

Act to Improve Preventive Flood Control
of 3 May 2005
(Federal Law Gazette I of 9 May 2005 page 1224)

The *Bundestag* has adopted the following act:

Article 1
Amendment of the Federal Water Act

The Federal Water Act as promulgated in the Federal Law Gazette of 19 August 2002 (Federal Law Gazette I page 3245), amended by Article 6 of the Law of 6 January 2004 (Federal Law Gazette I page 2, 219), is amended as follows:

1. Article 18a shall read as follows:
 - a) The words "obligation and plans for the" in the headline shall be deleted.
 - b) Para. 2, sentence 2 shall be deleted.
2. The second clause of Article 19a (2) no. 2 shall be deleted.
3. Article 19e (2) sentence 3 shall read as follows:

"Pipeline installations pursuant to sentence 1 shall be subject to Article 19a (4) and Article 21."
- 3a. Article 19g (4) shall read as follows:

"(4) Provisions of the *Länder* regulating the storage of substances constituting a hazard to water in water protection areas, headwater protection areas, flood plains, flood-prone zones or project areas shall remain unaffected."
4. The second part, section 4 shall read as follows:

"S e c t i o n 4
Flood control

Article 31a
Principles of flood control

(1) Surface waters have to be managed in such a way that as far as possible floods are held back, a non-harmful water run-off is ensured and flood damage is prevented. Areas that may be inundated by a flood or where an inundation may help to alleviate flood damage have to be protected in pursuance of the stipulations contained in this section.

(2) Within the bounds of possibility and reasonability, any person potentially affected by a flood is obliged to undertake adequate measures to prevent flood-related risks and to reduce flood damage, particularly to adjust the land use to a possible risk created for humans, the environment or material assets through floods.

(3) *Land* law shall stipulate how the competent state authorities and the population in the areas affected are informed about flood risks, adequate preventive measures and rules of behaviour and how they are warned of an expected flood in a timely manner.

Article 31b Flood plains

(1) Flood plains are areas between surface waters and dykes or high banks and other zones which are subject to flooding or water flow during floods or which are used for flood alleviation or floodwater retention.

(2) Waters or water segments where more than minor flood damage has occurred or is expected to occur shall be determined by *Land* law. *Land* law shall also make provisions to inform the general public about these waters and to adjust the designation of waters pursuant to sentence 1 to new findings. As a minimum, those areas where statistically a flood event is expected to occur once every hundred years (design flood) shall be designated as flood plains for the waters defined in sentence 1 no later than by 10 May 2012. The deadline for the designation of flood plains with a high potential for damage in the wake of a flood, particularly in settlement areas, ends on 10 May 2010. The way how the general public is to be informed and included in the designation of flood plains pursuant to sentences 3 and 4 shall also be determined by *Land* law. The Federal *Länder* shall designate areas as flood plains and adopt regulations designed to protect against the risk of flooding insofar as these are required in order to

1. protect or improve the ecological structures of bodies of water and their flood areas,
2. prevent measures which could promote erosion,
3. preserve or claim and particularly recover natural retention areas,
4. control floodwater run-off, or
5. prevent and alleviate flood damage.

Land law shall in particular stipulate:

1. how to deal with substances constituting a hazard to water, including the flood-proof installation of new and backfitting of existing oil heating systems and, as far as necessary for damage prevention, the prohibition to install new oil heating systems,
2. how to prevent interruptions in water supply and sanitation, as far as possible,
3. official licences for measures which could substantially change the water run-off, such as height alterations in the earth's surface.

If, in connection with the restoration of retention areas, orders are issued stipulating more stringent requirements on the proper agricultural or silvicultural use of a piece of land, then Article 19 (4) sentences 1 and 3 shall apply *mutatis mutandis*.

(3) In the flood plains designated pursuant to (2) sentences 3 and 4, for areas under agricultural use and others *land* law shall stipulate how to prevent or alleviate possible erosion or significant adverse effects on waters, particularly from inputs of pollutants.

(4) With the exception of land-use plans for harbours and shipyards, no new development sites must be designated by land-use plans in flood plains pursuant to (2) sentences 3 and 4. The competent authority may allow the designation of new development sites as an exception, provided that

1. alternatives for human settlement development do not exist or cannot be created,
2. the area to be newly designated borders directly with an existing development area,
3. a risk to life, significant health damage or material loss may not be expected,
4. the floodwater run-off and the water level are not negatively impacted on,
5. flood retention is not affected and at the same time the loss of retention space is compensated for with respect to capacity and functionality
6. flood control stipulations in place are not affected,
7. no negative effects on upstream and downstream riparians may be expected,
8. flood prevention concerns are being observed and
9. construction projects are implemented in such a way that in the event of a design flood that has served as the base line for the designation of flood plains no structural damage is to be expected.

