



Senate

General Assembly

File No. 297

February Session, 2010

Substitute Senate Bill No. 302

Senate, April 6, 2010

The Committee on Planning and Development reported through SEN. COLEMAN of the 2nd Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING STATE FUNDING OF AFFORDABLE HOUSING LOCATED IN A FIVE-HUNDRED-YEAR FLOOD PLAIN.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 25-68d of the 2010 supplement to the general
2 statutes is repealed and the following is substituted in lieu thereof
3 (*Effective July 1, 2010*):

4 (a) [No] Except as provided in subsections (g) to (i), inclusive, of this
5 section, no state agency shall undertake an activity or a critical activity
6 within or affecting the floodplain without first obtaining an approval
7 or approval with conditions from the commissioner of a certification
8 submitted in accordance with subsection (b) of this section or
9 exemption by the commissioner from such approval or approval with
10 conditions in accordance with subsection (d) of this section.

11 (b) Any state agency proposing an activity or critical activity within
12 or affecting the floodplain shall submit to the commissioner

13 information certifying that:

14 (1) The proposal will not obstruct flood flows or result in an adverse
15 increase in flood elevations, significantly affect the storage or flood
16 control value of the floodplains, cause an adverse increase in flood
17 velocities, or an adverse flooding impact upon upstream, downstream
18 or abutting properties, or pose a hazard to human life, health or
19 property in the event of a base flood or base flood for a critical activity;

20 (2) The proposal complies with the provisions of the National Flood
21 Insurance Program, [(44 CFR 59 et seq.)] 44 CFR 59 et seq., and any
22 floodplain zoning requirements adopted by a municipality in the area
23 of the proposal and the requirements for stream channel encroachment
24 lines adopted pursuant to the provisions of section 22a-342;

25 (3) The agency has acquired, through public or private purchase or
26 conveyance, easements and property in floodplains when the base
27 flood or base flood for a critical activity is elevated above the
28 increment authorized by the National Flood Insurance Program or the
29 flood storage loss would cause adverse increases in such base flood
30 flows;

31 (4) The proposal promotes long-term nonintensive floodplain uses
32 and has utilities located to discourage floodplain development;

33 (5) The agency has considered and will use to the extent feasible
34 flood-proofing techniques to protect new and existing structures and
35 utility lines, will construct dikes, dams, channel alterations, seawalls,
36 breakwaters or other structures only where there are no practical
37 alternatives and will implement stormwater management practices in
38 accordance with regulations adopted pursuant to section 25-68h; and

39 (6) The agency has flood forecasting and warning capabilities
40 consistent with the system maintained by the National Weather
41 Service and has a flood preparedness plan.

42 (c) The commissioner shall make a decision either approving,
43 approving with conditions or rejecting a certification not later than

44 ninety days after receipt of such certification, except that in the case of
45 an exemption any decision shall be made ninety days after the close of
46 the hearing. If a certification is rejected, the agency shall be entitled to a
47 hearing in accordance with the provisions of sections 4-176e, 4-177, 4-
48 177c and 4-180.

49 (d) Any state agency proposing an activity or critical activity within
50 or affecting the floodplain may apply to the commissioner for
51 exemption from the provisions of subsection (b) of this section. Such
52 application shall include a statement of the reasons why such agency is
53 unable to comply with said subsection and any other information the
54 commissioner deems necessary. The commissioner, at least thirty days
55 before approving, approving with conditions or denying any such
56 application, shall publish once in a newspaper having a substantial
57 circulation in the affected area notice of: (1) The name of the applicant;
58 (2) the location and nature of the requested exemption; (3) the tentative
59 decision on the application; and (4) additional information the
60 commissioner deems necessary to support the decision to approve,
61 approve with conditions or deny the application. There shall be a
62 comment period following the public notice during which period
63 interested persons and municipalities may submit written comments.
64 After the comment period, the commissioner shall make a final
65 determination to either approve the application, approve the
66 application with conditions or deny the application. The commissioner
67 may hold a public hearing prior to approving, approving with
68 conditions or denying any application if in the discretion of the
69 commissioner the public interest will be best served thereby, and the
70 commissioner shall hold a public hearing upon receipt of a petition
71 signed by at least twenty-five persons. Notice of such hearing shall be
72 published at least thirty days before the hearing in a newspaper
73 having a substantial circulation in the area affected. The commissioner
74 may approve or approve with conditions such exemption if the
75 commissioner determines that (A) the agency has shown that the
76 activity or critical activity is in the public interest, will not injure
77 persons or damage property in the area of such activity or critical
78 activity, complies with the provisions of the National Flood Insurance

79 Program, and, in the case of a loan or grant, the recipient of the loan or
80 grant has been informed that increased flood insurance premiums may
81 result from the activity or critical activity. An activity shall be
82 considered to be in the public interest if it is a development subject to
83 environmental remediation regulations adopted pursuant to section
84 22a-133k and is in or adjacent to an area identified as a regional center,
85 neighborhood conservation area, growth area or rural community
86 center in the State Plan of Conservation and Development pursuant to
87 chapter 297, or (B) in the case of a flood control project, such project
88 meets the criteria of subparagraph (A) of this subdivision and is more
89 cost-effective to the state and municipalities than a project constructed
90 to or above the base flood or base flood for a critical activity. Following
91 approval for exemption for a flood control project, the commissioner
92 shall provide notice of the hazards of a flood greater than the capacity
93 of the project design to each member of the legislature whose district
94 will be affected by the project and to the following agencies and
95 officials in the area to be protected by the project: The planning and
96 zoning commission, the inland wetlands agency, the director of civil
97 defense, the conservation commission, the fire department, the police
98 department, the chief elected official and each member of the
99 legislative body, and the regional planning agency. Notice shall be
100 given to the general public by publication in a newspaper of general
101 circulation in each municipality in the area in which the project is to be
102 located.

