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**SUBSTITUTE SENATE BILL 5433**

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**State of Washington****55th Legislature****1997 Regular Session**

**By** Senate Committee on Natural Resources & Parks (originally sponsored by Senators Stevens, Anderson, Rasmussen, Newhouse, Rossi, Benton, Hargrove, Goings, Finkbeiner and Zarelli)

Read first time 02/28/97.

1 AN ACT Relating to flood damage reduction; amending RCW 43.21C.020,  
2 75.20.130, 79.90.150, 79.90.300, 86.15.030, 86.15.050, 86.15.160,  
3 86.26.105, 90.58.180, 86.12.200, and 90.58.030; adding a new section to  
4 chapter 36.70A RCW; adding a new section to chapter 86.09 RCW; adding  
5 new sections to chapter 86.12 RCW; adding a new section to chapter  
6 86.13 RCW; adding a new section to chapter 86.15 RCW; adding a new  
7 section to chapter 86.16 RCW; adding a new section to chapter 35.13  
8 RCW; adding a new section to chapter 35A.14 RCW; adding a new section  
9 to chapter 75.20 RCW; adding a new section to chapter 79.90 RCW; adding  
10 a new section to chapter 43.17 RCW; adding a new section to chapter  
11 86.26 RCW; creating a new section; repealing RCW 79.90.325; and  
12 declaring an emergency.

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

14 NEW SECTION. **Sec. 1.** The legislature finds that river and stream  
15 systems can threaten public and private property during flood events.  
16 River systems react in different ways: When some rivers flood, they  
17 scour; others fill in by sediment deposition. The legislature further  
18 finds that when placing or removing organic debris in a river that  
19 scours, it may be appropriate to place more debris for fish habitat; if

1 it is a river that deposits sediments and tends to fill in then it may  
2 be appropriate to remove deposits to create some deeper pools and a  
3 better flow pattern, that will help fish habitat as well as lessen  
4 flood danger. The legislature therefore declares that reducing flood  
5 damage through the use of structural and nonstructural projects is in  
6 the public interest and that it is the duty of the state to assist in  
7 funding flood control projects. Structural and nonstructural projects  
8 include but are not limited to: Streambank stabilization, river  
9 channel maintenance, land use restrictions, land buy-outs, flood  
10 easements, and emergency notification. The legislature further  
11 declares that counties be given the flexibility to make those decisions  
12 that are best for their particular rivers, rather than prescribe or  
13 constrain local government to the point where they cannot manage their  
14 different types of rivers. The legislature further declares that local  
15 governments should coordinate flood planning and flood projects so that  
16 the projects do not cause flooding in other areas. Counties and cities  
17 are encouraged to coordinate using watershed planning areas to provide  
18 consistent planning throughout a water's course.

19 NEW SECTION. **Sec. 2.** A new section is added to chapter 36.70A RCW  
20 to read as follows:

21 Each county, city, or town adopting or amending a comprehensive  
22 plan or development regulations to implement that plan or protect  
23 critical areas shall ensure that its plan or regulations, or both are  
24 consistent with and coordinated with any plan to reduce flood hazards.

25 NEW SECTION. **Sec. 3.** A new section is added to chapter 86.09 RCW  
26 to read as follows:

27 (1) Each county adopting or amending a comprehensive plan or  
28 development regulations to implement that plan or protect critical  
29 areas shall ensure that its plan or regulations, or both are consistent  
30 with and coordinated with any plan adopted under this chapter to reduce  
31 flood hazards.

32 (2) Each county, city, flood control district, or other local  
33 entity planning under chapter 86.16 or 86.26 RCW must consult with  
34 other jurisdictions within the watershed or watersheds to be planned,  
35 before adoption of a plan. Any local government receiving state  
36 funding for flood projects or flood planning must consult with the  
37 other jurisdictions within the watershed in which the project is to be

1 done or in which planning is to take place, before proceeding with a  
2 project or planning effort.

3 NEW SECTION. **Sec. 4.** A new section is added to chapter 86.12 RCW  
4 to read as follows:

5 (1) Each county adopting or amending a comprehensive plan or  
6 development regulations to implement that plan or protect critical  
7 areas shall ensure that its plan or regulations, or both are consistent  
8 with and coordinated with any plan adopted under this chapter to reduce  
9 flood hazards.

