

HOUSE BILL REPORT

E2SSB 5632

As Reported By House Committee On:

Agriculture & Ecology
Appropriations

Title: An act relating to flood damage reduction.

Brief Description: Providing for flood damage reduction.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators A. Anderson, Drew, Owen, Hargrove, Swecker, Morton, Hale, Haugen, Finkbeiner, Strannigan, Moyer, Palmer, Johnson, Quigley and Rasmussen).

Brief History:

Committee Activity:

Agriculture & Ecology: 3/27/95 [DPA];
Appropriations: 3/30/95, 4/3/95 [DPA(AG)].

HOUSE COMMITTEE ON AGRICULTURE & ECOLOGY

Majority Report: Do pass as amended. Signed by 13 members: Representatives Chandler, Chairman; Koster, Vice Chairman; McMorris, Vice Chairman; Mastin, Ranking Minority Member; Chappell, Assistant Ranking Minority Member; Boldt; Clements; Delvin; Honeyford; Johnson; Kremen; Robertson and Schoesler.

Minority Report: Do not pass. Signed by 4 members: Representatives R. Fisher; Poulsen; Regala and Rust.

Staff: Rick Anderson (786-7114).

Background:

Flood damages

Nearly every county in the state has had one or more federally declared disasters in the past 20 years. The three flood events of 1990 caused damage to public and private structures in excess of \$160 million.

Flood plain management

Responsibility for flood hazard prevention and management is divided between a number of federal, state, and local agencies.

The federal government provides low cost flood insurance for communities that meet minimum requirements through the Federal Emergency Management Agency (FEMA). To qualify for federal flood insurance, local governments must adopt, implement, and enforce ordinances that meet federal flood plain requirements. Approximately 250 cities and counties qualify under the federal insurance program; 10 percent of eligible cities and counties do not qualify. Federal law allows development to cause up to a one-foot rise in the flood plain. FEMA pays 75 percent of eligible costs for damages incurred during a federally declared flood disaster if the state and locals contribute 25 percent.

The Department of Ecology is required to adopt standards that equal the federal standards and to review local ordinances to ensure consistency with these standards. The Department of Ecology issues \$4 million in grants each biennium to help local governments repair and maintain existing flood control structures and to develop comprehensive flood plans. The state also pays 12.5 to 25 percent of eligible costs for damages incurred during a federally declared flood disaster.

To qualify for federal flood insurance, local governments must develop flood plain ordinances that meet federal flood plain requirements. Local governments are generally responsible for the repair and maintenance of dikes, levees, and other flood control structures. Local governments, at their option, may prepare comprehensive flood plans. Local governments are required, under the Growth Management Act, to develop ordinances to protect frequently flooded areas. Local governments may pay 12.5 percent of eligible costs for damages incurred during a federally declared flood disaster.

Permit Requirements for In-stream Work

The Department of Fisheries issues hydraulic project permits for any project that would use, divert, obstruct, or change the natural flow or bed of any waters of the state. Protection of fish life is the only grounds upon which approval may be denied or conditioned. The department is directed to give immediate oral approval to conduct in-stream work during emergencies. The Department of Fisheries has also established rules regulating gravel removal within the waters of the state.

The Department of Natural Resources has authority over aquatic lands. The department has established rules that govern the use or modification of any river system, including gravel removal projects.

Summary of Amended Bill: The amended bill is identical to SHB 1597 as it passed out of the House of Representatives.

Legislative Findings:

Legislative findings are made that reducing flood damage through the use of structural and nonstructural projects is in the public interest.

Land Use:

All development regulations protecting critical areas identified under the Growth Management Act must be consistent with a flood plain management plan. All elements of a growth management plan must be consistent with a flood management plan. Designations of agricultural lands, forest lands, mineral resource lands, or critical areas under the Growth Management Act must be consistent with the flood management plan.

The prevention, minimization, and repair of flood damage is added to the list of responsibilities of the state under the State Environmental Policy Act.

