

**2019 SENATE ENERGY AND NATURAL RESOURCES**

**SB 2091**

# 2019 SENATE STANDING COMMITTEE MINUTES

## Energy and Natural Resources Committee Fort Lincoln Room, State Capitol

SB 2091  
1/11/2019  
Job Number 30685

- Subcommittee  
 Conference Committee

Committee Clerk: Marne Johnson

### Explanation or reason for introduction of bill/resolution:

A bill relating to flood plain management community standards for permissible uses within the flood fringe.

### Minutes:

1 Attachment

The public hearing was opened; all members were present.

**Aaron Carranza (0:30-3:45) Director, Regulatory Division, Office of the State Engineer,** introduced the bill, please see attachment #1.

**Senator Schaible:** Can you give me an example of owners wanting to elevate a crawl space or use a combination method? Just explain those methods and the rationale.

**Mr. Carranza:** The requirement is that all buildings, the lowest floor elevation must be elevated one foot above the base flood elevation. Depending on the lay of the land, that could mean several feet that a building or structure has to be raised. Bringing in four feet of fill may be expensive or the site may not allow that. So a combination of fill plus a crawl space may meet federal standard, and be the most economical way to do that. Currently state law would not allow that option and the whole structure would have to be placed on fill to the lowest floor. Combination methods could be advantageous, just not currently allowed in state law.

**Senator Piepkorn:** Where did this bill originate?

**Mr. Carranza:** This is a continuing theme within the agency, we heard the concerns of people asking to use a crawl space. It's been a recurring issue; our response has been fill is state law. It was identified as we looked at what we'd like to see changed coming in to the legislative session. If we remove the state minimum requirement, federal guidelines are still in play, a local participating community can still add that back in if they so choose, but we feel it should be more of a local decision, as it is a case and site specific issue.

**Senator Roers:** The first floor elevation has to be one foot above the hundred year flood plain; traditionally foundations have been allowed to get you up there and crawl spaces were used, but they were probably what you'd call flood proof foundation, and now you're saying

they wouldn't have to be flood proof, if you're recognizing the fact that they could be used to raise up to a specific height, is that what we're saying here?

**Mr. Carranza:** In new construction, the whole flood proof crawl space would not be authorized under current state law, that situation you were describing would be allowable if we removed the on-fill state restriction. That scenario would be allowed, flood proofing and federal guidelines regarding crawlspaces with flood openings would still be in play; we're just allowing the additional flexibility to pursue that option without having to truck in massive amounts of fill.

**Senator Roers:** Here it states, within the flood fringe, what is the flood fringe?

**Mr. Carranza:** When FEMA comes in to map a flood plain in a participating area, there are typically two areas identified: the flood fringe, and the flood way. The flood fringe is your typical one-hundred-year plain. The flood way is the area needed to pass that one-hundred-year flow. If you assumed massive development on the flood fringe and squeezed the elevation up to one foot of surcharge. The flood fringe is the area outside of the flood way but is still a one hundred year flood plain.

**Vice Chair Kreun:** In the discussions, I am assuming you had public hearings, were the communities able to blanket the change in the development areas or were they spotted? What was going to happen? What I see happening if we have one area that has this designation, does it carry over to the other and hinder the community from building a complete project.

**Mr. Carranza:** You're saying what happens if the rules change for a community as the development is occurring and how do those changes affect a potential development or a potential flood control project? Communities are recommended to adopt higher standards, there is a federal program called the Community Rating System (CRS), communities get discounts on flood insurance premiums if they were to adopt certain higher standards. That process could still be in play. Adopting on-fill could be a CRS credit worthy adoption. As far as local community's development, and impacts on a flood protection project, we don't see this as being impactful on that. They would still have to go through a particular map change if they were changing the flood fringe or flood way in any way shape or form with the flood control project. This development change would not impact that process.

**Senator Cook:** If this passes, do you send out some notice to all communities that they now have this extra flexibility?

**Mr. Carranza:** What we have is a periodic publication called Floodlines, which our state National Flood Insurance Program (NFIP) Coordinator, Deon Hayes sends out periodically. A method like that, or an additional special edition would go out to all participating communities to let them know of the change, with that we could also do site visits, or have a more robust rollout, but there is a mechanism in place.

