

HOUSE BILL REPORT

HB 1441

As Reported By House Committee On:
Environmental Affairs

Title: An act relating to flood damage reduction.

Brief Description: Providing for flood damage reduction.

Sponsors: Representatives R. Johnson, Rust, Quall, Linville, Dunshee, Basich, Finkbeiner, Karahalios, J. Kohl, R. Meyers, Roland, Romero and Johanson.

Brief History:

Reported by House Committee on:
Environmental Affairs, March 3, 1993, DPS.

HOUSE COMMITTEE ON ENVIRONMENTAL AFFAIRS

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Rust, Chair; Flemming, Vice Chair; Horn, Ranking Minority Member; Bray; Foreman; Holm; L. Johnson; J. Kohl; Linville; and Roland.

Minority Report: Do not pass. Signed by 4 members: Representatives Van Luven, Assistant Ranking Minority Member; Edmondson; Hansen; and Sheahan.

Staff: Rick Anderson (786-7114).

Background:

Flood damages

The three flood events of 1990 caused flood damages to public and private structures in excess of \$160 million. Nearly every county in the state has had one or more federally declared disasters in the past 20 years. Ten counties have had three or more federally declared flood disasters since January 1, 1979: Clallam, Jefferson, Grays Harbor, Wahkiakum, Lewis, Pierce, King, Snohomish, Skagit, and Whatcom.

Flood plain management

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. The federal requirements specify that: 1) the first habitable floor of a residential structure in the flood plain is built at least one foot above the level of a 100 year flood; 2) local permits are issued for buildings in the flood plain; and 3) structures within the FEMA floodway meet a "zero-rise" standard. The FEMA floodway is the area containing the swiftest and deepest flows of a flooding river or stream. "Zero-rise" means that a structure must be built in a way that does not impede the flow of floodwaters. 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.

State law requires the Department of Ecology (DOE) to adopt standards that equal the federal standards. DOE reviews local ordinances to ensure consistency with state and federal standards. The Department of Ecology provides funds for planning and maintenance of existing flood control structures. DOE also provides technical assistance with plans and mapping of 100 year flood plains.

Comprehensive flood plans

Comprehensive flood plans are optional. County plans can apply to cities or towns but an arbitration process is established if a plan is not adopted by a city or town. Cities or towns can adopt their own plans. State Flood Control Assistant Account Program (FCAAP) funds will pay up to 75 percent of the preparation of a comprehensive flood plan.

State flood funding

Current law requires the state flood (FCAAP) account to be funded at a level of \$4 million minus any unspent funds from the previous biennium. The FCAAP account is funded through the state general fund.

Counties, cities, and special districts are eligible for FCAAP grants. Grants of up to \$500,000 are available for jurisdictions within a county. Grants of up to 50 percent are available for maintenance of existing projects. Projects using state funds must be consistent with the comprehensive flood plan.

Flood hazard notification

State law does not require a seller of real property in a flood plain to notify a potential buyer that the property is in the flood plain.

Summary of Substitute Bill:

Part I: Zero-rise floodway

By July 1, 1994, the Department of Ecology must prepare a model ordinance establishing a zero-rise floodway. The zero-rise floodway ordinance must provide that new and substantially improved structures built in the flood plain: 1) do not cause a rise in floodwaters; and 2) do not decrease the net storage capacity of the flood plain.

The model ordinance must also address differences between incorporated and unincorporated areas, allow a project proponent to meet the zero-rise provisions by arranging a legal agreement with affected property owners, provide a variance procedure, and exempt all structures on farm or agricultural land of 20 acres or more.

Flood-prone counties are required to submit an ordinance to DOE implementing a zero-rise floodway policy by July 1, 1995, and to submit a comprehensive flood hazard management plan to DOE by July 1, 1997. Cities and towns within flood-prone counties are required to submit an ordinance to DOE within one year of adoption of its county's flood plan. Flood-prone counties are defined as those having three or more federally declared flood disasters since January 1, 1979. The zero-rise floodway is defined as the 100 year flood plain.

Flood-prone counties, cities, and towns that do not meet the timelines for establishing a zero-rise floodway policy are ineligible for state FCAAP funds and for state matching grants for federally declared flood disasters. For all counties choosing not to plan, grants from FCAAP will not be available for flood plan preparation or for flood projects after December 31, 1997.

