

# HOUSE BILL REPORT

## ESHB 2934

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### As Passed Legislature

**Title:** An act relating to accessory buildings and structures within the flood plain.

**Brief Description:** Making changes to flood plain construction limitations.

**Sponsors:** Representative Koster.

**Brief History:**

**Committee Activity:**

Local Government: 2/2/00 [DPS].

**Floor Activity:**

Passed House: 2/10/00, 97-0.

Passed Senate: 3/3/00, 46-0.

Passed Legislature.

### Brief Summary of Substitute Bill

- Amends exemption for projects to correct local health, sanitary, or safety code violations from the 50 percent determination related to floodway construction restrictions to apply only to projects which are the minimum necessary to ensure safe living conditions and to require identification of violations by the local enforcement official.
- Exempts from the floodway prohibition: (1) historic structures; and (2) substantially damaged residential structures other than farmhouses meeting certain requirements.
- Specifies the Department of Ecology's authority to recommend waivers of the floodway prohibition for residential structures other than farmhouses requires the local governments' concurrence to effect a waiver.

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HOUSE COMMITTEE ON LOCAL GOVERNMENT

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Mulliken, Republican Co-Chair; Scott, Democratic Co-Chair; Doumit, Democratic Vice Chair; Mielke, Republican Vice Chair; Edwards; Ericksen and Fortunato.

**Staff:** Caroleen Dineen (786-7156).

**Background:**

The Department of Ecology (DOE) coordinates the flood plain management regulation elements of the national flood insurance program (NFIP) in Washington. Local flood plain management regulations applicable to construction activities which might affect the security of life, health and property against flood damage must comply with the NFIP and state requirements for flood plain management.

State and local flood plain management regulations are based on designated special flood hazard areas on Federal Emergency Management Agency (FEMA) maps. The DOE establishes minimum state requirements and has authority to approve or reject designs and plans for structures or works constructed across the floodway of any stream or water body in the state. The DOE also may disapprove if the local flood plain management ordinance or amendment does not restrict land uses within designated floodways, including prohibiting of construction or reconstruction of residential structures except:

- repairs, reconstruction or improvements not increasing ground floor area; and
- repairs, reconstruction or improvements, the cost of which does not exceed 50 percent of the structure's market value either before the repair started or before the damage occurred.

Work done to comply with local health, sanitary, or safety code is exempt from the 50 percent determination regarding market value for purposes of the floodway prohibition. Historic structures are also exempt from the 50 percent determination.

Legislation enacted in 1999 (1999 Laws of Washington, chapter 9) exempted existing farmhouses in designated floodways from the general floodway prohibition against substantial repair or reconstruction provided certain conditions are satisfied. The 1999 legislation also allowed the DOE to consider recommending repair or replacement of residential structures other than farmhouses and required the DOE to adopt rules by December 31, 1999, related to the new authority.

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**Summary of Bill:**

The exemption from the 50 percent determination related to floodway construction for work done to comply with health, sanitary or safety codes is amended. Projects to correct local health, sanitary, or safety code violations identified by a local code or building enforcement official are exempt from the 50 percent determination if they are the minimum necessary to ensure safe living conditions.

The exemption from the 50 percent determination related to floodway construction for structures identified as historic places is replaced with an exemption from the floodway prohibition for historic structures.

Substantially damaged residential structures other than farmhouses located in designated floodways may also be exempt from the floodway prohibition under certain circumstances. Upon request of a local government, the DOE may recommend repair, replacement or relocation of substantially damaged residential structures other than farmhouses. The DOE must assess the risk of harm to life and property posed by floodway conditions and base its recommendation on scientific analysis of depth, velocity and flood-related erosion. The DOE's recommendation, with the local government's concurrence, to allow repair or replacement of such a substantially damaged residential structure is a waiver of the floodway prohibition.

The deadline for the DOE to develop rules related to the assessment procedures and criteria for repair, replacement or relocation of residential structures other than farmhouses is extended to December 31, 2000.

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**Appropriation:** None.

**Fiscal Note:** Requested on February 2, 2000.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Testimony For:** (Original bill) Counties have authority over replacement of existing accessory buildings under certain circumstances, and provisions regarding new buildings may conflict with federal law.

(Amendment) The amendment strengthens local control by granting local governments a voice in the permitting process. The provisions in the amendment are necessary for the DOE to implement the flood plain bill the Legislature passed last year.

**Testimony Against:** None.

**Testified:** Representative John Koster, prime sponsor.