

CONFIDENTIAL
LEGISLATIVE BILL REVIEW FORM: 2013

Bill Number: H.72 Name of Bill: Accessory Dwelling Units in Flood Hazard Areas

Agency/Dept.: ANR Author of Bill Review: Rebecca Pfeiffer

Date of Bill Review: 1/28/2013 Status of Bill (check one):

☐ Upon Introduction ☐ As passed by 1st body ☐ As passed by both bodies ☐ Fiscal

Recommended Position:

☐ Support ☐ Oppose ☐ Remain Neutral ☒ Support with modifications identified in #8 below

Analysis of Bill

1. Summary of bill and issue it addresses. *Describe what the bill is intended to accomplish and why.*

This bill proposes to allow municipalities to prohibit the construction of accessory dwelling units (ADUs) in flood hazard areas.

2. Is there a need for this bill? *Please explain why or why not.* Currently, some communities prohibit new primary structures from within their hazard areas. This bill would help to close the gap that exists, as communities are currently not able to also prohibit ADUs within or appurtenant to an owner occupied single family dwelling in a flood hazard area. "Appurtenant" may allow for new structures, conversions of nearby non-residential structures (garages etc.), and conversions of basements into living space all of which at least require close regulation (typically Conditional Use) to meet National Flood Insurance Program standards. As written, this bill would not require that ADUs be prohibited within flood hazard areas; rather, it would just allow a community the choice to prohibit ADUs within flood hazard areas. This would help the flood hazard area bylaw to be consistent across all uses if the community prohibits new structures in their flood hazard area. Additionally, this change would help §4412 become more consistent with the state floodplain rulemaking authority language found in Act 138.

3. What are likely to be the fiscal and programmatic implications of this bill for this Department?

It does not seem likely that this bill would substantially increase the work load for the DEC. If this bill was passed, there may be potentially fewer project reviews over time. In the medium term there may be a limited increase in requests from municipalities for help in adding language to incorporate updated language in their flood hazard/zoning bylaw. Additionally, this bill would create language that supports the objectives DEC and Act 138 that encourage communities to limit or prohibit encroachments /new structures in flood hazard areas due to public safety concerns and to adequately mitigate existing structures.

4. What might be the fiscal and programmatic implications of this bill for other departments in state government, and what is likely to be their perspective on it?

It is not anticipated that this bill would create any additional programmatic burden to other State Agencies or departments. It is possible that the Department of Economic, Housing and Community Development may wish to review the impact of this change on affordable housing options. This change would not likely to be a large effect on the availability of safe and affordable housing options in communities.

5. What might be the fiscal and programmatic implications of this bill for others, and what is likely to be their perspective on it? (for example: public, municipalities, organizations, business, regulated entities, etc.)

Municipalities: Because there is no requirement to act as a result of this change in language, it is not anticipated that there would be any opposition to this change from municipalities. In fact, communities that have chosen to prohibit new structures in their mapped hazard areas would likely support this change so that their bylaw can now be clearly consistent.

Public/Regulated Entities: This bill would result in the possibility of limiting ADUs in some communities, so there may be some public concern about this bill because of the potential limitation of some property rights.

6. Other Stakeholders:

6.1 Who else is likely to support the proposal and why? Advocates for the protection of floodplains and river corridors trying to avoid new encroachments, and emergency planners where emergency response capacity is limited or poorly defined

6.2 Who else is likely to oppose the proposal and why? It is possible that there may be some concern to this change from affordable housing advocates. This bill would result in the possibility of some communities limiting affordable housing options within flood hazard areas. The overall impact on affordable housing would most likely be very limited within most communities, and would appropriately discourage the use of hazard areas as sites for affordable but less than safe housing.

7. Rationale for recommendation: *Justify recommendation stated above.* As stated above, this bill would create language that encourages communities to limit or prohibit new structures in flood hazard areas due to public safety concerns. It is not anticipated to result in any significant additional work load to the Floodplain Management Program staff, and has no requirements for action by municipalities. The current language in 4412 (E) creates confusion about the level of review for new structures and the creation of new housing in a hazard area and the ability of communities to avoid new encroachments and higher densities in hazard areas.

8. Specific modifications that would be needed to recommend support of this bill: *Not meant to rewrite bill, but rather, an opportunity to identify simple modifications that would change recommended position.*

DEC would request that the language be changed to prohibit accessory dwelling units in flood or other hazard areas, not just flood hazard areas.

Commissioner has reviewed this document:


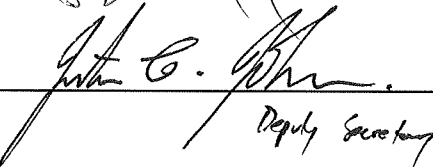
Date:

1/29/13

Secretary has reviewed this document:

Date:

1/30/2013



Deputy Secretary