

HOUSE BILL REPORT

HB 1963

As Reported By House Committee On:
Local Government

Title: An act relating to flood plain management.

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

Sponsors: Representatives Koster, Dunshee, O'Brien, Anderson, G. Chandler, Sump, Dunn, B. Chandler and Mulliken.

Brief History:

Committee Activity:

Local Government: 2/25/99, 3/1/99 [DPS].

Brief Summary of Substitute Bill

- Exempts existing farmhouses in designated floodways from the general floodway prohibition against substantial repair or reconstruction.
- Allows the Department of Ecology (DOE) to consider recommending repair or replacement of residential structures other than farmhouses.

HOUSE COMMITTEE ON LOCAL GOVERNMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Mulliken, Republican Co-Chair; Scott, Democratic Co-Chair; Doumit, Democratic Vice Chair; Mielke, Republican Vice Chair; Edwards; Ericksen; Fisher and Fortunato.

Staff: Caroleen Dineen (786-7156).

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 DOE is the state agency responsible for coordinating the flood

plain management regulation elements of the national flood insurance program 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 national flood insurance program (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 provided for the NFIP. Civil penalties may be imposed for violation of flood plain management regulations.

The DOE is required to establish the minimum state requirements and has authority to approve or reject designs and plans for structures or works to be constructed across the floodway of any stream or water body in the state. The DOE also has authority to approve or reject local flood plain management ordinances and amendments and to 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 the DOE unless the DOE disapproves it within that period. The DOE may disapprove a local flood plain ordinance or amendment if the DOE finds it does not comply with the minimum requirements of the NFIP or the minimum state requirements. The 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 Substitute 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 locating on a farm site

where resulting agricultural products are not produced for the primary consumption or use by the dwelling's occupants and owner.

Repairs, reconstruction, replacement or improvements to existing farmhouses are exempt from the prohibition against construction or reconstruction of existing farmhouses in designated floodways if they satisfy the following conditions:

- the new farmhouse must be a replacement of an existing farmhouse on the same farm site;
- no potential building site outside the designated floodway may exist for a replacement farmhouse on the same farm;
- replacement, repairs, reconstruction or improvements must not exceed or increase the total square footage of encroachment of the existing farmhouse;
- the entire existing farmhouse, if replaced, must be completely removed within 90 days after occupancy of the new farmhouse;
- for substantial improvements and replacements, the lowest floor elevation (including basement) must be one foot higher than the base flood elevation;
- new and replacement water supply and sanitary sewer systems must be designed to eliminate or minimize flood water infiltration or sanitary sewer discharge into flood waters; and
- utilities and utility connections must be located to eliminate or minimize flood damage.

For residential structures other than farmhouses, the 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. The DOE's recommendation to allow repair or replacement constitutes a waiver of the floodway prohibition.

The DOE is required to develop rules to guide assessment procedures and criteria for repair or replacement of farmhouse and other residential structures.

An emergency clause specifies that these provisions are to take effect immediately.

Substitute Bill Compared to Original Bill: The substitute bill changes the definition of farmhouse to eliminate the requirement that commercial farm operations constitute the farm owner's or occupant's principal livelihood. The substitute bill also adds the provisions and conditions for repair or replacement of residential structures other than farmhouses. In addition, the substitute bill: (1) eliminates the requirement for the farmhouse to be located on lands designated as agricultural lands of long-term

commercial significance; (2) requires the DOE to adopt rules regarding assessments procedures and criteria; and (3) adds an emergency clause.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: (Original bill) This bill is very important to Snohomish County and at least four other counties. Snohomish County received a notice from the DOE that the farmhouse exception in its ordinance does not comply with the current statute. The floodway prohibition is in state law and is not mandated by federal law. Snohomish County residents may lose eligibility as early as April for FEMA flood insurance because of this problem. FEMA and DOE have worked with Snohomish County to create a legislative remedy. This bill will benefit counties other than Snohomish County.

The floodway maps need to be revised, as many of the homes for which the current statute prohibits substantial repair or reconstruction have never had water around them. Some people's homes that have never flooded are not marketable because they cannot be substantially repaired or replaced, and owners' investments in those homes now have no value. Many of these owners also must pay for flood insurance to meet lender's requirements when they would not be allowed to repair or rebuild if their homes were damaged.

Farming is one of the best uses of floodplains, and such uses are consistent with the Growth Management Act. FEMA provides incentives to promote farm uses and favors eliminating any roadblocks to continued agricultural uses. Farmhouses need to be on or near the land being farmed, and this bill allows farmers to rebuild if their homes are damaged or destroyed.

This bill also gives the DOE more flexibility to determine danger and health and safety issues.

This definition of farmhouse in this bill should be revised to apply to farms that do not constitute the owner's principal livelihood. Many small farmers cannot make a living with farming and have to support farming activities with other occupations. The reference to agricultural lands designation should be amended to apply these provisions to all counties, not just those that plan under the Growth Management Act. This bill also needs an emergency clause to ensure it will be effective in time to address Snohomish County's concerns.

Testimony Against: None.

Testified: Representative Koster, prime sponsor; Representative Dunshee, sponsor; John R. Gintz, Snohomish County Cattlemen's Association; Jim Haase, Washington State Grange; Sally Ohlsen, Washington State Grange; George Ohlsen, Washington State Grange; Ric Lawsen, Snohomish County Council; Gary Nelson, Snohomish County Council; Gary Reiersgard, Chief Planning Officer, Snohomish County Council; Karla Kay Fullerton, Washington Cattlemen's Association; Karen Tregoning; Tim D'Acci, Washington State Department of Ecology; Linda Johnson, Washington Farm Bureau; Chuck Steele, Federal Emergency Management Association; and Paul Parker, Washington State Association of Counties.