



North Dakota Legislative Council

Prepared for the Agriculture and Natural Resources Committee
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TOWNSHIP PARTICIPATION IN THE NATIONAL FLOOD INSURANCE PROGRAM STUDY - BACKGROUND MEMORANDUM

Section 1 of Senate Bill No. 2365 (2023) ([appendix](#)) directs the Legislative Management to study the roles of the Insurance Commissioner, Department of Emergency Services, and Department of Water Resources (DWR) in relation to the tracking and updating of the relevant primary land use authority on lands outside a municipality's jurisdiction. The study must:

- Include a method of tracking all organized townships within the state and maintaining updated contact information, certified annually by December 31.
- Consider a formal process for organized townships to request, establish, and track the yielding of land use authority to an adjacent jurisdiction.
- Consider how insurance producers access the necessary information, including updated contact information of the authority, to appropriately associate potential insurance policy holders with the relevant land use authority for the purposes of the Federal Emergency Management Agency's (FEMA) National Flood Insurance Program (NFIP).
- Consider how a member of the public may access the relevant land use authority associated with a specific parcel of land.

Testimony provided by a representative of the Insurance Department during the 2023 legislative session in support of the study indicated some North Dakota residents had their NFIP policies canceled because the township in which the property was situated did not have a participation agreement in place to allow eligibility for NFIP coverage. The inability of insurance agents to access accurate information regarding which townships have a valid participation agreement in place further exacerbates the issue. Testimony indicated up to 100 NFIP policies sold in the state may be ineligible for coverage due to the township lacking the necessary participation agreement.

BACKGROUND

The National Flood Insurance Program was established by the National Flood Insurance Act of 1968¹ (NFIA). The goal of the NFIP is to offer primary flood insurance to properties subject to significant flood risk and to reduce flood risk through effective floodplain management standards.² Communities volunteer to participate in the NFIP to have access to federal flood insurance. To participate in the NFIP, the community must adopt minimum land use standards. The Federal Emergency Management Agency administers the NFIP. A department within FEMA, the Federal Insurance and Mitigation Administration (FIMA), is the specialized department designed to manage the NFIP.³ The Federal Emergency Management Agency manages a Risk Mapping, Assessment, and Planning (Risk MAP) program to create Flood Insurance Rate Maps (FIRMs).⁴ These FIRMs designate Special Flood Hazard Areas (SFHAs), which are areas at risk of annual flooding of 1 percent or greater. Participating communities must adopt a flood map and enact minimum standards to control development within an SFHA. The Federal Emergency Management Agency encourages communities to bolster their floodplain standards by making reduced insurance rates available through the Community Rating System (CRS).⁵ Under 44 CFR 59.24, the NFIP reserves the right to place participating communities on probation or in suspension for failing to adopt FIRMs or maintain minimum floodplain standards. In communities that do not participate in the NFIP or have been suspended, individuals cannot

¹ Title XIII, Pub.L. 90-448; 82 Stat. 572; 42 U.S.C. §4001 et seq.

² *Introduction to the National Flood Insurance Program (NFIP)*, Congressional Research Service, January 6, 2023. (<https://crsreports.congress.gov/product/pdf/R/R44593>).

³ *Id.*

⁴ *Id.*

⁵ *Id.*

purchase NFIP insurance. Without participation in the NFIP, communities must overcome numerous challenges before being considered for federal disaster assistance in flood-hazard areas.⁶

As of December 2022, the NFIP had nearly 5 million flood insurance policies providing over \$1.3 trillion in coverage. The program collects about \$4.6 billion in revenue from policyholders' premiums, fees, and surcharges. Nationally, as of January 2023, over 22,000 communities in 56 states and jurisdictions participated in the NFIP. According to FEMA, the NFIP's flood management standards have saved the nation almost \$2.4 billion annually in flood losses avoided.⁷

STATE LAW

Insurance Department

North Dakota Century Code Chapter 26.1-01 defines the duties and powers of the Insurance Commissioner. Section 26.1-01-03, in part, requires the Insurance Commissioner to "see that all the laws of this state respecting insurance companies and benevolent societies are executed faithfully" and "report in detail to the attorney general any violation of law relative to insurance companies and their officers or agents." Additionally, Section 26.1-01-07 allows the Insurance Commissioner to issue licenses to an insurance professional and collect fees in connection with the issuance of a license. The Insurance Commissioner and the Insurance Department regulate insurance professional in North Dakota, including those who sell flood insurance.

