

112TH CONGRESS
2D SESSION

S. 2039

To allow a State or local government to construct levees on certain properties otherwise designated as open space lands.

IN THE SENATE OF THE UNITED STATES

JANUARY 26, 2012

Mr. HOEVEN (for himself and Mr. CONRAD) introduced the following bill;
which was read twice

JANUARY 26, 2012

Considered, amended, read the third time, and passed

A BILL

To allow a State or local government to construct levees on certain properties otherwise designated as open space lands.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. LEVEES.**

4 (a) DEFINITIONS.—In this section—

5 (1) the term “Administrator” means the Ad-
6 ministrator of the Federal Emergency Management
7 Agency; and

1 (2) the term “covered hazard mitigation land”
2 means land—

3 (A) acquired and deed restricted under sec-
4 tion 404(b) of the Robert T. Stafford Disaster
5 Relief and Emergency Assistance Act (42
6 U.S.C. 5170c(b)) before, on, or after the date
7 of enactment of this Act; and

8 (B) that is located—

9 (i) in North Dakota; and

10 (ii) in a community that—

11 (I) is participating in the Na-
12 tional Flood Insurance Program on
13 the date on which a State, local, or
14 tribal government submits an applica-
15 tion requesting to construct a perma-
16 nent flood risk reduction levee under
17 subsection (b); and

18 (II) certifies to the Administrator
19 and the Chief of Engineers that the
20 community will continue to participate
21 in the National Flood Insurance Pro-
22 gram.

23 (b) **AUTHORITY.**—Notwithstanding clause (i) or (ii)
24 of section 404(b)(2)(B) of the Robert T. Stafford Disaster
25 Relief and Emergency Assistance Act (42 U.S.C.

1 5170c(b)(2)(B)), the Administrator shall approve the con-
2 struction of a permanent flood risk reduction levee by a
3 State, local, or tribal government on covered hazard miti-
4 gation land if the Administrator and the Chief of Engi-
5 neers determine, through a process established by the Ad-
6 ministrator and Chief of Engineers and funded entirely
7 by the State, local, or tribal government seeking to con-
8 struct the proposed levee, that—

9 (1) construction of the proposed permanent
10 flood risk reduction levee would more effectively
11 mitigate against flooding risk than an open flood-
12 plain or other flood risk reduction measures;

13 (2) the proposed permanent flood risk reduction
14 levee complies with Federal, State, and local require-
15 ments, including mitigation of adverse impacts and
16 implementation of floodplain management require-
17 ments, which shall include an evaluation of whether
18 the construction, operation, and maintenance of the
19 proposed levee would continue to meet best available
20 industry standards and practices, would be the most
21 cost-effective measure to protect against the as-
22 sessed flood risk and minimizes future costs to the
23 federal government;

24 (3) the State, local, or tribal government seek-
25 ing to construct the proposed levee has provided an

1 adequate maintenance plan that documents the pro-
2 cedures the State, local, or tribal government will
3 use to ensure that the stability, height, and overall
4 integrity of the proposed levee and the structure and
5 systems of the proposed levee are maintained, in-
6 cluding—

7 (A) specifying the maintenance activities to
8 be performed;

9 (B) specifying the frequency with which
10 maintenance activities will be performed;

11 (C) specifying the person responsible for
12 performing each maintenance activity (by name
13 or title);

14 (D) detailing the plan for financing the
15 maintenance of the levee; and

16 (E) documenting the ability of the State,
17 local, or tribal government to finance the main-
18 tenance of the levee.

19 (c) MAINTENANCE CERTIFICATION.—

20 (1) IN GENERAL.—A State, local, or tribal gov-
21 ernment that constructs a permanent flood risk re-
22 duction levee under subsection (b) shall submit to
23 the Administrator and the Chief of Engineers an an-
24 nual certification indicating whether the State, local,

1 or tribal government is in compliance with the main-
2 tenance plan provided under subsection (b)(3).

3 (2) REVIEW.—The Chief of Engineers shall re-
4 view a certification submitted under paragraph (1)
5 and determine whether the State, local, or tribal
6 government has complied with the maintenance plan.

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