on an authorized site. No charge shall
26 be required for any use of the material obtained under the provisions
27 of this chapter if the material is used for public purposes by local
28 governments. No charge may be required for removal or use of such
29 material if the removal of the material is determined by the county
30 engineer or equivalent position to be for flood control purposes.
31 Public purposes include, but are not limited to, construction and
32 maintenance of roads, dikes, and levies. Nothing in this section shall
33 repeal or modify the provisions of RCW 75.20.100 or eliminate the
34 necessity of obtaining a permit for such removal from other state or
35 federal agencies as otherwise required by law.

36 **Sec. 13.** RCW 79.90.300 and 1991 c 322 s 26 are each amended to
37 read as follows:

1 (1) The department of natural resources, upon application by any
2 person or when determined by the department to be in the best interest
3 of the state, may enter into a contract or lease providing for the
4 removal and sale of rock, gravel, sand, and silt, or other valuable
5 materials located within or upon beds of navigable waters, or upon any
6 tidelands or shorelands belonging to the state and providing for
7 payment to be made therefor by such royalty as the department may fix,
8 by negotiation, by sealed bid, or at public auction. If application is
9 made for the purchase of any valuable material situated within or upon
10 aquatic lands the department shall inspect and appraise the value of
11 the material in the application. The department may reduce or
12 eliminate royalties in areas prone to flooding. The department may
13 include a provision in contracts for the removal of rock, gravel, sand,
14 or silt that allows for payment to be made as the material is sold.

15 (2) The department shall actively seek to encourage through permit
16 requirements and adjusted fees the removal of accumulated materials
17 from rivers and streams where there is a flood damage reduction
18 benefit. The department shall develop policies to accomplish this
19 goal.

20 **Sec. 14.** RCW 85.38.200 and 1986 c 278 s 8 are each amended to read
21 as follows:

22 (1) Territory that is (~~contiguously located~~) adjoining or in
23 close proximity to a special district may be annexed by the special
24 district as provided in this section under the petition and election,
25 resolution and election, or direct petition method of annexation.

26 (2) An annexation under the election method may be initiated by the
27 filing of a petition requesting the action that is signed by at least
28 ten owners of property in the area proposed to be annexed or the
29 adoption of a resolution requesting such action by the governing body
30 of the special district. The petitions shall be filed with the
31 governing body of the special district that is requested to annex the
32 territory. An election to authorize an annexation initiated under the
33 petition and election method may be held only if the governing body
34 approves the annexation. An annexation under either election method
35 shall be authorized if the voters of the area proposed to be annexed
36 approve a ballot proposition favoring the annexation by a simple
37 majority vote. The annexation shall be effective when results of an
38 election so favoring the annexation are certified by the county auditor

1 or auditors. The election, notice of the election, and eligibility to
2 vote at the election shall be as provided for the creation of a special
3 district.

4 (3) An annexation under the direct petition method of annexation
5 may be accomplished if the owners of a majority of the acreage proposed
6 to be annexed sign a petition requesting the annexation, and the
7 governing body of the special district approves the annexation. The
8 petition shall be filed with the governing body of the special
9 district. The annexation shall be effective when the governing body
10 approves the annexation.

11 (4) Whenever a special district annexes territory under this
12 section, the exclusive method by which the special district measures
13 and imposes special assessments upon real property within the entire
14 enlarged area shall be as set forth in RCW 85.38.150 through 85.38.170.

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

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

25 At the hearing scheduled upon the resolution, the board shall
26 permit all interested parties to be heard. Thereafter, the board may
27 reject the resolution or it may modify the boundaries of such zone and
28 make such other corrections or additions to the resolutions as they
29 deem necessary to the accomplishment of the purpose of this chapter:
30 PROVIDED, That if the boundaries of such zone are enlarged, the board
31 shall hold an additional hearing following publication and notice of
32 such new boundaries: PROVIDED FURTHER, That the boundaries of any zone
33 shall generally follow the boundaries of the watershed area affected:
34 PROVIDED FURTHER, That the immediately preceding proviso shall in no
35 way limit or be construed to prohibit the formation of a county-wide
36 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. 16.** RCW 86.15.050 and 1961 c 153 s 5 are each amended to read
5 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. 17.** 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 **Sec. 18.** 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 management plan shall be completed and adopted (~~((within at least three
17 years of the certification that it is being prepared, as provided in
18 RCW 86.26.050))~~) by any county that has experienced at least two
19 presidentially declared flood disasters within the most recent ten-year
20 period by December 31, 1999, or within two years of a second
21 presidentially declared flood disaster.

