

Sixty-ninth
Legislative Assembly
of North Dakota

FIRST ENGROSSMENT

ENGROSSED SENATE BILL NO. 2027

Introduced by

Legislative Management

(Agriculture and Natural Resources Committee)

1 A BILL for an Act to create and enact a new section to chapter 11-11, a new subsection to
2 section 11-11-14, a new section to chapter 40-05, a new section to chapter 58-06, a new
3 subsection to section 58-06-01, and a new section to chapter 61-16.2 of the North Dakota
4 Century Code, relating to floodplain management powers and ordinances for counties, cities,
5 and townships; and to amend and reenact subsection 2 of section 11-33-03, subsection 67 of
6 section 40-05-01, subsection 2 of section 40-47-03, and sections 58-03-12 and 61-16.2-02 of
7 the North Dakota Century Code, relating to county, city, and township floodplain management
8 ordinances and to provide definitions.

9 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

10 **SECTION 1.** A new section to chapter 11-11 of the North Dakota Century Code is created
11 and enacted as follows:

12 **Floodplain management ordinances - Requirements - Limitations - Definitions -**
13 **Enforcement.**

14 1. As used in this chapter:

15 a. "Floodplain management" has the same meaning as in section 61-16.2-02.

16 b. "Floodplain management ordinance" has the same meaning as in section
17 61-16.2-02.

18 c. "Indian country" means all:

19 (1) Land within the limits of any Indian reservation that is under the jurisdiction
20 of the United States government and located within this state,
21 notwithstanding the issuance of any patent, and, including rights of way
22 running through the reservation;

(2) Dependent Indian communities within this state whether within the original or subsequently acquired territory of the state; and

(3) Indian allotments within this state, the Indian titles to which have not been extinguished, including rights of way running through the allotted lands.

2. A board of county commissioners may undertake floodplain management as provided in chapter 61-16.2. If a board of county commissioners undertakes floodplain management under this section, the board of county commissioners shall enact a floodplain management ordinance applying to all persons and property within the boundaries of the county, except for persons and property within a city's zoning jurisdiction as provided under chapter 40-47 or within the exterior boundaries of Indian country.

3. Notwithstanding subsection 2, if a board of township supervisors approves by a written resolution that the township desires to undertake floodplain management under chapter 61-16.2, the board of township supervisors shall avail itself the authority to regulate floodplain management. Upon the adoption of the resolution, the board of township supervisors has exclusive authority to regulate floodplain management under chapter 61-16.2. If a board of township supervisors undertakes floodplain management under this section, the board of township supervisors shall enact a floodplain management ordinance applying to all persons and property within the boundaries of the township, except for persons and property within a city's zoning jurisdiction as provided under chapter 40-47 or within the exterior boundaries of Indian country. The township clerk shall forward a copy of the written resolution to the county auditor of the county in which the township is located and the department of water resources for inclusion in the central repository established under section 10 of this Act.

4. After acquiring floodplain management authority from the county under subsection 3, the township may relinquish its floodplain management authority back to the county upon execution of a written agreement signed by the board of county commissioners and the board of township supervisors. The county may not require the township to convey an additional authority legally afforded to the township in exchange for the written agreement. The relinquishment of authority may not become effective sooner

1 than sixty days after the board of township supervisors delivers a written notice of
2 proposed relinquishment to the appropriate board of county commissioners.

3 5. If a township previously exercised floodplain management authority and becomes
4 subject to county floodplain management authority under this section, the township
5 shall defend, indemnify, and hold harmless the county and its agents, officers, and
6 employees from and against a claim for damages arising from a township's
7 noncompliance with chapter 61-16.2 and the national flood insurance program
8 [42 U.S.C. 4001 et seq.].

9 6. Upon enactment of a floodplain management ordinance by a county under this
10 section, the county auditor shall forward the ordinance to the department of water
11 resources for inclusion in the central repository established under section 10 of this
12 Act.

13 7. The county auditor of a county exercising floodplain management authority shall certify
14 to the department of water resources by March thirty-first of each year a list of the
15 jurisdictions over which the county is exercising floodplain management authority
16 under chapter 61-16.2.

17 8. A county exercising floodplain management authority is not required to activate its
18 zoning authority under chapter 11-33 before enacting a floodplain management
19 ordinance.

20 9. In a county exercising floodplain management, the board of county commissioners
21 shall enforce an ordinance or regulation enacted under this section. The board of
22 county commissioners may impose enforcement duties on an officer, department,
23 agency, or employee of the county.

24 **SECTION 2.** A new subsection to section 11-11-14 of the North Dakota Century Code is
25 created and enacted as follows:

26 To undertake floodplain management activities in the manner provided under section 1
27 of this Act.

28 **SECTION 3. AMENDMENT.** Subsection 2 of section 11-33-03 of the North Dakota Century
29 Code is amended and reenacted as follows:

30 2. To provide for emergency management, including floodplain management as provided
31 under section 1 of this Act. "Emergency management" means a comprehensive

integrated system at all levels of government and in the private sector which provides for the development and maintenance of an effective capability to mitigate, prepare for, respond to, and recover from known and unforeseen hazards or situations, caused by an act of nature or man, which may threaten, injure, damage, or destroy lives, property, or our environment.