10 (2) Each county, city, flood control district, or other local  
11 entity planning under chapter 86.16 or 86.26 RCW must consult with  
12 other jurisdictions within the watershed or watersheds to be planned,  
13 before adoption of a plan. Any local government receiving state  
14 funding for flood projects or flood planning must consult with the  
15 other jurisdictions within the watershed in which the project is to be  
16 done or in which planning is to take place, before proceeding with a  
17 project or planning effort.

18 NEW SECTION. **Sec. 5.** A new section is added to chapter 86.13 RCW  
19 to read as follows:

20 (1) Each county adopting or amending a comprehensive plan or  
21 development regulations to implement that plan or protect critical  
22 areas shall ensure that its plan or regulations, or both are consistent  
23 with and coordinated with any plan adopted under this chapter to reduce  
24 flood hazards.

25 (2) Each county, city, flood control district, or other local  
26 entity planning under chapter 86.16 or 86.26 RCW must consult with  
27 other jurisdictions within the watershed or watersheds to be planned,  
28 before adoption of a plan. Any local government receiving state  
29 funding for flood projects or flood planning must consult with the  
30 other jurisdictions within the watershed in which the project is to be  
31 done or in which planning is to take place, before proceeding with a  
32 project or planning effort.

33 NEW SECTION. **Sec. 6.** A new section is added to chapter 86.15 RCW  
34 to read as follows:

35 (1) Each county adopting or amending a comprehensive plan or  
36 development regulations to implement that plan or protect critical

1 areas shall ensure that its plan or regulations, or both are consistent  
2 with and coordinated with any plan adopted under this chapter to reduce  
3 flood hazards.

4 (2) Each county, city, flood control district, or other local  
5 entity planning under chapter 86.16 or 86.26 RCW must consult with  
6 other jurisdictions within the watershed or watersheds to be planned,  
7 before adoption of a plan. Any local government receiving state  
8 funding for flood projects or flood planning must consult with the  
9 other jurisdictions within the watershed in which the project is to be  
10 done or in which planning is to take place, before proceeding with a  
11 project or planning effort.

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

14 (1) Each county, city, or town adopting or amending a comprehensive  
15 plan or development regulations, or both to implement that plan or  
16 protect critical areas shall ensure that its plan or regulations, or  
17 both are consistent with and coordinated with any plan to reduce flood  
18 hazards.

19 (2) Each county, city, flood control district, or other local  
20 entity planning under this chapter or chapter 86.26 RCW must consult  
21 with other jurisdictions within the watershed or watersheds to be  
22 planned, before adoption of a plan. Any local government receiving  
23 state funding for flood projects or flood planning must consult with  
24 the other jurisdictions within the watershed in which the project is to  
25 be done or in which planning is to take place, before proceeding with  
26 a project or planning effort.

27 NEW SECTION. **Sec. 8.** A new section is added to chapter 35.13 RCW  
28 to read as follows:

29 No city or town may annex territory located within the designated  
30 flood plain unless the city or town establishes zoning and use  
31 requirements for the territory to be annexed that are consistent with  
32 the comprehensive plan, critical area regulations, and flood plain  
33 management plan of the county of jurisdiction.

34 NEW SECTION. **Sec. 9.** A new section is added to chapter 35A.14 RCW  
35 to read as follows:

1 No city or town may annex territory located within the designated  
2 flood plain unless the city or town establishes zoning and use  
3 requirements for the territory to be annexed that are consistent with  
4 the comprehensive plan, critical area regulations, and flood plain  
5 management plan of the county of jurisdiction.

6 **Sec. 10.** RCW 43.21C.020 and 1971 ex.s. c 109 s 2 are each amended  
7 to read as follows:

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

27 (2) In order to carry out the policy set forth in this chapter, it  
28 is the continuing responsibility of the state of Washington and all  
29 agencies of the state to use all practicable means, consistent with  
30 other essential considerations of state policy, to improve and  
31 coordinate plans, functions, programs, and resources to the end that  
32 the state and its citizens may:

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

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

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

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

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

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

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

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

15 (3) The legislature recognizes that each person has a fundamental  
16 and inalienable right to a healthful environment and that each person  
17 has a responsibility to contribute to the preservation and enhancement  
18 of the environment.

