

1999 HOUSE NATURAL RESOURCES

HB 1167

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1167

House Natural Resources Committee

Conference Committee

Hearing Date 1/15/99

Tape Number	Side A	Side B	Meter #
1	x		19-55.0
1		x	0.0-0.2
Committee Clerk Signature <i>Kevin Tarsel</i>			

Minutes:

SUMMARY OF THE BILL: A BILL for an Act to create and enact a new section to chapter 11-32.2, 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 flood plain on plats, definition of community, and state engineer review of uses of flood ways; and 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 flood plain on plats, delineation of the flood way for lakes, elevation of structure in the flood way, and mandatory community participation in the flood insurance program.

Chairman Grosz opened the hearing on HB 1167 in the Pioneer Room. All committee members were present: Chairman Grosz, Vice-Chairman Henegar, Rep. Drovdal, Rep. Galvin, Rep. DeKrey, Rep. Nottestad, Rep. Nelson, Rep. Clark, Rep. Porter, Rep. Martinson, Rep. Hanson, Rep. Kelsh, Rep. Lundgren, Rep. Sandvig, Rep. Solberg.

David Sprynczynatyk, State Engineer and Secretary to the State Water Commission appeared in favor of HB 1167. (see attached testimony)

Chairman Grosz asks Mr. Sprynczynatyk whether there will be less building on the flood plain if this bill passes.

Mr. Sprynczynatyk answered Chairman Grosz by saying that he doesn't necessarily believe that there will be less building, but probably less damage to structures.

Rep. Nelson asks about section 2, referring to the Devil's Lake area, wondering if the plots in that region show 100 year flood plain data, given that some of the areas were farmland that are now waterfall production areas.

Mr. Sprynczynatyk answered that much of the area does not have a natural outlet at lower areas, and that his office is still trying to determine the flood plain elevation, as they don't have adequate information from the surrounding townships. He answered that Devil's Lake is a unique area.

Rep. Nelson asked another question: "Let's say we are in one of the smaller counties, farther North of the Devil's Lake basin, first of all, it looks like we have to have a comprehensive integrated system. Who would make up that team, that would develop that system. Without this data that would show the 100 year flood plain....how would they work this in some of the counties...?"

Mr. Sprynczynatyk answered that the bill would not require any new plans to be developed, it just makes an expansion and that flood plain data is available to most communities.

Rep. Drovdal asks about some of the concerns of Grand Forks. (see attached testimony)

Mr. Sprynczynatyk answers that Grand Forks will have the authority to address their concerns.

Rep. Clark asks about if there is a fixed definition of flooding.

Mr. Sprynczynatyk answers that there is no fixed definition, and that it is a judgment call from the community.

Chairman Grosz makes reference to the faxed testimony from the city of Grand Forks.

Harold Narum the Deputy Requisite of the Division of Emergency Management appeared in favor of HB 1167. (see attached testimony)

Bill Wocken, City Administrator of the city of Bismarck testified in favor of HB 1167 with an amendment. He testified that the city was concerned with the new standard for flood levels not preempting city standards, that a community feels unnecessary. He asked for further time to work with the water commission to bring an amendment before the committee.

Rep. Drovdal makes reference to page 4, line 20 and 21 about changing the standard of flood levels, asking if the wording was changed, if it would satisfy the city of Bismarck.

Mr. Wocken answered that it would satisfy the immediate concerns, but that he did not think it was wise to shut the door on Bismarck establishing its own standards.

Rep. Drovdal asks if the city will be liable for granting building permits and then changing the standards, at which the builder would have to do some rebuilding.

Mr. Wocken answers that for the public benefit, the city has to regulate the flood plain, but Rep. Drovdal's point will be something that the city has to look at carefully.

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House Natural Resources Committee
Bill/Resolution Number hb1167.lwp
Hearing Date 1/15/99

Rep. Porter refers to page 4, line 20 of HB 1167, in reference to a proposed amendment.

Mr. Wocken replied that this particular section was one he had issue with and would like to be amended.

Alan Walter, Director of Public Works, City of Minot appeared in favor of HB 1167, with an amendment. (see attached testimony)

Chairman Grosz closed the hearing on HB 1167.

FISCAL NOTE

(Return original and 10 copies)

Bill/Resolution No.: HB 1167 Amendment to: _____

Requested by Legislative Council Date of Request: 1-4-99

1. Please estimate the fiscal impact (in dollar amounts) of the above measure for state general or special funds, counties, cities, and school districts.

Narrative: No additional cost to the State Water Commission. Tasks would be performed within current budget allocations.

Impact on counties and cities with the passage of this bill would be:

1. The time of personnel to administer an ongoing community floodplain management program; and
2. One time publishing cost for two legal notices for the enactment of a community floodplain ordinance.

It is assumed only those communities experiencing excessive flood damage would be brought into the program.

2. State fiscal effect in dollar amounts:

	1997-99 Biennium		1999-2001 Biennium		2001-03 Biennium	
	General Fund	Special Funds	General Fund	Special Funds	General Fund	Special Funds
Revenues:	-0-	-0-	-0-	-0-	-0-	-0-
Expenditures:	-0-	-0-	-0-	-0-	-0-	-0-

3. What, if any, is the effect of this measure on the appropriation for your agency or department:

- a. For rest of 1997-99 biennium: -0-
- b. For the 1999-2001 biennium: no additional costs anticipated
- c. For the 2001-03 biennium: no additional costs anticipated

4. County, City, and School District fiscal effect in dollar amounts:

	1997-99 Biennium			1999-2001 Biennium			2001-03 Biennium		
	Counties	Cities	School Districts	Counties (6)	Cities (24)	School Districts (0)	Counties	Cities	School Districts
	-0-	-0-	-0-						
Administrative expense:				\$4,320	\$17,280	-0-	\$4,320	\$17,280	-0-
Publication (one time cost):				900	3,600	-0-	-0-	-0-	-0-
Totals:				\$5,220	\$20,880	-0-	\$4,320	\$17,280	-0-

If additional space is needed, attach a supplemental sheet.

Signed David A. Sprynczynatyk
 Typed Name David A. Sprynczynatyk
 Department State Water Commission
 Phone Number 328-4940

Date Prepared: January 8, 1999

FISCAL NOTE EXPLANATION:

Currently, 42 of 53 counties participate in the NFIP, leaving 11 counties to enroll in the NFIP. Six of the 11 counties are anticipated to enroll in the NFIP. Currently, 159 of 361 cities participate in the NFIP, leaving 202 which are not enrolled in the NFIP. Twenty-four of 202 cities are anticipated to enroll in the NFIP.

6 counties
+ 24 cities
30 communities to enroll (estimate)

(1) Formula used in estimating personnel costs to 30 counties and cities:

2 hours of administrative time required of community staff per month @ \$15/ hour
(\$12/hour + 30% fringe benefit cost of \$3/hour) = \$30/month.

\$30 / month x 24 months in a biennium = \$720 / community / biennium.

\$720 x 30 communities = **\$21,600** additional cost.

(2) Public notice costs (one time) for floodplain management ordinance enactment:

2 public notices @ \$75 each related to ordinance enactment = \$150.

\$150 x 30 communities = **\$4,500** additional cost.

Summary:

Personnel time:	\$21,600
Public notices	<u>4,500</u>
Total:	\$26,100

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1167

Page 1, line 4, remove the first "and"

Page 1, line 9, after "program" insert "; and to provide an effective date"

Page 3, line 9, remove the overstrike over "~~and~~" and remove ". The comprehensive plan"

Page 4, line 11, replace "**Communities to adopt**" with "**Community**"

Page 4, line 21, overstrike "under this chapter, whichever are more restrictive" and insert immediately thereafter "if the community has not adopted standards, then the structures must meet the standards set forth in paragraphs 2 and 3"

Page 4, line 23, overstrike "or" and insert immediately thereafter "at least one foot [30.48 centimeters]"

Page 4, line 28, after "than" insert "one foot [30.48 centimeters] above"

Page 5, replace lines 3 through 31 with:

- "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 [Public Law 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 [Public Law 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."