22 If (~~((after this three-year period has elapsed))~~), by December 31,
23 1999, or by the end of the two-year period following a second
24 presidentially declared flood disaster such a comprehensive flood
25 control plan has not been completed and adopted, grants for flood
26 control maintenance projects shall not be made to the county or
27 municipal corporations in the county until a comprehensive flood
28 control plan is completed and adopted by the appropriate local
29 authority. These limitations on grants shall not preclude allocations
30 for emergency purposes made pursuant to RCW 86.26.060, however priority
31 consideration for emergency assistance shall be given to those counties
32 required to plan under this section who have completed their plans.

33 **Sec. 19.** RCW 90.58.180 and 1994 c 253 s 3 are each amended to read
34 as follows:

35 (1) Any person aggrieved by the granting, denying, or rescinding of
36 a permit on shorelines of the state pursuant to RCW 90.58.140 may seek
37 review from the shorelines hearings board by filing a request for the

1 same within thirty days of the date of filing as defined in RCW
2 90.58.140(6).

3 Concurrently with the filing of any request for review with the
4 board as provided in this section pertaining to a final order of a
5 local government, the requestor shall file a copy of his or her request
6 with the department and the attorney general. If it appears to the
7 department or the attorney general that the requestor has valid reasons
8 to seek review, either the department or the attorney general may
9 certify the request within thirty days after its receipt to the
10 shorelines hearings board following which the board shall then, but not
11 otherwise, review the matter covered by the requestor. The failure to
12 obtain such certification shall not preclude the requestor from
13 obtaining a review in the superior court under any right to review
14 otherwise available to the requestor. The department and the attorney
15 general may intervene to protect the public interest and insure that
16 the provisions of this chapter are complied with at any time within
17 fifteen days from the date of the receipt by the department or the
18 attorney general of a copy of the request for review filed pursuant to
19 this section. The shorelines hearings board shall initially schedule
20 review proceedings on such requests for review without regard as to
21 whether such requests have or have not been certified or as to whether
22 the period for the department or the attorney general to intervene has
23 or has not expired, unless such review is to begin within thirty days
24 of such scheduling. If at the end of the thirty day period for
25 certification neither the department nor the attorney general has
26 certified a request for review, the hearings board shall remove the
27 request from its review schedule.

28 (2) The department or the attorney general may obtain review of any
29 final order granting a permit, or granting or denying an application
30 for a permit issued by a local government by filing a written request
31 with the shorelines hearings board and the appropriate local government
32 within thirty days from the date the final order was filed as provided
33 in RCW 90.58.140(6).

34 (3) The review proceedings authorized in subsections (1) and (2) of
35 this section are subject to the provisions of chapter 34.05 RCW
36 pertaining to procedures in adjudicative proceedings. Judicial review
37 of such proceedings of the shorelines hearings board is governed by
38 chapter 34.05 RCW.

1 (4) If the review proceedings authorized in subsection (1) of this
2 section find for the requestor, and if the requestor is the permit
3 applicant, the requestor may be awarded any legal and engineering costs
4 involved in challenging the permit decision.

5 (5) A local government may appeal to the shorelines hearings board
6 any rules, regulations, or guidelines adopted or approved by the
7 department within thirty days of the date of the adoption or approval.
8 The board shall make a final decision within sixty days following the
9 hearing held thereon.

10 If the board determines that the rule, regulation, or guideline:

11 (a) Is clearly erroneous in light of the policy of this chapter; or

12 (b) Constitutes an implementation of this chapter in violation of
13 constitutional or statutory provisions; or

14 (c) Is arbitrary and capricious; or

15 (d) Was developed without fully considering and evaluating all
16 material submitted to the department by the local government; or

17 (e) Was not adopted in accordance with required procedures;

18 the board shall enter a final decision declaring the rule, regulation,
19 or guideline invalid, remanding the rule, regulation, or guideline to
20 the department with a statement of the reasons in support of the
21 determination, and directing the department to adopt, after a thorough
22 consultation with the affected local government, a new rule,
23 regulation, or guideline. Unless the board makes one or more of the
24 determinations as hereinbefore provided, the board shall find the rule,
25 regulation, or guideline to be valid and enter a final decision to that
26 effect.