Gravel Removal

Department of Fish and Wildlife rules for gravel removal are revised and codified. The excavation line for gravel removal must be parallel to the water's edge, with the excavation at a minimum gradient of one half percent. Excavated materials may not be stockpiled within the ordinary high water line except from June 15 to October 15. Gravel may be removed in an amount equal to the annual deposit of a stream or river multiplied by the number of years since the last removal.

Department of Natural Resources rules for river management are revised and codified. Sand and gravel may be removed in an amount equal to the annual deposit of a stream multiplied by the number of years since the last removal. The department may not charge a royalty assessment when a public entity removes gravel if the local government determines that the gravel removal is for flood control purposes. The department may reduce or eliminate royalties when the gravel is removed by a private citizen in areas that are prone to flooding.

Agencies are directed to actively encourage, through permit requirements, the removal of accumulated materials from rivers and streams where there is a flood damage reduction benefit.

RCW 79.90.325 is repealed. This statute allows the Department of Natural Resources to reduce its royalty assessments for gravel removal, if the gravel removal results in a flood protection benefit.

HPA Permits

The Department of Fish and Wildlife's jurisdiction to regulate hydraulic projects may not extend past the ordinary high water line in marine and fresh waters. The department is also prohibited from limiting or conditioning the amount, timing, or delivery method of water diverted under the state's water code.

The criteria upon which the Department of Fish and Wildlife approves or rejects a hydraulic project permit are changed. The department must approve a project if: (1) a project provides no substantial risk to fish life and provides fish habitat productivity that is equal to pre-project conditions within three years; or if (2) the project protects structures likely to incur damage during the next flood season if the project is not

completed, and the project lessens loss of fish life as compared to a project resulting from an emergency request. These criteria apply only to projects that are consistent with a flood control management plan, as determined by the county.

The Department of Fish and Wildlife must grant multiple year authority, up to five years, when approving a hydraulic project submitted by a local flood control agency for multi-year maintenance projects.

Projects involving the repair of existing flood control facilities do not require a hydraulic project permit if they are consistent with the county flood plan and necessary to avoid flood damage during the next season.

The hydraulic project permit process for agriculturally-related projects is modified to allow the permit to be worked on concurrently with the State Environmental Protection Act (SEPA) process. A final decision on the hydraulic permit cannot be made until the SEPA process has been finalized.

Appeals

Applicants who win a hydraulics project approval permit appeal or shorelines permit appeal may be awarded legal and engineering costs involved in the appeal.

Flood Control Zone Districts

Technical and procedural changes are made to the creation and operation of flood control zone districts. A county is allowed 30 days, instead of 10 days, to issue its ordinance creating a flood control zone district. The district is authorized to establish a lien for delinquent charges or to establish an alternative foreclosure procedure.

Flood Planning Requirements

Any county with two or more presidentially declared flood disasters within the most recent ten-year period is required to complete a comprehensive flood control plan by December 31, 1998, or within two years of having a second federally declared flood disaster. Counties that are required to plan, and have completed a plan, are to receive priority consideration for emergency funding assistance.

Two new elements are added to the list of items that must be considered in a local comprehensive flood control management plan: potential channel migration areas and practices that will avoid long-term accretion of sediments.

Upon request, the Department of Transportation is required to provide certain information relating to state highways and bridges to a city or county that is preparing a comprehensive flood control management plan.

Substantial Development Permits

The following projects are exempt from substantial development permits (required by local governments under the Shoreline Management Act): construction of stream flow retention or detention facilities and improvements to dikes and levees, if the project is

consistent with a flood control management plan; and streambed maintenance, including sediment removal, sediment disposal, and streambank stabilization, if determined to be a flood control benefit by the county legislative authority.

Miscellaneous

A flood protection project is defined as work necessary to preserve, restore, or improve natural or human-made streambanks or flood control facilities.