Page 6, remove lines 1 through 3

Page 6, line 15, after "**floodways**" insert "**- Exceptions**"

Page 6, line 24, after the underscored period insert "A community may apply to the state engineer for an exemption from this section. The state engineer may grant the exemption if the state engineer determines that the community has the technical hydraulic expertise to determine if the proposed use is in compliance with state and federal law."

Page 6, after line 24, insert:

"SECTION 11. EFFECTIVE DATE. Section 8 of this Act becomes effective August 1, 2000."

Renumber accordingly

Date:
Roll Call Vote #:

1999 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO.

House House Natural Resources Committee

Subcommittee on 1167
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken No Pass

Motion Made By Drovdal Seconded By Porter

Representatives	Yes	No	Representatives	Yes	No
Chairman Mick Grosz	✓				
Vice-Chairman Dale Henegar	✓				
Representative David Drovdal	✓				
Representative Pat Galvin	✓				
Representative Duane DeKrey	✓				
Rep. Darrell D. Nottestad	✓				
Representative Jon O. Nelson	✓				
Representative Byron Clark	✓				
Representative Todd Porter	✓				
Representative Jon Martinson	✓				
Representative Lyle Hanson					
Representative Scot Kelsh					
Representative Deb Lundgren					
Representative Sally M. Sandvig	✓				
Representative Dorvan Solberg	✓				

Total (Yes) 12 No 0

Absent 3

Floor Assignment Rep. Galvin

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
February 3, 1999 11:13 a.m.

Module No: HR-22-1783
Carrier: Galvin
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HB 1167: Natural Resources Committee (Rep. Grosz, Chairman) recommends DO PASS
(12 YEAS, 0 NAYS, 3 ABSENT AND NOT VOTING). HB 1167 was placed on the
Eleventh order on the calendar.

1999 SENATE NATURAL RESOURCES

HB 1167

1999 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. HB1167

Senate Natural Resources Committee

Conference Committee

Hearing Date March 5, 1999

Tape Number	Side A	Side B	Meter #
1	x		0-6207
1		x	0-965
1	x		220-2470
3/18/99	1	x	4715-6200
3/18/99	1	x	0-120
Committee Clerk Signature <i>Lyla A. Lagen</i>			

Minutes:

SENATOR TRAYNOR opened the hearing on HB1167: 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.

DAVID A. SPRYNCZYNATYK testified in support of HB1167. (See attached testimony and Proposed Amendments) The amendments apply more to communities who do not have adequate programs relating to floods, and to help these communities to create these more stringent programs. There is also an effective date in the law that addresses the specific issue known as the "Freeboard Issue" which takes effect August 1, 2000 which gives communities a grace period

between now and August 1, 2000 allowing them to adopt their own more stringent and enforcement program.

SENATOR TRAYNOR asked how does this bill fit into the federal floodplain program, and will this help a lake flood.

DAVID A. SPRYNCZYNATYK replied FEMA through its flood insurance program has made exceptions to the normal rules. This bill would make it clear that the State Engineer would be able to work within the Devils Lake area on a flood insurance program because it does include or add lakes to the definition of water courses for the flood insurance program. Secondly, once a flood elevation is established for Devils Lake, this would allow the State Engineer and the community, if they decided to, to be able to increase the flood level requirements to up to a foot.

This would be aside from the policy of the federal government which could help us in some areas if the communities are willing to prevent future flood damages.

SENATOR TRAYNOR asked would you, under this bill, set a level for Devils Lake at which the level should be for a building in order for the building to be accepted and insured.

DAVID A. SPRYNCZYNATYK replied yes.

SENATOR FISCHER asked would you set the benchmarks in communities where they could shoot off of to make sure they are a foot or a foot and one-half or whatever their ordinance would require.

DAVID A. SPRYNCZYNATYK replied we have not been requested to do that, but we would have the capability to do that, but a local surveyor or engineer could do with less expense because they work in that area.

SENATOR REDLIN asked what is the overflow point of Devils Lake naturally.

DAVID A. SPRYNCZYNATYK replied today Devils Lake sits at 1444 ft. and if it rises another 2.6 feet, it will spill into Stump Lake. Devils Lake then needs to rise another 10 feet above that to roughly 1457 ft. before it spills into the Sheyenne River.

SENATOR REDLIN asked what is the purpose of the outlet.

DAVID A. SPRYNCZYNATYK replied the purpose is to bring Devils Lake to a manageable level. Evaporation is the only way to reduce the level of the lake, other than by an outlet.

SENATOR FISCHER asked how much fill can someone build on in a floodplain area.

DAVID A. SPRYNCZYNATYK replied this issue has not been included in this bill. It would have to be based on the hydraulic effect.

SENATOR CHRISTMANN asked is this a requirement for communities to do so people know better than to build in low spots.

DAVID A. SPRYNCZYNATYK replied the requirements are that those areas be identified as flood prone via maps and be made known to potential buyers.

SENATOR CHRISTMANN asked what does the national flood insurance plan insure.

DAVID A. SPRYNCZYNATYK replied in order for people to get a rider for flood insurance on their structures, the community where the structure is located has to belong to the national flood insurance program. When that community joins the program, they have to adopt flood plain ordinances to reduce future flood damages.

SENATOR TRAYNOR asked would this bill have any impact on flood insurance premiums.

DAVID A. SPRYNCZYNATYK replied no because those are set by FEMA and national flood insurance program.

SENATOR TRAYNOR asked why do 2 properties such as residential and business have different premiums that vary greatly.

SENATOR FISCHER responded they can vary according to elevation.

SENATOR REDLIN asked about the amendments which state an emphasis on 1 foot freeboard and referenced to standards adopted by the community.

DAVID A. SPRYNCZYNATYK replied if a community does adopt a 1 foot freeboard standard, then they are able to reduce the premiums for the people that are insured. Having the additional 1 foot of cushion is important because there are problems with wave action and fill being added into your floodplain which causes the flood elevation to rise.

SENATOR CHRISTMANN asked if the cities and communities in the national flood program continue from year to year.

DAVID A. SPRYNCZYNATYK replied once they are in the program, they stay in. If they dropped out, the residents would not be eligible for flood insurance, and the communities would have to come back in and go through another process which takes time. The communities do not have the flexibility to play the odds. There are requirements under federal loans that if you are in an identified floodplain, a resident has to carry flood insurance while the loan is in place.

SENATOR FREBORG asked when a community goes through the process of becoming a part of the insurance program, does every structure within that community qualify for insurance.

DAVID A. SPRYNCZYNATYK replied once a community is in the program, every resident and every structure qualifies for the program.

PAT SCOTT, ND Division of Emergency Management on behalf of Douglas C. Friez, testified in support of HB1167.

BILL WOCKEN, City Administrator for the City of Bismarck testified in support of HB1167 with all of the amendments proposed by the State Engineer. The City of Bismarck actively manages their floodplain and floodway and Bismarck is a participant of the national flood insurance program. Our only concern with the bill is the mandatory 1 foot freeboard that was added into the bill, because that would not allow the ability of the local governing body to make a decision relative to its floodplain. Bismarck has a 0 freeboard policy and we may wish in the future to add that foot of freeboard to the floodplain but we want that to be a local decision based on consultation with the State Engineer's Office.

ARDEN HANER, Ward County Water Resources testified in opposition to HB1167. If the state pays for all of the communities and if communities have to pay their own, both are too expensive. There has to be a way to go through the Water Resource Board and come back through FEMA and get FEMA to do the mapping. If anyone is in the 1 foot elevation, they are required to carry insurance.

SENATOR FISCHER stated not all townships are mapped. There are some choices available and this bill creates a start to solve these problems in communities.

