

Section 3(3) requires that public hearings be used to determine the effects district heating have on long-term utility rates. State law currently provides consumer protection by (1) requiring the establishment of district heating only by municipal legislative ordinance and (2) requiring the legislative authority to estimate consumer costs of such a system (RCW 35.97.050-060). Instead of streamlining the permitting system, section 3(3) retards the advancement of district heating while not furthering consumer protection.

With the exception of sections 3(1) and 3(3), Substitute House Bill No. 425 is approved."

CHAPTER 523

[Engrossed Senate Bill No. 5556]

FLOOD CONTROL

AN ACT Relating to flood control; amending RCW 86.16.010, 86.16.020, 86.16.035, 43.27A.200 and 43.83B.320; adding new sections to chapter 86.16 RCW; and repealing RCW 86.16.027, 86.16.030, 86.16.040, 86.16.050, 86.16.060, 86.16.065, 86.16.067, 86.16.070, 86.16.080, 86.16.085, 86.16.090, 86.16.100, 86.16.110, 86.16.130, and 86.16.170.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. Section 1, chapter 159, Laws of 1935 and RCW 86.16.010 are each amended to read as follows:

The legislature finds that the alleviation of recurring flood damages to public and private property(;) and to the public health and safety(;-and to the development of the natural resources of the state is declared to be) is a matter of public concern(;-and). As an aid in effecting such alleviation the state of Washington, in the exercise of its sovereign and police powers, hereby assumes full regulatory control over the navigable and nonnavigable waters flowing or lying within the borders of the state subject always to the federal control of navigation, to the extent necessary to accomplish the objects of this chapter. In addition, in an effort to alleviate flood damage and expenditures of government funds, the federal government adopted the national flood insurance act of 1968 and subsequently the flood disaster protection act of 1973. The department of ecology is the state agency in Washington responsible for coordinating the floodplain management regulation elements aspects of the national flood insurance program.

Sec. 2. Section 3, chapter 159, Laws of 1935 and RCW 86.16.020 are each amended to read as follows:

((State regulatory control)) State-wide floodplain management regulation shall be exercised through ((regulatory orders, the designation of flood control zones and the issuance of permits, as hereinafter provided, and)); (1) Local governments' administration of the national flood insurance program regulation requirements, (2) the establishment of minimum state requirements for floodplain management, (3) the administration of floodplain management programs for local jurisdictions not participating in or meeting the requirements of the national flood insurance program, and (4) through the issuance of regulatory orders. This regulation shall be exercised over the

planning, construction, operation and maintenance of any works, structures and improvements, private or public, which might, if improperly planned, constructed, operated and maintained, adversely influence the regimen of a stream or body of water or might adversely affect the security of life, health and property against damage by flood water.

NEW SECTION. Sec. 3. The department of ecology shall:

- (1) Review and approve all county, city, or town floodplain management ordinances pursuant to section 4 of this act;
- (2) Provide guidance and assistance to local governments in development and amendment of their floodplain management ordinances;
- (3) Provide technical assistance to local governments in the administration of their floodplain management ordinances;
- (4) Provide local governments and the general public with information related to the national flood insurance program;
- (5) Provide assistance to local governments in enforcement actions against any individual or individuals performing activities within the floodplain that are not in compliance with local, state, or federal floodplain management requirements;
- (6) Assume regulatory authority for floodplain management activities in the event of failure by the local government to comply with the requirements of this chapter; and
- (7) Establish minimum state requirements that equal or exceed the minimum federal requirements for the national flood insurance program.

NEW SECTION. Sec. 4. (1) Beginning the effective date of this section, every county and incorporated city and town shall submit to the department of ecology any new flood plain management ordinance or amendment to any existing floodplain management ordinance. Such ordinance or amendment shall take effect thirty days from filing with the department unless the department disapproves such ordinance or amendment within that time period.

