

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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HOUSE BILL 1632*

Short Title: Flood Hazard Prevention Act of 2000.

(Public)

Sponsors: Representative Gibson.

Referred to: Ways and Means.

May 18, 2000

A BILL TO BE ENTITLED

AN ACT TO PREVENT INAPPROPRIATE DEVELOPMENT IN THE ONE HUNDRED-YEAR FLOODPLAIN AND TO REDUCE FLOOD HAZARDS, AS RECOMMENDED BY THE ENVIRONMENTAL REVIEW COMMISSION.

Whereas, the hurricanes and associated flooding experienced in Eastern North Carolina in 1999 caused over six billion 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; 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.

(a) The purpose of this Part is ~~to specify means for regulation of artificial obstructions in floodways to:~~

- (1) Minimize the extent of floods by preventing obstructions which inhibit water flow and increase flood height and damage.

1 (2) Prevent and minimize loss of life, injuries, property damage, and other
2 losses in flood hazard areas.

3 (3) Promote the public health, safety, and welfare of citizens of North
4 Carolina in flood hazard areas.

5 It is hereby declared that the channel and ~~a portion of the~~ adjoining 100-year
6 floodplain of all the State's streams will be designated as a floodway, in which artificial
7 obstructions may not be placed—flood hazard area. Structures and other artificial
8 obstructions may not be placed in the channel of a stream or in the adjoining floodplain,
9 except in accordance with the provisions of this Part. The purpose of designating these areas
10 as a floodway is to help control and minimize the extent of floods by preventing obstructions
11 which inhibit water flow and increase flood height and damage, and thereby to prevent and
12 minimize loss of life, injuries, property damage and other losses (both public and private) in
13 flood hazard areas, and to promote the public health, safety and welfare of citizens of North
14 Carolina in flood hazard areas.

15 **"§ 143-215.52. Definitions.**

16 As used in this Part, ~~unless the context otherwise requires:~~ Part:

17 (1) 'Artificial obstruction' means any obstruction which is not a natural
18 obstruction, including any which, while not a significant obstruction in
19 itself, is capable of accumulating debris and thereby reducing the flood-
20 carrying capacity of the stream.

21 (1a) 'Base flood' or '100-year flood' means the flood which has a one percent
22 (1%) chance of being equalled or exceeded in any given year. The term
23 'Base flood' is used in the National Flood Insurance Program to indicate
24 the minimum level of flooding to be addressed by a community in its
25 floodplain management regulations.

26 (1b) 'Base floodplain' or '100-year floodplain' means that area subject to a
27 one percent (1%) or greater chance of flooding in any given year, as
28 shown on the most current floodplain maps prepared pursuant to the
29 National Flood Insurance Program or approved by the Department.

30 (1c) 'Department' means the Department of Crime Control and Public
31 Safety.

32 (1d) 'Flood hazard area' means the portion of the floodplain designated by a
33 local government or by the Department, pursuant to this Part, as an area
34 where development must be regulated to prevent damage from flooding.
35 The flood hazard area must include and may exceed the base floodplain.

36 (1e) 'Floodplain' means the lowland and relatively flat areas adjoining inland
37 and coastal waters, including the base floodplain.

38 (2) 'Floodway' means that portion of the channel and floodplain of a stream
39 designated to provide passage for the 100-year flood, without increasing
40 the elevation of that flood at any point by more than one foot.

41 (3) 'Local government' means any county or municipal corporation.

1 (4) 'Natural obstruction' includes any rock, tree, gravel, or ~~analogous other~~
2 natural matter that is an obstruction and has been located within the
3 floodway by a nonhuman cause.

4 (5) 'Stream' means a watercourse that collects surface runoff from an area
5 of one square mile or greater. ~~This does not include flooding due to tidal or~~
6 ~~storm surge on estuarine or ocean waters.~~

7 **"§ 143-215.53. ~~Artificial obstruction prohibited.~~ Floodplain development regulated.**

8 ~~The placement of~~ Except as provided in G.S. 143-215.54 and G.S. 143-215.57, no
9 person shall place any artificial obstruction in the floodway of any stream or construct
10 any structure in a flood hazard area after the floodway-flood hazard area has been
11 delineated pursuant to G.S. 143-215.56 G.S. 143-215.56. is hereby prohibited, except as set
12 forth in G.S. 143-215.54, unless a permit has been obtained for such artificial obstruction from
13 the responsible local government. No damageable portion of a structure located outside the
14 floodway may be below the elevation that would be attained by the 100 year flood if the stream
15 were contained within the floodway.

