

SENATE BILL REPORT

ESHB 1490

AS REPORTED BY COMMITTEE ON AGRICULTURE & WATER RESOURCES,  
APRIL 2, 1991

**Brief Description:** Changing provisions relating to flood control management.

**SPONSORS:** House Committee on Local Government (originally sponsored by Representatives R. Johnson, Haugen, Roland, Kremen, Rayburn, Spanel, Rust, Braddock, Scott and Paris).

HOUSE COMMITTEE ON LOCAL GOVERNMENT

HOUSE COMMITTEE ON APPROPRIATIONS

SENATE COMMITTEE ON AGRICULTURE & WATER RESOURCES

**Majority Report:** Do pass as amended.

Signed by Senators Barr, Chairman; Anderson, Vice Chairman; Bailey, Conner, Gaspard, Hansen, and Newhouse.

**Staff:** Steve Nelsen (786-7535)

**Hearing Dates:** March 29, 1991; April 2, 1991

**BACKGROUND:**

Under the Flood Plain Management Act, the Department of Ecology reviews and approves county, city or town flood plain management ordinances and, when requested, provides guidance and assistance to local governments in the development of those ordinances. County legislative authorities may create flood control zone districts to plan, construct, maintain, and operate flood control improvements. Flood control zone districts are required to develop a comprehensive plan for the operation of flood control improvements and this plan must be approved by the Department of Ecology.

Flood control zone districts are authorized to provide drainage and flood control improvements and to finance these improvements by: (1) imposing special assessments; (2) imposing rates and charges in the same manner as a county imposes rates and charges in a stormwater utility; (3) levying a regular property tax of up to 50 cents per \$1,000 of assessed valuation; and (4) levying excess property taxes with voter approval.

Each biennium \$4 million is placed into the flood control assistance account which is used for grants to local governments to repair flood control facilities and to prepare comprehensive flood control management plans.

Various activities in a body of water are permitted only if a hydraulics permit for the activity has been issued by the Department of Fisheries or the Department of Wildlife.

**SUMMARY:**

Counties may adopt a new type of comprehensive flood control management plan for any drainage basin located wholly or partially within the county. The plan must include: designation of areas susceptible to flooding; land use regulations precluding the location of structures in the floodway; construction restrictions within the floodway; and, restrictions on land clearing activities which exacerbate flood problems. The plan is mandatory throughout the basin. Those portions of the plan relating to land use restrictions and construction standards are minimum standards that a city or town may exceed.

A comprehensive flood control management plan must also establish a comprehensive scheme of flood control improvements which includes: determining the need for, and location of, flood control improvements based on a cost/benefit analysis; establishing a level of permissible flood protection for flood control improvements; identifying alternatives to in-stream flood control work; targeting areas where flood waters could be directed during a flood to avoid damage to structures; and, a source of revenue for the scheme and the improvements.

Counties may establish advisory committees to participate in the preparation of a comprehensive flood control management plan and provide general advice on flood problems.

Flood control assistance account funds may be used to develop the new comprehensive flood control management plans, to study cost-sharing feasibility, and to enhance flood control facilities. Grants from the flood control account may be made to a local government only, if in the opinion of the Department of Ecology, the local government is making a good faith effort to take advantage of, or conform with, federal and state flood control programs.

Flood control zone district laws are altered so that cities and towns cannot opt out of a newly created flood control zone district. Flood control zone districts may not overlap. Revenue bonds may be issued to finance any flood control improvement or storm water control improvement.

Persons may seek review via the Pollution Control Hearings Board for Department of Ecology actions pursuant to the Flood Plain Management Act.

Within 30 days of application, the Department of Fisheries and Wildlife shall process hydraulic project applications for the repair of legally constructed dikes, seawalls, and other flood control structures damaged by floods or windstorms in November and December 1990.

**Appropriation:** none

**Revenue:** none

**Fiscal Note:** requested March 9, 1991

**SUMMARY OF PROPOSED SENATE AMENDMENT:**

Recognition is provided for the need to take action to prevent and minimize flood damages in advance of actual flooding. In addition, there is recognition of the need for a coordinated state policy regarding the prevention and minimization of flood damage and the need for state agencies to cooperate with the public in flood control measures.

