

CHAPTER 183
FORMERLY
SENATE BILL NO. 64
AS AMENDED BY
SENATE AMENDMENT NO. 2
AND
HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 7 OF THE DELAWARE CODE RELATING TO FLOODPLAIN AND DRAINAGE STANDARDS, WETLANDS AND SUBAQUEOUS LANDS.

WHEREAS, Delaware is the lowest state in the USA with a mean elevation of just 60 feet above sea level; and

WHEREAS, Delaware is vulnerable to flooding from rising sea levels and coastal storm systems; and

WHEREAS, Over 331 square miles or 17% of Delaware's land mass are within a mapped 100 year flood plain; and

WHEREAS, Approximately 621 road miles and over 18,000 structures are in the 100 year floodplain; and

WHEREAS, Poor drainage standards and inconsistent municipal codes have contributed to chronic and nuisance flooding throughout the state resulting in state expenditures each year to resolve drainage problems and have cost taxpayers an estimated \$65,000,000 since 1996; and

WHEREAS, Those inadequate and inconsistent drainage standards cause an adverse impact to Delaware landowners affecting the use and enjoyment of their personal property; and

WHEREAS, DNREC should be afforded greater flexibility to waive regulatory requirements for emergencies to allow activities that protect public health and safety and property;

NOW THEREFORE:

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Title 7 of the Delaware Code by enacting a new "Chapter 44 FLOOD MITIGATION STANDARDS as follows:

"CHAPTER 44. FLOOD MITIGATION STANDARDS

§4401. Purpose.

It is the purpose of this Chapter to promote the public health, safety and general welfare, and to: Protect human life, health and welfare; encourage the utilization of appropriate construction practices in order to prevent or minimize flood damage in the future; minimize flooding of water supply and sanitary sewage disposal systems; maintain natural drainage; reduce financial burdens imposed on the state, local community, its governmental units and its residents, by discouraging unwise design and construction of development in areas subject to flooding; minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public; minimize prolonged business interruptions; minimize damage to public facilities and other utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges; reinforce that those who build in and occupy special flood hazard areas should assume responsibility for their actions; minimize the impact of development on adjacent properties within and near flood prone areas; provide that the flood storage and conveyance functions of the floodplain are maintained; minimize the impact of development on the natural and beneficial functions of the floodplain; prevent floodplain uses that are either hazardous or environmentally incompatible; and improve drainage standards to reduce threats to community welfare.

§ 4402. Definitions.

The following words, terms and phrases, when used in this Chapter, shall have the meanings ascribed to them except where the context clearly indicates a different meaning:

(a) 'Department' shall mean the Department of Natural Resources and Environmental Control.

(b) Federal Emergency Management Agency (FEMA): The federal agency with the overall responsibility for administering the National Flood Insurance Program.

(c) Flood or Flooding: A general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland or tidal waters, and/or the unusual and rapid accumulation or runoff of surface waters from any source.

(d) 'Secretary' shall mean the Secretary of the Department of Natural Resources and Environmental Control.

(e) 'State' shall mean the State of Delaware.

§ 4403 Rules.

The Secretary shall, within 9 months of the effective date of this legislation, develop guidance and minimum standards for improved floodplain management and drainage within the state after consultation with a Floodplain and Drainage Advisory Committee (Committee) appointed by the Secretary, to include public and private interests, as well as appropriate state, federal and municipal agencies, and governmental subdivisions of the State. Floodplain and Drainage standards shall include, but not be limited to definitions, general requirements and criteria for consideration by local governments within the State of Delaware. The Committee will consider nationally recognized standards and best practices. The Committee may also evaluate the capacity of local governments to implement standards and may make recommendations to the Secretary as appropriate, including, but not limited to the development of model ordinances. The Committee shall also examine the adequacy of existing requirements, policies and practices associated with notification to prospective property purchasers of existing flooding or drainage issues. Prior to finalizing such standards the Department shall offer an opportunity for the public to comment on the proposed standards and will consider all relevant comments.

