

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 1999

SENATE BILL 1341
RATIFIED BILL

AN ACT TO PREVENT INAPPROPRIATE DEVELOPMENT IN THE ONE
HUNDRED-YEAR FLOODPLAIN AND TO REDUCE FLOOD HAZARDS.

Whereas, the hurricanes and associated flooding experienced in Eastern North Carolina in 1999 caused billions of dollars in damage; and

Whereas, some of the structural damage resulting from the floods could have been prevented by requiring development in the floodplain to be elevated above the 100-year floodplain; and

Whereas, harm to the environment could have been minimized by prohibiting certain inappropriate uses in the floodplain; and

Whereas, loss of life and property could have been reduced by preventing certain types of development in the floodplain; and

Whereas, future loss of life and property can be reduced by more effective enforcement of floodplain management regulations; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. Part 6 of Article 21 of Chapter 143 of the General Statutes reads as rewritten:

"PART 6. FLOODWAY FLOODPLAIN REGULATION.

"§ 143-215.51. Preamble. Purposes.

~~The purpose purposes of this Part is to specify means for regulation of artificial obstructions in floodways are to:~~

- ~~(1) Minimize the extent of floods by preventing obstructions that inhibit water flow and increase flood height and damage.~~
- ~~(2) Prevent and minimize loss of life, injuries, property damage, and other losses in flood hazard areas.~~
- ~~(3) Promote the public health, safety, and welfare of citizens of North Carolina in flood hazard areas.~~

~~It is hereby declared that the channel and a portion of the floodplain of all the State's streams will be designated as a floodway, in which artificial obstructions may not be placed except in accordance with the provisions of this Part. The purpose of designating these areas as a floodway is to help control and minimize the extent of floods by preventing obstructions which inhibit water flow and increase flood height and damage, and thereby to prevent and minimize loss of life, injuries, property damage and other losses (both public and private) in flood hazard areas, and to promote the public health, safety and welfare of citizens of North Carolina in flood hazard areas.~~

"§ 143-215.52. Definitions.

~~(a) As used in this Part, unless the context otherwise requires: Part:~~

- ~~(1) 'Artificial obstruction' means any obstruction ~~which to the flow of water in a stream that is not a natural obstruction, including any which, that,~~ while not a significant obstruction in itself, is capable of accumulating debris and thereby reducing the flood-carrying capacity of the stream.~~
- ~~(1a) 'Base flood' or '100-year flood' means a flood that has a one percent (1%) chance of being equaled or exceeded in any given year. The term 'base flood' is used in the National Flood Insurance Program to~~

- indicate the minimum level of flooding to be addressed by a community in its floodplain management regulations.
- (1b) 'Base floodplain' or '100-year floodplain' means that area subject to a one percent (1%) or greater chance of flooding in any given year, as shown on the current floodplain maps prepared pursuant to the National Flood Insurance Program or approved by the Department.
- (1c) 'Department' means the Department of Crime Control and Public Safety.
- (1d) 'Flood hazard area' means the area designated by a local government, pursuant to this Part, as an area where development must be regulated to prevent damage from flooding. The flood hazard area must include and may exceed the base floodplain.
- ~~(2) 'Floodway' means that portion of the channel and floodplain of a stream designated to provide passage for the 100-year flood, without increasing the elevation of that flood at any point by more than one foot.~~
- (3) 'Local government' means any county or municipal corporation, city, as defined in G.S. 160A-1.
- (3a) 'Lowest floor', when used in reference to a structure, means the lowest enclosed area, including a basement, of the structure. An unfinished or flood resistant enclosed area, other than a basement, that is usable solely for parking vehicles, building access, or storage is not a lowest floor.
- (4) 'Natural obstruction' includes any rock, tree, gravel, or analogous other natural matter that is an obstruction and has been located within the floodway-100-year floodplain by a nonhuman cause.
- (4b) 'Secretary' means the Secretary of Crime Control and Public Safety.
- (5) 'Stream' means a watercourse that collects surface runoff from an area of one square mile or greater. This does not include flooding due to tidal or storm surge on estuarine or ocean waters.
- (6) 'Structure' means a walled or roofed building, including a mobile home and a gas or liquid storage tank.
- (b) As used in this Part, the terms 'artificial obstruction' and 'structure' do not include any of the following:
- (1) An electric generation, distribution, or transmission facility.
 - (2) A gas pipeline or gas transmission or distribution facility, including a compressor station or related facility.
 - (3) A water treatment or distribution facility, including a pump station.
 - (4) A wastewater collection or treatment facility, including a lift station.
 - (5) Processing equipment used in connection with a mining operation.
- ~~"§ 143* The placement of any artificial obstruction in the floodway of any stream after the floodway has been delineated pursuant to G.S. 143-215.56 is hereby prohibited, except as set forth in G.S. 143-215.54, unless a permit has been obtained for such artificial obstruction from the responsible local government. No damageable portion of a structure located outside the floodway may be below the elevation that would be attained by the 100-year flood if the stream were contained within the floodway.~~
- "§ 143-215.54. Floodway uses. Regulation of flood hazard areas; prohibited uses.**
- (a) Local governments are empowered to—A local government may adopt ordinances to regulate uses in flood hazard areas and grant permits for the use of the floodways—flood hazard areas that are consistent with the purposes—requirements of this Part and for purposes which the State does not regulate either by a permit or a formal approval system.—Part.