27 (~~(5)~~) (6) Rules, regulations, and guidelines shall be subject to
28 review in superior court, if authorized pursuant to RCW 34.05.570(2).
29 No review shall be granted by a superior court on petition from a local
30 government unless the local government shall first have obtained review
31 under subsection (~~(4)~~) (5) of this section and the petition for court
32 review is filed within three months after the date of final decision by
33 the shorelines hearings board.

34 NEW SECTION. Sec. 20. A new section is added to chapter 43.17 RCW
35 to read as follows:

36 Each appropriate agency shall actively seek to encourage through
37 permit requirements the removal of accumulated materials from rivers
38 and streams where there is a measurable flood damage reduction benefit.

1 Each agency shall develop policies to accomplish this goal. Policies
2 should consider the benefits of a designed, open-channel hydraulic
3 engineering criteria to facilitate the natural downstream movement of
4 detrimental material.

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

7 The county legislative authority of any county may adopt a
8 comprehensive flood control management plan for any drainage basin that
9 is located wholly or partially within the county.

10 A comprehensive flood control management plan shall include the
11 following elements:

12 (1) Designation of areas that are susceptible to periodic flooding,
13 from inundation by bodies of water or surface water runoff, or both,
14 including the river's meander belt or floodway;

15 (2) Establishment of a comprehensive scheme of flood control
16 protection and improvements for the areas that are subject to such
17 periodic flooding, that includes: (a) Determining the need for, and
18 desirable location of, flood control improvements to protect or
19 preclude flood damage to structures, works, and improvements, based
20 upon a ~~((cost/benefit))~~ cost-benefit ratio between the expense of
21 providing and maintaining these improvements and the benefits arising
22 from these improvements; (b) establishing the level of flood protection
23 that each portion of the system of flood control improvements will be
24 permitted; (c) identifying and considering alternatives to in-stream
25 flood control work; (d) the impact of in-stream flood control work on
26 the state's in-stream resources; (e) identifying areas where flood
27 waters could be directed during a flood to avoid damage to buildings
28 and other structures; ~~((and (e)))~~ (f) identifying areas where a river
29 may migrate into a new channel and developing options to prevent the
30 creation of the new channel; (g) identifying practices that will avoid
31 long-term accretion of sediments; and (h) identifying sources of
32 revenue that will be sufficient to finance the comprehensive scheme of
33 flood control protection and improvements;

34 (3) Establishing land use regulations that preclude the location of
35 structures, works, or improvements in critical portions of such areas
36 subject to periodic flooding, including a river's meander belt or
37 floodway, and permitting only flood-compatible land uses in such areas;

1 (4) Establishing restrictions on construction activities in areas
2 subject to periodic floods that require the flood proofing of those
3 structures that are permitted to be constructed or remodeled; and

4 (5) Establishing restrictions on land clearing activities and
5 development practices that exacerbate flood problems by increasing the
6 flow or accumulation of flood waters, or the intensity of drainage, on
7 low-lying areas. Land clearing activities do not include forest
8 practices as defined in chapter 76.09 RCW.

9 A comprehensive flood control management plan shall be subject to
10 the minimum requirements for participation in the national flood
11 insurance program, requirements exceeding the minimum national flood
12 insurance program that have been adopted by the department of ecology
13 for a specific flood plain pursuant to RCW 86.16.031, and rules adopted
14 by the department of ecology pursuant to chapter 86.16 RCW and RCW
15 86.26.050 relating to flood plain management activities. When a county
16 plans under chapter 36.70A RCW, it (~~may~~) must incorporate the portion
17 of its comprehensive flood control management plan relating to land use
18 restrictions in its comprehensive plan and development regulations
19 adopted pursuant to chapter 36.70A RCW.

20 **Sec. 22.** RCW 90.58.030 and 1987 c 474 s 1 are each amended to read
21 as follows:

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

24 (1) Administration:

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

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

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

30 (d) "Person" means an individual, partnership, corporation,
31 association, organization, cooperative, public or municipal
32 corporation, or agency of the state or local governmental unit however
33 designated;

34 (e) "Hearing board" means the shoreline hearings board established
35 by this chapter.