BRYAN HOIME, ND Township Officers Ass'n testified that flood insurance is important, but the deadline date of August 1, 2000 will not be enough time for townships to complete zoning and plats. If these areas are not subject to excessive flooding, why do these townships and communities have to do this.

JULIE KRENZ, Legal Counsel for State Engineer referred to a(2) whichever are more restrictive, this applies only to the floodproofing standards, and doesn't apply to the base elevation at what the structure should be built; page 4, line 21 (see underlined words) we had a bill drafted

inserting that language and it may be easier to look at that. The way the law would read is that the structures have to meet standards adopted by the community, but if the community has not adopted standards, then they have to meet the higher standards according to state law with the ones with based elevations.

SENATOR CHRISTMANN asked for an explanation of floodproofing.

DAVID A. A. SPRYNCZYNATYK replied floodproofing applies to the method of construction to the building itself to prevent damages to the structure.

SENATOR TRAYNOR asked if the 1,350 townships have to zone.

DAVID A. SPRYNCZYNATYK replied it is not our intent to go in and review each township to determine if there is excessive flooding and secondly, whether or not they should be in the program. It is our intent and the fiscal note is based on cities and counties that we would work with because the best information we have available is broader and is available for cities and counties.

SENATOR TRAYNOR closed the hearing on HB1167.

COMMITTEE ACTION: March 11, 1999, Tape 1, Side A, Meter# 220-2470: A discussion was held on the proposed amendments submitted to the committee. SENATOR CHRISTMANN moved to adopt the amendments submitted by David A. Sprynczynatyk, seconded by SENATOR FISCHER. A voice vote indicated 6 YEAS, 0 NAYS, 0 Absent and not voting. SENATOR CHRISTMANN moved the amendment, seconded by SENATOR REDLIN. voice vote indicated 6 YEAS, 0 NAYS, 0 Absent and not voting. SENATOR FISCHER moved DO PASS AS AMENDED TWICE, seconded by SENATOR REDLIN. Roll call vote indicated 6 YEAS, 0 NAYS, 0 Absent and not voting. SENATOR FISCHER volunteered to carry the bill.

COMMITTEE ACTION: March 18, 1999, Tape 1, Side A, Meter# 4715-6200 and Tape 1,

Side B, Meter# 0-120: Senator Fischer moved to reconsider HB1167, seconded by Senator Freborg. The reason for the reconsideration, Bryan Hoime brought amendments after adjournment and talked with David A. Sprynczynatyk who in turn asked if we would reconsider our actions and add the amendments from Bryan Hoime. A motion was made to adopt Amendment# 98174.0102. A voice vote indicated 6 YEAS, 0 NAYS, 0 Absent and not voting. SENATOR FISCHER moved for a DO PASS AS AMENDED THREE TIMES, seconded by SENATOR HEITKAMP. Roll call vote indicated 6 YEAS, 0 NAYS, 0 Absent and not voting. SENATOR FISCHER volunteered to carry the bill.

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1167

Page 3, line 22, after "zone" insert "with areas subject to excessive flooding and with structures located within those areas"

Renumber accordingly

*House
Amendments*

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1167

Page 6, line 7, after “communities” insert “that have residential, commercial, or industrial structures in areas”

Page 6, line 7, remove the overstrike

Page 6, line 7, after “flooding” insert “, as determined by the state engineer,”

Renumber accordingly

March 11, 1999

7-22
3/12/99
lot 2

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1167
SENATE AMENDMENTS TO HB 1167 NAT. RES.

3/12/99

Page 1, line 4, remove the first "and"

Page 1, line 9, after "program" insert "; and to provide an effective date"

SENATE AMENDMENTS TO HB 1167 NAT. RES. 3/12/99

Page 3, line 9, remove the overstrike over "~~and~~" and remove ". The comprehensive plan"

SENATE AMENDMENTS TO HB 1167 NAT. RES. 3/12/99

Page 4, line 11, replace "**Communities to adopt**" with "**Community**"

Page 4, line 21, overstrike "under this chapter, whichever are more restrictive" and insert immediately thereafter "if the community has not adopted standards, then the structures must meet the standards set forth in paragraphs 2 and 3"

Page 4, line 23, overstrike "or" and insert immediately thereafter "at least one foot [30.48 centimeters]"

Page 4, line 28, after "than" insert "one foot [30.48 centimeters] above"

SENATE AMENDMENTS TO HB 1167 NAT. RES. 3/12/99

Page 5, replace lines 3 through 31 with:

"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."

2 of 2

Page 6, remove lines 1 through 3

Page 6, line 7, remove the overstrike over "~~subject to excessive flooding~~" and insert immediately thereafter ", as determined by the state engineer,"

Page 6, line 15, after "**floodways**" insert "**- Exceptions**"

Page 6, line 24, after the underscored period insert "A community may apply to the state engineer for an exemption from this section. The state engineer may grant the exemption if the state engineer determines that the community has the technical hydraulic expertise to determine if the proposed use is in compliance with state and federal law."

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

Renumber accordingly

Date: 3-11-99

Roll Call Vote #:

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1167

Senate Natural Resources Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken DO PASS AS AMENDED TWICE

Motion Made By Fischer Seconded By Redlin

Senators	Yes	No	Senators	Yes	No
Senator John T. Traynor, Chr	✓				
Senator Tom Fischer, Vice Chr	✓				
Senator Randel Christmann	✓				
Senator Layton Freborg	✓				
Senator Joel C. Heitkamp	✓				
Senator Rolland W. Redlin	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Fischer

If the vote is on an amendment, briefly indicate intent:

Roll Call Vote #: /

Date: 3-18-99

1999 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HB 1167

Senate Natural Resources Committee

Subcommittee on _____
or
 Conference Committee

Legislative Council Amendment Number _____

Action Taken DO PASS AS AMENDED THREE TIMES

Motion Made By Fischer Seconded By Heitkamp

Senators	Yes	No	Senators	Yes	No
Senator John T. Traynor, Chr	✓				
Senator Tom Fischer, Vice Chr	✓				
Senator Randel Christmann	✓				
Senator Layton Freborg	✓				
Senator Joel C. Heitkamp	✓				
Senator Rolland W. Redlin	✓				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Fischer

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

HB 1167: Natural Resources Committee (Sen. Traynor, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HB 1167 was placed on the Sixth order on the calendar.

Page 1, line 4, remove the first "and"

Page 1, line 9, after "program" insert "; and to provide an effective date"

Page 3, line 9, remove the overstrike over "~~and~~" and remove ". The comprehensive plan"

Page 4, line 11, replace "**Communities to adopt**" with "**Community**"

Page 4, line 21, overstrike "under this chapter, whichever are more restrictive" and insert immediately thereafter "if the community has not adopted standards, then the structures must meet the standards set forth in paragraphs 2 and 3"

Page 4, line 23, overstrike "or" and insert immediately thereafter "at least one foot [30.48 centimeters]"

Page 4, line 28, after "than" insert "one foot [30.48 centimeters] above"

Page 5, replace lines 3 through 31 with:

"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."

Page 6, remove lines 1 through 3

Page 6, line 7, remove the overstrike over "~~subject to excessive flooding~~" and insert immediately thereafter ", as determined by the state engineer,"

Page 6, line 15, after "floodways" insert "- Exceptions"

Page 6, line 24, after the underscored period insert "A community may apply to the state engineer for an exemption from this section. The state engineer may grant the exemption if the state engineer determines that the community has the technical hydraulic expertise to determine if the proposed use is in compliance with state and federal law."

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

Renumber accordingly

1999 HOUSE NATURAL RESOURCES

HB 1167

CONFERENCE COMMITTEE

1999 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. 1167 C.C.

House Natural Resources Committee

Conference Committee

Hearing Date 4/5/99

Tape Number	Side A	Side B	Meter #
1	x		0.0-6.0
Committee Clerk Signature <i>Robin L. Small</i>			

Minutes: REP. NOTTESTAD called the conference committee to order. All members were present.

