

# HOUSE BILL REPORT

## HB 1597

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### As Reported By House Committee On:

Agriculture & Ecology

**Title:** An act relating to flood damage reduction.

**Brief Description:** Concerning the reduction of flood damage.

**Sponsors:** Representatives Johnson, Koster, Chandler, Boldt, Sheldon, Mastin, Basich, McMorris, Thompson, Beeksma, Kremen, Hatfield, McMahan, Hymes, Honeyford, D. Schmidt, Skinner, Clements, Buck, Stevens, Mielke and Kessler.

### Brief History:

#### Committee Activity:

Agriculture & Ecology: 2/2/95, 3/1/95 [DPS].

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## HOUSE COMMITTEE ON AGRICULTURE & ECOLOGY

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 13 members: Representatives Chandler, Chairman; Koster, Vice Chairman; McMorris, Vice Chairman; Mastin, Ranking Minority Member; Chappell, Assistant Ranking Minority Member; Boldt; Clements; Delvin; Honeyford; Johnson; Kremen; Robertson and Schoesler.

**Minority Report:** Do not pass. Signed by 4 members: Representatives R. Fisher; Poulsen; Regala and Rust.

**Staff:** Rick Anderson (786-7114).

### Background:

#### Flood damages

Nearly every county in the state has had one or more federally declared disasters in the past 20 years. The three flood events of 1990 caused damage to public and private structures in excess of \$160 million.

#### Flood plain management

Responsibility for flood hazard prevention and management is divided between a number of federal, state, and local agencies.

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. 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. FEMA pays 75 percent of eligible costs for damages incurred during a federally declared flood disaster if the state and locals contribute 25 percent.

The Department of Ecology is required to adopt standards that equal the federal standards and to review local ordinances to ensure consistency with these standards. The Department of Ecology issues \$4 million in grants each biennium to help local governments repair and maintain existing flood control structures and to develop comprehensive flood plans. The state also pays 12.5 to 25 percent of eligible costs for damages incurred during a federally declared flood disaster.

To qualify for federal flood insurance, local governments must develop flood plain ordinances that meet federal flood plain requirements. Local governments are generally responsible for the repair and maintenance of dikes, levees, and other flood control structures. Local governments, at their option, may prepare comprehensive flood plans. Local governments are required, under the Growth Management Act, to develop ordinances to protect frequently flooded areas. Local governments may pay 12.5 percent of eligible costs for damages incurred during a federally declared flood disaster.

#### Permit Requirements for In-stream Work

The Department of Fisheries issues hydraulic project permits for any project that would use, divert, obstruct, or change the natural flow or bed of any waters of the state. Protection of fish life is the only grounds upon which approval may be denied or conditioned. The department is directed to give immediate oral approval to conduct in-stream work during emergencies. The Department of Fisheries has also established rules regulating gravel removal within the waters of the state.

The Department of Natural Resources has authority over aquatic lands. The department has established rules that govern the use or modification of any river system, including gravel removal projects.

#### **Summary of Substitute Bill:**

##### Legislative Findings:

Legislative findings are made that reducing flood damage through the use of structural and nonstructural projects is in the public interest. (Sec. 1).

### Land Use:

All development regulations protecting critical areas identified under the Growth Management Act must be consistent with a flood plain management plan. (Sec. 2). All elements of a growth management plan must be consistent with a flood management plan. (Sec. 3). Designations of agricultural lands, forest lands, mineral resource lands, or critical areas under the Growth Management Act must be consistent with the flood management plan. (Sec. 4).

The prevention, minimization, and repair of flood damage is added to the list of responsibilities of the state under the State Environmental Policy Act. (Sec. 5).

### Gravel Removal

Department of Fish and Wildlife rules for gravel removal are revised and codified. The excavation line for gravel removal must be parallel to the water's edge, with the excavation at a minimum gradient of one half percent. Excavated materials may not be stockpiled within the ordinary high water line except from June 15 to October 15. Gravel may be removed in an amount equal to the annual deposit of a stream or river multiplied by the number of years since the last removal. (Secs. 6 and 7).

Department of Natural Resources rules for river management are revised and codified. Sand and gravel may be removed in an amount equal to the annual deposit of a stream multiplied by the number of years since the last removal. The department may not charge a royalty assessment when a public entity removes gravel if the local government determines that the gravel removal is for flood control purposes. The department may reduce or eliminate royalties when the gravel is removed by a private citizen in areas that are prone to flooding. (Secs. 11-13).

Agencies are directed to actively encourage, through permit requirements, the removal of accumulated materials from rivers and streams where there is a flood damage reduction benefit. (Sec. 19).

RCW 79.90.325 is repealed. This statute allows the Department of Natural Resources to reduce its royalty assessments for gravel removal, if the gravel removal results in a flood protection benefit. (Sec. 25).

### HPA Permits

The Department of Fish and Wildlife's jurisdiction to regulate hydraulic projects may not extend past the ordinary high water line in marine and fresh waters. The department is also prohibited from limiting or conditioning the amount, timing, or delivery method of water diverted under the state's water code. (Secs. 8 (1) and 9(1)).