36 (2) Geographical:

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

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

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

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

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

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

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

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

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

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

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

35 and

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

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

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

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

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

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

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

15 (f) "Wetlands" or "wetland areas" means those lands extending
16 landward for two hundred feet in all directions as measured on a
17 horizontal plane from the ordinary high water mark; floodways and
18 contiguous flood plain areas landward two hundred feet from such
19 floodways; and all marshes, bogs, swamps, and river deltas associated
20 with the streams, lakes, and tidal waters which are subject to the
21 provisions of this chapter; the same to be designated as to location by
22 the department of ecology(~~(:—PROVIDED, That)~~). However, any county or
23 city may determine that portion of a one-hundred-year-flood plain to be
24 included in its master program as long as such portion includes, as a
25 minimum, the floodway and the adjacent land extending landward two
26 hundred feet (~~(therefrom)~~);

27 (g) "Floodway" means those portions of the area of a river valley
28 lying streamward from the outer limits of a watercourse upon which
29 flood waters are carried during periods of flooding that occur with
30 reasonable regularity, although not necessarily annually, said floodway
31 being identified, under normal condition, by changes in surface soil
32 conditions or changes in types or quality of vegetative ground cover
33 condition. The floodway shall not include those lands that can
34 reasonably be expected to be protected from flood waters by flood
35 control devices maintained by or maintained under license from the
36 federal government, the state, or a political subdivision of the state.

37 (3) Procedural terms:

38 (a) "Guidelines" means those standards adopted to implement the
39 policy of this chapter for regulation of use of the shorelines of the

1 state prior to adoption of master programs. Such standards shall also
2 provide criteria to local governments and the department in developing
3 master programs;

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

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

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

18 (e) "Substantial development" shall mean any development of which
19 the total cost or fair market value exceeds two thousand five hundred
20 dollars, or any development which materially interferes with the normal
21 public use of the water or shorelines of the state; except that the
22 following shall not be considered substantial developments for the
23 purpose of this chapter:

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

26 (ii) Improvements to dikes and levees if the improvement is
27 determined by a county to be consistent with a comprehensive flood
28 control management plan developed under chapter 86.26 RCW;

29 (iii) Construction of the normal protective bulkhead common to
30 single family residences;

31 (~~(iii)~~) (iv) Emergency construction necessary to protect property
32 from damage by the elements;

33 (~~(iv)~~) (v) Construction and practices normal or necessary for
34 farming, irrigation, and ranching activities, including agricultural
35 service roads and utilities on wetlands, and the construction and
36 maintenance of irrigation structures including but not limited to head
37 gates, pumping facilities, and irrigation channels: PROVIDED, That a
38 feedlot of any size, all processing plants, other activities of a
39 commercial nature, alteration of the contour of the wetlands by

1 leveling or filling other than that which results from normal
2 cultivation, shall not be considered normal or necessary farming or
3 ranching activities. A feedlot shall be an enclosure or facility used
4 or capable of being used for feeding livestock hay, grain, silage, or
5 other livestock feed, but shall not include land for growing crops or
6 vegetation for livestock feeding and/or grazing, nor shall it include
7 normal livestock wintering operations;

8 ~~((v))~~ (vi) Construction or modification of navigational aids such
9 as channel markers and anchor buoys;

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

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

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

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

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

35 ~~((xi))~~ (xii) Any action commenced prior to December 31, 1982,
36 pertaining to (A) the restoration of interim transportation services as
37 may be necessary as a consequence of the destruction of the Hood Canal
38 bridge, including, but not limited to, improvements to highways,
39 development of park and ride facilities, and development of ferry

1 terminal facilities until a new or reconstructed Hood Canal bridge is
2 open to traffic; and (B) the reconstruction of a permanent bridge at
3 the site of the original Hood Canal bridge.

4 **Sec. 23.** RCW 47.28.140 and 1991 c 322 s 29 are each amended to
5 read as follows:

6 When in the opinion of the governing authorities representing the
7 department and any agency, instrumentality, municipal corporation, or
8 political subdivision of the state of Washington, any highway, road, or
9 street will be benefited or improved by constructing, reconstructing,
10 locating, relocating, laying out, repairing, surveying, altering,
11 improving, or maintaining, or by the establishment adjacent to, under,
12 upon, within, or above any portion of any such highway, road, or street
13 of an urban public transportation system, by either the department or
14 any agency, instrumentality, municipal corporation, or political
15 subdivision of the state, and it is in the public interest to do so,
16 the authorities may enter into cooperative agreements wherein either
17 agrees to perform the work and furnish the materials necessary and pay
18 the cost thereof, including necessary engineering assistance, which
19 costs and expenses shall be reimbursed by the party whose
20 responsibility it was to do or perform the work or improvement in the
21 first instance. The work may be done by either day labor or contract,
22 and the cooperative agreement between the parties shall provide for the
23 method of reimbursement. In the case of some special benefit or
24 improvement to a state highway derived from (~~any project that assists~~
25 ~~in preventing or minimizing flood damages as defined in RCW 86.16.120~~
26 ~~or from~~)) the construction of any public works project, including any
27 urban public transportation system, the department may contribute to
28 the cost thereof by making direct payment to the particular state
29 department, agency, instrumentality, municipal corporation, or
30 political subdivision on the basis of benefits received, but such
31 payment shall be made only after a cooperative agreement has been
32 entered into for a specified amount or on an actual cost basis prior to
33 the commencement of the particular public works project.