(b) ~~The following uses may be made of floodways as a matter of right flood hazard areas without a permit issued under this Part.~~ Part, provided that these uses comply with local land-use ordinances and any other applicable laws or regulations:

- (1) General farming, pasture, outdoor plant nurseries, horticulture, forestry, mining, wildlife sanctuary, game farm, and other similar agricultural, wildlife and related uses;
- (2) Ground level loading areas, parking areas, rotary aircraft ports and other similar ground level area uses;
- (3) Lawns, gardens, play areas and other similar uses;
- (4) Golf courses, tennis courts, driving ranges, archery ranges, picnic grounds, parks, hiking or horseback riding trails, open space and other similar private and public recreational uses.
- (5) Land application of waste at agronomic rates consistent with a permit issued under Part 1 or Part 1A of Article 21 of Chapter 143 of the General Statutes or an approved animal waste management plan.
- (6) Land application of septage consistent with a permit issued under G.S. 130A-291.1.

(c) New solid waste disposal facilities, hazardous waste management facilities, salvage yards, and chemical storage facilities are prohibited in the 100-year floodplain except as authorized under G.S. 143-215.54A(b).

"§ 143-215.54A. Minimum standards for ordinances; variances for prohibited uses.

(a) A flood hazard prevention ordinance adopted by a county or city pursuant to this Part shall, at a minimum:

- (1) Meet the requirements for participation in the National Flood Insurance Program and of this section.
- (2) Prohibit new solid waste disposal facilities, hazardous waste management facilities, salvage yards, and chemical storage facilities in the 100-year floodplain except as authorized under subsection (b) of this section.
- (3) Provide that a structure or tank for chemical or fuel storage incidental to a use that is allowed under this section or to the operation of a water treatment plant or wastewater treatment facility may be located in a 100-year floodplain only if the structure or tank is either elevated above base flood elevation or designed to be watertight with walls substantially impermeable to the passage of water and with structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy.

(b) A flood hazard prevention ordinance may include a procedure for granting variances for uses prohibited under G.S. 143-215.54(c). A county or city shall notify the Secretary of its intention to grant a variance at least 30 days prior to granting the variance. A county or city may grant a variance upon finding that all of the following apply:

- (1) The use serves a critical need in the community.
- (2) No feasible location exists for the location of the use outside the 100-year floodplain.
- (3) The lowest floor of any structure is elevated above the base flood elevation or is designed to be watertight with walls substantially impermeable to the passage of water and with structural components capable of resisting hydrostatic and hydrodynamic loads and the effects of buoyancy.
- (4) The use complies with all other applicable laws and regulations.

"§ 143-215.55. Existing artificial obstructions. Acquisition of existing structures.

~~Artificial obstructions existing in a floodway on July 1, 1971, shall not be considered to be in violation of this Part. However, they may not be enlarged or~~

~~replaced in part or in whole, without a permit, as provided by this Part in the case of a proposed artificial obstruction. Local governments are empowered to~~ A local government may acquire, by purchase, exchange, or condemnation such existing artificial obstructions if deemed necessary by the responsible local government for the purpose of avoiding flood damages. an existing structure located in a flood hazard area in the area regulated by the local government if the local government determines that the acquisition is necessary to prevent damage from flooding. The procedure in all condemnation proceedings pursuant to this section shall conform as nearly as possible to the procedure provided in Article 3 of Chapter 40A of the General Statutes.