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

(a) Restriction of land uses within designated floodways including the prohibition of construction or reconstruction of residential structures except for: (i) Repairs, reconstruction, or improvements to a structure which do not increase the ground floor area; and (ii) repairs, reconstruction, or improvements to a structure the cost of which does not exceed fifty percent of the market value of the structure either, (A) before the repair, reconstruction, or repair is started, or (B) if the structure has been damaged, and is being restored, before the damage occurred. Work done on structures to comply with existing health, sanitary, or safety codes or to structures identified as historic places shall not be included in the fifty percent determination;

(b) Floodproofing or elevating lowest floor levels for nonresidential structures;

(c) Elevating lowest floor levels for residential structures;

(d) The minimum requirements of the national flood insurance program; or

(e) Any minimum state requirements established by rule by the department of ecology.

NEW SECTION. Sec. 5. The basis for state and local floodplain management regulation shall be the areas designated as special flood hazard areas on the most recent maps provided by the federal emergency management agency for the national flood insurance program. Best available information shall be used if these maps are not available or sufficient.

NEW SECTION. Sec. 6. The department of ecology may adopt such rules as are necessary to implement this chapter.

NEW SECTION. Sec. 7. The exercise by the state of the authority, duties, and responsibilities as provided in this chapter shall not imply or create any liability for any damages against the state.

NEW SECTION. Sec. 8. (1) The attorney general or the attorney for the local government shall bring such injunctive, declaratory, or other actions as are necessary to ensure compliance with this chapter.

(2) Any person who fails to comply with this chapter shall also be subject to a civil penalty not to exceed one thousand dollars for each violation. Each violation or each day of noncompliance shall constitute a separate violation.

(3) The penalty provided for in this section shall be imposed by a notice in writing, either by certified mail with return receipt requested or by personal service, to the person incurring the same from the department or local government, describing the violation with reasonable particularity and ordering the act or acts constituting the violation or violations to cease and desist or, in appropriate cases, requiring necessary corrective action to be taken within a specific and reasonable time.

(4) Any penalty imposed pursuant to this section by the department shall be subject to review by the pollution control hearings board. Any penalty imposed pursuant to this section by local government shall be subject to review by the local government legislative authority. Any penalty jointly imposed by the department and local government shall be appealed to the pollution control hearings board.

Sec. 9. Section 8, chapter 159, Laws of 1935 and RCW 86.16.035 are each amended to read as follows:

~~((Said state supervisor))~~ The department of ecology shall have supervision and control over all dams and obstructions in streams, and may make reasonable regulations with respect thereto concerning the flow of water

which he deems necessary for the protection to life and property below such works from flood waters.

***Sec. 10. Section 8, chapter 284, Laws of 1969 ex. sess. and RCW 43-.27A.200 are each amended to read as follows:**

Any person feeling aggrieved by a regulatory order issued pursuant to RCW 43.27A.190 shall be entitled to review thereof upon request as follows:

(1) Review of the following categories of orders enumerated in subsections (a), (b), (c) and (d) of this subsection (1) shall be available in superior court pursuant and subject to the provisions of RCW 90.03.080 and shall include:

(a) An order which relates to the right to divert, withdraw or otherwise make beneficial use of waters of a water source which has been adjudicated pursuant to RCW 90.03.110 through 90.03.240 or RCW 90.44.220 and 90-.44.230; or

(b) An order which relates to the performance of an activity, or the construction or operation of a facility or improvement by a person without a permit, certificate, license or other authorization or approval of the department of water resources when the same is required to be obtained from the department by the person by statute, including but not limited to RCW 90-.03.250, 90.03.350, 90.03.370, 90.03.380, 90.44.050, ((86.16.080,)) or 43.37-.080, prior to said performance, construction or operation; or

(c) An order which relates to the violation of a term or condition of a permit or certificate, license or other authorization or approval issued by the department of water resources; or

(d) An order which relates to a water use condition constituting an emergency which threatens the public safety or welfare;