34 In the case of a special benefit or improvement to a state highway
35 derived from a project that assists in preventing or reducing flood
36 damages as defined in RCW 86.16.120, the department shall contribute to
37 the cost of the benefit or improvement by making direct payment to the
38 particular state department, agency, instrumentality, municipal

1 corporation, or political subdivision on the basis of contribution to
2 the problem or benefits received. The department may make payment only
3 after an agreement has been entered into between the department and the
4 appropriate state or local government entity. The department shall
5 contribute costs on the basis of benefits received.

6 NEW SECTION. Sec. 24. A new section is added to chapter 86.26 RCW
7 to read as follows:

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

13 NEW SECTION. Sec. 25. The department of transportation shall
14 provide to the respective counties an inventory of all state highways
15 and bridges, that are located in federal emergency management agency-
16 designated flood plains, and are located within each county with two or
17 more presidentially declared flood disasters within the most recent
18 ten-year period. The department of transportation shall provide any
19 available flood plain information to assist the counties as they
20 prepare the county comprehensive flood control management plan. The
21 department shall provide input and cooperate with the counties in
22 identifying any state roads or bridges that may cause a constriction to
23 the natural flow of flood waters. The department shall also assist the
24 counties in identifying state roads that, either by themselves or in
25 conjunction with levees or other structures in the flood plain, may
26 potentially entrap floodwaters in areas originally intended to be
27 floodproofed. The county comprehensive flood control management plan
28 should identify flooding events that pose a serious threat to critical
29 transportation facilities in the form of damage to a roadway or to a
30 bridge, or closure to the roadway or bridge during times of a flooding
31 emergency.

32 NEW SECTION. Sec. 26. A new section is added to chapter 75.20 RCW
33 to read as follows:

34 By December 31, 1996, the departments of fish and wildlife, natural
35 resources, and ecology shall jointly develop a memorandum of
36 understanding to facilitate the consideration of projects that will aid

1 in the minimization or prevention of flood damage as defined in RCW
2 86.16.120. To reduce the duplication of information required by a
3 project's permits, the departments must provide in their memorandum
4 procedures to share data to the extent practicable among themselves and
5 with other agencies that may be involved in approving or denying a
6 permit application. The departments' memorandum must provide a plan to
7 implement a comprehensive permit process that is streamlined and easily
8 understandable to permit applicants.

9 NEW SECTION. **Sec. 27.** RCW 79.90.325 and 1984 c 212 s 10 are each
10 repealed.

11 NEW SECTION. **Sec. 28.** If specific funding for the purposes of
12 this act, referencing this act by bill number, is not provided by June
13 30, 1995, in the omnibus appropriations act, this act is null and void.

14 NEW SECTION. **Sec. 29.** This act is necessary for the immediate
15 preservation of the public peace, health, or safety, or support of the
16 state government and its existing public institutions, and shall take
17 effect immediately."

18 **SHB 1597** - S COMM AMD
19 By Committee on Natural Resources

20

21 On page 1, line 1 of the title, after "reduction;" strike the
22 remainder of the title and insert "amending RCW 36.70A.060, 36.70A.070,
23 36.70A.170, 43.21C.020, 75.20.100, 75.20.103, 75.20.130, 79.90.150,
24 79.90.300, 85.38.200, 86.15.030, 86.15.050, 86.15.160, 86.26.105,
25 90.58.180, 86.12.200, 90.58.030, and 47.28.140; adding new sections to
26 chapter 75.20 RCW; adding a new section to chapter 79.90 RCW; adding a
27 new section to chapter 43.17 RCW; adding a new section to chapter 86.26
28 RCW; creating new sections; repealing RCW 79.90.325; and declaring an
29 emergency."

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