The Committee shall consist of the following members:

1. One (1) member of the Senate appointed by the President Pro Tempore of the Senate and One (1) member of the House of Representatives appointed by the Speaker of the House of Representatives;
2. One (1) member of the Delaware Farm Bureau appointed by the President of the Delaware Farm Bureau;
3. One (1) representative of the Delaware Association of Conservation Districts, appointed by the President of the Delaware Association of Conservation Districts;
4. One (1) representative of the Delaware State Bar Association Real and Personal Property Section, appointed by the President of the Delaware State Bar Association;
5. One (1) representative of the Delaware Association of Realtors, appointed by the President of the Delaware Association of Realtors;
6. One (1) representative from the Federal Emergency Management Agency National Flood Insurance Program;
7. One (1) representative from the Delaware Hazard Mitigation Council appointed by the Director of the Delaware Emergency Management Agency.
8. One (1) representative of the Home Builders Association of Delaware appointed by the President of the Home Builders Association of Delaware.
9. Three representatives of the Delaware League of Local Governments appointed by the President of the Delaware League of Local Governments.
10. One (1) representative of the Sussex County Association of Towns.
11. One (1) representative of the Committee of 100 appointed by the President of the Committee of 100.
12. One (1) representative of the Delaware Insurance Commissioner's Office appointed by the Delaware Insurance Commissioner.
13. One (1) representative of the American Council of Engineering Companies appointed by the President of the American Council of Engineering Companies.
14. One (1) representative of the Delaware Department of Transportation appointed by the Secretary of the Department of Transportation.
15. Three representatives of the Delaware Association of Counties, one from each county, appointed by the President of the Delaware Association of Counties.
16. Two (2) representatives of the Division of Watershed Stewardship, appointed by the Secretary of the Department of Natural Resources and Environmental Control.

The Chair of the Committee shall be selected by the Secretary of the Department of Natural Resources and Environmental Control. The Committee shall organize and hold its first meeting no more than 30 days following the effective date of this legislation and shall be staffed by DNREC.

§ 4404. Review of Standards

(a) Within six months of the adoption of minimum standards, the three county governments and all municipal governments as appropriate shall review and prepare comments regarding their individual codes and ordinances to determine if they are consistent with the minimum standards. Such review and comments shall identify areas where existing requirements meet or exceed these recommendations and standards, do not comply with the standards or are functionally equivalent.

(b) The review and comments from local governments will also identify areas where implementation of these standards would represent a hardship to the local government, and what impediments to adoption of these standards have been identified. The Committee shall develop the framework for conducting such a review and DNREC shall provide technical assistance to local governments in conducting such analysis when requested.

(c) DNREC shall compile the results of the review, develop a draft report, reconvene the Committee to review the draft report and solicit feedback and deliver the final report to the General Assembly no later than March 15, 2013.”

Section 2. Further amend Title 7 Del C. Chapter 66, §6607 by adding a new subsection (f) to read as follows:

“(f) The Secretary may waive any provision of the Regulations adopted pursuant to this Chapter when warranted under the following circumstances:

1. *Life threatening emergencies.*
2. *Actions required for public safety for which sufficient time is not available to follow the Regulations.*
3. *When imminent or catastrophic damage or loss of major infrastructure is likely if all provisions of the Regulations are adhered to.*
4. *Where the authority of the Department under Chapter 66 overlaps with another statute, including but not limited to Shellfish Grounds (Chapter 19), Beach Preservation (Chapter 68) or Subaqueous Lands (Chapter 72) provided that the following criteria are met:*
 - a. *If, in the opinion of the Secretary, equal environmental impact review and regulation of the activity would be provided by either statute; and*
 - b. *Waiver of these Regulations would not be contrary to the purposes of 66.”*

Section 3. Further amend Title 7 Del C. Chapter 72, §7205 by adding a new subsection (c) to read as follows:

“(c) The Secretary may waive any provision of the Regulations adopted pursuant to this Chapter when warranted under the following circumstances:

1. *Life threatening emergencies.*
2. *Actions required for public safety for which sufficient time is not available to follow the Regulations.*
3. *When imminent or catastrophic damage or loss of major infrastructure is likely if all provisions of the Regulations are adhered to.*
4. *Where the authority of the Department under Chapter 72 overlaps with another statute, including but not limited to Shellfish Grounds (Chapter 19), Beach Preservation (Chapter 68) or Wetlands (Chapter 66) provided that the following criteria are met:*
 - a. *If, in the opinion of the Secretary, equal environmental impact review and regulation of the activity would be provided by either statute; and*
 - b. *Waiver of these Regulations would not be contrary to the purposes of Chapter 72.”*

Approved August 17, 2011