

Excerpt from *Summaries of Substantive Ratified Legislation 2000*

Research Division, North Carolina General Assembly

Flood Hazard Prevention Act of 2000

S.L. 2000-150 (SB 1341) rewrites all of Part 6 (Floodway Regulation) of Article 21 of Chapter 143 of the General Statutes. This act changes the title of Part 6 to Floodplain Regulation, rewrites the purpose of the Part, and extensively amends the definitions of terms. It authorizes local governments to adopt flood hazard prevention ordinances to regulate uses in flood hazard areas. A local government that adopts a flood hazard prevention ordinance by July 1, 2001 will be given a higher priority to receive loans and grants from the Clean Water Revolving Loan and Grant Fund. This act also prohibits new solid waste disposal facilities, hazardous waste management facilities, salvage yards, and chemical storage facilities in the 100-year floodplain except as authorized under a flood hazard prevention ordinance. Administration of the floodplain regulation program is transferred from the Department of Environment and Natural Resources (DENR) to the Department of Crime Control and Public Safety.

Flood Hazard Prevention Ordinance

This act authorizes local governments to adopt flood hazard prevention ordinances. A flood hazard prevention ordinance must:

- Meet the requirements of the National Flood Insurance Program.
- Prohibit new solid waste disposal facilities, hazardous waste management facilities, salvage yards, and chemical storage facilities in the 100-year floodplain.
- Require that chemical or fuel storage tanks incidental to an allowed use either be watertight or elevated above base flood elevation.

As part of its flood hazard prevention ordinance, a local government may establish a permitting process for uses of flood hazard areas. Certain uses including agriculture, mining, recreation and land application of waste and septage may be made of flood hazard areas without the issuance of a permit. Under its permitting program, a local government

- May consider the impact of locating an obstruction in a flood hazard area on existing and future development.
- Must consider the impact of locating an obstruction in a stream on water back up and diversion, the danger of the obstruction being swept downstream, and injury and damage at the site of the obstruction.

A local government may also include in its flood hazard prevention ordinance a procedure for granting a variance to the prohibition on new solid waste disposal facilities, hazardous waste management facilities, salvage yards, and chemical storage facilities in the 100-year floodplain. Under a variance procedure, a local government must notify the Secretary of Crime Control and Public Safety at least 30 days prior to granting the variance and must find that:

- The use serves a critical need to the community.
- No feasible location exists outside the 100-year floodplain for the location of the use.
- The lowest floor of any structure is either elevated or watertight.
- The use complies with all other applicable laws and regulations.

If a city chooses not to exercise its authority to adopt a flood hazard prevention ordinance that applies to its extraterritorial zoning jurisdiction, the surrounding county is authorized to do so.

Other Provisions for Flood Hazard Prevention

This act provides for a number of other flood hazard prevention measures that:

- Authorize local governments to acquire an existing structure in a flood hazard area by purchase or condemnation if necessary to prevent damage from flooding.
- Authorize local governments to delineate flood hazard areas with the assistance of State and federal technical agencies. Flood hazard areas may be delineated by reference to maps prepared under the National Flood Insurance Program. The Department of Crime Control and Public Safety may prepare maps of the 100-year floodplain and base flood elevations if existing floodplain maps under the National Flood Insurance Program are more than five years old and the Department finds a need to identify flood hazard areas to prevent flood damage. Maps prepared by the Department must meet the federal standards for use in administering the National Flood Insurance Program.
- Amend an existing penalty provision to make a violation of floodplain regulations a misdemeanor only if the violation is willful and to allow a local government to use all remedies available for the enforcement of its zoning ordinance to enforce its flood hazard prevention ordinance.

- Provide local governments that adopt a flood hazard prevention ordinance conforming to the minimum requirements set out in this act priority in the consideration of applications for loans and grants from the Clean Water Revolving Loan and Grant Fund.
- Direct the Environmental Review Commission (ERC) to study the need to increase minimum elevation requirements for structures in floodplains, to increase the authority of the Secretary of Crime Control and Public Safety to enforce minimum standards in the floodplains, and other measures to prevent recurring damage to public and private property from flooding in order to reduce demands for public assistance in response to future storm events.
- Direct the Environmental Management Commission (EMC) to study the impact of development in the river basins of the State on the volume of stormwater runoff and its contribution to flood events. The EMC is directed to specifically consider means to reduce the impact of development in the river basins of the State.

The provision on priority for loans and grants from the Clean Water Revolving Loan and Grant Fund becomes effective July 1, 2001 and applies to loans and grants made on or after that date. All other provisions of this act became effective August 2, 2000.