

1 STATE OF OKLAHOMA

2 2nd Session of the 51st Legislature (2008)

3 SUBCOMMITTEE RECOMMENDATION
4 FOR

5 HOUSE BILL NO. 3297

6 By: Collins

7 SUBCOMMITTEE RECOMMENDATION

8 An Act relating to water and water rights; stating
9 Legislative findings; amending 82 O.S. 2001, Sections
10 1604, as last amended by Section 3, Chapter 95,
11 O.S.L. 2004, 1606 as amended by Section 6, Chapter
12 46, O.S.L. 2002, 1608 as amended by Section 8,
13 Chapter 46, O.S.L. 2002, 1609 as amended by Section
14 9, Chapter 46, O.S.L. 2002, 1610 as amended by
15 Section 10, Chapter 46, O.S.L. 2002, 1611 as amended
16 by Section 11, Chapter 46, O.S.L. 2002, 1612 as
17 amended by Section 12, Chapter 46, O.S.L. 2002, 1614
18 as amended by Section 14, Chapter 46, O.S.L. 2002,
19 1615 as amended by Section 15, Chapter 46, O.S.L.
20 2002, 1616 as amended by Section 16, Chapter 46,
21 O.S.L. 2002, 1617 as amended by Section 17, Chapter
22 46, O.S.L. 2002, Section 4, Chapter 95, O.S.L. 2004
23 (82 O.S. Supp. 2007, Sections 1604, 1606, 1608, 1609,
24 1610, 1611, 1612, 1614, 1615, 1616, 1617 and 1620),
which relate to the Oklahoma Floodplain Management
Act; allowing boards of county commissioners,
governing bodies of municipalities, and floodplain
boards to participate in the program; clarifying
statutory language; authorizing the Oklahoma Water
Resources Board to establish a state floodplain
board; providing for promulgation of rules; requiring
the Oklahoma Water Resources Board to coordinate with
certain entities on the establishment of floodplains
and one-hundred-year flood elevations; requiring
certain entities to adopt floodplain regulations;
specifying contents of regulations; requiring certain
entities participating in the program to utilize an
accredited floodplain administrator; modifying
process for adoption of floodplain regulations;
directing certain entities to amend floodplain

1 regulations upon completion of certain construction;
2 modifying prohibition on the construction of certain
3 units or structures within a delineated floodplain
4 area; requiring certain entities to consider certain
5 industrial uses when preparing floodplain management
6 regulations; modifying procedure for granting
7 variances from floodplain regulation requirements;
8 requiring certain notice of requested variance;
9 providing for the appeal of decisions by certain
10 entities; modifying the appeal process; prohibiting
11 certain development or improvements in a floodplain
12 without approval or a development permit issued by a
13 certain entity; requiring certain entities to
14 designate a floodplain administrator; providing for
15 noncodification; and declaring an emergency.

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

SECTION 1. NEW LAW A new section of law not to be
codified in the Oklahoma Statutes reads as follows:

The Legislature finds that some boards of county commissioners
and some municipal governing bodies have difficulty in recruiting
sufficient numbers of residents within their respective areas of
jurisdiction to serve as members of a floodplain board. In such
situations, the boards of county commissioners and municipal
governing bodies should be given flexibility in deciding whether to
establish a floodplain board for the respective areas of
jurisdiction or whether to exercise the authorities, powers, and
duties set forth in the Oklahoma Floodplain Management Act directly.
The Legislature also finds that other provisions of the Oklahoma

1 Floodplain Management Act need to be clarified for more efficient
2 implementation.

3 SECTION 2. AMENDATORY 82 O.S. 2001, Section 1604, as
4 last amended by Section 3, Chapter 95, O.S.L. 2004 (82 O.S. Supp.
5 2007, Section 1604), is amended to read as follows:

6 Section 1604. A. ~~To allow participation in the program, the~~
7 ~~Oklahoma Water Resources Board,~~ The boards of county commissioners
8 and municipal governing bodies are authorized to establish
9 floodplain boards for their respective area of jurisdiction ~~which~~
10 ~~may.~~ To allow participation in the program, the boards of county
11 commissioners, municipal governing bodies, or floodplain boards that
12 are established by a county or a municipality pursuant to this
13 section shall adopt, administer and enforce floodplain management
14 ~~rules and regulations,~~ for the purpose of:

- 15 1. The delineation of floodplains and floodways;
- 16 2. The preservation of the capacity of the floodplain to carry
17 and discharge regional floods;
- 18 3. The minimization of flood hazards;
- 19 4. The establishment and charging of reasonable fees, not to
20 exceed Five Hundred Dollars (\$500.00), for services provided by the
21 Oklahoma Water Resources Board, county commissioners and
22 municipalities in the administration of their responsibilities
23 pursuant to the Oklahoma Floodplain Management Act;
- 24 5. The regulation of the use of land in the floodplain;

1 6. The protection of the natural and beneficial functions of
2 the floodplain, reducing damage to property from floods, reducing
3 injury and loss of life from floods, and allowing communities to be
4 eligible for flood insurance; and

5 7. The hiring and employment of an accredited floodplain
6 administrator.

