

**Fifty-eighth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 7, 2003**

SENATE BILL NO. 2362
(Senators Fischer, Espegard)
(Representatives Delmore, Maragos, Wieland)

AN ACT to amend and reenact sections 61-16.2-02, 61-16.2-06, 61-16.2-08, 61-16.2-09, 61-16.2-10, 61-16.2-13, and 61-16.2-14 of the North Dakota Century Code, relating to floodplain management.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 61-16.2-02 of the North Dakota Century Code is amended and reenacted as follows:

61-16.2-02. Definitions. In this chapter, unless the context or subject matter otherwise provides:

1. "Commission" means state water commission.
2. "Community" means any political subdivision that has the authority to zone.
3. "Conveyance" or "hydraulic conveyance" means a geometric characteristic of a river or watercourse at a given point that determines the flow-carrying capacity at that point.
4. "District" means a water resource district, as defined in chapter 61-16.1.
4. 5. "Flood fringe" means that portion of a floodplain outside of the floodway.
5. 6. "Floodway" or "regulatory floodway" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot [.30 meter].
7. "Person" means any person, firm, partnership, association, corporation, limited liability company, agency, or any other private or governmental organization, which includes, but is not limited to, any agency of the United States, a state agency, or any political subdivision of the state.
6. 8. "State engineer" means the state engineer appointed pursuant to section 61-03-01, who is also the chief executive officer of the commission, or, for the purpose of this chapter, the state engineer's designee.

For the purposes of this chapter, the state engineer shall, in addition to the definitions listed above, follow the definitions under the national flood insurance program [42 U.S.C. 4001 et seq.] and implementing regulations, which are hereby incorporated into and made a part of this chapter by reference.

SECTION 2. AMENDMENT. Section 61-16.2-06 of the North Dakota Century Code is amended and reenacted as follows:

61-16.2-06. Permissible floodway uses. Upon delineation of the floodway under the national flood insurance program [42 U.S.C. 4001 et seq.], uses shall be permitted within the floodway to the extent that they do not cause any ~~increase~~ measurable decrease in the ~~elevation of the base flood~~ hydraulic conveyance in the affected area.

SECTION 3. AMENDMENT. Section 61-16.2-08 of the North Dakota Century Code is amended and reenacted as follows:

61-16.2-08. Community standards - Permissible uses within flood fringe.

4. Upon delineation of the floodplain or floodway under the national flood insurance program [42 U.S.C. 4001 et seq.], the following uses shall be permitted within the flood fringe to the extent that they are not prohibited by any other ordinance, regulation, or statute:

- a. 1. Any use permitted in the ~~designated~~ regulatory floodway pursuant to section 61-16.2-06.
- b. 2. Structures, including residential, ~~commercial,~~ and ~~industrial~~ nonresidential structures; provided, that:

- (1) ~~Such structures meet the standards either adopted by the community or if the community has not adopted standards, then the structures must meet the standards set forth in paragraphs 2 and 3.~~

- (2) a. Residential structures are constructed on fill such that the lowest floor, including basements, is elevated to at least one foot [30.48 centimeters] above the base flood level elevation unless granted a residential basement floodproof exception under the national flood insurance program.

- (3) b. ~~Commercial and industrial~~ Nonresidential structures are either constructed on fill as specified in ~~paragraph 2~~ subdivision a elevated to at least one foot [.30 meter] above the base flood elevation or are adequately floodproofed up to an elevation no lower than ~~one foot~~ two feet [30.48 centimeters .61 meter] above the base flood level elevation. Such floodproofing shall be in accordance with the standards either adopted by the community under the national flood insurance program [42 U.S.C. 4001 et seq.] or under this chapter, whichever are more restrictive.

- 2. ~~a.~~ Standards adopted by the community for structures in the flood fringe must meet or exceed the following:

- (1) ~~Residential structures must be constructed on fill so that the lowest floor, including basements, is elevated to or above the base flood level unless granted a residential floodproof exception under the national flood insurance program [Pub. L. 90-448; 82 Stat. 572; 42 U.S.C. 4001 et seq.].~~

- (2) ~~Commercial and industrial structures must be constructed on fill as specified in subdivision a or must be adequately floodproofed up to an elevation no lower than the base flood level. The floodproofing must be in accordance with the standards adopted by the community under the national flood insurance program [Pub. L. 90-448; 82 Stat. 572; 42 U.S.C. 4001 et seq.] or under this chapter, whichever are more restrictive.~~

- b. ~~Communities are encouraged to adopt standards that require residential structures to be constructed so that the lowest floor is elevated to at least one foot [30.48 centimeters] above the base flood level and commercial and industrial structures are constructed so that the lowest floor is elevated to at least one foot [30.48 centimeters] above the base flood level or the structures are adequately floodproofed up to an elevation no lower than one foot [30.48 centimeters] above the base flood level.~~

SECTION 4. AMENDMENT. Section 61-16.2-09 of the North Dakota Century Code is amended and reenacted as follows:

61-16.2-09. Enforcement and penalties.