SEN. FISCHER introduced the amendment for HB 1167. FISCHER explained the amendment to the committee.

REP. MARTINSON asks what exactly was added to the amendment. SEN. FISCHER then tells him.

SEN. FISCHER makes a motion to have the Senate recede from its amendments and then to further amend the bill. Seconded by REP. SOLBERG.

SEN. CHRISTMANN asks what good is this? SEN. FISCHER explains the overlook of the amendment. He tells CHRISTMANN that a community can be defined as a township.

REP. NOTTESTAD then takes a voice vote on the motion. All in favor voted I. There was no opposition. 6 YES, 0 NO. The hearing was then closed.

VK
4/5/99
1082

CONFERENCE COMMITTEE AMENDMENTS TO HOUSE BILL NO. 1167 NAT. RES. 4/6/99

That the Senate recede from its amendments as printed on pages 1012 and 1013 of the House Journal and pages 820 and 821 of the Senate Journal and that House Bill No. 1167 be amended as follows:

Page 1, line 4, remove the first "and"

Page 1, line 9, after "program" insert "; and to provide an effective date"

CONFERENCE COMMITTEE AMENDMENTS TO HOUSE BILL NO. 1167 NAT. RES. 4/6/99

Page 3, line 9, remove the overstrike over "~~and~~" and remove ". The comprehensive plan"

CONFERENCE COMMITTEE AMENDMENTS TO HOUSE BILL NO. 1167 NAT. RES. 4/6/99

Page 4, line 11, replace "**Communities to adopt**" with "**Community**"

Page 4, line 21, overstrike "under this chapter, whichever are more restrictive" and insert immediately thereafter "if the community has not adopted standards, then the structures must meet the standards set forth in paragraphs 2 and 3"

Page 4, line 23, overstrike "or" and insert immediately thereafter "at least one foot [30.48 centimeters]"

Page 4, line 28, after "than" insert "one foot [30.48 centimeters] above"

CONFERENCE COMMITTEE AMENDMENTS TO HOUSE BILL NO. 1167 NAT. RES. 4/6/99

Page 5, replace lines 3 through 31 with:

"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."

CONFERENCE COMMITTEE AMENDMENTS TO HOUSE BILL NO. 1167 NAT. RES. 4/6/99

Page 6, remove lines 1 through 3

Page 6, line 7, after "communities" insert "that have residential, commercial, or industrial structures in areas" and remove the overstrike over "~~subject to excessive flooding~~" and insert immediately thereafter ", as determined by the state engineer."

Page 6, line 15, after "**floodways**" insert "**- Exceptions**"

Page 6, line 24, after the underscored period insert "A community may apply to the state engineer for an exemption from this section. The state engineer may grant the exemption if the state engineer determines that the community has the technical hydraulic expertise to determine if the proposed use is in compliance with state and federal law."

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

Renumber accordingly

(Bill Number) 1167 (, as (re)engrossed):

Your Conference Committee

For the Senate:

Fischer ✓
Christmann ✓
Bedlin ✓

For the House:

Nottestad ✓
Martinson ✓
Solberg ✓

recommends that the SENATE/HOUSE (ACCEDE to) RECEDE (from)
723/724 725/726 5724/5726 5723/5725
the Senate (House) amendments on (SJ/HJ) page(s) _____ - _____

and place 1167 on the Seventh order.
727

, adopt (further) amendments as follows, and place
1167 on the Seventh order:

having been unable to agree, recommends that the committee be discharged
and a new committee be appointed. 690/515

((Re)Engrossed) _____ was placed on the Seventh order of business on the
calendar.

DATE: 4/5/99

CARRIER: Nottestad

LC NO. 98174 . 0103 of amendment

LC NO. _____ . _____ of engrossment

Emergency clause added or deleted _____

Statement of purpose of amendment _____

(1) LC (2) LC (3) DESK (4) COMM.

REPORT OF CONFERENCE COMMITTEE

HB 1167: Your conference committee (Sens. Fischer, Christmann, Redlin and Reps. Nottestad, Martinson, Solberg) recommends that the **SENATE RECEDE** from the Senate amendments on HJ pages 1012-1013, adopt further amendments as follows, and place HB 1167 on the Seventh order:

That the Senate recede from its amendments as printed on pages 1012 and 1013 of the House Journal and pages 820 and 821 of the Senate Journal and that House Bill No. 1167 be amended as follows:

Page 1, line 4, remove the first "and"

Page 1, line 9, after "program" insert "; and to provide an effective date"

Page 3, line 9, remove the overstrike over "~~and~~" and remove ". The comprehensive plan"

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(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.].

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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."

Page 6, remove lines 1 through 3

Page 6, line 7, after "communities" insert "that have residential, commercial, or industrial structures in areas" and remove the overstrike over "~~subject to excessive flooding~~" and insert immediately thereafter ", as determined by the state engineer,"

Page 6, line 15, after "**floodways**" insert "**- Exceptions**"

Page 6, line 24, after the underscored period insert "A community may apply to the state engineer for an exemption from this section. The state engineer may grant the exemption if the state engineer determines that the community has the technical hydraulic expertise to determine if the proposed use is in compliance with state and federal law."

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

Renumber accordingly

1999 TESTIMONY

HB 1167



Inspections Department

City of Grand Forks

255 North Fourth Street • P.O. Box 5200 • Grand Forks, ND 58206-5200

(701) 746-2631

Fax # (701) 787-7148

January 14, 1999

Mick Grosz, Chairman
Dale Henegar, Vice Chairman
ND House of Representatives
Natural Resources Committee

Committee Members:

The City of Grand Forks would like to respectively request the inclusion of the following written testimony into the legislative record on House Bill 1167.

The City of Grand Forks commends the State's efforts at improving floodplain management with this bill. After the devastating flooding in 1997 there appears to be a need to take a fresh look at the current law. The City of Grand Forks agrees with the overall intent of the bill and would have no opposition to the changes if we are interpreting them correctly. It is felt that further clarification is needed in one section of the amendments. The section we have concerns over is House Bill 1167 – Section 8. AMENDMENT 61-16.2-08 *Communities to adopt standards – Permissible uses within flood fringe.*

The City of Grand Forks believes that more strict regulations over the NFIP requirements should be left to the specific jurisdiction. The reason we believe this is that each jurisdiction is unique and has specific flood threat conditions. Also, the flat topography of the Red River Valley makes blanket elevation increases over the base flood elevation (BFE) questionable.

The City of Grand Forks has been taking a very close look at its floodplain management and its floodplain mapping. It has been investigating the possibility of increasing the regulated area beyond the designated floodplain to further protect the City's people and property. This would be in conjunction with increasing the required flood protection level by up to 1.5 feet above the current BFE. The City of Grand Forks and other communities facing remapping must seriously look at this increase as to how it will affect the community once a new map is in place. Once a new map is issued it should be accurate, so a one-foot increase on the new BFE may be a tremendous hardship.

Subsection 2 appears to be written to outline the requirements of all communities that are not presently participating in the NFIP to participate. It states that these communities must adopt regulations in a one year period. If they do not adopt these regulations they will be required to use the State's regulations as specified in subsection 3. It also appears to encourage those communities that are adopting regulations to impose the higher regulatory standard of adding one foot to the BFE, but does not require it.

Subsection 3 specifies the requirements that must be followed if a community has not adopted it's own regulations to date or within one year of the effective date of this Act. The requirements specified here are stricter than the minimum requirements specified in subsection 1. (Requiring one additional foot of floodproofing above the BFE)

To summarize, if a community now has in place an ordinance that meets the minimum requirements specified by NFIP and existing Section 61-16.2 of the North Dakota Century Code, it will not be affected by subsection 3. All communities that do not have ordinances adopted within one year of the effective date of this Act will be required to follow the requirements specified in subsection 3. While these changes may be difficult to interpret they appear to be sound in their approach, attempting to achieve a higher level of protection for a community by adding a foot of freeboard.