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

10 C. The ~~rules and~~ regulations adopted by each floodplain board
11 shall be approved by the ~~Oklahoma Water Resources Board, the county~~
12 or the municipality, as the case may be, by appropriate ~~order,~~
13 resolution or ordinance.

14 D. The Oklahoma Water Resources Board is authorized to
15 establish a state floodplain board for the state. If established,
16 the state floodplain board shall promulgate rules as provided by
17 this section, which shall become effective upon approval by the
18 Board.

19 SECTION 3. AMENDATORY 82 O.S. 2001, Section 1606, as
20 amended by Section 6, Chapter 46, O.S.L. 2002 (82 O.S. Supp. 2007,
21 Section 1606), is amended to read as follows:

22 Section 1606. The Oklahoma Water Resources Board shall ~~develop,~~
23 ~~adopt and promulgate criteria and rules for aiding the~~ coordinate
24 with the boards of county commissioners, municipal governing bodies,

1 and floodplain boards in the use of flood insurance rate maps and
2 flood hazard boundary maps for the establishment and delineation of
3 the floodplains and the one-hundred-year flood elevations for
4 Oklahoma.

5 SECTION 4. AMENDATORY 82 O.S. 2001, Section 1608, as
6 amended by Section 8, Chapter 46, O.S.L. 2002 (82 O.S. Supp. 2007,
7 Section 1608), is amended to read as follows:

8 Section 1608. A. All boards of county commissioners, municipal
9 governing bodies, and floodplain boards created by a county or
10 municipality as provided for in Section 1604 of this title that
11 ~~choose to~~ participate in the program shall adopt floodplain
12 regulations, which shall conform with the requirements necessary to
13 establish eligibility and to maintain participation in the program
14 ~~and.~~ The regulations shall include the following:

15 1. Regulations Incorporation by reference to the most recent
16 flood insurance rate maps or flood hazard boundary maps prepared by
17 the Federal Emergency Management Agency or more specific information
18 to delineate floodplains within the area of jurisdiction;

19 2. Requirements for the issuance of development permits for any
20 platting of land in floodplains, construction of dwelling units and
21 commercial or industrial structures in floodplains, and all other
22 construction and development in the floodplains, which may divert,
23 retard or obstruct floodwater and threaten public health, safety or
24 welfare. The regulations shall include a description of the process

1 to apply for and obtain a development permit to be issued by the
2 board of county commissioners, municipal governing body, floodplain
3 board, or accredited floodplain administrator as specified in the
4 regulations;

5 ~~2. Regulations which establish minimum~~ 3. Minimum flood
6 protection elevations and flood damage prevention requirements for
7 the issuance of development permits and use of structures and
8 facilities which are located in a floodplain or are vulnerable to
9 flood damage. Regulations adopted under this section are to be in
10 accordance with any applicable state and local laws, regulations and
11 ordinances;

12 ~~3. Regulations which provide~~ 4. Requirements for coordination
13 of adopted floodplain regulations and consideration of issuance of
14 development permits by the floodplain board with giving notice to
15 all other interested and affected political subdivisions and state
16 agencies.—~~The;~~ and

17 5. A provision that the regulations of a floodplain board shall
18 not apply to the use of the usual farm buildings for agricultural
19 purposes, the planting of agricultural crops or the construction of
20 farm ponds; ~~and.~~

21 ~~4. B.~~ B. Counties and municipalities that choose to participate in
22 the program ~~and~~ either through the board of county commissioners,
23 the governing body of the municipality, or a floodplain board shall
24 utilize a floodplain manager ~~are encouraged to attend the floodplain~~

1 ~~development management classes offered by the National Flood~~
2 ~~Insurance Program and any additional annual continuing education~~
3 ~~classes offered~~ administrator that is accredited by the Oklahoma
4 Water Resources Board as required pursuant to Section 1620 of this
5 title.

6 SECTION 5. AMENDATORY 82 O.S. 2001, Section 1609, as
7 amended by Section 9, Chapter 46, O.S.L. 2002 (82 O.S. Supp. 2007,
8 Section 1609), is amended to read as follows:

9 Section 1609. ~~Floodplain~~ The boards of county commissioners,
10 governing bodies of municipalities, and floodplain boards may enter
11 into cooperative agreements pursuant to the "Interlocal Cooperation
12 Act" for the delineation of floodplains and adoption of regulations
13 within the floodplains.

