

STATE OF OKLAHOMA

2nd Session of the 48th Legislature (2002)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 2228

By: Walker

COMMITTEE SUBSTITUTE

An Act relating to waters and water rights; amending 82 O.S. 2001, Sections 1601, 1602, 1603, 1604, 1605, 1606, 1607, 1608, 1609, 1610, 1611, 1612, 1613, 1614, 1615, 1616, 1617 and 1618, which relate to the Oklahoma Floodplain Management Act; modifying purpose and intent of act; updating language; providing for additional rules; encouraging completion of classes and continuing education classes; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 82 O.S. 2001, Section 1601, is amended to read as follows:

Section 1601. ~~This act~~ Chapter 23 of this title shall be known and may be cited as the Oklahoma Floodplain Management Act.

SECTION 2. AMENDATORY 82 O.S. 2001, Section 1602, is amended to read as follows:

Section 1602. A. The State of Oklahoma recognizes the personal hardships and economic distress caused by flood disasters; in particular, the loss of life from floods, the physical and emotional impact of flooding on individuals and communities, public and private property damage and disruption, the increased cost for disaster relief and the need for preservation and restoration of the natural resources and functions of floodplains. Oklahoma also recognizes that it has become uneconomical for the private insurance industry alone to make flood insurance available to those in need of such protection on reasonable terms and conditions. Recognizing ~~this problem~~ these problems, Congress enacted the National Flood

Insurance Act of 1968, ~~whereby flood insurance can be made available through the coordinated efforts of the federal government and the private insurance industry and through the positive cooperation of state and local government~~ which, among other things, requires the development of a unified national program for floodplain management which sets out a framework for national goals towards which agencies at all levels of government and in the private sector can work each within its own mission and role.

B. The purpose of ~~this act~~ the Oklahoma Floodplain Management Act pursuant to the most current version of a unified program for floodplain management is to procure:

1. Protect the natural and beneficial functions of the floodplain, to reduce damage and disruption to property from floods, to reduce costs of disaster relief and to reduce injury and loss of life from floods;

2. Assist state agencies, local governments and the private sector in developing local floodplain management programs and in obtaining training and funding therefor; and

3. Procure flood insurance for those citizens that desire to participate in this federal program.

SECTION 3. AMENDATORY 82 O.S. 2001, Section 1603, is amended to read as follows:

Section 1603. As used in ~~this act~~ the Oklahoma Floodplain Management Act:

1. "Area of jurisdiction" means:

- a. all of the lands within an incorporated town or city, for a municipality,
- b. all of the unincorporated areas of the county, for a county, or
- c. all property owned or operated by the state, for the state;

2. "Board" means the Oklahoma Water Resources Board;

3. " Dwelling unit " means a place of residence and may be a single or multiple-dwelling building;

4. " Flood " or " flooding " means general and temporary conditions of partial or complete inundation of normally dry land areas from the overflow of lakes, streams, rivers or any other inland waters;

5. " Floodplain " means the land adjacent to a body of water which has been or may be covered by flooding, including, but not limited to, the one-hundred-year flood;

6. " Floodplain board " means an administrative and planning board, for floodplain management, of a county, a municipality or the state or the planning commission of a municipality or a county if so designated by the governing body of the municipality or county;

7. " Floodplain regulations " mean the codes, ordinances and other regulations relating to the use of land and construction within the channel and floodplain areas including, but not limited to, zoning ordinances, platting regulations, building codes, housing codes, setback requirements and open area regulations;

8. " Floodway " means the channel of a stream, watercourse or body of water and those portions of floodplains which are reasonably required to carry and discharge the floodwater or floodflow of any river or stream;

9. " One-hundred-year flood " means a flood which has a one percent (1%) chance of occurring each year, based upon the criteria established by the Oklahoma Water Resources Board; and

10. " Program " means the overall national flood insurance program authorized by the National Flood Insurance Act of 1968 (42 U.S.C. 4001-4128) as amended.