Department of Water Resources

Chapter 61-16.2 provides DWR authority to administer floodplain management practices in North Dakota. Under this chapter, DWR is required to collect and distribute information relating to floodplain management and coordinate local, state, and federal floodplain management activities. The department also is tasked with encouraging appropriate federal agencies to make their flood control planning data available to communities and districts for planning purposes and to allow adequate local participation in the planning process. The department must assist communities and districts in their floodplain management activities in cooperation with the federal and state entities. Section 61-16.2-05 requires DWR to review a community's floodplain management ordinances. During the ordinance review, DWR must verify whether a community's floodplain management ordinances comply with Chapter 61-16.2 and the minimum standards set forth under the NFIP. Section 61-16.2-13 requires communities with residential and nonresidential structures in areas subject to excessive flooding, as determined by DWR, to participate in the NFIP. However, a community is not required to participate in the NFIP 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 61-16.2-02(1)(b) defines "community" as any political subdivision that has the authority to zone.

Township Zoning

In most states, zoning is delegated to municipalities or counties, not townships. According to the National Association of Towns and Townships, "towns and townships only operate in 20 states."⁸ According to the Urban Institute, only eight states, including North Dakota, allow townships or counties to zone land outside an incorporated city, while allowing municipalities to zone land within a city.⁹ Section 58-03-11 permits a board of township supervisors to establish one or more zoning districts for the purpose of zoning and land use within an organized township. Section 58-03-12 permits a township to exercise zoning 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." Under Section 58-03-12, "emergency management" is defined as "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." Flooding falls under the definition of "emergency management."

Chapter 54-40.5 permits an organized township to transfer zoning authority to a county through a written agreement. If an organized township retains the power to zone, the organized township is considered a "community"

⁶ *Id.*

⁷ *Id.*

⁸ *Grassroots Governments and the People They Serve*, National Association of Towns and Townships, September 2023.

(<https://michigantownships.org/townships-in-the-us/#:~:text=Today%2C%20towns%20and%20townships%20operate,York%2C%20New%20Jersey%20and%20Pennsylvania>).

⁹ *Who Zones? Mapping Land-Use Authority across the United States*, The Urban Institute, December 2019. (<https://www.urban.org/urban-wire/who-zones-mapping-land-use-authority-across-us>).

as defined in Chapter 61-16.2 and its residents are subject to the requirements of all communities under that Chapter.

Department of Emergency Services

Chapter 37-17.1, known as the North Dakota Disaster Act of 1985, governs the Department of Emergency Services. Under Section 37-17.1-02.1, the Department of Emergency Services consists of the State Radio Division and the Division of Homeland Security, overseen by the Adjutant General. The Adjutant General is authorized to appoint a separate director of each division. As it relates to disasters, Section 37-17.1-02 requires the Department of Emergency Services to provide for "a statewide emergency management system embodying all aspects of prevention, mitigation, preparedness, response, and recovery and incorporating the principles of the national incident management system and its incident command system, as well as other applicable federal mandates." Under Section 37-17.1-04(3), the term "disaster" includes, among other events, flooding.

FEDERAL LAW

National Flood Insurance Program Data Collection, Mapping, and Minimum Standards

Under 42 U.S.C. 4104 and 44 CFR 65.1, FEMA is responsible for undertaking Flood Insurance Studies (FISs) nationwide to identify areas with flood hazards, review and determine flood risks, and create insurance zones. In coordination with participating communities, FEMA develops flood maps called FIRMs using these FISs which depict the community's flood risk and floodplain. 42 U.S.C 4101(b) requires the administrator of FEMA to review, update, and maintain FIRMs in accordance with the NFIA.

Under 42 U.S.C. 4102(c), FEMA has developed a set of minimum floodplain management standards that are intended to constrict the development of land that is exposed to flood damage where appropriate; guide the development of proposed construction away from locations which are threatened by flood hazards; assist in reducing damage caused by floods; and otherwise improve the long-range land management and use of flood-prone areas. 42 U.S.C 4022 requires communities to adopt these minimum floodplain management standards to participate in the NFIP. The Federal Emergency Management Agency has set forth the minimum standards required for participation in the NFIP in 44 CFR 60.3. Although the standards are adopted as federal regulations, the standards only have the force of law when they are adopted and enforced by a state or local government.¹⁰ Ultimately, legal enforcement of the floodplain management standards is the responsibility of the participating NFIP community.¹¹ When a community enrolls in the NFIP, the community will be added to a central database. The Federal Emergency Management Agency attempts to track all participating communities in the NFIP's "Community Status Book."¹²

APPROACHES BY ADJACENT STATES

Montana

A township form of government does not exist in Montana. Thus, the need to track and compile a list of townships within the state is not necessary. Minnesota and South Dakota, however, do have township forms of government.