(2) Review of all regulatory orders issued pursuant to RCW 43.27A.190, other than those described in RCW 43.27A.200(1), shall be available through administrative hearings conducted by the department of water resources. A hearing shall be granted by the director of the department of water resources if the requester submits a written request to the director by certified or registered mail for a hearing and the same is received by, or mailed to the director within thirty days from the date of receipt of the order. No such request shall be entertained unless it contains the following:

(a) The requester's name and address;

(b) The date of the order for which the request for review is taken;

(c) A statement of the substance of the order complained of;

(d) A clear, separate and concise statement of each and every error which the requester alleges to have been committed by the department;

(e) A clear and concise statement of facts upon which the requester relies to sustain his statements of error; and

(f) A statement setting forth the relief sought.

All hearings shall be before the director or a hearing officer appointed by the director. Any party to a hearing held hereunder who feels aggrieved by

a final order issued by the director of the department of water resources after a hearing may obtain review thereof in a superior court. All hearings and judicial review authorized hereunder shall be subject to the provisions of chapter 34.04 RCW pertaining to contested cases.

In the event a regulatory or final order issued pursuant to RCW 43.27A.190 or 43.27A.200 is not complied with, the attorney general, upon request of the department of water resources, shall bring an action in the superior court of the county where the violation occurred or potential violation is about to occur to obtain such judicial relief as necessary, including injunctive relief, to insure that said order is complied with.

*Sec. 10 was vetoed, see message at end of chapter.

Sec. 11. Section 5, chapter 1, Laws of 1977 ex. sess. and RCW 43.83B.320 are each amended to read as follows:

(1) As to projects and water withdrawal permits issued or authorized or both under RCW 43.83B.310 and 43.83B.315, the requirements of chapter 43.21C RCW and all local zoning ordinances, plans, and local building and construction permit ordinances are waived and inapplicable. Notwithstanding any other provisions of law, water projects and related withdrawal permits, authorized or issued pursuant to RCW 43.83B.310 or 43.83B.315 shall not be subject to any public notice requirements. Permits issued under RCW 43.83B.310 and 43.83B.315 shall be in lieu of all environmental protection and natural resource regulation permits, certificates, and other approvals and authorization documents required under state statutes including, but not limited to, RCW 90.58.140(;-) and 75.20.100, ((and ~~86.16.080;~~)) as well as all other similar permits required under local ordinances. All state departments or other agencies having jurisdiction over state or other public lands which are required to be used in carrying out projects related to water withdrawal permits, issued pursuant to RCW 43.83B.310 and 43.83B.315, shall provide short term easements or other appropriate property interests upon the payment of the fair market value: PROVIDED, That this mandate shall not apply to any lands of the state which are reserved for a special purpose or use which cannot properly be carried out if such a property interest were to be conveyed.

(2) Upon request of the department of ecology or the department of social and health services, the department of general administration may waive any public bidding requirements otherwise provided by law, for any project authorized by RCW 43.83B.310 or 43.83B.315 and financed with funds appropriated in RCW 43.83B.300 through 43.83B.385, 43.83B.901, and 43.83B.210 if the department of general administration determines that (a) an emergency condition exists, and (b) if the request for a waiver is not approved the public interest will be significantly affected in a detrimental manner. The department of general administration shall rule upon requests for waiver submitted to it within five working days. If the department fails to rule within said five-day period the request shall be deemed approved

and a waiver deemed to be granted. The department of general administration, after obtaining the views of the department of ecology and the department of social and health services, shall adopt rules to implement this section. Notwithstanding any other provision of RCW 43.83B.300 through 43.83B.385, 43.83B.901, and 43.83B.210, this subsection shall terminate on September 30, 1977.

