

SENATE BILL REPORT

ESHB 1963

As Reported By Senate Committee On:
State & Local Government, March 31, 1999

Title: An act relating to flood plain management.

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

Sponsors: 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: State & Local Government: 3/29/99, 3/31/99 [DP-WM].

SENATE COMMITTEE ON STATE & LOCAL GOVERNMENT

Majority Report: Do pass and be referred to Committee on Ways & Means.

Signed by Senators Patterson, Chair; Gardner, Vice Chair; Hale, Haugen, Horn and Kline.

Staff: Sharon Swanson (786-7445)

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 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 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.

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. DOE also may approve or reject local flood plain

management ordinances and amendments and 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 DOE unless disapproved within that period. DOE may disapprove a local flood plain ordinance or amendment if it does not comply with the minimum NFIP or state requirements. 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.

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 located 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 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, 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. DOE's recommendation to allow repair or replacement constitutes a waiver of the floodway prohibition.

DOE must 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.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: This legislation is crucial. If this change is not implemented, Snohomish County will lose eligibility under NFIP and the people living here will be unprotected.

Currently, people living in floodways do not have the option of rebuilding their homes even if the home is destroyed by fire or tornado. The current state law is too far reaching. Washington law does not allow replacement of residential structures in the floodway. We must change this. Owners of structures are required by financial institutions to maintain flood insurance on any structure in a floodway. It makes no sense to not allow people to rebuild a structure they must insure. Some homes have never flooded in the 100 year flood plains, but are still required to maintain flood insurance.

Testimony Against: None.

Testified: PRO: Rick Larson, Gary Nelson Gary Reiersgard, Snohomish County; Karla Kay Fullerton, WA Cattlemen's Assn.; Jim Haase, WA State Grange; Linda Johnson, WA Farm Bureau; Tim D'Acci, WA Dept. of Ecology; Donald A. Steffen.