19 NEW SECTION. Sec. 11. A new section is added to chapter 75.20 RCW  
20 to read as follows:

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

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

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

28 (3) The permittee shall begin excavating at the excavation line and  
29 proceed toward the bank, perpendicular to the alignment of the  
30 watercourse.

31 (4) The permittee shall keep the maximum distance of excavation  
32 toward the bank from the excavation line approximately equal throughout  
33 the excavation zone. "Excavation zone" means the area between the  
34 excavation line and the bank.

35 (5) The permittee shall identify the excavation zone with boundary  
36 markers.

37 (6) The permittee shall maintain a minimum one percent gradient  
38 upward from the excavation line in the excavation zone.

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

3 (8) The permittee shall not stockpile or spoil excavated materials  
4 within the ordinary high water line except from June 15 to September  
5 15.

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

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

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

12 (12) The permittee shall be allowed to remove only that amount of  
13 rock, sand, gravel, or silt which is anticipated to be naturally  
14 replenished by a flood of at least a ten-year magnitude, except in  
15 instances where a lapse in material removal has occurred. If such  
16 lapse has occurred, then an amount of material equivalent to the amount  
17 estimated to have accumulated since the last material removal  
18 operation, including debris and vegetation, may be removed.

19 **Sec. 12.** RCW 75.20.130 and 1996 c 276 s 2 are each amended to read  
20 as follows:

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

24 (2) The hydraulic appeals board shall consist of three members:  
25 The director of the department of ecology or the director's designee,  
26 the director of the department of agriculture or the director's  
27 designee, and the director or the director's designee of the department  
28 whose action is appealed under subsection (6) of this section. A  
29 decision must be agreed to by at least two members of the board to be  
30 final.

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

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

1 (5) The board has exclusive jurisdiction to hear appeals arising  
2 from the approval, denial, conditioning, or modification of a hydraulic  
3 approval issued by the department: (a) Under the authority granted in  
4 RCW 75.20.103 for the diversion of water for agricultural irrigation or  
5 stock watering purposes or when associated with streambank  
6 stabilization to protect farm and agricultural land as defined in RCW  
7 84.34.020; or (b) under the authority granted in RCW 75.20.190 for off-  
8 site mitigation proposals.

9 (6)(a) Any person aggrieved by the approval, denial, conditioning,  
10 or modification of a hydraulic approval pursuant to RCW 75.20.103 may  
11 seek review from the board by filing a request for the same within  
12 thirty days of notice of the approval, denial, conditioning, or  
13 modification of such approval.

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

17 (c) If a review proceeding authorized in (a) of this subsection  
18 finds for the aggrieved permit applicant, the applicant may be awarded  
19 any legal and engineering costs involved in challenging the permit  
20 decision.

21 NEW SECTION. Sec. 13. A new section is added to chapter 79.90 RCW  
22 to read as follows:

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

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

28 (b) The removal provides recreational benefits;

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

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

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

35 (2) The department must allow sand and gravel removal leases to  
36 allow removal of that amount which is anticipated to be naturally  
37 replenished by a flood of at least a ten-year magnitude, except in  
38 instances where a lapse in material removal has occurred. If such a

1 lapse has occurred, then an amount of material equivalent to the amount  
2 estimated to have accumulated since the last material removal  
3 operation, including debris and vegetation, may be removed.

4 **Sec. 14.** 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 directed by a local  
30 government and if it is determined by the local government to be for  
31 flood control purposes. Public purposes include, but are not limited  
32 to, construction and maintenance of roads, dikes, and levies. Nothing  
33 in this section shall repeal or modify the provisions of RCW 75.20.100  
34 or eliminate the necessity of obtaining a permit for such removal from  
35 other state or federal agencies as otherwise required by law.

