

HOUSE BILL NO. 1167

Introduced by

Natural Resources Committee

(At the request of the State Engineer)

1 A BILL for an Act to create and enact a new section to chapter 11-33.2, a new subsection to
2 section 61-16.2-02, and a new section to chapter 61-16.2 of the North Dakota Century Code,
3 relating to identifying the floodplain on plats, definition of community, and state engineer review
4 of uses in floodways; and to amend and reenact subsection 2 of section 11-33-03, subsection 2
5 of section 40-47-03, subsection 11 of section 40-50.1-01, sections 58-03-12, 61-16.2-04,
6 61-16.2-08, and 61-16.2-13 of the North Dakota Century Code, relating to emergency
7 management, identifying floodplain on plats, delineation of the floodway for lakes, elevation of
8 structure in the floodway, and mandatory community participation in the flood insurance
9 program.

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

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

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

20 **SECTION 2.** A new section to chapter 11-33.2 of the North Dakota Century Code is
21 created and enacted as follows:

22 **Contents of plat - Location and elevation of lakes, rivers, or streams - Notification**
23 **of floodplain.** Whenever land, subject to regulation under this chapter, abutting upon any lake,
24 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

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

3 **SECTION 5. AMENDMENT.** Section 58-03-12 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **58-03-12. Basis for township zoning regulations and restrictions.** The regulations
6 and restrictions established in any township zoning district must be made in accordance with a
7 comprehensive plan with reasonable consideration as to the character of such district, its
8 peculiar suitability for particular uses, the normal growth of the municipality, and the various
9 types of occupations, industries, and land uses within the area, ~~and~~. The comprehensive plan
10 must be designed to facilitate traffic movement, encourage orderly growth and development of
11 the municipality and adjacent areas, and promote health, safety, and general welfare, and
12 provide for emergency management. "Emergency management" means a comprehensive
13 integrated system at all levels of government and in the private sector which provides for the
14 development and maintenance of an effective capability to mitigate, prepare for, respond to,
15 and recover from known and unforeseen hazards or situations, caused by an act of nature or
16 man, which may threaten, injure, damage, or destroy lives, property, or our environment. The
17 comprehensive plan must be a statement in documented text setting forth explicit goals,
18 objectives, policies, and standards of the jurisdiction to guide public and private development
19 within its control.

20 **SECTION 6.** A new subsection to section 61-16.2-02 of the North Dakota Century Code
21 is created and enacted as follows:

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

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

25 **61-16.2-04. Delineation of floodplains and floodways.** The state engineer shall
26 assist communities in preparing and obtaining data and other necessary information for the
27 delineation of floodplains and floodways. When the state engineer determines that sufficient
28 technical information is available for the delineation of floodplains and floodways on a
29 watercourse or lake, the state engineer shall then consult with the appropriate district and each
30 affected community. The state engineer, the affected community, and the appropriate district
31 shall consider flooding experiences, plans to avoid potential hazards, estimates of economic

1 impacts of flooding on the community, both historical and prospective, and such other data as
2 the district and community may consider appropriate. Upon obtaining and developing the
3 necessary information for delineation of the floodplain and floodway, the state engineer and the
4 affected community shall notify the appropriate federal agency and request that such material
5 be used to delineate the floodplain and floodway under the national flood insurance program
6 [42 U.S.C. 4001 et seq.]. The regulatory floodway must be able to carry the waters of the base
7 flood without cumulatively increasing the water surface elevation of the base flood more than
8 one foot [30.48 centimeters] at any point.

9 **SECTION 8. AMENDMENT.** Section 61-16.2-08 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **61-16.2-08. Communities to adopt standards - Permissible uses within flood**
12 **fringe.**

- 13 1. Upon delineation of the floodplain or floodway under the national flood insurance
14 program [42 U.S.C. 4001 et seq.], the following uses shall be permitted within the
15 flood fringe to the extent that they are not prohibited by any other ordinance,
16 regulation, or statute:
- 17 ~~4.~~ a. Any use permitted in the designated floodway pursuant to section 61-16.2-06.
18 ~~2.~~ b. Structures, including residential, commercial, and industrial structures;
19 provided, that:
- 20 ~~a.~~ (1) Such structures meet the standards either adopted by the community or
21 under this chapter, whichever are more restrictive.
- 22 ~~b.~~ (2) Residential structures are constructed on fill such that the lowest floor,
23 including basements, is elevated to or above the base flood level
24 unless granted a residential floodproof exception under the national
25 flood insurance program.
- 26 ~~e.~~ (3) Commercial and industrial structures are either constructed on fill as
27 specified in ~~subdivision b~~ paragraph 2 or are adequately floodproofed
28 up to an elevation no lower than the base flood level. Such
29 floodproofing shall be in accordance with the standards either adopted
30 by the community under the national flood insurance program

1 [42 U.S.C. 4001 et seq.] or under this chapter, whichever are more
2 restrictive.

3 2. Within one year of the effective date of this Act, each community shall adopt
4 standards governing uses permitted within the flood fringe. The standards must
5 meet or exceed those set forth in subsection 1 and communities are encouraged to
6 adopt standards that require residential structures to be constructed so that the
7 lowest floor is elevated to at least one foot [30.48 centimeters] above the base
8 flood level and commercial and industrial structures are either constructed so that
9 the lowest floor is elevated to at least one foot [30.48 centimeters] above the base
10 flood level or are adequately floodproofed up to an elevation no lower than one foot
11 [30.48 centimeters] above the base flood level. Uses permitted within the
12 jurisdiction of any community that does not adopt standards governing uses
13 permitted within the flood fringe within one year of the effective date of this Act are
14 subject to provisions of subsection 3.

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

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

20 b. Structures, including residential, commercial, and industrial structures,
21 provided, that:

22 (1) Such structures meet the standards either adopted by the community or
23 under this chapter, whichever are more restrictive.

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

28 (3) Commercial and industrial structures are either constructed on fill as
29 specified in paragraph 2 or are adequately floodproofed up to an
30 elevation no lower than one foot [30.48 centimeters] above the base
31 flood level. Such floodproofing must be in accordance with the

1 standards either adopted by the community under the national flood
2 insurance program [42 U.S.C. 4001 et seq.] or under this chapter,
3 whichever are more restrictive.

4 **SECTION 9. AMENDMENT.** Section 61-16.2-13 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **61-16.2-13. Flood insurance –~~State policy.~~** ~~It is the policy of this state that all~~ All
7 communities ~~subject to excessive flooding~~ shall participate in the national flood insurance
8 program [Pub. L. 90-448] and Acts amendatory thereof or supplementary thereto, so that the
9 people of North Dakota may have the opportunity to indemnify themselves from future flood
10 losses through the purchase of this insurance. A community is not required to participate in the
11 program if all of the land under the jurisdiction of the community is enrolled as a result of
12 another community's participation in the program.

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

15 **State engineer review of development in mapped floodways.** Before issuing a
16 permit or authorization to allow a use in a mapped regulatory floodway, the community
17 responsible for permitting or authorizing such use shall submit to the state engineer for review
18 all technical documentation, including a functioning hydraulic model and other information
19 analyzing the proposed use and identifying its proposed impact. Upon the request of the state
20 engineer, the community shall provide additional information needed by the state engineer for
21 the state engineer's review. The state engineer shall complete the state engineer's review
22 within thirty days after receiving the technical documentation. Upon completion of the state
23 engineer's review, the state engineer shall notify the community whether the proposed use is in
24 compliance with state and federal law.