By December 31, 1996, the departments of Fish and Wildlife, Natural Resources, and Ecology are directed to develop a memorandum of understanding to facilitate the consideration of projects that will aid the prevention of flood damage. The memorandum must provide a plan to implement a streamlined, comprehensive permit process.

Amended Bill Compared to Engrossed Second Substitute Bill: The amended bill makes a number of changes to the way in which hydraulic projects are permitted. Specifically, the amended bill: 1) limits the department's authority to issue hydraulic permits to projects within the ordinary highwater mark; 2) allows three years, instead of two, before a hydraulic project must achieve fish habitat productivity that is equal to pre-project conditions; 3) applies the criteria for fish life only to hydraulic projects that are for flood control purposes; 4) allows maintenance projects for flood control structures to receive hydraulic project permits that are valid for up to five years.

The amended bill adds two categories of flood control projects that are exempt from substantial development permits.

The following provisions were deleted by the striking amendment: 1) The Department of Transportation must monetarily contribute to flood control projects that benefit state highways; 2) The bill is null and void if not specifically funded in the budget; and 3) A flood planning element requiring consideration of instream work on instream resources.

Appropriation: None.

Fiscal Note: Available on original bill. New fiscal note requested on March 24, 1995.

Effective Date of Amended Bill: The bill contains an emergency clause and takes effect immediately. However, the bill is null and void unless funded in the budget.

Testimony For: Substitute House Bill 1597 is preferable to the Senate bill because the House bill restricts the Department of Fish & Wildlife from issuing permits for hydraulic projects that occur outside of the ordinary high water mark.

Testimony Against: The comprehensive flood plans should not have primacy over growth management plans. The bill does not address the root causes of flooding.

Making it easier to dredge will increase, not decrease, flood damages. The bill allows a hydraulic project to disrupt fish habitat for two years; entire fish runs can be destroyed in that time.

Testified: Senator Anderson (prime sponsor); Kent Lebsack, Washington Cattlemen Association (pro); Ed Manary, Department of Fish and Wildlife (commented); Judy Turpin, Washington Environmental Council (con); Dawn Vyvyan, Yakima Indian Nation, Skagit System Cooperative, and Northwest Indian Fisheries Commission (con); Bruce Wishart, Sierra Club (con); Sylviann Frankus, League of Women Voters of Washington (con); and Mike Grady, Department of Community, Trade and Economic Development (con).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: Do pass as amended by Committee on Agriculture & Ecology. Signed by 20 members: Representatives Silver, Chairman; Clements, Vice Chairman; Huff, Vice Chairman; Pelesky, Vice Chairman; Basich; Brumsickle; Carlson; Chappell; Crouse; Foreman; Grant; Hargrove; Hickel; Lambert; Lisk; McMorris; Reams; Sehlin; Sheahan and Talcott.

Minority Report: Do not pass. Signed by 10 members: Representatives Sommers, Ranking Minority Member; Valle, Assistant Ranking Minority Member; Cooke; Dellwo; G. Fisher; Jacobsen; Poulsen; Rust; Thibaudeau and Wolfe.

Staff: Susan Nakagawa (786-7145).

Summary of Recommendation of Committee on Appropriations Compared to Recommendation of Committee on Agriculture & Ecology: No new changes were recommended.

Appropriation: None.

Fiscal Note: Available on original bill. New fiscal note requested on March 24, 1995.

Effective Date of Amended Bill: The bill contains an emergency clause and takes effect immediately. However, the bill is null and void unless funded in the budget.

Testimony For: This bill allows property owners to protect their property. Flood damage costs are extreme. The return to the investment by passing the bill is considerable. It is imperative for the state to address flood reduction. The fiscal note estimate by the Department of Fish and Wildlife is high.

Testimony Against: Sections eight through 10 are a concern for the Department of Fish and Wildlife because they add liability. If the department is taken to court, they

will be responsible for paying legal and engineering costs. The bill adds new responsibilities to the department and there are costs because of this.

Testified: Representative Jim Clements (in favor); and Ed Manary, Department of Fish and Wildlife (with concerns).