

112TH CONGRESS  
2D SESSION

# S. 2039

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IN THE HOUSE OF REPRESENTATIVES

JANUARY 27, 2012

Referred to the Committee on Transportation and Infrastructure

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## AN ACT

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,*

1 **SECTION 1. LEVEES.**

2 (a) DEFINITIONS.—In this section—

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

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

8 (A) acquired and deed restricted under sec-  
9 tion 404(b) of the Robert T. Stafford Disaster  
10 Relief and Emergency Assistance Act (42  
11 U.S.C. 5170c(b)) before, on, or after the date  
12 of enactment of this Act; and

13 (B) that is located—

14 (i) in North Dakota; and

15 (ii) in a community that—

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

23 (II) certifies to the Administrator  
24 and the Chief of Engineers that the  
25 community will continue to participate

1 in the National Flood Insurance Pro-  
2 gram.

3 (b) AUTHORITY.—Notwithstanding clause (i) or (ii)  
4 of section 404(b)(2)(B) of the Robert T. Stafford Disaster  
5 Relief and Emergency Assistance Act (42 U.S.C.  
6 5170c(b)(2)(B)), the Administrator shall approve the con-  
7 struction of a permanent flood risk reduction levee by a  
8 State, local, or tribal government on covered hazard miti-  
9 gation land if the Administrator and the Chief of Engi-  
10 neers determine, through a process established by the Ad-  
11 ministrator and Chief of Engineers and funded entirely  
12 by the State, local, or tribal government seeking to con-  
13 struct the proposed levee, that—

14 (1) construction of the proposed permanent  
15 flood risk reduction levee would more effectively  
16 mitigate against flooding risk than an open flood-  
17 plain or other flood risk reduction measures;

18 (2) the proposed permanent flood risk reduction  
19 levee complies with Federal, State, and local require-  
20 ments, including mitigation of adverse impacts and  
21 implementation of floodplain management require-  
22 ments, which shall include an evaluation of whether  
23 the construction, operation, and maintenance of the  
24 proposed levee would continue to meet best available  
25 industry standards and practices, would be the most

1 cost-effective measure to protect against the as-  
2 sessed flood risk and minimizes future costs to the  
3 federal government;

4 (3) the State, local, or tribal government seek-  
5 ing to construct the proposed levee has provided an  
6 adequate maintenance plan that documents the pro-  
7 cedures the State, local, or tribal government will  
8 use to ensure that the stability, height, and overall  
9 integrity of the proposed levee and the structure and  
10 systems of the proposed levee are maintained, in-  
11 cluding—

12 (A) specifying the maintenance activities to  
13 be performed;

14 (B) specifying the frequency with which  
15 maintenance activities will be performed;

16 (C) specifying the person responsible for  
17 performing each maintenance activity (by name  
18 or title);

19 (D) detailing the plan for financing the  
20 maintenance of the levee; and

21 (E) documenting the ability of the State,  
22 local, or tribal government to finance the main-  
23 tenance of the levee.

24 (c) MAINTENANCE CERTIFICATION.—

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

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

Passed the Senate January 26, 2012.

Attest:

NANCY ERICKSON,

*Secretary.*