14 SECTION 6. AMENDATORY 82 O.S. 2001, Section 1610, as
15 amended by Section 10, Chapter 46, O.S.L. 2002 (82 O.S. Supp. 2007,
16 Section 1610), is amended to read as follows:

17 Section 1610. A. Floodplain rules enacted pursuant to the
18 Oklahoma Floodplain Management Act shall only be promulgated by the
19 Oklahoma Water Resources Board in accordance with the Administrative
20 Procedures Act.

21 B. Floodplain regulations enacted pursuant to the Oklahoma
22 Floodplain Management Act and any amendments to the regulations
23 shall ~~only~~ be adopted by ~~the county or municipal~~ boards of county
24 commissioners, governing bodies of a municipality, or floodplain

1 boards only after a public hearing ~~at which parties in interest and~~
2 ~~other citizens have an opportunity to be heard.~~ At least thirty
3 (30) days prior to the hearing, a notice of the time and place of
4 hearing shall be published in a newspaper of general circulation
5 regularly published nearest the area of jurisdiction.

6 C. At least thirty (30) days prior to the date of any hearing
7 required by subsection B of this section, written notice shall be
8 furnished to the Oklahoma Water Resources Board, accompanied by a
9 copy of each proposed ~~rule to be acted upon~~ regulation.

10 D. A copy of any regulation adopted by a board of county
11 commissioners, governing body of a municipality, or a floodplain
12 board pursuant to the Oklahoma Floodplain Management Act shall be
13 filed with the Board within fifteen (15) days of its adoption.

14 SECTION 7. AMENDATORY 82 O.S. 2001, Section 1611, as
15 amended by Section 11, Chapter 46, O.S.L. 2002 (82 O.S. Supp. 2007,
16 Section 1611), is amended to read as follows:

17 Section 1611. Within one hundred eighty (180) days after the
18 completion of construction of any flood control protective works,
19 the board of county commissioners, governing body of a municipality,
20 or a floodplain board in its area of jurisdiction shall redefine the
21 floodplain as altered by the works by amending the floodplain
22 regulations. The new floodplain definition and one-hundred-year
23 flood elevations shall then be submitted to the Oklahoma Water
24 Resources Board.

1 SECTION 8. AMENDATORY 82 O.S. 2001, Section 1612, as
2 amended by Section 12, Chapter 46, O.S.L. 2002 (82 O.S. Supp. 2007,
3 Section 1612), is amended to read as follows:

4 Section 1612. A. After a board of county commissioners, a
5 governing body of a municipality, or a floodplain board has
6 submitted to the Oklahoma Water Resources Board ~~definitions of maps~~
7 or other descriptions delineating all floodplains and
8 one-hundred-year flood elevations within its area of jurisdiction,
9 all platting of land, all construction of dwelling units or
10 commercial or industrial structures, and all future development
11 within the delineated floodplain area is prohibited unless:

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

15 2. Prior to ~~regulations having been adopted,~~ the platting,
16 construction, and development a ~~special~~ development permit is
17 granted by the board of county commissioners, the governing body of
18 the municipality, the floodplain board, or accredited floodplain
19 administrator; or

20 3. A ~~special~~ development permit is granted by the state
21 floodplain board, if development or construction is to be on lands
22 owned or ~~held in trust~~ operated by the state for the state.
23 ~~Provided, that notice~~ Notice of ~~such~~ the construction or development
24 must be afforded to all concerned governmental entities within

1 thirty (30) days of the decision to undertake ~~such~~ the construction
2 or development.

3 B. ~~Special~~ Development permits authorized by subsection A of
4 this section may be issued when the applicable board of county
5 commissioners, governing body of a municipality, floodplain board,
6 or accredited floodplain administrator determines that construction
7 or development in the floodplain in question complies with the
8 floodplain regulations or rules and is not a danger to persons or
9 property. ~~In making its determination, the floodplain board shall~~
10 ~~comply with Section 1610 of this title.~~

11 SECTION 9. AMENDATORY 82 O.S. 2001, Section 1614, as
12 amended by Section 14, Chapter 46, O.S.L. 2002 (82 O.S. Supp. 2007,
13 Section 1614), is amended to read as follows:

14 Section 1614. The Oklahoma Water Resources Board in
15 promulgating rules pursuant to ~~Section 1606 of this title~~ the
16 Oklahoma Floodplain Management Act and boards of county
17 commissioners, governing bodies of municipalities, and floodplain
18 boards in preparing floodplain management regulations shall give due
19 consideration to the needs of an industry, including agriculture,
20 whose business requires that it be located within a floodplain.

