

**HOUSE BILL NO. 1167
with Senate Amendments**

Fifty-sixth
Legislative Assembly
of North Dakota

HOUSE BILL NO. 1167

Introduced by

Natural Resources Committee

(At the request of the State Engineer)

A BILL for an Act to create and enact a new section to chapter 11-33.2, a new subsection to section 61-16.2-02, and a new section to chapter 61-16.2 of the North Dakota Century Code, relating to identifying the floodplain on plats, definition of community, and state engineer review of uses in floodways; to amend and reenact subsection 2 of section 11-33-03, subsection 2 of section 40-47-03, subsection 11 of section 40-50.1-01, sections 58-03-12, 61-16.2-04, 61-16.2-08, and 61-16.2-13 of the North Dakota Century Code, relating to emergency management, identifying floodplain on plats, delineation of the floodway for lakes, elevation of structure in the floodway, and mandatory community participation in the flood insurance program; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Subsection 2 of section 11-33-03 of the North Dakota Century Code is amended and reenacted as follows:

2. ~~To secure safety from fire, flood, and other dangers~~ provide for emergency management. "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 2. A new section to chapter 11-33.2 of the North Dakota Century Code is created and enacted as follows:

Contents of plat - Location and elevation of lakes, rivers, or streams - Notification of floodplain. Whenever land, subject to regulation under this chapter, abutting upon any lake, river, or stream is subdivided, the subdivider must show on the plat or other document

1 containing the subdivision a contour line denoting the present shoreline, water elevation, and
2 the date of the survey. If any part of a plat or other document lies within the one hundred year
3 floodplain of a lake, river, or stream as designated by the state engineer or a federal agency,
4 the mean sea level elevation of that one hundred year flood must be denoted on the plat by
5 numerals. Topographic contours at a two-foot [60.96-centimeter] contour interval referenced to
6 mean sea level must be shown for the portion of the plat lying within the floodplain. All
7 elevations must be referenced to a durable bench mark described on the plat with its location
8 and elevation to the nearest hundredth of a foot [0.3048 centimeters], which must be given in
9 mean sea level datum.

10 **SECTION 3. AMENDMENT.** Subsection 2 of section 40-47-03 of the North Dakota
11 Century Code is amended and reenacted as follows:

- 12 2. ~~Secure safety from fire, panic, and other dangers~~ Provide for emergency
13 management. "Emergency management" means a comprehensive integrated
14 system at all levels of government and in the private sector which provides for the
15 development and maintenance of an effective capability to mitigate, prepare for,
16 respond to, and recover from known and unforeseen hazards or situations, caused
17 by an act of nature or man, which may threaten, injure, damage, or destroy lives,
18 property, or our environment;

19 **SECTION 4. AMENDMENT.** Subsection 11 of section 40-50.1-01 of the 1997
20 Supplement to the North Dakota Century Code is amended and reenacted as follows:

- 21 11. Any plat which includes lands abutting upon any lake, river, or stream must show;
22 ~~for the purpose of information only,~~ a contour line denoting the present shoreline,
23 water elevation, and the date of survey. If any part of a plat lies within the one
24 hundred year floodplain of a lake, river, or stream as designated by the state ~~water~~
25 ~~commission~~ engineer or a federal ~~emergency management~~ agency, the mean sea
26 level elevation of that one hundred year flood must be denoted on the plat by
27 numerals. Topographic contours at a two-foot [60.96-centimeter] contour interval
28 referenced to mean sea level must be shown for the portion of the plat lying within
29 the floodplain. All elevations must be referenced to a durable bench mark
30 described on the plat ~~together~~ with its location and elevation to the nearest

hundredth of a foot [0.3048 centimeters], which must be given in mean sea level datum.

SECTION 5. 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. 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, ~~and~~ promote health, safety, and general welfare, and provide for emergency management. "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 6. A new subsection to section 61-16.2-02 of the North Dakota Century Code is created and enacted as follows:

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

SECTION 7. AMENDMENT. Section 61-16.2-04 of the North Dakota Century Code is amended and reenacted as follows:

61-16.2-04. Delineation of floodplains and floodways. The state engineer shall assist communities in preparing and obtaining data and other necessary information for the delineation of floodplains and floodways. When the state engineer determines that sufficient technical information is available for the delineation of floodplains and floodways on a watercourse or lake, the state engineer shall then consult with the appropriate district and each affected community. The state engineer, the affected community, and the appropriate district shall consider flooding experiences, plans to avoid potential hazards, estimates of economic impacts of flooding on the community, both historical and prospective, and such other data as

the district and community may consider appropriate. Upon obtaining and developing the necessary information for delineation of the floodplain and floodway, the state engineer and the affected community shall notify the appropriate federal agency and request that such material be used to delineate the floodplain and floodway under the national flood insurance program [42 U.S.C. 4001 et seq.]. The regulatory floodway must be able to carry the waters of the base flood without cumulatively increasing the water surface elevation of the base flood more than one foot [30.48 centimeters] at any point.

SECTION 8. 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.

1. 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:

~~4.~~ a. Any use permitted in the designated floodway pursuant to section 61-16.2-06.

~~2.~~ b. Structures, including residential, commercial, and industrial structures; provided, that:

~~a.~~ (1) Such structures meet the standards either adopted by the community or ~~under this chapter, whichever are more restrictive~~ if the community has not adopted standards, then the structures must meet the standards set forth in paragraphs 2 and 3.

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

~~c.~~ (3) Commercial and industrial structures are either constructed on fill as specified in ~~subdivision b~~ paragraph 2 or are adequately floodproofed up to an elevation no lower than one foot [30.48 centimeters] above the base flood level. 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 9. AMENDMENT. Section 61-16.2-13 of the North Dakota Century Code is
amended and reenacted as follows:

61-16.2-13. Flood insurance ~~–State policy.~~ It is the policy of this state that all
communities 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

1 community is not required to participate in the program if all of the land under the jurisdiction of
2 the community is enrolled as a result of another community's participation in the program.

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

5 **State engineer review of development in mapped floodways - Exceptions.** Before
6 issuing a permit or authorization to allow a use in a mapped regulatory floodway, the
7 community responsible for permitting or authorizing such use shall submit to the state engineer
8 for review all technical documentation, including a functioning hydraulic model and other
9 information analyzing the proposed use and identifying its proposed impact. Upon the request
10 of the state engineer, the community shall provide additional information needed by the state
11 engineer for the state engineer's review. The state engineer shall complete the state
12 engineer's review within thirty days after receiving the technical documentation. Upon
13 completion of the state engineer's review, the state engineer shall notify the community whether
14 the proposed use is in compliance with state and federal law. A community may apply to the
15 state engineer for an exemption from this section. The state engineer may grant the exemption
16 if the state engineer determines that the community has the technical hydraulic expertise to
17 determine if the proposed use is in compliance with state and federal law.

18 **SECTION 11. EFFECTIVE DATE.** Section 8 of this Act becomes effective on
19 August 1, 2000.