

1 NEW SECTION. Section 8. Variances. (1) A political subdivision must adopt variance
2 procedures that address the criteria established [in subsection (3)] for granting variances for uses
3 that otherwise would not be allowed pursuant to [section 6].

4 (2) An application for a variance must include information that the political subdivision
5 considers necessary to evaluate the variance request, including but not limited to a delineation of
6 the flood plain on the parcel, plans, maps, and specifications detailing the request.

7 (3) A political subdivision may grant a variance upon making the following findings that:

8 (a) a literal application of [this act] would result in an unnecessary hardship to the property
9 owner as a result of circumstances unique to the parcel such as size, shape, topography, or
10 location;

11 (b) the variance is not contrary to the public interest, based on a consideration of whether the
12 variance is:

- 13 (i) likely to adversely impact water quality;
- 14 (ii) likely to increase stream bank erosion;
- 15 (iii) likely to increase flood heights or velocity; and
- 16 (iv) consistent with the general purpose and intent of [sections 1 through 10].

17 (c) the hardship is not the result of the actions of the applicant; and

18 (d) the variance is as small as reasonably possible to accommodate the proposed use while
19 preserving the intent of [section 2] to the greatest degree practicable.

20 (4) The applicant for a variance has the burden of demonstrating the factors set forth in
21 [subsection 3] are met.

22 (5) If the provisions of this act entirely preclude the construction of structures on an
23 otherwise developable parcel in existence on [the effective date of this act] then:

24 (a) the political subdivision shall find that an unnecessary hardship exists under [subsection
25 3(a)]; and

26 (b) upon the applicant's compliance with [subsection 2], the political subdivision shall issue a
27 variance in conformance with [subsection (3)(d)].

1 **NEW SECTION. Section 9. Local setback standards in lieu of state standards.** (1) A
2 political subdivision may enact local setback regulations defining the setback area and vegetative
3 buffers for tier I streams and tier II streams within its jurisdiction. Such regulations shall apply in
4 lieu of the provisions of [section 5], provided they meet the minimum requirements set forth in
5 this section.

6 (2) Locally-established setbacks may be of a fixed or variable width, and may be larger or
7 smaller than those set forth in [section 5]. Setbacks may be expressed as a numerical distance in
8 feet, or by narrative reference to topography or other physical features, provided they establish a
9 definable setback.

10 (3) Setbacks must be established at a sufficient width, based on peer-reviewed science and
11 local information, to fulfill the purposes set forth in [section 2] by designating an area along tier I
12 and tier II streams where the uses prohibited in [section 6] will not occur. The setback areas
13 should generally encompass the areas described in [(a) through (d) of this subsection]. Setbacks
14 need not be set at a width that encompasses the entirety of these areas at every point along the
15 stream, so long as their width is reasonably calculated to encompass these areas in most cases:

16 (a) wetlands adjacent to streams;

17 (b) the flood plain;

18 (c) the channel migration zone; and

19 (d) areas adjacent to the flood plain with slopes greater than 25 percent.

20 (4) Local setback regulations must establish vegetative buffers that, based on peer-reviewed
21 science and local conditions, are of sufficient width to prevent unnatural rates of erosion and
22 sedimentation, protect water quality, and maintain native riparian vegetation.

23 (5) The political subdivision shall prepare a written record in support of its decision to enact
24 a local setback regulation, including references to the peer-reviewed science and information that
25 were used to determine the width of setbacks and vegetative buffers. The numerical distances set
26 forth in [section 5] shall not be used as presumptive maximum or minimum widths for local
27 setbacks or vegetative buffers.

28 (7) Nothing in [sections 1-10] shall be construed to limit a political subdivision's authority
29 to enact regulations further limiting uses within setbacks or vegetative buffers, or to enact
30 regulations establishing setbacks and vegetative buffers for watercourses not governed by the
31 provisions of [this act].