TESTIMONY ON HOUSE BILL 1167

House Natural Resources Committee

**David A. Sprynczynatyk, State Engineer
and Secretary to the State Water Commission**

January 15, 1999

Mr. Chairman and Members of the Committee, my name is David Sprynczynatyk. I am the North Dakota State Engineer and Secretary to the State Water Commission and appear today in support of House Bill 1167.

House Bill 1167 is intended to modify the laws governing floodplain management in North Dakota and reduce future flood damages in the state. Since 1989, virtually all areas of the state have incurred some degree of flooding. The flooding in the Red River Valley and Grand Forks in 1997 is most notable, but we have experienced flood problems in dozens of communities across the state. The attached map shows federal flood disaster declarations in North Dakota since 1989. As you know, these instances of flooding have cost the state millions of dollars in flood fight expenses and flood damage repair. In 1997 alone, this amounted to over \$15 million of expense for the state and at least \$248 million of federal expense.

Section 1 expands the purposes for which a county may adopt a comprehensive plan. Current law provides that one of the purposes that may be provided for in a comprehensive plan is to secure safety from fire, flood, and other dangers. This bill expands the purposes and provides that a comprehensive plan can provide for emergency management, which 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." Sections 3 and 5 expand similar authority for cities and townships. This will increase the awareness of counties, townships, and cities as they carry out their zoning responsibilities and address potential disasters.

Section 2 of the bill is a change to the subdivision regulation section of the law. It will require county subdivision plats to show identified 100-year floodplain boundaries. Presently this is required on subdivision plats for areas within cities, but current law does not require this outside of cities. This will help to improve public awareness regarding flood prone areas and reduce future risk.

Section 4 simply updates the language of the section of law addressing the platting of townsites to be more consistent with other sections of the law that address floodplain management, lakes, rivers, the State Engineer, and federal agencies.

Section 6 adds the definition of community into the current floodplain management law. For purposes of conformity to federal law and implementation of the flood insurance program, community is defined as any political subdivision that has the authority to zone. In North Dakota, cities, townships, and counties qualify as communities under the flood insurance program.

Section 7 adds lakes to the definition of waterways that have been delineated as flood prone under the floodplain authority of the State Engineer. This would eliminate the question of whether or not floodplains can be identified around lakes by the State Engineer as allowed for watercourses.

Section 8 encourages communities to adopt freeboard standards that require structures to be constructed one foot above the base 100-year flood elevation. This additional freeboard standard allows protection against flooding caused by floodplain development and encroachment, the effects of wave action, and the limited accuracy of hydrologic and hydraulic modeling. The attached map shows the meanings of floodplain, floodway, and flood fringe. Generally, current structures are allowed to be built at or above the base flood elevation which is based upon the 100-year flood. Development in the flood fringe does artificially increase the elevation of the base flood, potentially causing damages to structures at the base flood elevation.

Because of the uniqueness of floodplains across the state, a one-year grace period was included in subsection 2 of section 8, allowing every community presently in the program to adopt its own standard. In some cases, a community may adopt a more restrictive standard, and in other cases, the decision by the community may be to adopt a less restrictive standard. Only if a community in the program chooses not to adopt a standard as explained in subsection 2 of section 8 will subsection 3 apply. Subsection 3 of section 8 requires any community that does adopt a standard to enforce a one-foot freeboard standard. This will also be true of any new community coming into the program after the one-year period. Furthermore, subsection 1 of section 8 recognizes the existence of floodproofing exceptions previously granted to 15 communities in the state. It should also be noted that the new standards in subsection 1 are only intended to apply to new communities brought into the floodplain management program in the future. Also, subsection 1 is not intended to apply to new areas brought into the jurisdiction of communities in the program now. The communities will be able to apply the existing adopted standards to these new areas as they see fit.

Section 9 of the bill would require all communities to be in the flood insurance program. After the bill was printed we realized that the language on page 6, line 7, should not have been overstruck. The intent is to require only those communities in the state that are subject to excessive flooding to be in the program. Also, it is appropriate for the State Engineer to make the determination of the communities that are subject to excessive flooding. I would ask consideration of the following amendments to House Bill 1167:

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1167

Page 6, line 7, remove the overstrike

Page 6, line 7, after flooding insert "as determined by the state engineer"

Re-number accordingly

Currently, 159 of the 361 cities in the state are enrolled in the National Flood Insurance Program (NFIP). In addition, 42 of the 53 counties are enrolled in the NFIP. In developing the fiscal note, it was assumed that House Bill 1167, if amended as suggested above, would add approximately 24 cities and six counties to the NFIP. However, more analysis would be done to determine whether a community is subject to excessive flooding.

Finally, section 10 of the bill will require the State Engineer to review all uses proposed in mapped floodways only and that potentially impact the elevation of the flood water. This section will help communities in the technical analysis of proposed floodway development within existing floodplain management responsibilities. The State Engineer's review will include a technical review of the hydraulic analysis which is necessary today for proposed changes or modifications affecting floodway water levels. This review shall be completed by the State Engineer within 30 days after receiving the technical documentation. The State Engineer will only determine if the proposed changes comply with state and federal law based on the technical analysis. The final decision to issue the permit still rests with the community.

Both the State Engineer and State Water Commission support House Bill 1167 and request your favorable consideration of the bill.

Thank You.

City of Minot

Public Works Department

DATE: January 14, 1999

TO: House Natural Resources Committee

FROM: Alan M. Walter, Director of Public Works, City of Minot

RE: Comments on House Billing #1167

This bill was presented to a small group late in 1998, as a proposal to be presented to the legislative assembly in 1999. We have a couple of comments on changes that we think should be made, I will mention those later. There are questions that our city staff has. We feel this should be given further consideration and study and then considered at the Legislative Assembly in 2001.

The City of Minot has worked for a number of years to develop flood plane protection and we have worked with FEMA and the Cor of Engineers to reduce the flood plane affect in Minot. We have also worked very diligently with FEMA on the flood plane regulations for the City of Minot. For a number of years there was a moratorium in the flood plane in Minot. When the dams had been completed, the dike work completed, and other river improvements completed both above and below the City of Minot the moratorium was taken off. Up until that time, the lowest floor of any building had to be above the flood plane. Or there had to be other provisions made in the building such as removable walls to accommodate the flow of water. There could not be a finished floor elevation below the 100 year flood plane.

Since the completion of the flood control projects development has again started in the flood planes of Minot. This includes the building of basements in the flood plane. These are all in the fringe area that is mentioned in House Bill 1167.

As we understand this puposal the lowest floor of any building built in this fringe area of the flood plane will have to be 1 foot above the 100 year flood plane. That includes any basements. As I have said Minot worked long and diligently on reducing the affects of the flood plane. We worked with FEMA to develop our flood plain rules. Now this bill is changing, what we have worked hard and long for.

Should this bill be passed, these are the comments we would have on portions of the bill.

First on page 3 line 9 it mentions the comprehensive plan. We believe this bill should not be tied to any comprehensive plan. There are a number of political subdivisions in North Dakota that do not have comprehensive plans. In general in A or AO flood plane zone do not generally have an elevation expressed in feet above sea level. So then flood plane maps for these areas would have to be developed before any land could be platted. The question then is, how will these flood plane elevations be determined.

★ The Magic City★



Division of Emergency Management

EDWARD T. SCHAFER
GOVERNOR

MAJ. GEN. KEITH BJERKE
ADJUTANT GENERAL

DOUGLAS C. FRIEZ
STATE DIRECTOR

TO: Representative Mick Grosz
Chairman, House Natural Resources Committee

FROM: *DF* Douglas C. Friez
DF Director, Division of Emergency Management

SUBJECT: Division of Emergency Management's regarding HB 1167 on Floodplain Management

DATE: January 15, 1999

Following are comments by the Division of Emergency Management in support of HB 1167, changes to the State Floodplain Management Law.