103 (e) The use of a mill that is located on a brownfield, as defined in
104 section 32-9kk, shall be exempt from the certification requirements of
105 subdivision (4) of subsection (b) of this section, provided the agency
106 demonstrates: (1) The activity is subject to the environmental
107 remediation requirements of the regulations adopted pursuant to
108 section 22a-133k, (2) the activity is limited to the areas of the property
109 where historical mill uses occurred, (3) any critical activity is above the
110 [five hundred year] five-hundred-year flood elevation, and (4) the
111 activity complies with the provisions of the National Flood Insurance
112 Program.

113 (f) The failure of any agency to comply with the provisions of this
114 section or any regulations adopted pursuant to section 25-68c shall be
115 grounds for revocation of the approval of the certification.

116 (g) The provisions of this section shall not apply to any proposal by
117 the Department of Transportation for a project within a drainage basin
118 of less than one square mile.

119 (h) Subject to the provisions of subsection (i) of this section, the
120 provisions of subsections (a) to (g), inclusive, of this section shall not
121 apply to the following activities or critical activities above the one-
122 hundred-year flood elevation that involve state funded housing
123 construction, rehabilitation or renovation: (1) Projects involving
124 existing housing on the Department of Economic and Community
125 Development's most recent affordable housing appeals list; or (2)
126 adaptive reuse of existing structures, provided (A) such reuse has a
127 residential housing component that is not less than eighty per cent of
128 the project, (B) not less than forty per cent of the housing units are for
129 persons and families of low and moderate income, and (C) site
130 coverage is not greater than ninety per cent of previously existing
131 structures; or (3) demolition of existing structures and new
132 construction of housing for persons and families of low and moderate
133 income, provided (A) such new construction has a residential housing
134 component that is not less than eighty per cent of the project, (B) not
135 less than forty per cent of the housing units are for persons and
136 families of low and moderate income, and (C) site coverage is not
137 greater than eighty per cent of the previously existing structures.

138 (i) Activities or critical activities exempted pursuant to subsection
139 (h) of this section shall not be undertaken unless the commissioner or a
140 duly authorized representative of the municipality having jurisdiction
141 certifies, in writing, that such activities or critical activities will not
142 significantly affect the storage or flood control value of the floodplains,
143 cause an adverse flooding impact upon upstream, downstream or
144 abutting properties or pose a hazard to human life, health or property.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2010</i>	25-68d

PD *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact: None

Municipal Impact: None

Explanation

The bill, which exempts certain state funded housing from flood plain prohibitions, results in no state or municipal fiscal impact.

The Out Years

State Impact: None

Municipal Impact: None

OLR Bill Analysis**sSB 302*****AN ACT CONCERNING STATE FUNDING OF AFFORDABLE HOUSING LOCATED IN A FIVE-HUNDRED-YEAR FLOOD PLAIN.*****SUMMARY:**

This bill creates three exceptions involving state-funded housing construction, rehabilitation, or renovation to the prohibition against building between the 100-year and the 500-year-flood plain. The exceptions are:

1. projects involving existing housing on the Department of Economic and Community Development's most recent affordable housing appeals list;
2. adaptive reuse of existing structures, provided:
 - a. the reuse project is at least 80% residential housing,
 - b. at least 40% of the housing units are for low- and moderate-income families, and
 - c. is less than 90% of the area of previously existing structures; or
3. demolition of existing structures and new construction for low- and moderate-income families, provided:
 - a. the new construction is at least 80% residential housing,
 - b. at least 40% of the housing units are for low- and moderate-income families, and
 - c. is less than 80% of the area previously existing structures.

Those projects cannot be undertaken unless the commissioner or an authorized municipal representative certifies in writing that the projects will not:

1. significantly affect the flood plain's storage or flood control value;
2. cause adverse flooding upstream, downstream, or on abutting properties; and
3. pose a hazard to people or property.

EFFECTIVE DATE: July 1, 2010

BACKGROUND

100- and 500-Year-Flood Plains

The 100-year-flood plain is the area that has a 1% chance to be flooded each year. The 500-year-flood plain is the area that has a 0.2% chance to be flooded each year. The chance of a given year having a particular flood is not related to what happened in a previous year, so, for example, it is possible that 500-year-floods may happen in consecutive years.

COMMITTEE ACTION

Planning and Development Committee

Joint Favorable Substitute

Yea 18 Nay 0 (03/17/2010)