SECTION 4. AMENDMENT. Subsection 67 of section 40-05-01 of the North Dakota Century Code is amended and reenacted as follows:

67. Flood control projects, including floodplain management as provided under section 5 of this Act. To acquire, construct, maintain, operate, finance, and control flood control projects, both within and adjacent to such municipality, and for such purpose to acquire the necessary real property and easements therefor by purchase and eminent domain, in accordance with chapter 32-15, and to adopt such ordinances as may reasonably be required to regulate the same.

SECTION 5. A new section to chapter 40-05 of the North Dakota Century Code is created and enacted as follows:

Floodplain management ordinances - Requirements - Limitations - Definitions - Enforcement.

1. As used in this chapter:

a. "Floodplain management" has the same meaning as in section 61-16.2-02.

b. "Floodplain management ordinance" has the same meaning as in section 61-16.2-02.

c. "Indian country" means:

(1) Land within the limits of any Indian reservation that is under the jurisdiction of the United States government and located within this state,

notwithstanding the issuance of any patent, and, including rights of way running through the reservation;

(2) Dependent Indian communities within this state whether within the original or subsequently acquired territory of the state; and

(3) Indian allotments within this state, the Indian titles to which have not been extinguished, including rights of way running through the allotted land.

2. The governing body of a city may exercise floodplain management authority under chapter 61-16.2. If a governing body of a city undertakes floodplain management, the governing body of a city shall enact a floodplain management ordinance over all persons and property within the boundaries of the city's zoning jurisdiction as provided under chapter 40-47 or within the exterior boundaries of Indian country.
3. Upon enactment of a floodplain management ordinance by a city under this section, the city auditor shall forward the ordinance to the department of water resources for inclusion in the central repository established under section 10 of this Act.
4. The city auditor of a city exercising floodplain management authority shall certify to the department of water resources by March thirty-first of each year that the city is undertaking floodplain management activities under chapter 61-16.2.
5. A city exercising floodplain management authority is not required to activate its zoning authority under chapter 40-47 before enacting a floodplain management ordinance.
6. In a city exercising floodplain management, the governing body of the city shall enforce an ordinance or regulation enacted under this section. The governing body of the city may impose enforcement duties on an officer, department, agency, or employee of the city.

SECTION 6. AMENDMENT. Subsection 2 of section 40-47-03 of the North Dakota Century Code is amended and reenacted as follows:

2. Provide for emergency management, including floodplain management as provided under section 5 of this Act. "Emergency management" means a comprehensive integrated system at all levels of government and in the private sector which provides for the development and maintenance of an effective capability to mitigate, prepare for, respond to, and recover from known and unforeseen hazards or situations, caused by an act of nature or man, which may threaten, injure, damage, or destroy lives, property, or our environment;

SECTION 7. AMENDMENT. Section 58-03-12 of the North Dakota Century Code is amended and reenacted as follows:

58-03-12. Basis for township zoning regulations and restrictions.

1. The regulations and restrictions established in any township zoning district must be made in accordance with a comprehensive plan with reasonable consideration as to

the character of such district, its peculiar suitability for particular uses, the normal growth of the municipality, and the various types of occupations, industries, and land uses within the area, and must be designed to facilitate traffic movement, encourage orderly growth and development of the municipality and adjacent areas, promote health, safety, and general welfare, and provide for emergency management, including and subject to floodplain management as provided under section 8 of this Act.

2. "Emergency management" means a comprehensive integrated system at all levels of government and in the private sector which provides for the development and maintenance of an effective capability to mitigate, prepare for, respond to, and recover from known and unforeseen hazards or situations, caused by an act of nature or man, which may threaten, injure, damage, or destroy lives, property, or our environment. The comprehensive plan must be a statement in documented text setting forth explicit goals, objectives, policies, and standards of the jurisdiction to guide public and private development within its control.

SECTION 8. A new section to chapter 58-06 of the North Dakota Century Code is created and enacted as follows:

Floodplain management ordinances - Requirements - Limitations - Definitions - Enforcement.

1. As used in this chapter:

a. "Floodplain management" has the same meaning as in section 61-16.2-02.

b. "Floodplain management ordinance" has the same meaning as in section 61-16.2-02.

c. "Indian country" means:

(1) Land within the limits of any Indian reservation that is under the jurisdiction of the United States government and located within this state.

notwithstanding the issuance of any patent, and, including rights of way running through the reservation;

(2) Dependent Indian communities within this state whether within the original or subsequently acquired territory of the state; and

(3) Indian allotments within this state, the Indian titles to which have not been extinguished, including rights of way running through the allotted land.

