

1 STATE OF OKLAHOMA

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

3 COMMITTEE SUBSTITUTE

4 FOR ENGROSSED

5 SENATE BILL NO. 746

By: Bingman of the Senate

6 And

7 Adkins of the House

8 COMMITTEE SUBSTITUTE

9 (Waters and water rights - Oklahoma Floodplain
10 Management Act - noncodification -

11 emergency)

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

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

18 The Legislature finds that some boards of county commissioners
19 and some municipal governing bodies have difficulty in recruiting
20 sufficient numbers of residents within their respective areas of
21 jurisdiction to serve as members of a floodplain board. In such
22 situations, the boards of county commissioners and municipal
23 governing bodies should be given flexibility in deciding whether to
24 establish a floodplain board for the respective areas of

1 jurisdiction or whether to exercise the authorities, powers, and
2 duties set forth in the Oklahoma Floodplain Management Act directly.
3 The Legislature also finds that other provisions of the Oklahoma
4 Floodplain Management Act need to be clarified for more efficient
5 implementation.

6 SECTION 2. AMENDATORY 82 O.S. 2001, Section 1604, as
7 last amended by Section 3, Chapter 95, O.S.L. 2004 (82 O.S. Supp.
8 2007, Section 1604), is amended to read as follows:

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

- 18 1. The delineation of floodplains and floodways;
- 19 2. The preservation of the capacity of the floodplain to carry
20 and discharge regional floods;
- 21 3. The minimization of flood hazards;
- 22 4. The establishment and charging of reasonable fees, not to
23 exceed Five Hundred Dollars (\$500.00), for services provided by the
24 Oklahoma Water Resources Board, county commissioners and

1 municipalities in the administration of their responsibilities
2 pursuant to the Oklahoma Floodplain Management Act;

3 5. The regulation of the use of land in the floodplain;

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

8 7. The hiring and employment of an accredited floodplain
9 administrator.

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

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

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

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

1 Section 1606. The Oklahoma Water Resources Board shall ~~develop,~~
2 ~~adopt and promulgate criteria and rules for aiding the~~ coordinate
3 with the boards of county commissioners, municipal governing bodies,
4 and floodplain boards in the use of flood insurance rate maps and
5 flood hazard boundary maps for the establishment and delineation of
6 the floodplains and the one-hundred-year flood elevations for
7 Oklahoma.

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

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

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

22 2. Requirements for the issuance of development permits for any
23 platting of land in floodplains, construction of dwelling units and
24 commercial or industrial structures in floodplains, and all other

1 construction and development in the floodplains, which may divert,
2 retard or obstruct floodwater and threaten public health, safety or
3 welfare. The regulations shall include a description of the process
4 to apply for and obtain a development permit to be issued by the
5 board of county commissioners, municipal governing body, floodplain
6 board, or accredited floodplain administrator as specified in the
7 regulations;

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

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

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

24

1 4- B. Counties and municipalities that choose to participate in
2 the program ~~and~~ either through the board of county commissioners,
3 the governing body of the municipality, or a floodplain board shall
4 ~~utilize a floodplain manager are encouraged to attend the floodplain~~
5 ~~development management classes offered by the National Flood~~
6 ~~Insurance Program and any additional annual continuing education~~
7 ~~classes offered~~ administrator that is accredited by the Oklahoma
8 Water Resources Board as required pursuant to Section 1620 of this
9 title.

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

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

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

21 Section 1610. A. Floodplain rules enacted pursuant to the
22 Oklahoma Floodplain Management Act shall only be promulgated by the
23 Oklahoma Water Resources Board in accordance with the Administrative
24 Procedures Act.

1 B. Floodplain regulations enacted pursuant to the Oklahoma
2 Floodplain Management Act and any amendments to the regulations
3 shall ~~only~~ be adopted by ~~the county or municipal~~ boards of county
4 commissioners, governing bodies of a municipality, or floodplain
5 boards only after a public hearing ~~at which parties in interest and~~
6 ~~other citizens have an opportunity to be heard.~~ At least thirty
7 (30) days prior to the hearing, a notice of the time and place of
8 hearing shall be published in a newspaper of general circulation
9 regularly published nearest the area of jurisdiction.

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

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

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

21 Section 1611. Within one hundred eighty (180) days after the
22 completion of construction of any flood control protective works,
23 the board of county commissioners, governing body of a municipality,
24 or a floodplain board in its area of jurisdiction shall redefine the

1 floodplain as altered by the works by amending the floodplain
2 regulations. The new floodplain definition and one-hundred-year
3 flood elevations shall then be submitted to the Oklahoma Water
4 Resources Board.

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

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

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

19 2. Prior to ~~regulations having been adopted,~~ the platting,
20 construction, and development a ~~special~~ development permit is
21 granted by the board of county commissioners, the governing body of
22 the municipality, the floodplain board, or accredited floodplain
23 administrator; or
24

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

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

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

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

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

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

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

24

1 C. ~~The~~ A board of county commissioners, governing body of a
2 municipality, or a floodplain board shall exercise wide discretion
3 in weighing the equities involved and the advantages and
4 disadvantages to the applicant and to the public at large when
5 determining whether the variance shall be granted. The ~~floodplain~~
6 ~~board~~ appropriate entity shall conduct a hearing ~~which complies with~~
7 ~~all requirements of the Oklahoma Floodplain Management Act for~~
8 ~~public notice~~ for each requested variance. At least thirty (30)
9 days prior to the hearing, a notice of the time and place of the
10 hearing shall be published in a newspaper of general circulation
11 regularly published nearest the area of jurisdiction. In no case
12 shall variances be effective for a period longer than twenty (20)
13 years. A copy of any variance issued shall be sent to the Oklahoma
14 Water Resources Board within fifteen (15) days of issuance.

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

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

21 B. Appeals of the decision of a board of county commissioners
22 or governing body of a municipality shall be taken to the board of
23 adjustment for the area of jurisdiction involved in the appeal.
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1 C. Appeals of the decision of a county or municipal floodplain
2 board shall be taken to the board of adjustment for the area of
3 jurisdiction involved in the appeal or to the governing body of the
4 county or municipality where no board of adjustment exists.

5 D. Appeals may be taken by any person aggrieved or by a public
6 officer, department, board or bureau affected by any decision of ~~the~~
7 a board of county commissioners, governing body of a municipality,
8 floodplain board, or a floodplain administrator in administering the
9 floodplain ~~board's~~ regulations.

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

14 F. An appeal shall stay all proceedings in furtherance of the
15 action appealed from unless the board of county commissioners,
16 governing body of a municipality, the floodplain board, or the
17 floodplain administrator from which the appeal is taken shall
18 certify to the appellant ~~of~~ body that by reason of facts stated in
19 the certificate a stay would, in its opinion, cause imminent peril
20 to life or property.

21 G. The appellant body shall have the following powers and
22 duties:

23 1. To hear and decide appeals where it is alleged that there is
24 error of law in any order, requirement, decision or determination

1 made ~~by the floodplain board~~ in the enforcement of the floodplain
2 ~~board's~~ regulations;

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

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

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

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

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

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1 SECTION 13. AMENDATORY Section 4, Chapter 95, O.S.L.
2 2004 (82 O.S. Supp. 2007, Section 1620), is amended to read as
3 follows:

4 Section 1620. A. Each board of county commissioners, governing
5 body of a municipality, or floodplain board participating in the
6 program shall designate a person to serve as the floodplain
7 administrator to administer and implement floodplain regulations.

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

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

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