SECTION 4. AMENDATORY 82 O.S. 2001, Section 1604, is amended to read as follows:

Section 1604. A. To allow participation in the program, the Oklahoma Water Resources Board, boards of county commissioners and municipal governing bodies are authorized to establish floodplain

boards for their respective area of jurisdiction which may adopt, administer and enforce floodplain management rules and regulations, for the purpose of:

1. The delineation of floodplains and floodways;
2. The preservation of the capacity of the floodplain to carry and discharge regional floods;
3. The minimization of flood hazards;
4. The establishment and charging of reasonable fees, not to exceed Five Hundred Dollars (\$500.00), for services provided by the Board, county commissioners and municipalities in the administration of their responsibilities pursuant to the Oklahoma Floodplain Management Act; ~~and~~
5. The regulation of the use of land in the floodplain; and
6. The protection of the natural and beneficial functions of the floodplain, reducing damage to property from floods, reducing injury and loss of life from floods, and allowing communities to be eligible for flood insurance.

B. The rules and regulations shall be based on adequate technical data and competent engineering advice and shall be consistent with local and regional comprehensive planning.

C. The rules and regulations shall be approved by the Oklahoma Water Resources Board, the county or the municipality, as the case may be, by appropriate order, resolution or ordinance.

SECTION 5. AMENDATORY 82 O.S. 2001, Section 1605, is amended to read as follows:

Section 1605. A. 1. A county floodplain board shall be composed of five (5) members to be appointed by the board of county commissioners.

2. All the members of the board shall be residents of the county and shall own or operate real property within the unincorporated area of the county.

3. Two members shall be appointed for terms of two (2) years, two members shall be appointed for terms of four (4) years and one member shall be appointed for a term of six (6) years. Thereafter, all appointments shall be made for terms of six (6) years.

4. All members shall serve without compensation. Members may be removed by the board of county commissioners for cause after a public hearing for that purpose.

5. Vacancies shall be filled by additional appointments for the unexpired term only.

B. 1. A municipal floodplain board shall be composed of five (5) members to be appointed by the municipal governing body. All the members of the board shall be residents of the municipality.

2. Membership of floodplain boards in existence prior to the effective date of this act shall remain as currently constituted. Membership for boards created subsequent to the effective date of this act shall consist of two members appointed for terms of two (2) years, two members appointed for terms of four (4) years and one member appointed for a term of six (6) years. Thereafter, all appointments shall be made for terms of six (6) years.

3. All members shall serve without compensation.

4. Members may be removed by the municipal governing body for cause after a public hearing for that purpose.

5. Vacancies shall be filled by additional appointments for the unexpired term only.

C. A state floodplain board shall be composed of the members of the Oklahoma Water Resources Board. All members shall serve without additional compensation.

SECTION 6. AMENDATORY 82 O.S. 2001, Section 1606, is amended to read as follows:

Section 1606. ~~Within one hundred eighty (180) days after the effective date of this act, the~~ The Oklahoma Water Resources Board shall develop, adopt and ~~publish~~ promulgate criteria and ~~regulations~~

rules for aiding the floodplain boards in the establishment and delineation of the floodplains and the one-hundred-year flood elevations for Oklahoma.

SECTION 7. AMENDATORY 82 O.S. 2001, Section 1607, is amended to read as follows:

Section 1607. The floodplain boards shall delineate and submit to the Oklahoma Water Resources Board all floodplain definitions and one-hundred-year flood elevations within their respective area of jurisdiction, using methods consistent with the criteria and ~~regulations~~ rules developed by the Board.

SECTION 8. AMENDATORY 82 O.S. 2001, Section 1608, is amended to read as follows:

Section 1608. All floodplain boards that choose to participate in the program shall adopt floodplain regulations, which shall conform with the requirements necessary to establish eligibility and to maintain participation in the program and shall include the following:

1. Regulations for any platting of land in floodplains, construction of dwelling units and commercial or industrial structures in floodplains, and all other construction in the floodplains, which may divert, retard or obstruct floodwater and threaten public health, safety or welfare;

2. Regulations which establish minimum flood protection elevations and flood damage prevention requirements for use of structures and facilities which are located in a floodplain or are vulnerable to flood damage. Regulations adopted under this section are to be in accordance with any applicable state and local laws, regulations and ordinances; ~~and~~

3. Regulations which provide for coordination by the floodplain board with all other interested and affected political subdivisions and state agencies. The regulations of a floodplain board shall not apply to the use of the usual farm buildings for agricultural

purposes, the planting of agricultural crops or the construction of farm ponds; and

4. Counties and municipalities that choose to participate in the program and utilize a floodplain manager are encouraged to attend the floodplain development management classes offered by the National Flood Insurance Program and any additional annual continuing education classes offered by the Oklahoma Water Resources Board.

