S-1492.2

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**SUBSTITUTE SENATE BILL 5649**

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**State of Washington 68th Legislature 2023 Regular Session**

**By** Senate Local Government, Land Use & Tribal Affairs (originally sponsored by Senator Braun)

AN ACT Relating to improvements to residential structures to reduce risk of flood damage; amending RCW 86.16.041; and creating a new section.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec.**  The legislature finds that the office of Chehalis basin in the department of ecology is directed to aggressively pursue implementation of an integrated strategy for long-term flood damage reduction in the Chehalis river basin. The legislature recognizes that restrictions on improvements to residential structures located in floodways may impede the office's ability to successfully carry out the Chehalis basin strategy. Therefore, the legislature intends to create additional regulatory flexibility to allow substantial improvements to residential structures for the primary purpose of reducing risk of flood damage in floodways.

**Sec.**  RCW 86.16.041 and 2000 c 222 s 1 are each amended to read as follows:

(1) Beginning July 26, 1987, every county and incorporated city and town shall submit to the department of ecology any new floodplain management ordinance or amendment to any existing floodplain management ordinance. Such ordinance or amendment shall take effect ((~~thirty~~)) 30 days from filing with the department unless the department disapproves such ordinance or amendment within that time period.

(2) The department may disapprove any ordinance or amendment submitted to it under subsection (1) of this section if it finds that an ordinance or amendment does not comply with any of the following:

(a) Restriction of land uses within designated floodways including the prohibition of construction or reconstruction, repair, or replacement of residential structures, except for: (i) Repairs, reconstruction, or improvements to a structure which do not increase the ground floor area; and (ii) repairs, reconstruction, or improvements to a structure the cost of which does not exceed ((~~fifty~~)) 50 percent of the market value of the structure either, (A) before the repair, reconstruction, or repair is started, or (B) if the structure has been damaged, and is being restored, before the damage occurred. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications that have been identified by the local code or building enforcement official and which are the minimum necessary to ensure safe living conditions shall not be included in the ((~~fifty~~)) 50 percent determination. However, the floodway prohibition in this subsection does not apply to existing farmhouses in designated floodways that meet the provisions of subsection (3) of this section, ((~~or~~)) to ((~~substantially damaged~~)) existing residential structures other than farmhouses that meet the depth and velocity and erosion analysis in subsection (4) of this section, or to structures identified as historic places;

(b) The minimum requirements of the national flood insurance program; and

(c) The minimum state requirements adopted pursuant to RCW 86.16.031(8) that are applicable to the particular county, city, or town.

(3) Repairs, reconstruction, replacement, or improvements to existing farmhouse structures located in designated floodways and which are located on lands designated as agricultural lands of long-term commercial significance under RCW 36.70A.170 shall be permitted subject to the following:

(a) The new farmhouse is a replacement for an existing farmhouse on the same farm site;

(b) There is no potential building site for a replacement farmhouse on the same farm outside the designated floodway;

(c) Repairs, reconstruction, or improvements to a farmhouse shall not increase the total square footage of encroachment of the existing farmhouse;

(d) A replacement farmhouse shall not exceed the total square footage of encroachment of the farmhouse it is replacing;

(e) A farmhouse being replaced shall be removed, in its entirety, including foundation, from the floodway within ((~~ninety~~)) 90 days after occupancy of a new farmhouse;

(f) For substantial improvements, and replacement farmhouses, the elevation of the lowest floor of the improvement and farmhouse respectively, including basement, is a minimum of one foot higher than the base flood elevation;

(g) New and replacement water supply systems are designed to eliminate or minimize infiltration of flood waters into the system;

(h) New and replacement sanitary sewerage systems are designed and located to eliminate or minimize infiltration of flood water into the system and discharge from the system into the flood waters; and

(i) All other utilities and connections to public utilities are designed, constructed, and located to eliminate or minimize flood damage.

(4) For all substantially damaged residential structures other than farmhouses that are located in a designated floodway, the department, at the request of the town, city, or county with land use authority over the structure, is authorized to assess the risk of harm to life and property posed by the specific conditions of the floodway, and, based upon scientific analysis of depth, velocity, and flood-related erosion, may exercise best professional judgment in recommending to the permitting authority, repair, replacement, or relocation of such damaged structures. The effect of the department's recommendation, with the town, city, or county's concurrence, to allow repair or replacement of a substantially damaged residential structure within the designated floodway is a waiver of the floodway prohibition.

The waiver provision in this subsection also applies to proposed projects that substantially improve residential structures for the primary purpose of reducing risk of flood damage.

(5) The department shall develop a rule or rule amendment guiding the assessment procedures and criteria described in subsections (3) and (4) of this section no later than December 31, 2000.

(6) For the purposes of this section, "farmhouse" means a single-family dwelling located on a farm site where resulting agricultural products are not produced for the primary consumption or use by the occupants and the farm owner.

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