The definition of flood damage provided in the Flood Plain Management Act under which local governments adopt flood plain hazard ordinances is amended. This definition is referenced in various other statutes to assist in coordinating state and local flood policy.

An element is added to shorelines master programs under the Shorelines Management Act to provide for consideration of the statewide interest in preventing and minimizing flood damages. A deadline is established by which the flood prevention and minimization policies must be incorporated into the state master program and local master shorelines program. The Department of Ecology is given emergency powers to meet its rulemaking deadline.

The exemption from a shoreline permit for the operation and maintenance of dikes and other facilities constructed before 1975 is expanded to include facilities constructed after 1975. The definition of "substantial development" is amended to require inflationary adjustments.

The Departments of Fisheries and Wildlife are required to give equal consideration to the state policy of preventing and minimizing flood damage when deliberating the approval of permits under the Hydraulic Project Approval Act.

A definition of "emergency" is provided in the Hydraulics Act.

The Hydraulics Act is amended so that all streambank stabilization projects are treated equally.

The Hydraulic Appeals Board is amended to remove the director of the department whose action is being appealed and add a member of the county legislative authority from the area where the project is sited.

A section is added to the Flood Plain Management Act to allow livestock flood sanctuary areas of a suitable size and elevation to protect all the livestock on a farm. The provisions must be within the minimum standards to maintain coverage under the federal flood insurance program.

The biennial appropriation to the flood control assistance account is increased from \$4 million to \$10 million. The use of the flood control assistance account is allowed for

improvement of existing facilities rather than limiting the account to replacement of prior facilities which may have been inadequate to begin with.

The prevention and minimization of flood damage is included within "essential considerations of state policy" in the state Environmental Policy Act. A deadline is set for approval of projects which are not a "substantial development" due to their low cost within the meaning of the Shorelines Management Act.

The state is allowed to share in the costs of flood control projects benefitting state highways whether or not the project is on a state right of way.

The flood protection benefits of gravel removal shall be considered in determining royalties charged by the Department of Natural Resources for that gravel.

County approval is required before any person or agency may place wooded debris within a stream channel.

The existing statutes regarding the sale of valuable materials from state-owned aquatic lands are amended to allow the Department of Natural Resources to make these materials available free of charge for public purposes. Sale of valuable materials by sealed bid or public auction is allowed.

The Scenic Rivers Act is amended to provide that nothing in the act shall prohibit the state, any state government agency, or local government from carrying out its duty to protect the public health and welfare by preventing or minimizing flood damages. No permits sought pursuant to an act other than the Scenic Rivers Act may be conditioned or denied in order to effect the policies or goals of the Scenic Rivers Act.

The Department of Community Development is directed to form a watercourse management task force. The task force is directed to: work cooperatively with the Army Corps of Engineers and the state Fisheries Department to reach a memorandum of agreement regarding the amount of vegetation allowed on dikes; review and modify the Washington Administrative Code rules adopted to implement the permitting provisions of the Hydraulics Act in order to prevent flood damages while protecting fish life; establish a streamlined permit processing procedure to assist in preventing flood damages; develop an informational brochure to assist persons in the permitting process; and, provide recommendations to the Department of Ecology on flood protection guidelines for the Shorelines Management Act.

The watercourse management task force shall consist of representatives from the Department of Fisheries, the Department of Wildlife, the Department of Ecology, the Department of Natural Resources, and the Department of Community Development, tribal governments, private persons from land damaged by flooding, diking and drainage districts,

and a company with experience in removing materials from watercourses.

**TESTIMONY FOR:**

A comprehensive approach to flood prevention on a river basin-wide basis is necessary. An increase in the flood control assistance account is needed due to the increasing severity of flood damages. Cities and towns should not be allowed to opt out of county flood plans or flood control zone district plans.

**TESTIMONY AGAINST:**

Forest practice restrictions or regulations should be handled through the Forest Practices Act rather than county plans. Cities and towns should not be forced to accept county flood plans or flood control zone district plans.

**TESTIFIED:** Representative Rob Johnson, original sponsor (pro); Rod Mack, Department of Ecology (pro); Susan Markey, Department of Fisheries (pro); Kathleen Collins, AWC; Tim Boyd, Washington Forest Protection Association; Dan Coyne, Washington Dairy Federation (pro)