A license must be issued by the competent authority for the construction or extension of a building pursuant to Sections 30, 34 and 35 of the Federal Building Code in flood plains as described in (2), sentences 3 and 4. Such a license may be issued only if in the individual case the project

1. has no or only minor impact on flood retention and at the same time the loss of retention space is compensated for,
2. does not negatively affect the water level and the run-off in the event of a flood,
3. does not affect the existing flood control measures and
4. is carried out with the necessary adjustments to flood control

or if the negative effects can be compensated for by special restrictions or requirements.

(5) *Land* law shall determine that flood plains that have not yet been designated pursuant to (2) sentences 3 and 4 have to be defined, mapped and provisionally safeguarded. For flood plains defined pursuant to sentence 1 that have been mapped and provisionally secured, (2) to (4) shall apply *mutatis mutandis*.

(6) The function of flood plains as retention areas pursuant to (1), (2) and (5) shall be preserved; where this conflicts with overriding concerns of public interest, the necessary compensatory measures must be taken in good time. Former flood plains that are suitable to act as retention areas should be restored as far as possible, provided this does not conflict with overriding concerns of public interest.

Article 31c

Flood-prone zones

(1) Flood-prone zones are areas that are flood plains in accordance with Article 31b (1), but which do not require designation pursuant to Article 31b (2) sentences 3 and 4 or which could be flooded in case public flood control facilities, particularly dykes, fail. *Land* law shall stipulate that areas under sentence 1 where floods may significantly impair the public interest are to be defined and mapped.

(2) *Land* law shall stipulate the necessary measures for flood-prone zones in order to prevent or alleviate significant adverse effects of floods on the public interest.

Article 31d

Flood control plans

(1) *Land* law shall stipulate that plans for a water run-off that is as harmless as possible, technical flood control and the reclamation and especially restoring of

retention areas and further flood control measures (flood control plans) have to be devised as appropriate. The flood control plans serve the purpose of minimising to the best possible degree and proportionately the risks emanating from at least one flood statistically expected to occur once in a hundred years. The flood control plans shall include in particular measures to preserve or restore retention areas, to flood and discharge the water from these retention areas according to the requirements of an optimised floodwater run-off in river basin units, to relocate dykes, to preserve or restore alluvial meadows and to retain precipitation water.

(2) *Land* law shall stipulate that flood control plans have to be published and updated.

(3) The *Länder* shall devise the flood control plans no later than by 10 May 2009. It is not necessary to devise flood control plans if the existing plans for improved flood control meet the requirements under (1).

§ 32

Cooperation in river basin districts

(1) *Land* law shall stipulate cooperation in flood control within the river basin districts of the relevant *Länder* and states, particularly the coordination of flood control plans and protection measures. It shall be possible to devise joint transboundary flood control plans. Article 1b (2) nos. 1, 3 and 4 apply accordingly, with the proviso that no. 3 also shall be applied to the authorities of the member states of the European Union.

(2) If an agreement on a flood control measure cannot be reached in the context of the cooperation under (1), on request of one of the *Länder* the Federal Government shall intermediate between the *Länder* concerned."

5. Article 36a (1) sentence 2 shall read as follows:

"Article 14 of the Federal Regional Planning Act of 18 August 1997 (Federal Law Gazette I page 2081), as amended by Article 3 of the Act of 15 December 1997 (Federal Law Gazette I page 2902), remains unaffected."

6. Article 37 (2) no. 3 shall read as follows:

"3. Flood plains (Article 31b) and flood-prone zones (Article 31c)."

7. In Article 42 (1) a semicolon is added after "37a sentence 1", followed by "in the case of Articles 31a (3), 31b (2), (3) and (5), 31c, 31d (1) and (2) and 32 (1) by 10 May 2007."

Article 2

Amendment of the Federal Building Code

The Federal Building Code as promulgated in the Federal Law Gazette on 23 September 2004 (Federal Law Gazette I page 2414) shall be amended as follows:

1. In the table of content the information regarding Section 246a shall read as follows:

"Section 246a flood plains; flood-prone zones"

2. In Section 1 (6) no. 11 the full stop is replaced by a comma and the following number 12 is added:

"12. Flood control matters".

3. After Section 5 (4) the following para. 4a is inserted:

"(4a) Designated flood plains for the purpose of Article 31b (2) sentences 3 and 4 of the Federal Water Act shall be taken on for information only. Flood plains for the purpose of Article 31b (5) and flood-prone zones for the purpose of Article 31c of the Federal Water Act that have not yet been designated shall be noted in the land utilisation plan."

