

Sixty-ninth
Legislative Assembly
of North Dakota

PROPOSED AMENDMENTS TO

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, relating to floodplain
4 management powers and ordinances for counties, cities, and townships; and to amend and
5 reenact subsection 2 of section 11-33-03, subsection 67 of section 40-05-01, subsection 2 of
6 section 40-47-03, and sections 58-03-12 and 61-16.2-02 of the North Dakota Century Code,
7 relating to county, city, and township floodplain management ordinances and to provide
8 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.

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

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

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

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

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

28 4. After acquiring floodplain management authority from the county under subsection 3,
29 the township may relinquish its floodplain management authority back to the county
30 upon execution of a written agreement signed by the board of county commissioners
31 and the board of township supervisors. **The county may not require the township to**

1 convey an additional authority legally afforded to the township in exchange for the
2 written agreement. The relinquishment of authority may not become effective sooner
3 than sixty days after the board of township supervisors delivers a written notice of
4 proposed relinquishment to the appropriate board of county commissioners.

5 5. If a township previously exercised floodplain management authority and becomes
6 subject to county floodplain management authority under this section, the township
7 shall defend, indemnify, and hold harmless the county and its agents, officers, and
8 employees from and against a claim for damages arising from a township's
9 noncompliance with chapter 61-16.2 and the national flood insurance program
10 [42 U.S.C. 4001 et seq.].

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

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

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

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

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

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

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

- 1 2. To provide for emergency management, including floodplain management as provided
2 under section 1 of this Act. "Emergency management" means a comprehensive
3 integrated system at all levels of government and in the private sector which provides
4 for the development and maintenance of an effective capability to mitigate, prepare for,
5 respond to, and recover from known and unforeseen hazards or situations, caused by
6 an act of nature or man, which may threaten, injure, damage, or destroy lives,
7 property, or our environment.

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

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

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

18 **Floodplain management ordinances - Requirements - Limitations - Definitions -**
19 **Enforcement.**

20 1. As used in this chapter:

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

22 b. "Floodplain management ordinance" has the same meaning as in section
23 61-16.2-02.

24 c. "Indian country" means:

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

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

- 1 (3) Indian allotments within this state, the Indian titles to which have not been
2 extinguished, including rights of way running through the allotted land.
- 3 2. The governing body of a city may exercise floodplain management authority under
4 chapter 61-16.2. If a governing body of a city undertakes floodplain management, the
5 governing body of a city shall enact a floodplain management ordinance over all
6 persons and property within the boundaries of the city's zoning jurisdiction as provided
7 under chapter 40-47 or within the exterior boundaries of Indian country.
- 8 3. Upon enactment of a floodplain management ordinance by a city under this section,
9 the city auditor shall forward the ordinance to the department of water resources for
10 inclusion in the central repository established under section 10 of this Act.
- 11 4. The city auditor of a city exercising floodplain management authority shall certify to the
12 department of water resources by March thirty-first of each year that the city is
13 undertaking floodplain management activities under chapter 61-16.2.
- 14 5. A city exercising floodplain management authority is not required to activate its zoning
15 authority under chapter 40-47 before enacting a floodplain management ordinance.
- 16 6. In a city exercising floodplain management, the governing body of the city shall
17 enforce an ordinance or regulation enacted under this section. The governing body of
18 the city may impose enforcement duties on an officer, department, agency, or
19 employee of the city.

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

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

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

1 **58-03-12. Basis for township zoning regulations and restrictions.**

2 1. The regulations and restrictions established in any township zoning district must be
3 made in accordance with a comprehensive plan with reasonable consideration as to
4 the character of such district, its peculiar suitability for particular uses, the normal
5 growth of the municipality, and the various types of occupations, industries, and land
6 uses within the area, and must be designed to facilitate traffic movement, encourage
7 orderly growth and development of the municipality and adjacent areas, promote
8 health, safety, and general welfare, and provide for emergency management, including
9 and subject to floodplain management as provided under section 8 of this Act.

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

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

20 **Floodplain management ordinances - Requirements - Limitations - Definitions -**

21 **Enforcement.**

22 1. As used in this chapter:

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

24 b. "Floodplain management ordinance" has the same meaning as in section
25 61-16.2-02.

26 c. "Indian country" means:

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

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

1 6. Upon enactment of a floodplain management ordinance by a township under this
2 section, the township clerk shall forward the ordinance to the department of water
3 resources for inclusion in the central repository established under section 10 of this
4 Act.

5 7. The township clerk of a township exercising floodplain management authority shall
6 certify to the department of water resources by ~~March thirty-first~~April thirtieth of each
7 year the names of the township supervisors and officers and that the township is
8 undertaking floodplain management activities under chapter 61-16.2.

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

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

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

18 If the township activates its floodplain management authority under section 8 of this
19 Act, to exercise floodplain management authority by enacting a floodplain
20 management ordinance.

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

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

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

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

1 **61-16.2-02. Definitions.**

2 1. In this chapter, unless the context or subject matter otherwise provides:

3 a. "Commission" means state water commission.

4 b. "Community" means any political subdivision that has the authority to zone.

5 c. "Conveyance" or "hydraulic conveyance" means a geometric characteristic of a
6 river or watercourse at a given point that determines the flow-carrying capacity at
7 that point.

8 d. "Department" means the department of water resources.

9 e. "District" means a water resource district, as defined in chapter 61-16.1.

10 f. "Flood fringe" means that portion of a floodplain outside of the floodway.

11 g. "Floodplain management" means a community-based effort to prevent or reduce
12 the risk of flooding. Floodplain management may be associated generally with
13 the national flood insurance program [42 U.S.C. 4001 et seq.].

14 h. "Floodplain management ordinance" means a building code, zoning, subdivision,
15 health, or special purpose ordinance, and any other use of police power, which
16 provide standards for communities to manage known flood hazards in all official
17 actions relating to land management and use. A floodplain management
18 ordinance may be associated with the national flood insurance program
19 [42 U.S.C. 4001 et seq.] to ensure participating communities meet state and
20 federal minimum standards.

21 i. "Floodway" or "regulatory floodway" means the channel of a river or other
22 watercourse and the adjacent land areas that must be reserved in order to
23 discharge the base flood without cumulatively increasing the water surface
24 elevation more than one foot [30.48 centimeters].

25 h-j. "Person" means any person, firm, partnership, association, corporation, limited
26 liability company, agency, or any other private or governmental organization,
27 which includes any agency of the United States, a state agency, or any political
28 subdivision of the state.

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