"§ 143-215.56. Delineation of floodway; flood hazard areas and 100-year floodplains; powers of Commission and Department; powers of local governments. governments and of the Department.

(a) ~~For the purpose of delineating the floodway a flood hazard area and evaluating the possibility of flood damages, responsible local governments are empowered to:~~ a local government may:

- (1) ~~Request technical assistance from the competent State and federal agencies, including the Army Corps of Engineers, the Soil Conservation Service, Natural Resource Conservation Service, the Tennessee Valley Authority, the Federal Emergency Management Agency, the North Carolina Department of Crime Control and Public Safety, the North Carolina Geodetic Survey, the North Carolina Geological Survey, and the U.S. Geological Survey, or successor agencies, and agencies.~~
- (2) Utilize the reports and data supplied by federal and State agencies as the basis for the exercise by local ordinance or resolution of the powers and responsibilities conferred on responsible local governments by this Part.

(b) ~~The Department shall be empowered to render shall provide advice and assistance to any local government having responsibilities under this Part. In exercising this function it shall specifically be authorized to the Department may furnish manuals, suggested standards, plans, and other technical data; to conduct training programs; and to give advice and assistance with respect to handling of particular applications; delineation of flood hazard areas and the development of appropriate ordinances; but it shall not be limited to such activities. and provide any other advice and assistance that the Department deems appropriate.~~ The Department shall send a copy of every rule adopted to implement this Part to the governing body of each local government in the State.

(c) A local government may delineate any ~~floodway flood hazard area~~ subject to its regulation by showing it on a map or drawing, by a written description, or any combination thereof, to be designated appropriately and filed permanently with the clerk of superior court and with the register of deeds in the county where the land lies. A local government may also delineate a flood hazard area by reference to a map prepared pursuant to the National Flood Insurance Program. The Commission may delineate a floodway, in the same manner and subject to the same requirement, when the reach of a stream in which a floodway is determined by the Commission to be needed exceeds the jurisdiction of a single local government. Alterations in the lines delineated shall be indicated by appropriate entries upon or addition to ~~such map the appropriate map, drawing, or description. Such entries~~ Entries or additions shall be made by or under the direction of the clerk of superior court. Photographic, typed or other copies of such map the map, drawing, or description, certified by the clerk of superior court, shall be admitted in evidence in all courts and shall have the same force and effect as would the original map or description. A local government or the Commission may provide for the redrawing of any such map. A redrawn map shall supersede for all purposes the earlier map or maps which that it is designated to replace upon the filing and approval thereof as designated and provided above.

~~(d) If the Commission determines that the floodway of any stream or stream segment should be delineated and the use thereof controlled as provided in this Part, and the local governments within which the stream or segment lies have not delineated the floodway or controlled uses therein, the Commission shall advise the local governments of its intent to delineate the floodway, and it shall be the responsibility of the local governments to control uses therein. At least 30 days prior to the effective date of a rule of the Commission establishing any floodway, notice of the effective date and copies of the rule shall be delivered to every affected local government along with copies of all maps and plans delineating the floodway. Public notice of the rule shall be given at least 30 days prior to the effective date by publication of a notice once a week for two successive weeks in a newspaper or newspapers having general circulation in the county or counties in which each affected local government lies and by posting a copy of the notice at the courthouse of each such county, along with a sketch map showing the stream or stream segment affected. The notice shall be adequate to apprise all interested persons of the nature of the rules, the effective date thereof, the stream or stream segment affected, and the manner in which more detailed information may be secured. The Department may prepare a floodplain map that identifies the 100-year floodplain and base flood elevations for an area for the purposes of this Part if all of the following conditions apply:~~

- ~~(1) The 100-year floodplain and base flood elevations for the area are not identified on a floodplain map prepared pursuant to the National Flood Insurance Program within the previous five years.~~
- ~~(2) The Department determines that the 100-year floodplain and the base flood elevations for the area need to be identified and the use of the area regulated in accordance with the requirements of this Part in order to prevent damage from flooding.~~
- ~~(3) The Department prepares the floodplain map in accordance with the federal standards required for maps to be accepted for use in administering the National Flood Insurance Program.~~

~~(e) Prior to preparing a floodplain map pursuant to subsection (d) of this section, the Department shall advise each local government whose jurisdiction includes a portion of the area to be mapped.~~

~~(f) Upon completing a floodplain map pursuant to subsection (d) of this section, the Department shall both:~~