SECTION 9. AMENDATORY 82 O.S. 2001, Section 1609, is amended to read as follows:

Section 1609. Floodplain boards may enter into cooperative agreements pursuant to ~~Sections 1001 et seq. of Title 74 of the Oklahoma Statutes,~~ the "Interlocal Cooperation Act", for the delineation of floodplains and adoption of regulations within the floodplains.

SECTION 10. AMENDATORY 82 O.S. 2001, Section 1610, is amended to read as follows:

Section 1610. A. Floodplain ~~regulations~~ rules enacted pursuant to ~~this act~~ the Oklahoma Floodplain Management Act shall only be ~~adopted~~ promulgated by the Oklahoma Water Resources Board in accordance with the Administrative Procedures Act.

B. Floodplain regulations enacted pursuant to ~~this act~~ the Oklahoma Floodplain Management Act shall only be adopted by the county or municipal floodplain boards after a public hearing at which parties in interest and other citizens have an opportunity to be heard. At least thirty (30) days prior to the hearing, a notice of the time and place of hearing shall be published in a newspaper of general circulation regularly published nearest the area of jurisdiction.

C. At least thirty (30) days prior to the date of any hearing required by subsection B of this section, written notice shall be furnished the Board, accompanied by a copy of each proposed rule ~~or~~

~~regulation~~ to be acted upon. A copy of any regulation adopted by a floodplain board pursuant to ~~this act~~ the Oklahoma Floodplain Management Act shall be filed with the Board within fifteen (15) days of its adoption.

SECTION 11. AMENDATORY 82 O.S. 2001, Section 1611, is amended to read as follows:

Section 1611. Within one hundred eighty (180) days after the completion of construction of any flood control protective works, the floodplain board in its area of jurisdiction shall redefine the floodplain as altered by the works. The new floodplain definition and one-hundred-year flood elevations shall then be submitted to the Oklahoma Water Resources Board.

SECTION 12. AMENDATORY 82 O.S. 2001, Section 1612, is amended to read as follows:

Section 1612. A. After a floodplain board has submitted to the Oklahoma Water Resources Board definitions of all floodplains and one-hundred-year flood elevations within its area of jurisdiction, all platting of land, all construction of dwelling units or commercial or industrial structures, and all future development within the delineated floodplain area is prohibited unless:

1. Floodplain regulations have been adopted pursuant to ~~this act~~ the Oklahoma Floodplain Management Act for such areas and are in full force and effect;

2. Prior to regulations having been adopted, a special permit is granted by the floodplain board; or

3. A special permit is granted by the state floodplain board, if development or construction is to be on lands owned or held in trust by the state. Provided, that notice of such construction or development must be afforded to all concerned governmental entities within thirty (30) days of the decision to undertake such construction or development.

B. Special permits authorized by subsection A of this section may be issued when the applicable floodplain board determines that construction or development in the floodplain in question is not a danger to persons or property. In making its determination, the floodplain board shall comply with Section ~~10~~ 1610 of this ~~act~~ title.

SECTION 13. AMENDATORY 82 O.S. 2001, Section 1613, is amended to read as follows:

Section 1613. Any use that exists prior to ~~the effective date of this act~~ May 13, 1980, which does not meet the minimum standards ~~set forth herein~~ specified and authorized by the Oklahoma Floodplain Management Act may continue. However, unless brought into compliance with the minimum standards set forth in regulations adopted pursuant to ~~this act~~ the Oklahoma Floodplain Management Act such uses may not be substantially altered, enlarged or added to.