I. Introduction

The rash of recent flood disasters has again made us painfully aware that floodplain management is absolutely necessary. At the same time we are very aware that a balance must be struck between encouraging strong community development and allowing unsafe practices that negatively threaten lives and property.

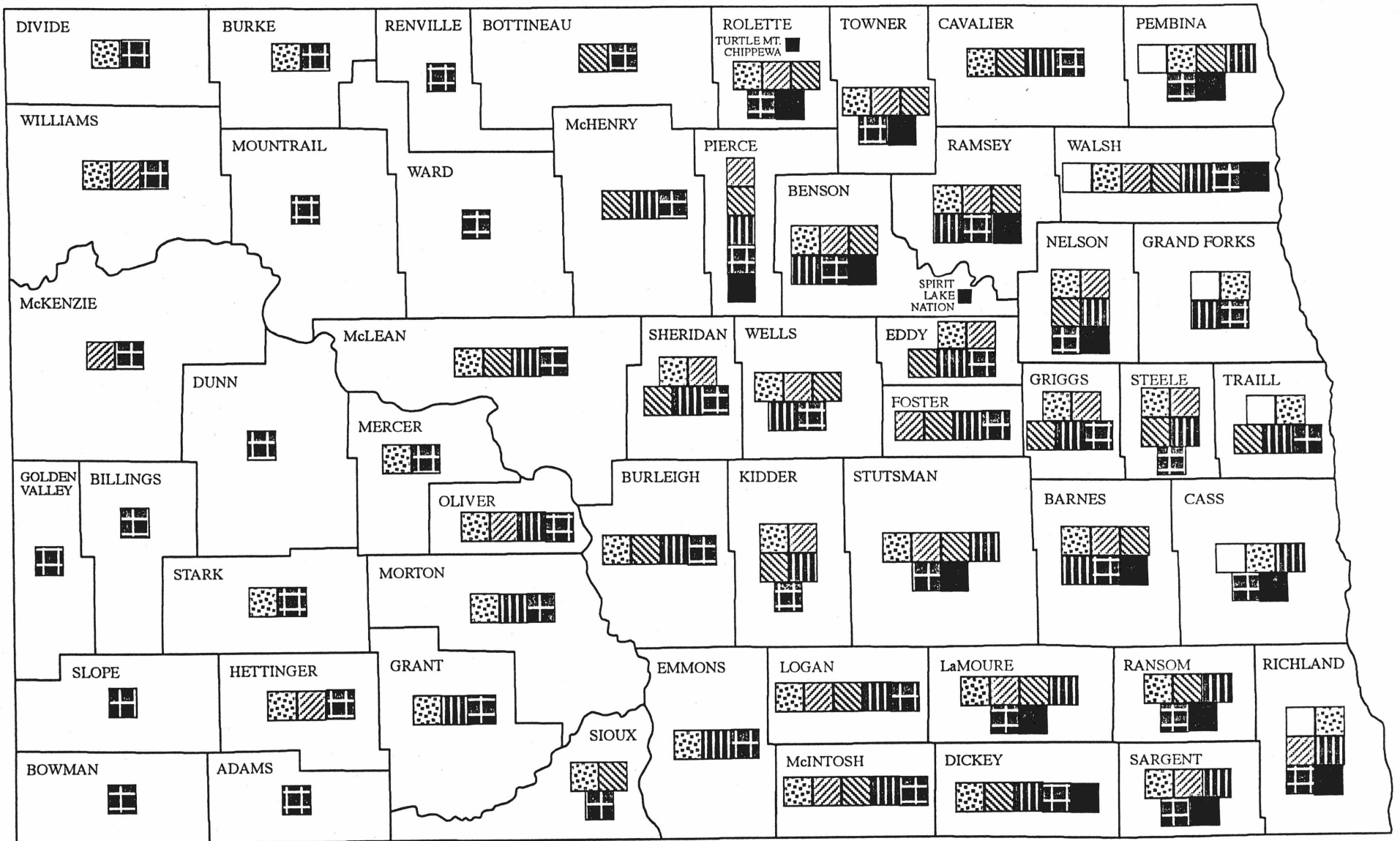
II. Background

From an emergency management standpoint we believe that the changes proposed by this legislation provide that balance and encourage counties, cities and townships to make important emergency management considerations during the planning stages of community development. It encourages local government to consider the consequences of how various hazards impact their community as they pass zoning ordinances that guide development, and to seriously consider during the planning stages, restrictions that mitigate disasters. It also encourages them to weigh proposed development against the time, expense and hardship of preparing for, responding to and recovering from devastating disasters.

In light of the past six years of unprecedented floods we strongly support any effort that encourages local government entities to participate in the National Flood Insurance Program (NFIP), realizing that the community must be enrolled before their citizens can purchase flood insurance.

III. Conclusion

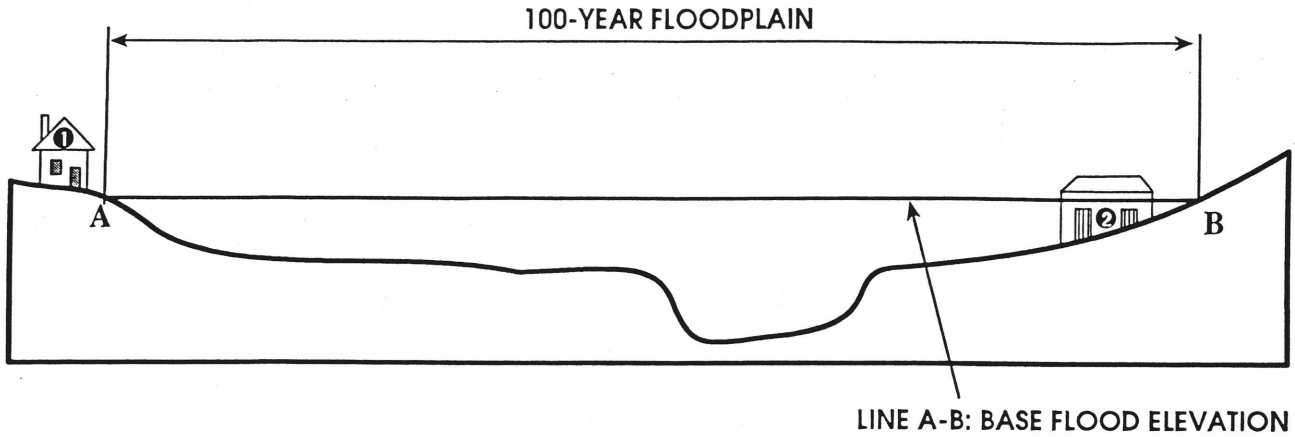
During the past six years, floods have caused hundreds of millions of dollars worth of damages to public and private property in North Dakota. Knowing this, the Division of Emergency Management encourages passage of HB 1167 to strengthen the floodplain management laws, which will help mitigate future flood damages to communities throughout North Dakota.