- ~~(1) Provide copies of the floodplain map to every local government whose jurisdiction includes a portion of the 100-year floodplain identified on the floodplain map.~~
- ~~(2) Submit the floodplain map to the Federal Emergency Management Agency for approval for use in administering the National Flood Insurance Program.~~

~~(g) Upon approval of a floodplain map prepared pursuant to subsection (d) of this section by the Federal Emergency Management Agency for use in administering the National Flood Insurance Program, it shall be the responsibility of each local government whose jurisdiction includes a portion of the 100-year floodplain identified in the floodplain map to incorporate the revised map into its floodplain ordinance.~~

"§ 143-215.57. Procedures in issuing permits.

~~(a) Responsible local governments are empowered to—A local government may establish application forms and require such maps, plans, and other information as necessary for the issuance of permits in a manner consonant with the objectives of this Part. For this purpose a local government may take into account anticipated development in the foreseeable future that may be adversely affected by the obstruction, as well as existing development. They shall consider the effects of a proposed artificial obstruction in a floodway stream in creating danger to life and property by:~~

- ~~(1) By water which—Water that may be backed up or diverted by such obstruction; the obstruction.~~

- (2) ~~By the~~ The danger that the obstruction will be swept downstream to the injury of ~~others; and others.~~
- (3) ~~By the~~ The injury or damage at the site of the obstruction itself.

~~For this purpose they may take into account anticipated development in the foreseeable future which may be adversely affected by the obstruction, as well as existing development.~~

(b) In prescribing standards and requirements for the issuance of permits under this Part, ~~Part~~ and in issuing such permits, ~~responsible~~ local governments shall proceed as in the case of an ordinance for the better government of the county or ~~municipality, city~~ as the case may be. A ~~municipality~~ city may exercise the powers granted in this Part not only within its corporate boundaries but also within the area of its extraterritorial zoning jurisdiction. A county may exercise the powers granted in this Part at any place within the county that is outside the zoning jurisdiction of any municipalities a city in the county. If a city does not exercise the powers granted in this Part in the city's extraterritorial zoning jurisdiction, the county may exercise the powers granted in this Part in the city's extraterritorial zoning jurisdiction. The county may regulate territory within the zoning jurisdiction of any ~~municipality~~ city whose governing body, by resolution, agrees to such regulation; ~~provided, however, that any such the regulation.~~ ~~municipal~~ The governing body of a city may, upon one year's written notice, withdraw its approval of the county regulations, and those regulations shall have no further effect within the ~~municipality's~~ city's jurisdiction.

(c) The local governing body is hereby empowered to adopt ~~such~~ regulations as it may deem necessary concerning the form, time, and manner of submission of applications for permits under this Part. ~~Such~~ These regulations may provide for the issuance of permits under this Part by the local governing body or by ~~such an~~ agency as ~~may be~~ designated by ~~said the~~ local governing body, as prescribed by the governing body. Every final decision granting or denying a permit under this Part shall be subject to review by the superior court of the county, with the right of jury trial at the election of the party seeking review. The time and manner of election of a jury trial shall be governed by G.S. 1A-1, Rule 38(b) of the Rules of Civil Procedure. Pending the final disposition of ~~any such an~~ appeal, no action shall be taken ~~which that~~ would be unlawful in the absence of a permit issued under this Part.

"§ 143-215.58. Violations and penalties.

(a) Any willful violation of this Part or of any ordinance adopted (or of the provisions of any permit issued) under the authority of this Part shall constitute a Class 1 misdemeanor.

(a1) A local government may use all of the remedies available for the enforcement of ordinances under Chapters 153A and 160A of the General Statutes to enforce an ordinance adopted pursuant to this Part.

(b) Failure to remove any artificial obstruction or enlargement or replacement thereof, that violates this Part or any ordinance adopted (or the provision of any permit issued) under the authority of this Part, shall constitute a separate violation of this Part for each ~~10 days~~ day that ~~such the~~ failure continues after written notice from the county ~~board of commissioners~~ or ~~municipal governing body.~~ governing body of a city.

(c) In addition to or in lieu of other remedies, the county board of commissioners or ~~municipal~~ governing body of a city may institute any appropriate action or proceeding to restrain or prevent any violation of this Part or of any ordinance adopted (or of the provisions of any permit issued) under the authority of this Part, or to require any person, firm or corporation ~~which that~~ has committed ~~any such a~~ violation to remove a violating obstruction or restore the conditions existing before the placement of the obstruction.