The requirements that the Department of Ecology adopt only flood plain management rules that equal federal minimum standards is deleted. Two sections are repealed. One of the repealed sections authorizes DOE to review and approve or disapprove plans and designs for structures in the floodway. The other repealed section requires the state to participate with local governments on certain flood control projects.

Part II: Funding

The activities eligible for funding under the state flood (FCAAP) account are broadened to include implementation of county flood plans including structural and non-structural projects.

The Department of Ecology is directed to give preference to dikes and levees that provide public access and allow flood waters to safely overtop when providing state flood funds to local governments. Certain dredging projects using state flood funds must monitor sediment accumulation for at least five years.

Funds unspent at the end of the biennium remain in the account and are in addition to the \$4 million appropriation.

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.

Part III: Flood hazard notification

A developer subdividing 26 or more lots must identify property within the 100 year flood plain as a physical hazard on public offering statements. A person who sells property within the 100 year flood plain must disclose that fact to the buyer in writing, prior to closing. The Department of Ecology is required to file maps of the 100 year flood plain with the county auditor of each county.

Part IV: Technical changes

This section deletes references to "flood control" and replaces them with "flood hazard."

Substitute Bill Compared to Original Bill: The original bill established a zero-rise floodway policy by rule for the unincorporated areas of all counties. The substitute bill applies the zero-rise policy to "flood-prone" counties, and cities and towns within those counties by local ordinance. The definition of substantial improvement is changed to a 20 percent increase in the footprint of an existing structure; the original bill used a 50 percent market value definition. The exemption provided to structures on farm land is limited to farms with 20 acres or more. The substitute bill adds a provisions allowing public works to meet a less stringent standard of "zero-rise."

All provisions relating to hydraulic project (HPA) permits and shoreline (SMA) permits are deleted.

The \$6 million increase from the state general fund to the state flood control (FCAAP) account is deleted.

The substitute bill replaces the requirement that sellers of property within the flood plain notify a potential buyer through an earnest money agreement with a requirement that buyers are notified in writing prior to closing.

The substitute bill amends a number of sections by deleting references to "flood control" and replacing them with "flood hazard reduction" or "flood hazard management." The substitute bill repeals two sections of law; the original bill did not repeal any sections of law.

Fiscal Note: Available.

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

Testimony For: The bill will help reduce damages from floods. Current state and federal flood plain laws promote fill within the flood plain; this policy guarantees that floodwaters will be higher, and cause more damage, with each succeeding year. The traditional system of "flood control" using dikes and levees leads to increased flood damages because these structures promote development in hazardous areas.

Testimony Against: The bill will limit growth opportunities for cities within the flood plain. The bill will substantially increase costs to public works such as roads, bridges, and sewage treatment plants. These structures do cause a significant rise in floodwaters during flood events. The bill will also add significant construction costs to new homes and industrial and commercial buildings. The timelines of the zero-rise policy should take effect sooner than July, 1997.

Witnesses: (On original bill) Representative Rob Johnson, Prime Sponsor (pro); Bob Berg, Lewis County (pro); Ray Reep, Mayor, city of Mount Vernon; Phil Messina, City Administrator, Burlington; Dave Williams, Association of Washington Cities; Sky Miller, Snohomish County (pro); Jeff Parsons, National Audubon Society (pro with amendments); Ed Manary, Department of Fisheries (pro and con); Larry Wasserman, Skagit System Cooperative (pro); Glen Hudson, Washington Association of Realtors (concerns); Don Schluter, Northwest River Council (pro); Dave Clark, King County Surface Water Management (pro); Steve Hallstrom, citizen (pro); Skip Burch, Washington State Department of Transportation (pro with amendments); Larry Williams, North Cascade Audubon Society (pro); LeRoy Gmazel, City of Snoqualmie (pro and con); and Jim Kennedy, Association of State Floodplain Managers (pro).

(On proposed substitute bill) Eric Berger, King County Road Administration (pro and con); Jim Kramer, King County Surface Water Management Division (pro and con); Dave Williams, Association of Washington Cities (pro with reservations); Skip Burch, Washington State Department of Transportation (con as written); and Jerry Louthain, Department of Ecology.