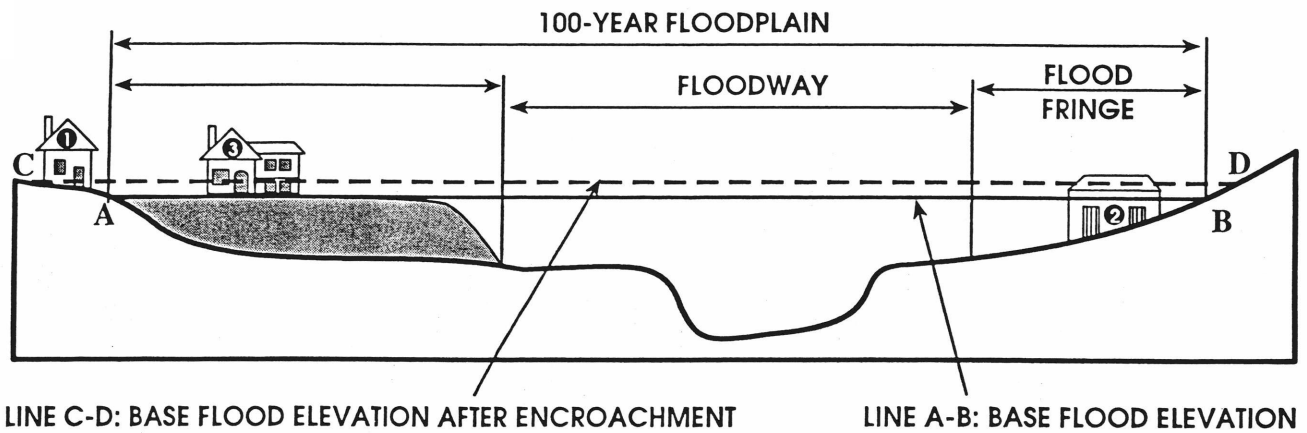
FLOOD DISASTER DECLARATIONS IN NORTH DAKOTA COUNTIES, 1989-1998



100-YEAR FLOODPLAIN



100-YEAR FLOODPLAIN WITH FLOODWAY



Line A-B: Base Flood Elevation - Current Standard
Line C-D: Proposed State Standard

TESTIMONY ON HOUSE BILL 1167

Senate Natural Resources Committee

**David A. Sprynczynatyk, State Engineer
and Secretary to the State Water Commission**

March 5, 1999

Mr. Chairman and Members of the Committee, my name is David Sprynczynatyk. I am the North Dakota State Engineer and Secretary to the State Water Commission and appear today in support of House Bill 1167.

House Bill 1167 as was intended to be amended in the House would modify the laws governing floodplain management in North Dakota and reduce future flood damages in the state. My testimony this morning will be based on the assumption the amendments approved by the House Natural Resources Committee on January 21, 1999, will be accepted. I support these amendments. In 1997, virtually all areas of the state incurred some degree of flooding. The flooding in the Red River Valley and Grand Forks in 1997 is most notable, but we have experienced flood problems in dozens of communities across the state. The attached map shows federal flood disaster declarations in North Dakota since 1989. As you know, these instances of flooding have cost the state millions of dollars in flood fight expenses and flood damage repair. In 1997 alone, this amounted to over \$15 million of expense for the state and at least \$248 million of federal expense.

Section 1 expands the purposes for which a county may adopt a comprehensive plan. Current law provides that one of the purposes that may be provided for in a comprehensive plan is to secure safety from fire, flood, and other dangers. This bill expands the purposes and provides that a comprehensive plan can provide for emergency management, which specifically addresses natural and man made hazards. Sections 3 and 5 expand similar authority for cities and townships. This will increase the awareness of counties, townships, and cities as they carry out their zoning responsibilities and address potential disasters.

Section 2 of the bill is a change to the subdivision regulation section of the law. It will require county subdivision plats to show identified 100-year floodplain boundaries, where they are mapped. Presently this is required on subdivision plats for areas within cities, but current law does not require this outside of cities. This will help to improve public awareness regarding flood prone areas and reduce future risk.

Section 4 simply updates the language of the section of law addressing the platting of townsites to be more consistent with other sections of the law that address floodplain management, lakes, rivers, the State Engineer, and federal agencies.

Section 6 adds the definition of community into the current floodplain management law. For purposes of conformity to federal law and implementation of the flood insurance program, community is defined as any political subdivision that has the authority to zone. In North Dakota, cities, townships, and counties qualify as communities under the flood insurance program.

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Section 8 encourages communities to adopt freeboard standards that require structures to be constructed one foot above the base 100-year flood elevation. This additional freeboard standard allows protection against flooding caused by floodplain development and encroachment, the effects of wave action, and the limited accuracy of hydrologic and hydraulic modeling. The attached sketch shows the meanings of floodplain, floodway, and flood fringe. Generally, current structures are allowed to be built at or above the base flood elevation which is based upon the 100-year flood. Development in the flood fringe does artificially increase the elevation of the base flood, potentially causing damages to structures at the base flood elevation. A community may adopt a more restrictive standard or the community may adopt a less restrictive standard between now and the effective date of this section. Only if a community in the program chooses not to adopt a standard will the one-foot freeboard standard apply. This will also be true of any new community coming into the program after the effective date of this bill. Also, subsection 1 recognizes the existence of floodproofing exceptions previously granted to 15 communities in the state.

Section 9 of the bill would require all communities to be in the flood insurance program. On further review of the amendments approved by the House Natural Resources Committee, a **proposed amendment** is offered. The intent is to require only those communities in the state that are subject to excessive flooding to be in the program. Also, it is appropriate for the State Engineer to make the determination of the communities that are subject to excessive flooding.

I would ask consideration of the following additional amendments to House Bill 1167:

PROPOSED AMENDMENTS TO HOUSE BILL NO. 1167

Page 6, line 7, remove the overstrike

Page 6, line 7, after flooding insert "as determined by the state engineer"

Renumber accordingly

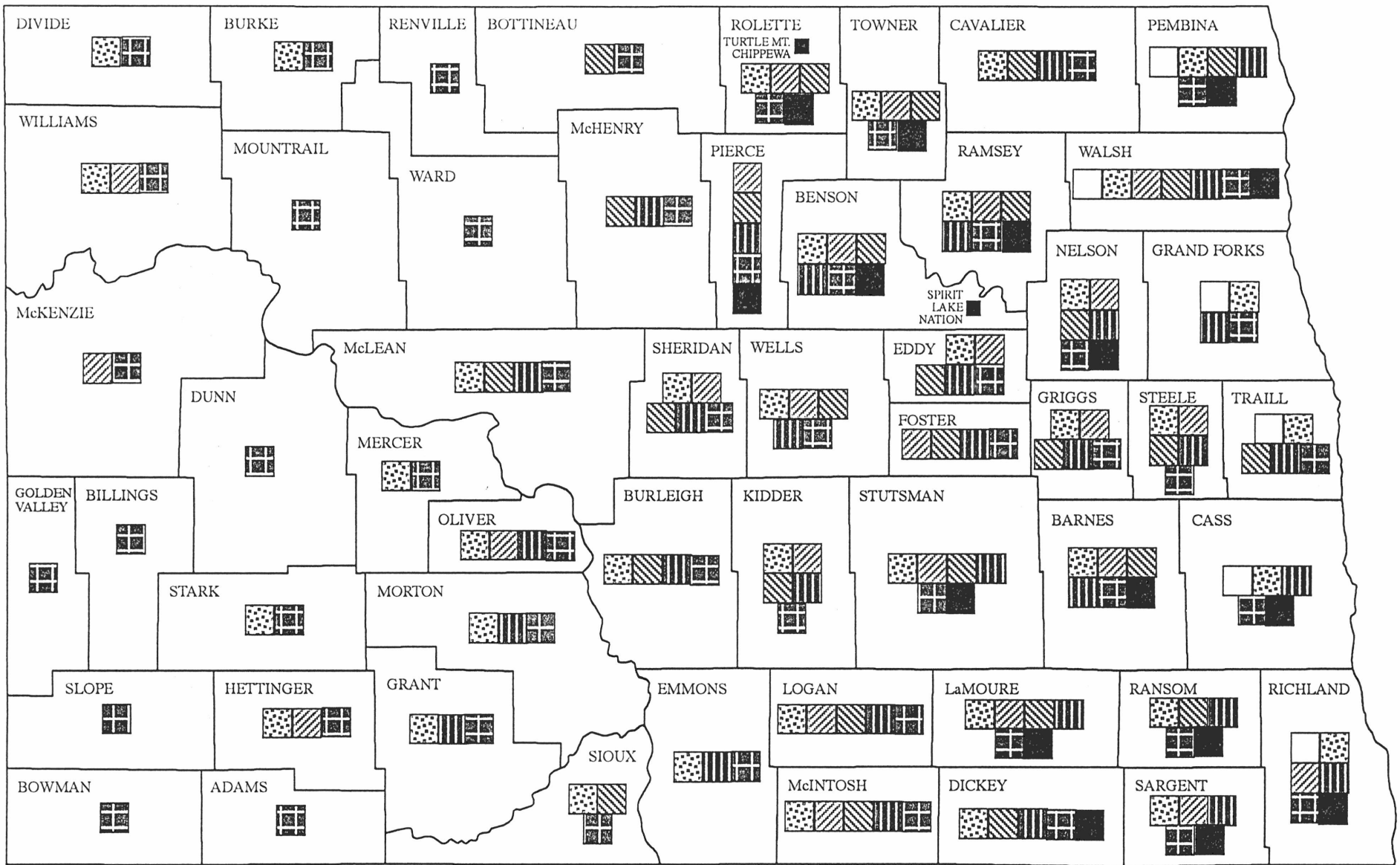
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Section 10 of the bill will require the State Engineer to review all uses proposed in mapped floodways only, and that potentially impact the elevation of the flood water. This section will help communities in the technical analysis of proposed floodway development within existing floodplain management responsibilities. The State Engineer's review will include a technical review of the hydraulic analysis which is necessary today for proposed changes or modifications affecting floodway water levels. This review shall be completed by the State Engineer within 30 days after receiving the technical documentation. The State Engineer will only determine if the proposed changes comply with state and federal law based on the technical analysis. The final decision to issue the permit still rests with the community.

