

ANALYSIS OF HB 3085

House Agriculture & Ecology Committee

February 5, 1998

BACKGROUND:

Counties are authorized to adopt comprehensive flood control management plans for any drainage basin located in whole or in part within the county. The plan must include designation of the areas susceptible to periodic flooding; establishment of a comprehensive scheme of flood control improvements for the areas subject to periodic flooding; establishing land use regulations which preclude the location of structures, works, or improvements in critical portions of the areas subject to periodic flooding; and establishing restrictions on land clearing activities and development practices that exacerbate flooding.

A county comprehensive flood control management plan is subject to the minimum requirements for participation in the national flood control insurance program, the requirements which exceed the minimum national flood control insurance program that have been adopted by the Department of Ecology for a specific flood plain, and rules adopted by the Department of Ecology relating to flood plain management activities. The state may not participate with a county for flood control maintenance projects unless a comprehensive flood control management plan has been adopted by the county. There is no requirement for these flood control plans to be updated on a periodic basis.

Comprehensive flood hazard management plans must be reviewed and updated every ten years. Plans that were approved before 1990 must be reviewed and updated by 2001. Basic plan updates must be jointly reviewed and approved by the Departments of Ecology and Fish and Wildlife.

Cities and counties which plan under the Growth Management Act (GMA) are not required to identify lands which are useful for flood hazard corridors. It is unclear whether development regulations adopted to implement flood control plans may be used as development regulations to implement GMA requirements pertaining to frequently flooded areas.

If a county modifies the course of a river, the title to the abandoned channel, bed, banks, up to and including the ordinary high water line is granted to the county making the improvement.

Counties are allowed to construct, operate, and maintain dams, dikes, bulkheads, and other protection, but are not expressly authorized to modify, remove, redesign, or relocate these forms of protection. The authority of a county to remove bars and logs from a stream, or to deepen or otherwise change the stream does not expressly state that it must be done consistently with the provisions pertaining to hydraulic permits.

A seller's real estate disclosure statement requires disclosure of whether the property is located in a designated flood plain, but does not require disclosure of whether any flooding occurred on the property.

The State Treasurer is required to transfer \$4 million from the general fund to the flood control

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assistance account at the beginning of each biennium. Money may only be spent after appropriation.

SUMMARY:

Counties may qualify for streamlined state and federal permitting if they elect to plan for flood management at an enhanced level. The current requirements for a county comprehensive flood control management plan constitute the elements of a basic comprehensive flood hazard management plan. An enhanced comprehensive flood hazard management plan (enhanced plan) contains all the elements of a basic plan, but also include several other elements.

Additional elements to be included within an enhanced plan are: identification of primary public needs such as preservation of water quality and creation of floodwater storage areas; identification of high-danger areas; identification of flood hazard corridors; establishment of land use restrictions that allow only compatible uses within the flood hazard corridor, and restrictive land use policies for frequently flooded areas; identification of detailed public flood hazard reduction projects; a sediment management strategy; a fish habitat mitigation or restoration strategy; prioritization of locations from within high-danger areas and flood hazard corridors for acquisition; identification of where projects may encumber state-owned or managed lands; a flood safety component; consistency with elements of the state flood reduction plan; identification of a funding strategy for plan implementation; and review under the State Environmental Protection Act (SEPA).

Enhanced plans must be jointly reviewed and approved by the Departments of Ecology and Fish and Wildlife. Specific projects may be rejected by either department at the time of plan review for violations of water pollution laws, shoreline management laws, or hydraulic permit laws. The local government adopting the plan must request advisory review and recommendation from affected area tribes and from the local shoreline planner. The local government adopting the plan may request advisory review from the Washington State Parks and Recreation Commission and the Department of Natural Resources regarding lands identified for acquisition to determine their suitability for holdings as state lands. If projects are determined to encumber state-owned or managed lands, the local government must advise the affected state agency.

Comprehensive flood hazard management plans must be reviewed and updated every ten years. Plans that were approved before 1990 must be reviewed and updated by 2001. Basic plan updates must be jointly reviewed and approved by the Departments of Ecology and Fish and Wildlife.

Public flood hazard reduction projects which are identified in detail in enhanced plans, and

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which are not rejected by either the Department of Ecology or the Department of Fish and Wildlife during plan approval, receive: additional consideration for flood control assistance account program project money; additional consideration for state and federal funds in both postdisaster and nonemergency flood mitigation funding; an exemption from individual SEPA review; priority for inclusion under 5-year maintenance agreements under the hydraulic permits law; and a 45-day maximum review when the federal Clean Water Act or Coastal Zone Management review is triggered. The SEPA exemption from additional review is for a period not to exceed five years.

The Departments of Fish and Wildlife, Ecology, and other relevant state agencies must provide technical support to counties during the enhanced plan review approval process. The Department of Ecology is directed to develop a general permit to satisfy permit requirements of the federal Clean Water Act for flood hazard reduction activities. The requirements of an enhanced plan shall establish eligibility for a general permit.

Cities and counties which plan under the Growth Management Act (GMA) must identify lands which are useful as flood hazard corridors. The goals and policies of an approved comprehensive flood management plan are considered as an element of the county's comprehensive plan under GMA, and the development regulations to implement the flood plan may be designated as the development regulations required under GMA to protect frequently flooded areas.

If a county modifies the course of a river, the title to the abandoned channel, bed, and bank remain within the state unless expressly conveyed to the county making the modification. The conveyance to the county is preferred when the county places the abandoned lands in a use benefitting the public, such as a flood hazard corridor.

A county may modify, remove, redesign, or relocate dams and other types of flood protection. Any removal of debris or change to the stream must be consistent with the hydraulic permit laws.

The seller's real estate disclosure statement is modified to require disclosure of whether the property had flooding during the greater of, the time period of ownership or the preceding ten years.

The amount of money which must be transferred by the State Treasurer at the beginning of each biennium from the state general fund to the flood control assistance account is increased from \$4 million to \$10 million.



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The bill contains a null and void clause if funding is not provided by June 30, 1998.

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