- 1 2. A board of township supervisors by written resolution may exercise floodplain
2 management under chapter 61-16.2. Upon the adoption of the resolution, the board of
3 township supervisors has exclusive authority to regulate floodplain management and
4 shall enact a floodplain management ordinance applying to all persons and property
5 within the boundaries of the township, except for persons and property within a city's
6 zoning jurisdiction as provided under chapter 40-47 or within the exterior boundaries of
7 Indian country. The township clerk shall forward a copy of the written resolution to the
8 county auditor of the county where the township is located and the department of
9 water resources for inclusion in the central repository established under section 10 of
10 this Act.
- 11 3. A township not exercising its floodplain management authority under this section is
12 subject to the floodplain management authority of the county under section 1 of this
13 Act.
- 14 4. After acquiring floodplain management authority from the county under subsection 2,
15 the township may relinquish its floodplain management authority back to the county
16 upon execution of a written agreement signed by the board of county commissioners
17 and the board of township supervisors. The county may not require the township to
18 convey an additional authority legally afforded to the township in exchange for the
19 written agreement. The relinquishment of authority may not become effective sooner
20 than sixty days after the board of township supervisors delivers a written notice of
21 proposed relinquishment to the appropriate board of county commissioners.
- 22 5. If a township previously exercised floodplain management authority and becomes
23 subject to county floodplain management authority under this section, the township
24 shall defend, indemnify, and hold harmless the county and its agents, officers, and
25 employees from and against a claim for damages arising from a township's
26 noncompliance with chapter 61-16.2 and the national flood insurance program
27 [42 U.S.C. 4001 et seq.].
- 28 6. Upon enactment of a floodplain management ordinance by a township under this
29 section, the township clerk shall forward the ordinance to the department of water
30 resources for inclusion in the central repository established under section 10 of this
31 Act.

1 7. The township clerk of a township exercising floodplain management authority shall
2 certify to the department of water resources by April thirtieth of each year the names of
3 the township supervisors and officers and that the township is undertaking floodplain
4 management activities under chapter 61-16.2.

5 8. A township exercising floodplain management authority is not required to activate its
6 zoning authority under chapter 58-03 before enacting a floodplain management
7 ordinance.

8 9. In a township exercising floodplain management, the board of township supervisors
9 shall enforce an ordinance or regulation enacted under this section. The board of
10 township supervisors may impose enforcement duties on an officer, department,
11 agency, or employee of the township.

12 **SECTION 9.** A new subsection to section 58-06-01 of the North Dakota Century Code is
13 created and enacted as follows:

14 If the township activates its floodplain management authority under section 8 of this
15 Act, to exercise floodplain management authority by enacting a floodplain
16 management ordinance.

17 **SECTION 10.** A new section to chapter 61-16.2 of the North Dakota Century Code is
18 created and enacted as follows:

19 **Central repository - Floodplain management authority - Accessible to the public.**

20 The department shall establish, operate, and maintain a publicly accessible electronic
21 central repository for local floodplain management ordinances, local floodplain management
22 agreements, and all annual certifications received by the department. The repository must
23 reflect which cities, townships, and counties have reported undertaking floodplain management
24 within the state. The department shall update the central repository by May thirty-first of each
25 year.

26 **SECTION 11. AMENDMENT.** Section 61-16.2-02 of the North Dakota Century Code is
27 amended and reenacted as follows:

28 **61-16.2-02. Definitions.**

- 29 1. In this chapter, unless the context or subject matter otherwise provides:
- 30 a. "Commission" means state water commission.
- 31 b. "Community" means any political subdivision that has the authority to zone.

- 1 c. "Conveyance" or "hydraulic conveyance" means a geometric characteristic of a
2 river or watercourse at a given point that determines the flow-carrying capacity at
3 that point.
- 4 d. "Department" means the department of water resources.
- 5 e. "District" means a water resource district, as defined in chapter 61-16.1.
- 6 f. "Flood fringe" means that portion of a floodplain outside of the floodway.
- 7 g. "Floodplain management" means a community-based effort to prevent or reduce
8 the risk of flooding. Floodplain management may be associated generally with
9 the national flood insurance program [42 U.S.C. 4001 et seq.].
- 10 h. "Floodplain management ordinance" means a building code, zoning, subdivision,
11 health, or special purpose ordinance, and any other use of police power, which
12 provide standards for communities to manage known flood hazards in all official
13 actions relating to land management and use. A floodplain management
14 ordinance may be associated with the national flood insurance program
15 [42 U.S.C. 4001 et seq.] to ensure participating communities meet state and
16 federal minimum standards.
- 17 i. "Floodway" or "regulatory floodway" means the channel of a river or other
18 watercourse and the adjacent land areas that must be reserved in order to
19 discharge the base flood without cumulatively increasing the water surface
20 elevation more than one foot [30.48 centimeters].
- 21 h.j. "Person" means any person, firm, partnership, association, corporation, limited
22 liability company, agency, or any other private or governmental organization,
23 which includes any agency of the United States, a state agency, or any political
24 subdivision of the state.

- 25 2. For the purposes of this chapter, the department shall follow the definitions in this
26 section and the definitions under the national flood insurance program [42 U.S.C. 4001
27 et seq.] and implementing regulations.