16 **"§ 143-215.54. ~~Floodway-Flood hazard area uses.~~**

17 (a) ~~Local governments are empowered to~~ A local government may adopt ordinances
18 to regulate uses in flood hazard areas and grant permits for the use of the floodways-flood
19 hazard areas that are consistent with the purposes-requirements of this Part and for purposes
20 which the State does not regulate either by a permit or a formal approval system. ~~Part.~~

21 (b) The following uses may be made of ~~floodways-flood hazard areas~~ as a matter of
22 right without a permit issued under this Part:

23 (1) General farming, pasture, outdoor plant nurseries, horticulture, forestry,
24 wildlife sanctuary, game farm, and other similar agricultural, wildlife
25 and related uses;

26 (2) Ground level loading areas, parking areas, rotary aircraft ports and other
27 similar ground level area uses;

28 (3) Lawns, gardens, play areas and other similar uses;

29 (4) Golf courses, tennis courts, driving ranges, archery ranges, picnic
30 grounds, parks, hiking or horseback riding trails, open space and other
31 similar private and public recreational uses.

32 (c) The lowest habitable floor of a structure in the 100-year floodplain must be
33 constructed at least two feet above the base flood elevation.

34 (d) Salvage yards, chemical storage facilities, and other uses involving potentially
35 large quantities of hazardous materials or solid waste disposal may not be located in the
36 100-year floodplain.

37 **"§ 143-215.55. ~~Existing artificial obstructions.~~ Acquisition of existing structures.**

38 ~~Artificial obstructions existing in a floodway on July 1, 1971, shall not be considered~~
39 ~~to be in violation of this Part. However, they may not be enlarged or replaced in part or in~~
40 ~~whole, without a permit, as provided by this Part in the case of a proposed artificial~~
41 ~~obstruction. Local governments are empowered to~~ A local government may acquire, by
42 purchase, exchange, or condemnation such existing artificial obstructions if deemed
43 necessary by the responsible local government for the purpose of avoiding flood

1 ~~damages.~~ an existing structure located in a flood hazard area in the area regulated by the
2 local government if the local government determines that the acquisition is necessary to
3 prevent damage from flooding. The procedure in all condemnation proceedings pursuant
4 to this section shall conform as nearly as possible to the procedure provided in Article 3
5 of Chapter 40A of the General Statutes.

6 **"§ 143-215.56. Delineation of ~~floodway;~~ flood hazard areas; powers of ~~Commission~~
7 ~~and Department;~~ powers of local governments.**

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

11 (1) Request technical assistance from the competent federal agencies,
12 including the Army Corps of Engineers, the Soil Conservation Service,
13 the Tennessee Valley Authority, and the U.S. Geological Survey, or
14 successor ~~agencies, and agencies.~~

15 (2) Utilize the reports and data supplied by federal and State agencies as the
16 basis for the exercise by local ordinance or resolution of the powers and
17 responsibilities conferred on responsible local governments by this Part.

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

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

1 (d) If the ~~Commission~~ Department determines that the ~~floodway~~ flood hazard area
2 of any stream or stream segment should be delineated and the use thereof controlled as
3 provided in this Part, and the local governments within which the stream or segment lies
4 have not delineated the ~~floodway~~ flood hazard area or controlled uses therein, the
5 ~~Commission~~ Department shall advise the local governments of its intent to delineate the
6 ~~floodway~~, flood hazard area, and it shall be the responsibility of the local governments to
7 control uses therein. At least 30 days prior to the effective date of ~~a rule of the Commission~~
8 ~~establishing any floodway~~, the delineation by the Department of any flood hazard area,
9 notice of the effective date and copies of the rule shall be delivered to every affected local
10 ~~government along with copies of all maps and plans delineating the floodway.~~ government.
11 Public notice of the ~~rule~~ delineation shall be given at least 30 days prior to the effective
12 date by publication of a notice once a week for two successive weeks in a newspaper or
13 newspapers having general circulation in the county or counties in which each affected
14 local government lies and by posting a copy of the notice at the courthouse of each such
15 county, along with a sketch map showing the stream or stream segment affected. The
16 notice shall be adequate to apprise all interested persons of the nature of the rules, the
17 effective date thereof, the stream or stream segment affected, and the manner in which
18 more detailed information may be secured.

19 **"§ 143-215.57. Procedures in issuing permits.**

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

- 27 (1) ~~By water~~ Water which may be backed up or diverted by such ~~obstruction;~~
28 obstruction.
- 29 (2) ~~By the~~ The danger that the obstruction will be swept downstream to the
30 injury of others; and others.
- 31 (3) ~~By the~~ The injury or damage at the site of the obstruction itself.