The criteria upon which the Department of Fish and Wildlife approves or rejects a hydraulic project permit are changed. The department must approve a project if: (1) a project provides no substantial risk to fish life and provides fish habitat productivity that is equal to pre-project conditions within three years; or if (2) the project protects

structures likely to incur damage during the next flood season if the project is not completed, and the project lessens loss of fish life as compared to a project resulting from an emergency request. These criteria apply only to projects that are consistent with a flood control management plan, as determined by the county. (Secs. 8(2) and 9(5)).

The Department of Fish and Wildlife must grant multiple year authority, up to five years, when approving a hydraulic project submitted by a local flood control agency for multi-year maintenance projects. (Secs. 8(5) and 9(11)).

Projects involving the repair of existing flood control facilities do not require a hydraulic project permit if they are consistent with the county flood plan and necessary to avoid flood damage during the next season. (Secs. 8(6) and 9(11)).

The hydraulic project permit process for agriculturally-related projects is modified to allow the permit to be worked on concurrently with the State Environmental Protection Act (SEPA) process. A final decision on the hydraulic permit cannot be made until the SEPA process has been finalized. (Sec. 9(2)).

#### Appeals

Applicants who win a hydraulics project approval permit appeal or shorelines permit appeal may be awarded legal and engineering costs involved in the appeal. (Secs. 10 and 18).

#### Flood Control Zone Districts

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. (Secs. 14-16).

#### Flood Planning Requirements

Any county with two or more presidentially declared flood disasters within the most recent ten-year period is required to complete a comprehensive flood control plan by December 31, 1998, or within two years of having a second federally declared flood disaster. Counties that are required to plan, and have completed a plan, are to receive priority consideration for emergency funding assistance. (Sec. 17).

Two new elements are added to the list of items that must be considered in a local comprehensive flood control management plan: potential channel migration areas and practices that will avoid long-term accretion of sediments. (Sec. 20).

Upon request, the Department of Transportation is required to provide certain information relating to state highways and bridges to a city or county that is preparing a comprehensive flood control management plan. (Sec. 23)

### Substantial Development Permits

The following projects are exempt from substantial development permits (required by local governments under the Shoreline Management Act): construction of stream flow retention or detention facilities and improvements to dikes and levees, if the project is consistent with a flood control management plan; and streambed maintenance, including sediment removal, sediment disposal, and streambank stabilization, if determined to be a flood control benefit by the county legislative authority. (Sec. 21).

### Miscellaneous

A flood protection project is defined as work necessary to preserve, restore, or improve natural or human-made streambanks or flood control facilities. (Sec. 22).

By December 31, 1996, the departments of Fish and Wildlife, Natural Resources, and Ecology are directed to develop a memorandum of understanding to facilitate the consideration of projects that will aid the prevention of flood damage. The memorandum must provide a plan to implement a streamlined, comprehensive permit process. (Sec. 24).

**Substitute Bill Compared to Original Bill:** The substitute bill changes one of two new criteria that the department is to use in deciding whether to approve or deny an HPA permit. These criteria are to apply only to projects consistent with a local flood control plan. The substitute bill deletes the requirement that the Department of Transportation conduct an inventory and pay at least ten percent of the costs of certain flood control projects. A provision is added requiring the department to provide certain information to local governments. The Department of Natural Resources is directed not to give special consideration to certain unique streamways when evaluating a project that would use or modify a river system. The substitute bill makes a number of technical and grammatical changes.

**Appropriation:** None.

**Fiscal Note:** Available. Fiscal note on substitute bill requested on March 2, 1995.

**Effective Date of Substitute Bill:** The bill contains an emergency clause and takes effect immediately.

**Testimony For:** (On HB 1177, 2/2/95). State law should give people the same consideration as fish. The Skokomish River is flooding more often and in places where it never flooded before. The river used to be dredged periodically. Excess government regulation has stopped nearly all gravel removal. The lack of dredging on this river threatens the lives and property of those who inhabit this river valley. The lack of gravel removal on the Skykomish River has resulted in poor fish habitat.

**Testimony Against:** (On HB 1177, 2/2/95). Gravel removal often has negative effects on fish life and habitat. Increased sediment load in rivers has been caused by

increased logging and development. This bill does not address the underlying causes of increased sedimentation.

**Testified:** (on HB 1177, 2/2/95). Representative Johnson (prime sponsor); Representative Sheldon (prime sponsor); Wes Johnson, Skokomish Flood Control Advisory Committee (pro); Evan Tosher, Skokomish Flood Control Advisory (pro); Kent Lebsack, Washington Cattlemen's Association (pro); John Gintz (pro); Rick Nelson (pro); Roger Finley (pro); Joe Krolezyk (pro); Bob Noss (pro); Jerry Richert (pro); Don Bailey (pro); Glenn Aldrich, Lewis County Commissioner (pro); Mary Jo Cady, Mason County Commissioner (pro); Bob Hart, Skagit County Commissioner (pro); Doug Neyhart (pro); Sky Miller, Snohomish County Public Works (commented); Jim Youngsman, (commented); Guy Parsons (commented); Linda Martinez (commented); Dawn Vyvyan, Skagit System Cooperative (con); Judy Turpin, Washington Environmental Council (concerns); and Richard Doak (con).