1. It is unlawful for any person to establish any use which is not in accordance with this chapter within any floodplain without prior written approval of the affected community. Every use placed in the floodplain in violation of this chapter or a floodplain management ordinance adopted under or in compliance with the provisions of this chapter, or adopted under the national flood insurance program [42 U.S.C. 4001 et seq.], is a public nuisance and the construction or installation thereof may be enjoined by an action brought by the state engineer or the appropriate community. The state engineer or community may obtain a court order directing the removal or elimination of such public nuisance; or authorizing the state engineer or community to remove the public nuisance, or cause to be removed, at the expense of the owner. A person who violates any of the provisions of this chapter is guilty of a class B misdemeanor.
2. ~~This chapter shall not apply to any construction or structures existing or for which a building permit has been issued in the floodplain prior to the adoption by the community of floodplain management ordinances under the national flood insurance program [42 U.S.C. 4001 et seq.].~~
3. Any community which fails to adopt or enforce floodplain management ordinances as required under the national flood insurance program [42 U.S.C. 4001 et seq.] by this chapter shall not be eligible to receive any flood disaster assistance, financial or otherwise, from this state pursuant to chapter 37-17.1 or any other state funds available under any other authority for flood relief.

SECTION 5. AMENDMENT. Section 61-16.2-10 of the North Dakota Century Code is amended and reenacted as follows:

61-16.2-10. Exceptions. This chapter shall not apply to the following actions or construction, as long as the flood carrying capacity within the altered or relocated portion of any watercourse is maintained, and the cumulative effect of any such action or construction will not increase the water surface elevation of the base flood more than one foot [30.48 centimeters] at any point:

1. Ring dikes around individual farmsteads which are not constructed with tiebacks to existing roadways or dikes. For the purposes of this section, "ring dike" means an embankment constructed of earth or other suitable materials for purposes of enclosing a farmstead consisting of a farm dwelling and associated farm buildings.
2. Agricultural dikes along the Red River of the North and Bois de Sioux River which are constructed pursuant to and in accordance with any joint and cooperative agreements between North Dakota and Minnesota for the establishment of criteria for authorizing dikes and other flood control structures and measures on the Red River of the North and Bois de Sioux River.

Any exception to the national flood insurance program [42 U.S.C. 4001 et seq.] and implementing regulations granted by the appropriate federal agency to a community which is participating in the national flood insurance program [42 U.S.C. 4001 et seq.] shall be an approved exception pursuant to this section. ~~On July 1, 1981, the state engineer shall immediately apply to the appropriate federal agency for an exception for the uses specifically described in this section.~~

SECTION 6. AMENDMENT. Section 61-16.2-13 of the North Dakota Century Code is amended and reenacted as follows:

61-16.2-13. Flood insurance. ~~All communities~~ Communities that have residential, ~~commercial, or industrial~~ and nonresidential structures in areas subject to excessive flooding, as determined by the state engineer, shall participate in the national flood insurance program [Pub. L. 90-448] and Acts amendatory thereof or supplementary thereto, so that the people of North Dakota may have the opportunity to indemnify themselves from future flood losses through the purchase of this insurance. A community is not required to participate in the program if all of the land under the jurisdiction of the community is enrolled as a result of another community's participation in the program.

SECTION 7. AMENDMENT. Section 61-16.2-14 of the North Dakota Century Code is amended and reenacted as follows:

61-16.2-14. State engineer review of development in mapped regulatory floodways - Exceptions. Before issuing a permit or authorization to allow a use in a mapped regulatory floodway, the community responsible for permitting or authorizing such use shall notify the state engineer of the proposed use. The state engineer shall determine whether a functioning hydraulic model is needed to measure the effect of the proposed use. Upon the request of the state engineer, the community shall submit to the state engineer for review all technical documentation, including a functioning hydraulic model and other technical information analyzing needed for the state engineer's review to analyze the proposed use and identifying to identify its proposed impact. Upon the request of the state engineer, the community shall provide additional information needed by the state engineer for the state engineer's review. The state engineer shall complete the state engineer's review within thirty days after receiving the technical documentation. Upon completion of the state engineer's review, the state engineer shall notify the community whether the proposed use is in compliance with state and federal law. A community may apply to the state engineer for an exemption on a case-by-case basis from this section. The state engineer may grant the exemption if the state engineer determines that the community has the technical hydraulic expertise to, by using its own technical review, can determine if the proposed use is in compliance with state and federal law.

President of the Senate

Speaker of the House

Secretary of the Senate

Chief Clerk of the House

This certifies that the within bill originated in the Senate of the Fifty-eighth Legislative Assembly of North Dakota and is known on the records of that body as Senate Bill No. 2362.

Senate Vote: Yeas 45 Nays 0 Absent 2

House Vote: Yeas 94 Nays 0 Absent 0

Secretary of the Senate

Received by the Governor at _____ M. on _____, 2003.

Approved at _____ M. on _____, 2003.

Governor

Filed in this office this _____ day of _____, 2003,

at _____ o'clock _____ M.

Secretary of State