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

35 (a1) Prior to issuing a permit for a structure in a floodplain, a local government
36 shall ensure that the lowest habitable floor of the structure is elevated at least two feet
37 above the 100-year floodplain.

38 (a2) A local government shall not permit the establishment of a salvage operation,
39 chemical storage facility, or other use involving potentially large quantities of hazardous
40 materials or solid waste disposal within the 100-year floodplain.

41 (b) In prescribing standards and requirements for the issuance of permits under
42 this Part, and in issuing such permits, responsible local governments shall proceed as in
43 the case of an ordinance for the better government of the county or municipality, as the

1 case may be. A municipality may exercise the powers granted in this Part not only within
2 its corporate boundaries but also within the area of its extraterritorial zoning jurisdiction.
3 A county may exercise the powers granted in this Part at any place within the county
4 outside the zoning jurisdiction of any municipalities in the county. The county may
5 regulate territory within the zoning jurisdiction of any municipality whose governing
6 body, by resolution, agrees to such regulation; provided, however, that any such
7 municipal governing body may, upon one year's written notice, withdraw its approval of
8 the county regulations, and those regulations shall have no further effect within the
9 municipality's jurisdiction.

10 (c) The local governing body is hereby empowered to adopt such regulations as it
11 may deem necessary concerning the form, time, and manner of submission of
12 applications for permits under this Part. Such regulations may provide for the issuance of
13 permits under this Part by the local governing body or by such agency as may be
14 designated by said body, as prescribed by the governing body. Every final decision
15 granting or denying a permit under this Part shall be subject to review by the superior
16 court of the county, with the right of jury trial at the election of the party seeking review.
17 The time and manner of election of a jury trial shall be governed by G.S. 1A-1, Rule
18 38(b) of the Rules of Civil Procedure. Pending the final disposition of any such appeal,
19 no action shall be taken which would be unlawful in the absence of a permit issued under
20 this Part.

21 **"§ 143-215.58. Violations and penalties.**

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

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

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

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

39 **"§ 143-215.59. Other approvals required.**

40 (a) The granting of a permit under the provisions of this Part shall in no way affect
41 any other type of approval required by any other statute or ordinance of the State or any
42 political subdivision of the State, or of the United States, but shall be construed as an
43 added requirement.

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

4 **"§ 143-215.60. Liability for damages.**

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

9 **"§ 143-215.61. Floodplain management.**

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

13 Section 2. Part 6 of Article 21 of Chapter 143 is amended by adding a new
14 section to read:

15 **"§ 143-215.62. Failure to implement; approval of variances.**

16 (a) A local government that has not adopted and implemented an ordinance
17 consistent with the requirements of this Part shall not be eligible for State disaster
18 assistance until the local government adopts and implements an ordinance consistent with
19 the requirements of this Part.

20 (b) Issuance by a local government of a variance from the minimum elevation
21 requirement of a local ordinance that is consistent with the requirements of this Part shall
22 make the structure's owner ineligible for State disaster assistance for loss or damage from
23 flooding to the structure permitted pursuant to the variance.

24 (c) The responsible local government shall give notice of the provisions of
25 subsection (b) of this section to any petitioner for a variance from the minimum elevation
26 requirements of a local ordinance that is consistent with the requirements of this Part
27 prior to issuing a permit pursuant to the variance and shall obtain the petitioner's
28 signature on a form that waives the petitioner's claim to any State disaster assistance for
29 loss or damage from flooding to the structure permitted pursuant to the variance.

30 (d) A local government must demonstrate that it has adopted and implemented an
31 ordinance consistent with the requirements of this Part in order to be eligible for State
32 grants and loans for infrastructure improvements, including the development or
33 expansion of a wastewater treatment system, drinking water treatment system, or
34 associated collection or distribution system."

35 Section 3. A structure or use existing in the 100-year floodplain prior to July 1,
36 2000, or for which a building permit was issued prior to July 1, 2000, is not in violation
37 of G.S. 143-215.54. On or after July 1, 2000, development in the base floodplain must at
38 a minimum be consistent with the standards set out in G.S. 143-215.4.

39 Section 4. Notwithstanding G.S. 150B-21.1(a)(2), the Department of Crime
40 Control and Public Safety is authorized to adopt temporary rules to implement this act.

41 Section 5. Sections 1, 3, 4, and 5 are effective when this act becomes law.
42 Section 2 becomes effective January 1, 2001.