

IN THE SENATE

SENATE BILL NO. 1288

BY RESOURCES AND ENVIRONMENT COMMITTEE

AN ACT

RELATING TO FLOOD PROTECTION; AMENDING SECTION 46-1021, IDAHO CODE, TO REVISE DEFINITIONS AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 46-1022, IDAHO CODE, TO PROVIDE THAT FLOODPLAIN ZONING ORDINANCES SHALL NOT REGULATE CERTAIN CHANGES TO IMPROVED OR UNIMPROVED REAL ESTATE WITHIN THE RIGHT-OF-WAY FOR ANY DITCH, LATERAL, DRAIN, DIVERSION STRUCTURE, PIPELINE, HYDROPOWER FACILITY OR OTHER IRRIGATION OR DRAINAGE WORKS THAT ARE PERFORMED OR AUTHORIZED BY THE OWNER FOR WATER DELIVERY, DRAINAGE OR HYDROPOWER PURPOSES; AND DECLARING AN EMERGENCY.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 46-1021, Idaho Code, be, and the same is hereby amended to read as follows:

46-1021. DEFINITIONS. As used in this act:

(1) "Development" means any ~~manmade~~ man-made change to improved or unimproved real estate, including, but not limited to, the construction of buildings, structures or accessory structures, or the construction of additions or substantial improvements to buildings, structures or accessory structures; the placement of mobile homes; mining, dredging, filling, grading, paving, excavation or drilling operations; and the deposition or extraction of materials; specifically including the construction of dikes, berms and levees. The term "development" does not include changes to improved or unimproved real estate within the right-of-way for any ditch, canal, lateral, drain, diversion structure, pipeline, hydropower facility or other irrigation, drainage or hydropower works that are performed or authorized by the owner thereof for water delivery, drainage or hydropower purposes pursuant to lawful rights and obligations. The irrigation and drainage activities exempted from the definition of "development" include, but are not limited to, the construction, reconstruction, operation, cleaning, maintenance, ~~or~~ repair, replacement or improvement of any ditch, canal, lateral, drain, diversion structure or other irrigation or drainage works that is performed or authorized by the owner thereof pursuant to lawful rights and obligations.

(2) "Flood" means a general or temporary condition of partial or complete inundation of normally dry land areas caused by the overflow or rise of river, ocean, streams or lakes, or the unusual and rapid accumulation or runoff of surface waters from any source.

(3) "Flood fringe" is that portion of the floodplain outside of the floodway covered by floodwaters during the regulatory flood.

(4) "Floodplain" is the land that has been or may be covered by floodwaters, or is surrounded by floodwater and inaccessible, during the occurrence of the regulatory flood. The riverine floodplain includes the floodway and the flood fringe.

(5) "Floodplain management" is the analysis and integration of the entire range of measures that can be used to prevent, reduce or mitigate flood damage in a given location, and that can protect and preserve the natural, environmental, historical, and cultural values of the floodplain.

(6) "Floodproofing" means the modifications of structures, their sites, building contents and water and sanitary facilities, to keep water out or reduce the effects of water entry.

(7) "Flood protection elevation" means an elevation that shall correspond to the elevation of the one percent (1%) chance flood (one hundred (100) year flood) plus any increased flood elevation due to floodway encroachment, plus any required freeboard.

(8) "Floodway" is the channel of the river or stream and those portions of the floodplain adjoining the channel required to discharge and store the floodwater or flood flows associated with the regulatory flood. Ditches, canals, laterals and drains that are constructed and used for irrigation or drainage purposes are not floodways.

(9) "Freeboard" represents a factor of safety usually expressed in terms of a certain amount of feet above a calculated flood level. Freeboard shall compensate for the many unknown factors that contribute to flood heights greater than the height calculated. These unknown factors include, but are not limited to, ice jams, debris accumulation, wave action, obstruction of bridge openings and floodways, the effects of urbanization on the hydrology of the watershed, loss of flood storage areas due to development and the sedimentation of a river or stream bed.

(10) "Local government," in the context of this chapter, means any county or city having planning and zoning authority to regulate land use within its jurisdiction.

(11) "Mitigation" means any action taken which will reduce the impact, damage or cost of the next flood that occurs.

(12) "Person" means any individual, group of individuals, corporation, partnership, association, political subdivision, public or private agency or entity.

(13) "Regulatory flood" is a flood determined to be representative of large floods known to have occurred in Idaho and which may be expected to occur on a particular stream because of like physical characteristics. The regulatory flood is based upon a statistical analysis of stream flow records available for the watershed or an analysis of rainfall and runoff characteristics in the watershed. In inland areas, the flood frequency of the regulatory flood is once in every one hundred (100) years; this means that in any given year there is a one percent (1%) chance that a regulatory flood may occur or be exceeded.

SECTION 2. That Section 46-1022, Idaho Code, be, and the same is hereby amended to read as follows:

46-1022. LOCAL GOVERNMENTS MAY ADOPT FLOODPLAIN ZONING ORDINANCES. Subject to the availability of adequate mapping and data to properly identify the floodplains, if any, within their jurisdiction, each local government is encouraged to adopt a floodplain map and floodplain management ordinance which identifies these floodplains and which requires, at a minimum, that any development in a floodplain must be constructed at a

1 flood protection elevation and/or have adequate floodproofing. The local
2 government may regulate all mapped and unmapped floodplains within their
3 jurisdiction. Nothing in this act shall prohibit a local government from
4 adopting more restrictive standards than those contained in this chapter.
5 Floodplain zoning ordinances shall not regulate changes to improved or
6 unimproved real estate within the right-of-way for any ditch, canal, lat-
7 eral, drain, diversion structure, pipeline, hydropower facility or other
8 irrigation, drainage or hydropower works that are performed or authorized
9 by the owner thereof for water delivery, drainage or hydropower purposes
10 pursuant to lawful rights and obligations including, but not limited to, the
11 construction, reconstruction, operation, cleaning, maintenance, ~~or~~ repair,
12 replacement or improvement of any ditch, canal, lateral, drain, diversion
13 structure or other irrigation or drainage works that is performed or autho-
14 rized by the owner thereof pursuant to lawful rights and obligations.

15 SECTION 3. An emergency existing therefor, which emergency is hereby
16 declared to exist, this act shall be in full force and effect on and after its
17 passage and approval.