21 SECTION 10. AMENDATORY 82 O.S. 2001, Section 1615, as
22 amended by Section 15, Chapter 46, O.S.L. 2002 (82 O.S. Supp. 2007,
23 Section 1615), is amended to read as follows:

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1 Section 1615. A. ~~The~~ A board of county commissioners,
2 governing body of a municipality, or a floodplain board may grant
3 ~~variances for uses which do not satisfy the~~ from requirements of
4 local floodplain regulations that are more stringent than the
5 minimum requirements of the Oklahoma Floodplain Management Act upon
6 presentation of adequate proof that compliance with the local
7 floodplain regulations adopted pursuant to the Oklahoma Floodplain
8 Management Act will result in an arbitrary and unreasonable taking
9 of property without sufficient benefit or advantage to the people.
10 However, no variance shall be granted where the effect of the
11 variance will be to permit the continuance of a condition which
12 unreasonably creates flooding hazards. Any variance so granted
13 shall not be construed as to relieve any person who receives it from
14 any liability imposed by the Oklahoma Floodplain Management Act or
15 by other laws of the state.

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

19 C. ~~The~~ A board of county commissioners, governing body of a
20 municipality, or a floodplain board shall exercise wide discretion
21 in weighing the equities involved and the advantages and
22 disadvantages to the applicant and to the public at large when
23 determining whether the variance shall be granted. The ~~floodplain~~
24 ~~board~~ appropriate entity shall conduct a hearing ~~which complies with~~

1 ~~all requirements of the Oklahoma Floodplain Management Act for~~
2 ~~public notice~~ for each requested variance. At least thirty (30)
3 days prior to the hearing, a notice of the time and place of the
4 hearing shall be published in a newspaper of general circulation
5 regularly published nearest the area of jurisdiction. In no case
6 shall variances be effective for a period longer than twenty (20)
7 years. A copy of any variance issued shall be sent to the Oklahoma
8 Water Resources Board within fifteen (15) days of issuance.

9 SECTION 11. AMENDATORY 82 O.S. 2001, Section 1616, as
10 amended by Section 16, Chapter 46, O.S.L. 2002 (82 O.S. Supp. 2007,
11 Section 1616), is amended to read as follows:

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

15 B. Appeals of the decision of a board of county commissioners
16 or governing body of a municipality shall be taken to the board of
17 adjustment for the area of jurisdiction involved in the appeal.

18 C. Appeals of the decision of a county or municipal floodplain
19 board shall be taken to the board of adjustment for the area of
20 jurisdiction involved in the appeal or to the governing body of the
21 county or municipality where no board of adjustment exists.

22 D. Appeals may be taken by any person aggrieved or by a public
23 officer, department, board or bureau affected by any decision of ~~the~~
24 a board of county commissioners, governing body of a municipality,

1 floodplain board, or a floodplain administrator in administering the
2 floodplain ~~board's~~ regulations.

3 E. The appeal shall be taken within a period of not more than
4 ten (10) days, by filing written notice with the appellant body and
5 the appropriate board of county commissioners, governing body of a
6 municipality, or the floodplain board, stating the grounds thereof.

7 F. An appeal shall stay all proceedings in furtherance of the
8 action appealed from unless the board of county commissioners,
9 governing body of a municipality, the floodplain board, or the
10 floodplain administrator from which the appeal is taken shall
11 certify to the appellant ~~of~~ body that by reason of facts stated in
12 the certificate a stay would, in its opinion, cause imminent peril
13 to life or property.

14 G. The appellant body shall have the following powers and
15 duties:

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

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

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

4 SECTION 12. AMENDATORY 82 O.S. 2001, Section 1617, as
5 amended by Section 17, Chapter 46, O.S.L. 2002 (82 O.S. Supp. 2007,
6 Section 1617), is amended to read as follows:

7 Section 1617. A. No new development or substantial improvement
8 to a structure, or new fill, excavation or other floodplain use ~~that~~
9 ~~is unreasonably hazardous to the public or that unduly restricts the~~
10 ~~capacity of the floodway to carry and discharge the regional flood~~
11 shall be ~~permitted~~ allowed without securing written authorization or
12 a development permit from the board of county commissioners,
13 governing body of a municipality, or the floodplain board in which
14 ~~the~~ has jurisdiction over the floodplain is located.

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

17 SECTION 13. AMENDATORY Section 4, Chapter 95, O.S.L.
18 2004 (82 O.S. Supp. 2007, Section 1620), is amended to read as
19 follows:

20 Section 1620. A. Each board of county commissioners, governing
21 body of a municipality, or floodplain board participating in the
22 program shall designate a person to serve as the floodplain
23 administrator to administer and implement floodplain regulations.

24

1 B. ~~Beginning November 1, 2004, each~~ Each floodplain
2 administrator shall be accredited by the Oklahoma Water Resources
3 Board.

4 SECTION 14. It being immediately necessary for the preservation
5 of the public peace, health and safety, an emergency is hereby
6 declared to exist, by reason whereof this act shall take effect and
7 be in full force from and after its passage and approval.

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