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

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

30       At the hearing scheduled upon the resolution, the board shall  
31 permit all interested parties to be heard. Thereafter, the board may  
32 reject the resolution or it may modify the boundaries of such zone and  
33 make such other corrections or additions to the resolutions as they  
34 deem necessary to the accomplishment of the purpose of this chapter:  
35 PROVIDED, That if the boundaries of such zone are enlarged, the board  
36 shall hold an additional hearing following publication and notice of  
37 such new boundaries: PROVIDED FURTHER, That the boundaries of any zone  
38 shall generally follow the boundaries of the watershed area affected:

1 PROVIDED FURTHER, That the immediately preceding proviso shall in no  
2 way limit or be construed to prohibit the formation of a county-wide  
3 flood control zone district authorized to be created by RCW 86.15.025.

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

7 **Sec. 17.** RCW 86.15.050 and 1961 c 153 s 5 are each amended to read  
8 as follows:

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

14 **Sec. 18.** RCW 86.15.160 and 1986 c 278 s 60 are each amended to  
15 read as follows:

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

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

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

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

32 (4) A charge, under RCW 36.89.080 through 36.89.100, for the  
33 furnishing of service to those who are receiving or will receive  
34 benefits from storm water control facilities (~~and~~) or who are  
35 contributing to an increase in surface water runoff. Except as  
36 otherwise provided in RCW 90.03.525, any public entity and public  
37 property, including the state and state property, shall be liable for

1 the charges to the same extent a private person and privately owned  
2 property is liable for the charges, and in setting these rates and  
3 charges, consideration may be made of in-kind services, such as stream  
4 improvements or donation of property;

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

11 **Sec. 19.** RCW 86.26.105 and 1986 c 46 s 5 are each amended to read  
12 as follows:

13 (~~(A comprehensive flood control management plan shall determine the  
14 need for flood control work, consider alternatives to in stream flood  
15 control work, identify and consider potential impacts of in stream  
16 flood control work on the state's in stream resources, and identify the  
17 river's meander belt or floodway.))~~ (1) A comprehensive flood control  
18 management plan shall be completed and adopted (~~(within at least three  
19 years of the certification that it is being prepared, as provided in  
20 RCW 86.26.050))~~ by any county that has experienced at least two  
21 presidentially declared flood disasters within the most recent ten-year  
22 period by December 31, 2001, or within two years of a second  
23 presidentially declared flood disaster.

24 (2) If (~~(after this three year period has elapsed))~~, by December  
25 31, 2001, or within two years of a second presidentially declared flood  
26 disaster, such a comprehensive flood control plan has not been  
27 completed and adopted, grants for flood control maintenance projects  
28 shall not be made to the county or municipal corporations in the county  
29 until a comprehensive flood control plan is completed and adopted by  
30 the appropriate local authority. These limitations on grants shall not  
31 preclude allocations for emergency purposes made pursuant to RCW  
32 86.26.060, however, priority consideration for emergency assistance  
33 shall be given to those counties that are required to plan, and have  
34 completed a plan, as required under this section.

35 **Sec. 20.** RCW 90.58.180 and 1995 c 347 s 310 are each amended to  
36 read as follows:

1 (1) Any person aggrieved by the granting, denying, or rescinding of  
2 a permit on shorelines of the state pursuant to RCW 90.58.140 may seek  
3 review from the shorelines hearings board by filing a petition for  
4 review within twenty-one days of the date of filing as defined in RCW  
5 90.58.140(6).

6 Within seven days of the filing of any petition for review with the  
7 board as provided in this section pertaining to a final decision of a  
8 local government, the petitioner shall serve copies of the petition on  
9 the department and the office of the attorney general. The department  
10 and the attorney general may intervene to protect the public interest  
11 and insure that the provisions of this chapter are complied with at any  
12 time within fifteen days from the date of the receipt by the department  
13 or the attorney general of a copy of the petition for review filed  
14 pursuant to this section. The shorelines hearings board shall schedule  
15 review proceedings on the petition for review without regard as to  
16 whether the period for the department or the attorney general to  
17 intervene has or has not expired.

18 (2) The department or the attorney general may obtain review of any  
19 final decision granting a permit, or granting or denying an application  
20 for a permit issued by a local government by filing a written petition  
21 with the shorelines hearings board and the appropriate local government  
22 within twenty-one days from the date the final decision was filed as  
23 provided in RCW 90.58.140(6).