4. After Section 9 (6) the following paragraph 6a is inserted:

"(6a) Designated flood plains for the purpose of Article 31b (2) sentences 3 and 4 of the Federal Water Act shall be taken on for information only. Flood plains for the purpose of Article 31b (5) and flood-prone zones for the purpose of Article 31c of the Federal Water Act that have not yet been designated shall be noted in the development plan."

- 4a. In Section 24 (1) sentence 1 no. 5 the word "and" is deleted, in no. 6 the full stop is replaced by a comma and the word "and" is added, after which the following number 7 is inserted:

"7. In areas which are not to be developed for the purpose of preventive flood control, particularly in flood plains."

5. Section 35 (3) sentence 1 no. 6 shall read as follows:

"6. hampers measures to improve agricultural structure or represents a danger to water supply and distribution or flood control,"

6. After Section 246 the following Section 246a is inserted:

"Section 246a
Flood plains, flood-prone zones

On the occasion of the promulgation of a land utilisation plan pursuant to Section 6 (6), the areas defined in Section 5 (4a) shall be taken on for information only and noted in accordance with this stipulation."

**Article 3
Amendment of the Federal Regional Planning Act**

Section 7 of the Federal Regional Planning Act of 18 August 1997 (Federal Law Gazette I page 2081) as amended last by Article 2 of the Law of 24 June 2004 (Federal Law Gazette I page 1359) is amended as follows:

1. In (2) sentence 1 no. 2, letter d is added as follows:

"d) open spaces to safeguard preventive flood control,".

2. In (3) sentence 2 no. 4 the full stop is replaced by a comma and the following number 5 is added:

"5. regionally significant requirements and measures of preventive flood control in accordance with the Federal Water Act."

Article 4

Amendment of the Federal Waterway Act

The Federal Waterway Act in the version promulgated on 4 November 1998 (Federal Law Gazette I page 3294), last amended by Article 238 of the Ordinance of 25 November 2003 (Federal Law Gazette I page 2334), is amended as follows:

1. In Article 8 (1), sentence 4 the following words are added:

"and are carried out in such a way as to avoid more than just minor impacts on flood control."
2. The following sentence is added to Article 12 (7):

"Expansions or new construction measures are carried out in such a way as to avoid more than just minor impacts on flood control."
3. In Article 17 no. 1 sentence 1 a semicolon is inserted after the last word, followed by the phrase " due to nature conservation concerns the Federal Agency for Nature Conservation must also be heard".
4. Article 35 (1) reads as follows:

„(1) Apart from its maintenance obligations under Article 8, the Federal Waterways and Shipping Administration shall maintain within the limits of possibility and reason a water level and flood hazard reporting service in coordination with the *Länder* in order to contribute to timely and reliable flood warnings and predictions. Notwithstanding any other special obligations, it shall provide for combating ice on federal waterways as far this is economically feasible."

Article 5

Amendment of the Act on the German Meteorological Service

Article 4 of the Act on the German Meteorological Service of 10 September 1998 (Federal Law Gazette I page 2871), as amended by Article 294 of the Ordinance of 29 October 2001 (Federal Law Gazette I page 2785), is amended as follows:

1. Para. 1 is amended as follows:
 - a) In no. 1 the clause "including preventive flood control" is inserted after the phrase "water management".
 - b) No. 3 is amended as follows:
 - aa) The word "official" is inserted before the word "warnings".
 - bb) The following phrase is added:

"particularly with a view to imminent flood hazards,".
2. In para. 4 a comma is inserted after the phrase "disaster control", followed by the phrase "particularly in extreme weather events,".

Article 6
Amendment of the Environmental Audit Act

In no. 2.3.6 of Annex 2 of the Environmental Audit Act in the version promulgated on 5 September 2001 (Federal Law Gazette I page 2350), last amended by Article 2 of the Act of 18 June 2002 (Federal Law Gazette I page 1914), the phrase "Article 32 of the Federal Water Act" is replaced by "Article 31b of the Federal Water Act".

Article 7
Amendment of the Combined Heat and Power Generation Act

Article 4 (3) sentence 3 of the Combined Heat and Power Generation Act of 19 March 2002 (Federal Law Gazette I page 1092), last amended by Section 3 of the Act of 21 July 2004 (Federal Law Gazette I page 1918), reads as follows:

"For combined heat and power generation plants with an output of up to two megawatts the usual price shall be understood as meaning the average price of baseload electricity at the EEX electricity exchange in *Leipzig* in the previous quarter."

Article 8
Entry into force

This act shall enter into force on the day following its promulgation.

The constitutional rights of the *Bundesrat* are safeguarded.

The foregoing law is hereby drawn up and shall be published in the Federal Law Gazette.

Berlin,

The Federal President
The Federal Chancellor
The Federal Minister for the Environment,
Nature Conservation and Nuclear Safety
The Federal Minister of Transport, Building and Housing