

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.

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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

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## 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

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

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

6 (B) that is located—

7 (i) in North Dakota; and

8 (ii) in a community that—

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

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

21 (b) **AUTHORITY.**—Notwithstanding clause (i) or (ii)  
22 of section 404(b)(2)(B) of the Robert T. Stafford Disaster  
23 Relief and Emergency Assistance Act (42 U.S.C.  
24 5170c(b)(2)(B)), the Administrator shall approve the con-  
25 struction of a permanent flood risk reduction levee by a

1 State, local, or tribal government on covered hazard miti-  
2 gation land if the Administrator and the Chief of Engi-  
3 neers determine, through a process established by the Ad-  
4 ministrator and Chief of Engineers, that—

5 (1) construction of the proposed permanent  
6 flood risk reduction levee would more effectively  
7 mitigate against flooding risk than an open flood-  
8 plain;

9 (2) the proposed permanent flood risk reduction  
10 levee complies with Federal, State, and local require-  
11 ments, including the consideration of mitigation of  
12 adverse impacts and floodplain management require-  
13 ments, which shall include an evaluation of whether  
14 the construction, operation, and maintenance of the  
15 proposed levee would continue to meet best available  
16 industry standards and practices and would protect  
17 against the assessed flood risk; and

18 (3) the State, local, or tribal government seek-  
19 ing to construct the proposed levee has provided an  
20 adequate maintenance plan that documents the pro-  
21 cedures the State, local, or tribal government will  
22 use to ensure that the stability, height, and overall  
23 integrity of the proposed levee and the structure and  
24 systems of the proposed levee are maintained, in-  
25 cluding—

1 (A) specifying the maintenance activities to  
2 be performed;

3 (B) specifying the frequency with which  
4 maintenance activities will be performed;

5 (C) specifying the person responsible for  
6 performing each maintenance activity (by name  
7 or title);

8 (D) detailing the plan for financing the  
9 maintenance of the levee; and

10 (E) documenting the ability of the State,  
11 local, or tribal government to finance the main-  
12 tenance of the levee.

13 (c) MAINTENANCE CERTIFICATION.—

14 (1) IN GENERAL.—A State, local, or tribal gov-  
15 ernment that constructs a permanent flood risk re-  
16 duction levee under subsection (b) shall submit to  
17 the Administrator and the Chief of Engineers an an-  
18 nual certification indicating whether the State, local,  
19 or tribal government is in compliance with the main-  
20 tenance plan provided under subsection (b)(3).

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

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