24 (3) The review proceedings authorized in subsections (1) and (2) of  
25 this section are subject to the provisions of chapter 34.05 RCW  
26 pertaining to procedures in adjudicative proceedings. Judicial review  
27 of such proceedings of the shorelines hearings board is governed by  
28 chapter 34.05 RCW. The board shall issue its decision on the appeal  
29 authorized under subsections (1) and (2) of this section within one  
30 hundred eighty days after the date the petition is filed with the board  
31 or a petition to intervene is filed by the department or the attorney  
32 general, whichever is later. The time period may be extended by the  
33 board for a period of thirty days upon a showing of good cause or may  
34 be waived by the parties.

35 (4) Any person may appeal any rules, regulations, or guidelines  
36 adopted or approved by the department within thirty days of the date of  
37 the adoption or approval. The board shall make a final decision within  
38 sixty days following the hearing held thereon.

1       (5) 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       (6) The board shall find the rule, regulation, or guideline to be  
6 valid and enter a final decision to that effect unless it determines  
7 that the rule, regulation, or guideline:

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

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

11       (c) Is arbitrary and capricious; or

12       (d) Was developed without fully considering and evaluating all  
13 material submitted to the department during public review and comment;  
14 or

15       (e) Was not adopted in accordance with required procedures.

16       (~~(6)~~) (7) If the board makes a determination under subsection  
17 (~~(5)~~) (6)(a) through (e) of this section, it shall enter a final  
18 decision declaring the rule, regulation, or guideline invalid,  
19 remanding the rule, regulation, or guideline to the department with a  
20 statement of the reasons in support of the determination, and directing  
21 the department to adopt, after a thorough consultation with the  
22 affected local government and any other interested party, a new rule,  
23 regulation, or guideline consistent with the board's decision.

24       (~~(7)~~) (8) A decision of the board on the validity of a rule,  
25 regulation, or guideline shall be subject to review in superior court,  
26 if authorized pursuant to chapter 34.05 RCW. A petition for review of  
27 the decision of the shorelines hearings board on a rule, regulation, or  
28 guideline shall be filed within thirty days after the date of final  
29 decision by the shorelines hearings board.

30       NEW SECTION. Sec. 21. A new section is added to chapter 43.17 RCW  
31 to read as follows:

32       Each appropriate agency shall actively seek to encourage through  
33 permit requirements the removal of accumulated materials from rivers  
34 and streams where there is a flood damage reduction benefit. Each  
35 agency shall develop policies to accomplish this goal.

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

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

4 A comprehensive flood control management plan shall include the  
5 following elements:

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

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

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

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

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

1 A comprehensive flood control management plan shall be subject to  
2 the minimum requirements for participation in the national flood  
3 insurance program, requirements exceeding the minimum national flood  
4 insurance program that have been adopted by the department of ecology  
5 for a specific flood plain pursuant to RCW 86.16.031, and rules adopted  
6 by the department of ecology pursuant to chapter 86.16 RCW and RCW  
7 86.26.050 relating to flood plain management activities. When a county  
8 plans under chapter 36.70A RCW, it (~~may~~) must incorporate the portion  
9 of its comprehensive flood control management plan relating to land use  
10 restrictions in its comprehensive plan and development regulations  
11 adopted pursuant to chapter 36.70A RCW.

12 **Sec. 23.** RCW 90.58.030 and 1996 c 265 s 1 are each amended to read  
13 as follows:

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

16 (1) Administration:

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

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

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

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

26 (e) "Hearing board" means the shoreline hearings board established  
27 by this chapter.

28 (2) Geographical:

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

31 (b) "Ordinary high water mark" on all lakes, streams, and tidal  
32 water is that mark that will be found by examining the bed and banks  
33 and ascertaining where the presence and action of waters are so common  
34 and usual, and so long continued in all ordinary years, as to mark upon  
35 the soil a character distinct from that of the abutting upland, in  
36 respect to vegetation as that condition exists on June 1, 1971, as it  
37 may naturally change thereafter, or as it may change thereafter in  
38 accordance with permits issued by a local government or the department:

1 PROVIDED, That in any area where the ordinary high water mark cannot be  
2 found, the ordinary high water mark adjoining salt water shall be the  
3 line of mean higher high tide and the ordinary high water mark  
4 adjoining fresh water shall be the line of mean high water;

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

7 (d) "Shorelines" means all of the water areas of the state,  
8 including reservoirs, and their associated shorelands, together with  
9 the lands underlying them; except (i) shorelines of state-wide  
10 significance; (ii) shorelines on segments of streams upstream of a  
11 point where the mean annual flow is twenty cubic feet per second or  
12 less and the wetlands associated with such upstream segments; and (iii)  
13 shorelines on lakes less than twenty acres in size and wetlands  
14 associated with such small lakes;

15 (e) "Shorelines of state-wide significance" means the following  
16 shorelines of the state:

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

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

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

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

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

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

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

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

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

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

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

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

6 (vi) Those shorelands associated with (i), (ii), (iv), and (v) of  
7 this subsection (2)(e);

8 (f) "Shorelands" or "shoreland areas" means those lands extending  
9 landward for two hundred feet in all directions as measured on a  
10 horizontal plane from the ordinary high water mark; floodways and  
11 contiguous floodplain areas landward two hundred feet from such  
12 floodways; and all wetlands and river deltas associated with the  
13 streams, lakes, and tidal waters which are subject to the provisions of  
14 this chapter; the same to be designated as to location by the  
15 department of ecology. Any county or city may determine that portion  
16 of a one-hundred-year-flood plain to be included in its master program  
17 as long as such portion includes, as a minimum, the floodway and the  
18 adjacent land extending landward two hundred feet therefrom;

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

29 (h) "Wetlands" means areas that are inundated or saturated by  
30 surface water or ground water at a frequency and duration sufficient to  
31 support, and that under normal circumstances do support, a prevalence  
32 of vegetation typically adapted for life in saturated soil conditions.  
33 Wetlands generally include swamps, marshes, bogs, and similar areas.  
34 Wetlands do not include those artificial wetlands intentionally created  
35 from nonwetland sites, including, but not limited to, irrigation and  
36 drainage ditches, grass-lined swales, canals, detention facilities,  
37 wastewater treatment facilities, farm ponds, and landscape amenities,  
38 or those wetlands created after July 1, 1990, that were unintentionally  
39 created as a result of the construction of a road, street, or highway.

1 Wetlands may include those artificial wetlands intentionally created  
2 from nonwetland areas to mitigate the conversion of wetlands.

3 (3) Procedural terms:

4 (a) "Guidelines" means those standards adopted to implement the  
5 policy of this chapter for regulation of use of the shorelines of the  
6 state prior to adoption of master programs. Such standards shall also  
7 provide criteria to local governments and the department in developing  
8 master programs;

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

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

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

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

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

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

34 (iii) Streambed maintenance including sediment removal, sediment  
35 disposal, and streambank stabilization if performed to provide public  
36 flood control benefit as determined by the appropriate county  
37 legislative authority;

1        (iv) Construction of stream flow regulation, retention, or  
2 detention facilities if consistent with a flood control management plan  
3 developed under chapter 86.26 RCW;

4        (v) Construction of the normal protective bulkhead common to single  
5 family residences;

6        ~~((iii))~~ (vi) Emergency construction necessary to protect property  
7 from damage by the elements;

8        ~~((iv))~~ (vii) Construction and practices normal or necessary for  
9 farming, irrigation, and ranching activities, including agricultural  
10 service roads and utilities on shorelands, and the construction and  
11 maintenance of irrigation structures including but not limited to head  
12 gates, pumping facilities, and irrigation channels. A feedlot of any  
13 size, all processing plants, other activities of a commercial nature,  
14 alteration of the contour of the shorelands by leveling or filling  
15 other than that which results from normal cultivation, shall not be  
16 considered normal or necessary farming or ranching activities. A  
17 feedlot shall be an enclosure or facility used or capable of being used  
18 for feeding livestock hay, grain, silage, or other livestock feed, but  
19 shall not include land for growing crops or vegetation for livestock  
20 feeding and/or grazing, nor shall it include normal livestock wintering  
21 operations;

22        ~~((v))~~ (viii) Construction or modification of navigational aids  
23 such as channel markers and anchor buoys;