**No testimony in support  
No opposing testimony**

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**Public hearing closed.**

**Senator Cook: I move do pass.**

**Senator Roers: I second.**

**A roll call vote was taken 6-0-0.**

**Motion carries**

**Senator Cook will carry.**

Date: 1.11.19  
Roll Call Vote #: 1

**2019 SENATE STANDING COMMITTEE  
ROLL CALL VOTES  
BILL/RESOLUTION NO. 2091**

Senate Energy and Natural Resources Committee

Subcommittee

Amendment LC# or Description: \_\_\_\_\_

Recommendation:  Adopt Amendment  
 Do Pass  Do Not Pass  Without Committee Recommendation  
 As Amended  Rerefer to Appropriations  
 Place on Consent Calendar  
Other Actions:  Reconsider  \_\_\_\_\_

Motion Made By Sen. Cook Seconded By Sen. Roers

Senators	Yes	No	Senators	Yes	No
Chair Jessica Unruh	X		Senator Merrill Piepkorn	X	
V. Chair Curt Kreun	X		Senator Jim Roers	X	
Senator Dwight Cook	X				
Senator Donald Schaible	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Sen Cook

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

**REPORT OF STANDING COMMITTEE**

**SB 2091: Energy and Natural Resources Committee (Sen. Unruh, Chairman)**  
recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING).  
SB 2091 was placed on the Eleventh order on the calendar.

**2019 HOUSE ENERGY AND NATURAL RESOURCES**

**SB 2091**

# 2019 HOUSE STANDING COMMITTEE MINUTES

## Energy and Natural Resources Committee

Coteau A Room, State Capitol

SB 2091

2/28/2019

32970

Subcommittee

Conference Committee

Committee Clerk, Kathleen Davis

### Explanation or reason for introduction of bill/resolution:

Relating to floodplain management community standards for permissible uses within the flood fringe

### Minutes:

Attachment 1

Chairman Porter: Opened the hearing on SB 2091.

Aaron Carranza, Director of the Regulatory Division for the Office of the State Engineer presented Attachment 1.

2:50

Rep. Keiser: The Corp of Engineers just completed their study for the National Flood Insurance program and changed the standards dramatically affecting ND, especially the Red River Valley. How do we address the changes in their designation of the different flood plain periodically as they redo their analysis?

Carranza: Very complicated question, many insurance rate tables regarding flood insurance rates depending how a structure compares to the existing and proposed flood plain or base flood elevation. Homeowners are given an opportunity and time to gradually increase their rates to allow compliance. It's an ongoing question on a national scale, every state and every community is struggling with that as new science and information presents.

Chairman Porter: Mandan's Heart River dike system, fully functional for the last 70 years now at risk of being decertified. Now everybody on the south side of Mandan all the way up to the post office basically would have to purchase flood insurance? How does that play into what we're talking about?

Carranza: That would not be a part of this, would not touch that ability. If flood insurance is required and substantial improvements or build a new home, you have to meet the existing flood plain requirements. With the Mandan levy, there's ongoing conversation with state agents and FEMA and local community on how to address that issue. If it happens to be decertified, the protection benefit it's providing and the flood insurance benefit would go away, the full standards of national flood insurance program would be in play.



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2.28.19  
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Chairman Porter: questions? Support? Opposition? closed the hearing on SB 2091.

# 2019 HOUSE STANDING COMMITTEE MINUTES

## Energy and Natural Resources Committee Coteau A Room, State Capitol

SB 2091  
2/28/2019  
32989

- Subcommittee  
 Conference Committee

Committee Clerk, Kathleen Davis

### Explanation or reason for introduction of bill/resolution:

Relating to floodplain management community standards for permissible uses within the flood fringe

### Minutes:

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**Chairman Porter:** opened the hearing on SB 2091.

**Rep. Keiser:** Move a Do Pass

**Rep. Anderson:** second

**Chairman Porter:** We have a motion and second for a Do Pass on SB 2091. Further discussion?

Roll call vote: 13 yes 0 no 1 absent Motion carried. Rep. Eidson is carrier.