NEW SECTION. Sec. 12. The following acts or parts of acts are each repealed:

- (1) Section 9, chapter 159, Laws of 1935 and RCW 86.16.027;
- (2) Section 5, chapter 159, Laws of 1935 and RCW 86.16.030;
- (3) Section 11, chapter 159, Laws of 1935 and RCW 86.16.040;
- (4) Section 12, chapter 159, Laws of 1935 and RCW 86.16.050;
- (5) Section 13, chapter 159, Laws of 1935 and RCW 86.16.060;
- (6) Section 14, chapter 159, Laws of 1935 and RCW 86.16.065;
- (7) Section 15, chapter 159, Laws of 1935, section 86, chapter 469, Laws of 1985 and RCW 86.16.067;
- (8) Section 16, chapter 159, Laws of 1935 and RCW 86.16.070;
- (9) Section 10, chapter 159, Laws of 1935 and RCW 86.16.080;
- (10) Section 1, chapter 75, Laws of 1973 and RCW 86.16.085;
- (11) Section 7, chapter 159, Laws of 1935, section 2, chapter 85, Laws of 1939 and RCW 86.16.090;
- (12) Section 4, chapter 159, Laws of 1935 and RCW 86.16.100;
- (13) Section 17, chapter 159, Laws of 1935 and RCW 86.16.110;
- (14) Section 18, chapter 159, Laws of 1935 and RCW 86.16.130; and
- (15) Section 3, chapter 75, Laws of 1973 and RCW 86.16.170.

NEW SECTION. Sec. 13. Sections 3 through 8 of this act are each added to chapter 86.16 RCW.

****NEW SECTION. Sec. 14. A new section is added to chapter 86.16 RCW to read as follows:***

(1) A town in that portion of the Snohomish river flood control zone in existence as of January 1, 1987, within King county may apply to the department of ecology for an exemption from this chapter for (a) those structures or improvements constructed prior to August 15, 1966, and (b) any property situated within a plat that was filed for record prior to August 15, 1966.

(2) The department of ecology may grant an exemption under subsection (1) of this section if the department of ecology finds the exemption is warranted due to the physical characteristics within the town.

*Sec. 14 was vetoed, see message at end of chapter.

Passed the Senate April 24, 1987.

Passed the House April 16, 1987.

Approved by the Governor May 19, 1987, with the exception of certain items which were vetoed.

Filed in Office of Secretary of State May 19, 1987.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to sections 10 and 14, Engrossed Senate Bill No. 5556, entitled:

"AN ACT Relating to flood control."

Section 10 is a technical amendment to a section of the code that was repealed by Senate Bill 5427, already signed into law. I have eliminated this section of the bill to avoid confusion.

Section 14 would allow the Department of Ecology to grant an exemption for certain towns from statutory prohibitions against some types of construction and rehabilitation within designated floodways. Section 4 of the bill includes language that allows repairs, reconstruction and improvements to an existing structure. Since the state supplements the national flood insurance program, any exemptions from this prohibition that go beyond the examples allowed under section 4 would represent a needless risk of public funds.

With the exception of sections 10 and 14, Engrossed Senate Bill No. 5556 is approved."

CHAPTER 524

[Engrossed Second Substitute Senate Bill No. 5659]

CHILD PROTECTIVE SERVICES

AN ACT Relating to child protective services; amending RCW 13.32A.170, 13.34.020, 13.34.030, 13.34.120, 13.34.180, 13.34.190, 26.44.010, 26.44.020, 26.44.030, 26.44.053, 26.44.070, 74.15.030, and 74.15.060; and reenacting and amending RCW 13.34.060.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. Section 31, chapter 155, Laws of 1979 as last amended by section 10, chapter 257, Laws of 1985 and RCW 13.32A.170 are each amended to read as follows:

(1) The court shall hold a fact-finding hearing to consider a proper petition and may approve or deny alternative residential placement giving due weight to the intent of the legislature that families(~~(, absent compelling reasons to the contrary, shall remain together and that parents have the right to place reasonable rules and restrictions upon their children))~~ have the right to place reasonable restrictions and rules upon their children, appropriate to the individual child's developmental level. The court may appoint legal counsel and/or a guardian ad litem to represent the child and advise parents of their right to be represented by legal counsel. The court