

# HOUSE BILL REPORT

## ESHB 1963

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### As Passed Legislature

**Title:** An act relating to flood plain management.

**Brief Description:** Allowing the rebuilding of a farmhouse in a floodway under certain circumstances.

**Sponsors:** By House Committee on Local Government (Originally sponsored by Representatives Koster, Dunshee, O'Brien, Anderson, G. Chandler, Sump, Dunn, B. Chandler and Mulliken).

#### **Brief History:**

##### **Committee Activity:**

Local Government: 2/25/99, 3/1/99 [DPS].

##### **Floor Activity:**

Passed House: 3/17/99, 98-0.

Passed Senate: 4/7/99, 47-0.

Passed Legislature.

#### **Brief Summary of Engrossed Substitute Bill**

- Exempts existing farmhouses in designated floodways from the general floodway prohibition against substantial repair or reconstruction.
- Allows the Department of Ecology (DOE) to consider recommending repair or replacement of residential structures other than farmhouses.

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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 8 members: Representatives Mulliken, Republican Co-Chair; Scott, Democratic Co-Chair; Doumit, Democratic Vice Chair; Mielke, Republican Vice Chair; Edwards; Ericksen; Fisher and Fortunato.

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

**Background:**

The federal National Flood Insurance Act of 1968 and Flood Disaster Protection Act of 1973 were enacted in an effort to alleviate flood damages and expenditures of government funds. The 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 include:

- local government administration of NFIP regulatory requirements;
- minimum state requirements for flood plain management that equal the minimum federal requirements for the NFIP; and
- regulatory orders to ensure compliance.

State and local flood plain management regulations are based on areas designated as special flood hazard areas on Federal Emergency Management Agency (FEMA) maps. Civil penalties may be imposed for violating flood plain management regulations.

The DOE is required to establish 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 approve or reject local flood plain management ordinances and amendments and to provide technical and other assistance to local governments with respect to flood plain management.

A local flood plain management ordinance or amendment takes effect 30 days from filing with the DOE unless disapproved within that period. The DOE may disapprove a local flood plain ordinance or amendment if it does not comply with the minimum NFIP or state requirements. The DOE may also disapprove if the local flood plain management ordinance or amendment does not restrict land uses within designated floodways, including prohibition 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.

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**Summary of Bill:**

An exemption to the floodway prohibition is created for farmhouses, and a mechanism for DOE to consider waiver of the floodway prohibition for other structures is established. A "farmhouse" is defined as a single-family dwelling locating on a farm site

where resulting agricultural products are not produced for the primary consumption or use by the dwelling's occupants and owner.

Existing farmhouses in designated floodways and located on lands designated as agricultural lands of long-term commercial significance according to the Growth Management Act (GMA) are exempt from the prohibition against construction or replacement of existing farmhouses in designated floodways if the following conditions are satisfied:

- the new farmhouse is a replacement of an existing farmhouse on the same farm site;
- no potential building site outside the designated floodway exists for a replacement farmhouse on the same farm;
- replacement, repairs, reconstruction or improvements do not exceed or increase the total square footage of encroachment of the existing farmhouse;
- the entire existing farmhouse, if replaced, is completely removed within 90 days after occupancy of the new farmhouse;
- for substantial improvements and replacements, the lowest floor elevation (including basement) is one foot higher than the base flood elevation;
- new and replacement water supply and sanitary sewer systems are designed to eliminate or minimize flood water infiltration or sanitary sewer discharge into flood waters; and
- utilities and utility connections are located to eliminate or minimize flood damage.

For residential structures other than farmhouses, the DOE, using scientific analysis, may assess the risk of harm to life and property related to the specific floodway conditions and exercise best professional judgment regarding recommendations on repair, replacement, reconstruction or relocation of damaged structures. Siting of replacement homes other than farmhouses must evaluate flood depth, flood velocity and flood-related erosion to identify a building site with the least risk of harm to life and property. The DOE's recommendation to allow repair or replacement constitutes a waiver of the floodway prohibition.

The DOE is required to develop rules to guide assessment procedures and criteria for repair or replacement of farmhouses and other residential structures.

An emergency clause specifies that these provisions are to take effect immediately.

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**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** This bill contains an emergency clause and takes effect immediately.

**Testimony For:** (Original bill) This bill is very important to Snohomish County and at least four other counties. Snohomish County received a notice from the DOE that the farmhouse exception in its ordinance does not comply with the current statute. The floodway prohibition is in state law and is not mandated by federal law. Snohomish County residents may lose eligibility as early as April for FEMA flood insurance because of this problem. FEMA and DOE have worked with Snohomish County to create a legislative remedy. This bill will benefit counties other than Snohomish County.

The floodway maps need to be revised, as many homes for which the current statute prohibits substantial repair or reconstruction have never had water around them. Some people's homes that have never flooded are not marketable because they cannot be substantially repaired or replaced, and owners' investments in those homes have no value. Many owners also must pay for flood insurance to meet lender's requirements when they would not be allowed to repair or rebuild if their homes were damaged.

Farming is one of the best uses of floodplains, and such uses are consistent with the GMA. FEMA provides incentives to promote farm uses and favors eliminating any roadblocks to continued agricultural uses. Farmhouses need to be on or near the land being farmed, and this bill allows farmers to rebuild if their homes are damaged or destroyed.

This bill also gives the DOE more flexibility to determine danger and health and safety issues.

This definition of farmhouse in this bill should be revised to apply to farms that do not constitute the owner's principal livelihood. Many small farmers cannot make a living with farming and have to support farming activities with other occupations. The reference to agricultural lands designation should be amended to apply these provisions to all counties, not just those that plan under the GMA. This bill also needs an emergency clause to ensure it will be effective in time to address Snohomish County's concerns.

**Testimony Against:** None.

**Testified:** Representative Koster, prime sponsor; Representative Dunshee, sponsor; John R. Gintz, Snohomish County Cattlemen's Association; Jim Haase, Washington State Grange; Sally Ohlsen, Washington State Grange; George Ohlsen, Washington State Grange; Ric Lawsen, Snohomish County Council; Gary Nelson, Snohomish County Council; Gary Reiersgard, Chief Planning Officer, Snohomish County Council; Karla Kay Fullerton, Washington Cattlemen's Association; Karen Tregoning; Tim D'Acci, Washington State Department of Ecology; Linda Johnson, Washington Farm Bureau; Chuck Steele, Federal Emergency Management Association; and Paul Parker, Washington State Association of Counties.