Date: 2-28-19  
 Roll Call Vote #: 1

**2019 HOUSE STANDING COMMITTEE  
 ROLL CALL VOTES  
 BILL/RESOLUTION NO. 2091**

House Energy and Natural Resources Committee

Subcommittee

Amendment LC# or Description: \_\_\_\_\_

Recommendation:  Adopt Amendment  
 Do Pass     Do Not Pass     Without Committee Recommendation  
 As Amended     Rerefer to Appropriations  
 Place on Consent Calendar  
 Other Actions:  Reconsider     \_\_\_\_\_

Motion Made By Rep Keiser    Seconded By Rep Anderson

Representatives	Yes	No	Representatives	Yes	No
Chairman Porter	✓		Rep. Lefor	✓	
Vice Chairman Damschen	✓		Rep. Marschall	✓	
Rep. Anderson	✓		Rep. Roers Jones	✓	
Rep. Bosch	✓		Rep. Ruby	✓	
Rep. Devlin	✓		Rep. Zubke	AB	
Rep. Heinert	✓		Rep. Mitskog	✓	
Rep. Keiser	✓		Rep. Eidson	✓	

Total (Yes) 13    No 0

Absent 1

Floor Assignment Rep Eidson

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

**REPORT OF STANDING COMMITTEE**

**SB 2091: Energy and Natural Resources Committee (Rep. Porter, Chairman)**  
recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING).  
SB 2091 was placed on the Fourteenth order on the calendar.

**2019 TESTIMONY**

**SB 2091**

SB 2091  
1.11.19  
#1

**Testimony**  
**Senate Bill 2091 – Office of the State Engineer**  
**Senate Energy and Natural Resources**  
**Senator Unruh, Chair**  
**January 11, 2019**

Chairwoman Unruh and members of the Senate Energy and Natural Resources Committee, my name is Aaron Carranza and I am the Director of the Regulatory Division for the Office of the State Engineer. I am here today to present testimony regarding Senate Bill 2091. Senate Bill 2091 is an agency sponsored bill that proposes additional flexibility for construction within the FEMA-identified Special Flood Hazard Area (SFHA).

All communities that participate in FEMA's National Flood Insurance Program (NFIP) must appropriately regulate land use and development within their identified SFHA, which is typically referred to as the 100-year floodplain. When building in the SFHA, NFIP regulations allow structures to be elevated by means of crawlspace, posts, piers, piling, columns, and fill.

However, NFIP participating states and communities have the flexibility to adopt higher standards in the management of the SFHA. As North Dakota Century Code § 61-16.2-08 is currently written, North Dakota state law is placing a higher standard on SFHA construction methods for all participating communities within the state by allowing only fill as a means to elevate structures.

Using fill to elevate a structure does have many benefits, although it may not always be the best option. For example, fill depletes the flood

storage capacity. If a large amount of fill is required to elevate properly, the development may cause issues elsewhere. Fill is also not desired for development in areas with high velocity flooding or within the regulated floodway where an increase in flood heights would result.

Often times, property owners want to elevate on a crawlspace or use a combination of methods, especially in areas where they need to elevate by several feet. By removing the words "on fill," we are allowing property owners the ability to choose the best elevation method for a given situation and structure.

We will continue to encourage local communities to adopt higher standards (and elevating on fill may be a standard they chose to adopt), however, it should be a local community-level decision of how best to manage local floodplain development.

Removing the phrase "on fill" from North Dakota Century Code § 61-16.2-08 will return a key floodplain management tool to the local participating community and will provide those looking to develop within a SFHA the potential flexibility to meet local, state, and federal guidelines in the most reasonable method that is appropriate and unique to their particular case.

The State Engineer supports the passage of Senate Bill 2091 and fully supports the sound management of water resources across municipal, county, and state jurisdictions.

Thank you for the opportunity to comment and I would be happy to answer any questions you might have.

**Testimony  
Senate Bill 2091  
House Energy and Natural Resources Committee  
Todd Porter, Chairman  
February 28, 2019**

Good morning. Chairman Porter and members of the House Energy and Natural Resources Committee, my name is Aaron Carranza and I am the Director of the Regulatory Division for the Office of the State Engineer. I am here today to present supporting testimony regarding Senate Bill 2091. Senate Bill 2091 is an agency sponsored bill that proposes additional flexibility for construction within the FEMA-identified Special Flood Hazard Area (SFHA).

All communities that participate in FEMA's National Flood Insurance Program (NFIP) must appropriately regulate land use and development within their identified SFHA, which is typically referred to as the 100-year floodplain. When building in the SFHA, NFIP regulations allow structures to be elevated by means of crawlspace, posts, piers, piling, columns, and fill.

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