24        ~~((vi))~~ (ix) Construction on shorelands by an owner, lessee, or  
25 contract purchaser of a single family residence for his own use or for  
26 the use of his family, which residence does not exceed a height of  
27 thirty-five feet above average grade level and which meets all  
28 requirements of the state agency or local government having  
29 jurisdiction thereof, other than requirements imposed pursuant to this  
30 chapter;

31        ~~((vii))~~ (x) Construction of a dock, including a community dock,  
32 designed for pleasure craft only, for the private noncommercial use of  
33 the owner, lessee, or contract purchaser of single and multiple family  
34 residences. This exception applies if either: (A) In salt waters, the  
35 fair market value of the dock does not exceed two thousand five hundred  
36 dollars; or (B) in fresh waters, the fair market value of the dock does  
37 not exceed ten thousand dollars, but if subsequent construction having  
38 a fair market value exceeding two thousand five hundred dollars occurs  
39 within five years of completion of the prior construction, the

1 subsequent construction shall be considered a substantial development  
2 for the purpose of this chapter;

3 ~~((viii))~~ (xi) Operation, maintenance, or construction of canals,  
4 waterways, drains, reservoirs, or other facilities that now exist or  
5 are hereafter created or developed as a part of an irrigation system  
6 for the primary purpose of making use of system waters, including  
7 return flow and artificially stored ground water for the irrigation of  
8 lands;

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

12 ~~((x))~~ (xiii) Operation and maintenance of any system of dikes,  
13 ditches, drains, or other facilities existing on September 8, 1975,  
14 which were created, developed, or utilized primarily as a part of an  
15 agricultural drainage or diking system;

16 ~~((xi))~~ (xiv) Site exploration and investigation activities that  
17 are prerequisite to preparation of an application for development  
18 authorization under this chapter, if:

19 (A) The activity does not interfere with the normal public use of  
20 the surface waters;

21 (B) The activity will have no significant adverse impact on the  
22 environment including, but not limited to, fish, wildlife, fish or  
23 wildlife habitat, water quality, and aesthetic values;

24 (C) The activity does not involve the installation of a structure,  
25 and upon completion of the activity the vegetation and land  
26 configuration of the site are restored to conditions existing before  
27 the activity;

28 (D) A private entity seeking development authorization under this  
29 section first posts a performance bond or provides other evidence of  
30 financial responsibility to the local jurisdiction to ensure that the  
31 site is restored to preexisting conditions; and

32 (E) The activity is not subject to the permit requirements of RCW  
33 90.58.550;

34 ~~((xii))~~ (xv) The process of removing or controlling an aquatic  
35 noxious weed, as defined in RCW 17.26.020, through the use of an  
36 herbicide or other treatment methods applicable to weed control that  
37 are recommended by a final environmental impact statement published by  
38 the department of agriculture or the department jointly with other  
39 state agencies under chapter 43.21C RCW.

1        NEW SECTION.    **Sec. 24.**    A new section is added to chapter 86.26 RCW  
2 to read as follows:

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

8        NEW SECTION.    **Sec. 25.**    A new section is added to chapter 86.12 RCW  
9 to read as follows:

10       Upon request by a county or city preparing a comprehensive flood  
11 management plan under this chapter, the department of transportation  
12 shall:

13       (1) Provide an inventory of all state highways and bridges located  
14 in a floodplain as designated by the federal emergency management  
15 agency;

16       (2) Identify any state roads or bridges that may cause a  
17 constriction to the natural flow of flood waters;

18       (3) Identify state roads that, either by themselves or in  
19 conjunction with levees or other structures in the floodplain, may  
20 entrap floodwaters in areas originally intended to be flood-proofed;  
21 and

22       (4) Provide any other information available to the department to  
23 assist in preventing or minimizing flood damages.

24       NEW SECTION.    **Sec. 26.**    RCW 79.90.325 and 1984 c 212 s 10 are each  
25 repealed.

26       NEW SECTION.    **Sec. 27.**    This act is necessary for the immediate  
27 preservation of the public peace, health, or safety, or support of the  
28 state government and its existing public institutions, and takes effect  
29 immediately.

--- END ---