

SENATE BILL REPORT

ESSB 5411

AS PASSED SENATE, MARCH 12, 1991

Brief Description: Making changes relating to flood damage.

SPONSORS: Senate Committee on Agriculture & Water Resources (originally sponsored by Senators Bailey, Anderson, Hansen, Barr, McMullen, Conner and Skratek).

SENATE COMMITTEE ON AGRICULTURE & WATER RESOURCES

Majority Report: That Substitute Senate Bill No. 5411 be substituted therefor, and the substitute bill do pass.

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

Staff: Steve Nelsen (786-7535)

Hearing Dates: February 7, 1991; March 1, 1991

BACKGROUND:

The protection of public health and safety is a fundamental duty of government. The people of Washington that live near rivers must take measures necessary to protect themselves from the dangers associated with flooding. In recognition of this need, the legislature has passed a number of laws authorizing various flood protection activities. But, concern has been raised that these protections are inadequate due in part to the lack of a coordinated state flood control policy which often makes it difficult to obtain the necessary permits. For example, flood protection projects often require permits under statutes which do not include flood control among their goals or considerations.

Nineteen counties were declared federal disaster areas following flooding in November which resulted in millions of dollars in damages. Many counties, such as King, Pierce, Thurston, Grays Harbor, and Lewis have been declared federal disaster areas seven or eight times since 1978.

SUMMARY:

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 their 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 rules adopted pursuant to the Hydraulics Act regarding the amount of vegetation allowable on dikes and levies are required to conform to with federal requirements.

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 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.

Appropriation: none

Revenue: none

Fiscal Note: available

TESTIMONY FOR:

Coordination of state policy is needed with respect to permits for flood prevention activities. Rivers are filling with silt and this reduction in flow capacity increases the likelihood and severity of flood damages. The permit process needs to be simplified and streamlined to reduce delays and frustration in

getting necessary permits. The Department of Transportation should be allowed to cost-share in projects which protect roads even if the project is not on a state right-of-way. Flood control maintenance projects should be defined to include improvements so that funds are not wasted replacing a structure that was insufficient to begin with.

The current definition of "emergency" in the hydraulics WACs is so narrow that emergency protections are ineffectual. Equal consideration of flood protection is needed in the hydraulics code because the sole consideration of protection of fish life is too restrictive. The Hydraulics Appeal Board should be amended to provide a level playing field. Conflict between the Department of Fisheries and the U.S. Army Corps of Engineers regarding the amount of vegetation allowed on dikes is endangering federal funds to replace and maintain those dikes.

TESTIMONY AGAINST:

The addition of flood control considerations to the hydraulics code would make it more difficult to protect fish life. Removing vegetation from dikes would destroy fish habitat. The definition of "emergency" is too broad. The Hydraulics Appeals Board should not be changed. Use of the term "equal consideration" is confusing.

A comprehensive study of flood dynamics and the effect of gravel removal from rivers is necessary. The symptoms of the flood problem are addressed to a greater extent than the causes of flooding.

TESTIFIED: Representative Peggy Johnson; Matt Lagerwey, City of Everson; Doreen Mahoney, Skagit System Cooperative; Carson Boysen, Northwest Indian Fisheries Commission; John Misich, Western Washington Farm Crops; Bill Craven, Marshland Flo (con); Roger Finley (pro); John Douglas, NW Rivers Council (con); Earl Clymer, Mayor, City of Renton (pro); Ted W. Anderson, Mid-Skagit Flood Advisory Committee (pro); Wes Johnson, Skokomish Flood Control Advisory Committee (pro); Cleve Pinnix, State Parks (con); Chris Drivdahl, Department of Wildlife; Chris Cheney (pro); Judith Merchant, Department of Fisheries (con); Darrell R. Harting, Snohomish County Property Rights Alliance (pro); John Gintz, Snohomish County Cattlemen's Association (pro); Don Nelson, Skagit County Flood Engineer (pro); Harry and Eunice Pounds (con); Wiard Groeneveld (pro); Ruth Wylie, Skagit County Commissioner (pro); Herb Waltner; J.H. Covey; Darrell O. Turner, Washington State Farm Bureau (pro); Bob Hulbert, Dike District #8, Skagit County (pro); Harold E. "Andy" Anderson, Dike and Drain District No. 20 (pro); Rod Mack, Department of Ecology; Dave Williams, Association of Washington Cities; Jeff Parsons, National Audubon Society (con); Jim Youngsman, Washington State Farm Bureau, Washington State Nurserymen's Association (pro)

HOUSE AMENDMENT(S):

Counties may adopt a 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 instream 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 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 Departments 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.

A 22-member state flood damage reduction commission is created, including: (1) four members of the Senate; (2) four members of the House of Representatives; (3) the director of the Department of Community Development, or the director's designee, who acts as chair of the commission; (4) the director of the Department of Wildlife, or the director's

designee; (5) the director of the Department of Fisheries, or the director's designee; (6) the director of the Department of Agriculture or the director's designee; (7) the director of the Department of Ecology, or the director's designee; (8) the director of the Department of Transportation or the director's designee; (9) the Commissioner of Public Lands, or the commissioner's designee; (10) the director of the Parks and Recreation Commission, or the director's designee; (11) four persons appointed by the Governor representing counties within which significant flood control improvements have been constructed; (12) two persons representing conservation districts and special districts that have been created to provide flood control improvements; and (13) two persons appointed by the Governor representing tribal governments.

The study commission shall study a variety of flood and flood related issues, and report its findings to the Legislature on or before December 31, 1991. These issues include: (1) comprehensive watershed and flood damage management; (2) different permitting requirements; (3) flood control improvements; (4) growth management; (5) forest practice impacts on watershed hydraulics; and (6) the acquisition of property to reduce flood damages.

Each agency pays the expenses of its commission members and the Department of Community Development both staffs the commission and pays the expenses of the appointees.

Liability is created for some activities which divert, impound, or alter the flow of water through a natural watercourse.

Counties and cities which plan under the Growth Management Act are required to identify lands useful for storm water management facilities in their comprehensive land use plan. Within one year of the adoption of the comprehensive land use plan, the city or county must adopt ordinances requiring storm water management facilities for development approval.

The Department of Community Development shall coordinate state emergency permits in times of state emergency.

Local governments which have adopted flood plain management ordinances shall include provisions for livestock flood sanctuary areas within the requirements of the national flood insurance program.

A procedure is established for coordinating required permits for projects to repair damage caused by recent flooding. The procedure expires September 15, 1991.