SECTION 14. AMENDATORY 82 O.S. 2001, Section 1614, is amended to read as follows:

Section 1614. The Oklahoma Water Resources Board in promulgating ~~guidelines~~ rules pursuant to Section ~~6~~ 1606 of this ~~act~~ title and floodplain boards in preparing floodplain management regulations shall give due consideration to the needs of an industry, including agriculture, whose business requires that it be located within a floodplain.

SECTION 15. AMENDATORY 82 O.S. 2001, Section 1615, is amended to read as follows:

Section 1615. A. The floodplain board may grant variances for uses which do not satisfy the requirements of ~~this act~~ the Oklahoma Floodplain Management Act upon presentation of adequate proof that compliance with the local floodplain regulations adopted pursuant to ~~this act~~ the Oklahoma Floodplain Management Act will result in an arbitrary and unreasonable taking of property without sufficient benefit or advantage to the people. However, no variance shall be

granted where the effect of the variance will be to permit the continuance of a condition which unreasonably creates flooding hazards, ~~and any.~~ Any variance so granted shall not be construed as to relieve any person who receives it from any liability imposed by ~~this act~~ the Oklahoma Floodplain Management Act or by other laws of the state.

B. Any person seeking a variance shall file a petition with the floodplain board, accompanied by a filing fee of Twenty-five Dollars (\$25.00).

C. The floodplain board shall exercise wide discretion in weighing the equities involved and the advantages and disadvantages to the applicant and to the public at large when determining whether the variance shall be granted. The floodplain board shall conduct a hearing which complies with all requirements of ~~this act~~ the Oklahoma Floodplain Management Act for public notice. In no case shall variances be effective for a period longer than twenty (20) years. A copy of any variance issued shall be sent to the Oklahoma Water Resources Board within fifteen (15) days of issuance.

SECTION 16. AMENDATORY 82 O.S. 2001, Section 1616, is amended to read as follows:

Section 1616. A. Appeals of any decision of the Oklahoma Water Resources Board shall be in accordance with the Administrative Procedures Act.

B. Appeals of the decision of a county or municipal floodplain board shall be taken to the board of adjustment for the area of jurisdiction involved in the appeal or to the governing body of the county or municipality where no board of adjustment exists. Appeals may be taken by any person aggrieved or by a public officer, department, board or bureau affected by any decision of the floodplain board in administering the floodplain board's ~~rules and~~ regulations. The appeal shall be taken within a period of not more than ten (10) days, by filing written notice with the appellant body

and the floodplain board, stating the grounds thereof. An appeal shall stay all proceedings in furtherance of the action appealed from unless the floodplain board from which the appeal is taken shall certify to the appellant of body that by reason of facts stated in the certificate a stay would, in its opinion, cause imminent peril to life or property. The appellant body shall have the following powers and ~~it shall be its duty~~ duties:

1. To hear and decide appeals where it is alleged that there is error of law in any order, requirement, decision or determination made by the floodplain board in the enforcement of the floodplain board's ~~rules and~~ regulations.

2. In exercising its powers, the appellant body may reverse or affirm wholly or partly, or may modify the order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the floodplain board from which the appeal is taken.

3. In acting upon any appeal, the appellant body shall apply the principles, standards and objectives set forth and contained in all applicable regulations and plans adopted.

SECTION 17. AMENDATORY 82 O.S. 2001, Section 1617, is amended to read as follows:

Section 1617. A. No new structure, fill, excavation or other floodplain use that is unreasonably hazardous to the public or that unduly restricts the capacity of the floodway to carry and discharge the regional flood shall be permitted without securing written authorization from the floodplain board in which the floodplain is located.

B. Any person convicted of violating the provisions of this section shall be guilty of a misdemeanor.

SECTION 18. AMENDATORY 82 O.S. 2001, Section 1618, is amended to read as follows:

Section 1618. The provisions of ~~this act~~ the Oklahoma Floodplain Management Act shall not apply to those counties, municipalities or other agencies ~~wh~~ which are in compliance with federal floodplain regulations and are participating in the program prior to ~~the effective date of this act~~ May 13, 1980.

SECTION 19. This act shall become effective November 1, 2002.

48-2-8621 KSM 6/12/15