Minnesota

Minnesota Statutes Chapters 365 - 368 govern general laws, service districts, powers of a board, officers, and special provisions related to towns and townships. The Minnesota Association of Townships provides support for the township form of government through advocacy, the provision of educational programming, and assistance in securing resources for local governments. The Minnesota Association of Townships is administered by a board comprised of 13 directors, each representing a geographical district within the state. Though not an exhaustive list, the State of Minnesota publishes a list of organized townships with the township's corresponding website. However, the state does not provide the public a certified list of organized townships or a database indicating land use authority among the several townships. The state also does not publish a list of political subdivisions participating in the NFIP.

South Dakota

South Dakota Codified Laws Title 8 governs townships. Title 8 provides for the establishment, division, and organization of townships; powers and obligations of organized townships; township meetings and elections; township officers; township board of supervisors; the clerk; the treasurer; and township contracts, purchases, fiscal

¹⁰ *Introduction to the National Flood Insurance Program (NFIP)*, Congressional Research Service, January 6, 2023. (<https://crsreports.congress.gov/product/pdf/R/R44593>).

¹¹ *Id.*

¹² *Community Status Book*, Federal Emergency Management Administration, September 2023. (<https://www.fema.gov/flood-insurance/work-with-nfip/community-status-book>).

affairs, and bonds. Under Section 8-2-9, when an organized township is within four miles of a municipality with a population greater than 50,000 residents, the township is permitted to regulate and restrict the height and size of buildings and other structures and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes. The purpose of the statute is to promote the health, safety, morals, and general welfare of the township and to divide the township into districts for zoning purposes. However, Section 8-2-9 provides any zoning power authorized under the section is subordinate to any zoning or other powers of the county or adjoining municipality when such powers are exercised by the county or municipality in respect to the township.

The South Dakota Association of Towns and Townships is governed by a board of directors. The mission of the South Dakota Association of Towns and Townships is to serve, preserve, and represent small towns and townships. However, like Minnesota, South Dakota neither provides a publicly available certified list of organized townships nor a database indicating land use authority among the several townships. South Dakota also does not publish a list of political subdivisions participating in the NFIP.

RECENT LEGISLATION

During the 2023 Legislative Session, the 68th Legislative Assembly did not introduce any legislation relating to the tracking of organized townships in North Dakota but did introduce legislation relating to the NFIP. House Bill No. 1098 removes a community's eligibility to obtain relief under the NFIP on insurable structures within FEMA's identified flood hazard areas if the community fails to adopt floodplain management ordinances required under the NFIP.

SUGGESTED STUDY APPROACH

In conducting this study, the committee may wish to receive testimony from professionals teaching or practicing emergency management in the state as well as representatives from the:

- DWR;
- Insurance Department;
- Department of Emergency Services;
- North Dakota Township Officers Association;
- FEMA;
- FIMA; and
- Insurance industry in North Dakota.

ATTACH:1

SECTION 1. LEGISLATIVE MANAGEMENT STUDY - TOWNSHIP PARTICIPATION IN THE NATIONAL FLOOD INSURANCE PROGRAM.

1. During the 2023-24 interim, the legislative management shall study the roles of the insurance commissioner, department of emergency services, and department of water resources in relation to the tracking and updating of the relevant primary land use authority on lands outside a municipality's jurisdiction. The study must:
 - a. Include a method of tracking all organized townships within the state and maintaining updated contact information, certified annually by December thirty-first.
 - b. Consider a formal process for organized townships to request, establish, and track the yielding of land use authority to an adjacent jurisdiction.
 - c. Consider how insurance producers access the necessary information, including updated contact information of the authority, to appropriately associate potential insurance policy holders with the relevant land use authority for the purposes of the federal emergency management agency's national flood insurance program.
 - d. Consider how a member of the public may access the relevant land use authority associated with a specific parcel of land.
2. The legislative management shall report its findings and recommendations, together with any legislation necessary to implement the recommendations, to the sixty-ninth legislative assembly.