"§ 143-215.59. Other approvals required.

(a) The granting of a permit under the provisions of this Part shall in no way affect any other type of approval required by any other statute or ordinance of the State

or any political subdivision of the State, or of the United States, but shall be construed as an added requirement.

(b) No permit for the construction of any structure to be located within a ~~floodway~~ flood hazard area shall be granted by a political subdivision unless the applicant has first obtained the permit required by any local ordinance adopted pursuant to this Part.

"§ 143-215.60. Liability for damages.

No action for damages sustained because of injury or property damage caused by ~~an~~ a structure or obstruction for which a permit has been granted under this Part shall be brought against the State or any political subdivision of the State, or their employees or agents.

"§ 143-215.61. Floodplain management.

The provisions of this Part shall not preclude the imposition by responsible local governments of land use controls and other regulations in the interest of floodplain management for the ~~floodplain or the floodway.~~ 100-year floodplain."

Section 2. G.S.159G-10(b)(1) reads as rewritten:

"(b) Priority Factors. – All applications for revolving loans or grants under this Chapter eligible for consideration during each priority period shall be assigned a priority for ~~such~~ funds by the receiving agency. The priority factors shall be similar to those developed under the North Carolina Clean Water Bond Act of 1977, as provided in and modified by this subsection.

(1) General Criteria. –

- a. The general criteria provided in 1 NCAC 22.0401 through .0403 on January 1, 1987, shall apply, except that 1 NCAC 22.0401(c) shall apply only to State funds appropriated to match available federal funds.
- b. The existence of a comprehensive land-use plan that meets the requirements of subsection (e) of this section is a general criterion for prioritizing which applicants will receive a loan or grant. An applicant that is not authorized to adopt a comprehensive land-use plan but that is located in whole or in part in a local government unit that has adopted a comprehensive land-use plan shall receive the same priority treatment as an applicant that has authority to adopt a comprehensive land-use plan. A comprehensive land-use plan that meets the requirements of subsection (e) of this section and that exceeds the minimum State standards for protection of water resources shall receive more points than a plan that does not exceed those standards. Additional points may be awarded for actions taken toward implementation of a comprehensive land-use plan. These actions may include the adoption of a zoning ordinance or any other measure that significantly contributes to the implementation of the comprehensive land-use plan.
- c. The existence of a flood hazard ordinance conforming to the requirements of Part 6 of Article 21 of Chapter 143 of the General Statutes is a general criterion for prioritizing which applicants will receive a loan or a grant. Demonstration, based on the most recent maps prepared pursuant to the National Flood Insurance Program or approved by the Department, that no portion of the applicant's jurisdiction is located within the 100-year floodplain is a general criterion equivalent to the existence of a flood hazard ordinance conforming to the requirements of Part 6 of Article 21 of Chapter 143 of the

General Statutes for prioritizing which applicants will receive a loan or a grant."

Section 3. The Environmental Review Commission shall study the need to increase minimum elevation requirements for structures that are located in floodplains, to increase the authority of the Secretary of Crime Control and Public Safety to enforce Part 6 of Article 21 of Chapter 143 of the General Statutes, as amended by Section 1 of this act, to increase protection against the potential recurrence of damage to public and private property that resulted from the hurricanes of 1999, and other measures to reduce the likelihood that public assistance will be needed in response to future hurricanes and other storm events. The Environmental Review Commission shall report its findings and recommendations, including any proposed legislation, to the 2001 General Assembly.

Section 4. The Environmental Management Commission shall study the impacts of development in the river basins of the State on the volume and intensity of stormwater flow and on the resulting intensity, frequency, and duration of flood events. As a part of its study and recommendations, the Commission shall specifically consider means to reduce or eliminate present and future impacts of development. The Environmental Management Commission shall report its findings and recommendations, including any proposed legislation to the Environmental Review Commission no later than 15 February 2001.

Section 5. Sections 1, 3, 4, and 5 of this act are effective when this act becomes law. Section 2 of this act becomes effective 1 July 2001 and applies to loans and grants made on or after that date.

In the General Assembly read three times and ratified this the 13th day of July, 2000.

Marc Basnight
President Pro Tempore of the Senate

James B. Black
Speaker of the House of Representatives

James B. Hunt, Jr.
Governor

Approved _____ .m. this _____ day of _____ , 2000