A new Section 11 would adopt the revised floodplain management standards in section 8, effective August 1, 2000.

Both the State Engineer and State Water Commission support House Bill 1167 and request your favorable consideration of the bill.

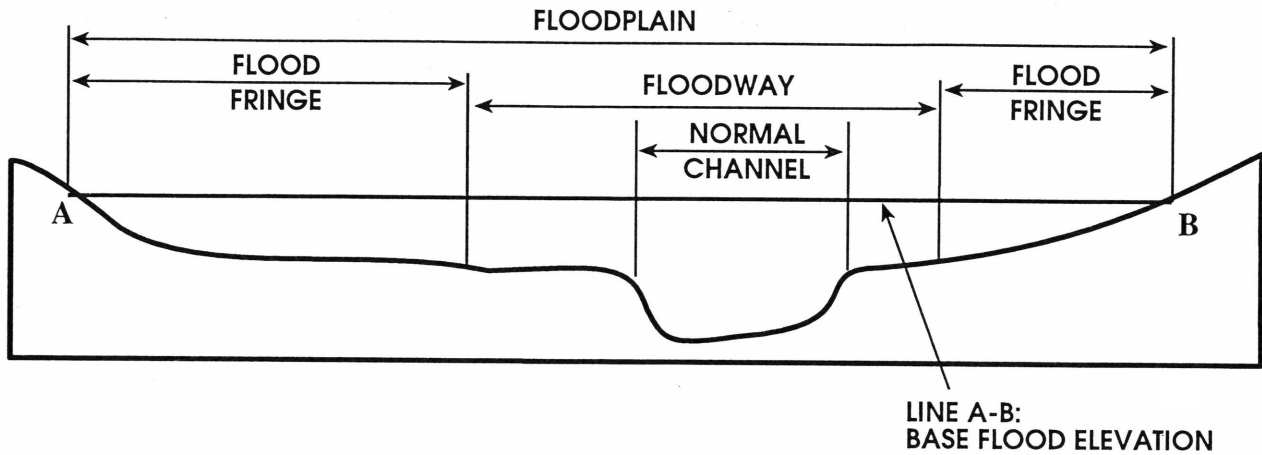
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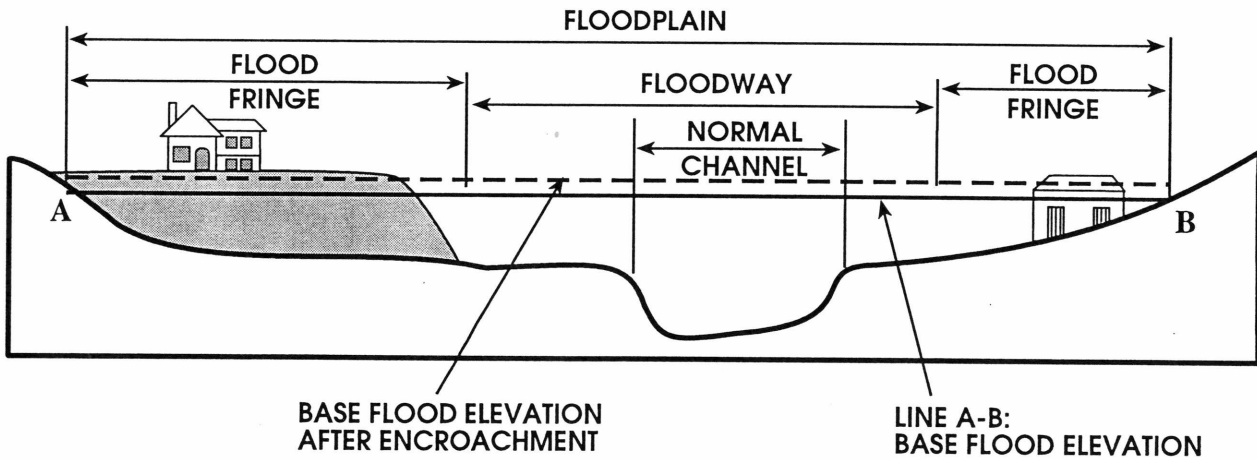
FLOOD DISASTER DECLARATIONS IN NORTH DAKOTA COUNTIES, 1989-1998



100-YEAR FLOODPLAIN NO DEVELOPMENT



100-YEAR FLOODPLAIN WITH EXISTING AND NEW DEVELOPMENT



Division of Emergency Management



EDWARD T. SCHAFER
GOVERNOR

MAJ. GEN. KEITH BJERKE
ADJUTANT GENERAL

DOUGLAS C. FRIEZ
STATE DIRECTOR

TO: Senator Jack Traynor
Chairman, Senate Natural Resources Committee

FROM:  Douglas C. Friez
Director, Division of Emergency Management

SUBJECT: Division of Emergency Management's regarding HB 1167 on Floodplain Management

DATE: March 5, 1999

Following are comments by the Division of Emergency Management in support of HB 1167, changes to the State Floodplain Management Law.

I. Introduction

The rash of recent flood disasters has again made us painfully aware that floodplain management is absolutely necessary. At the same time we are very aware that a balance must be struck between encouraging strong community development and allowing unsafe practices that negatively threaten lives and property.

II. Background

From an emergency management standpoint we believe that the changes proposed by this legislation, and it's agreed upon amendments, provide that balance and encourage counties, cities and townships to make important emergency management considerations during the planning stages of community development. It encourages local government to consider the consequences of how various hazards impact their community as they pass zoning ordinances that guide development. It also causes them to seriously consider during the planning stages, restrictions that mitigate disasters and encourages them to weigh proposed development against the time, expense and hardship of preparing for, responding to and recovering from devastating disasters.

In light of the past six years of unprecedented floods we strongly support any effort that encourages local government entities to participate in the National Flood Insurance Program (NFIP), realizing that the community must be enrolled before their citizens can purchase flood insurance.

III. Conclusion

During the past six years, floods have caused hundreds of millions of dollars worth of damages to public and private property in North Dakota. Knowing this, the Division of Emergency Management encourages passage of HB 1167 to strengthen the floodplain management laws, which will help mitigate future flood damages to communities throughout North Dakota.