

THE HOUSE OF REPRESENTATIVES
Monday, March 3, 2008

Committee Substitute for
House Bill No. 3297

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 3297 - By: COLLINS of the House and EASLEY of the Senate.

An Act relating to water and water rights; stating Legislative findings; amending 82 O.S. 2001, Sections 1604, as last amended by Section 3, Chapter 95, O.S.L. 2004, 1606, as amended by Section 6, Chapter 46, O.S.L. 2002, 1608, as amended by Section 8, Chapter 46, O.S.L. 2002, 1609, as amended by Section 9, Chapter 46, O.S.L. 2002, 1610, as amended by Section 10, Chapter 46, O.S.L. 2002, 1611, as amended by Section 11, Chapter 46, O.S.L. 2002, 1612, as amended by Section 12, Chapter 46, O.S.L. 2002, 1614, as amended by Section 14, Chapter 46, O.S.L. 2002, 1615, as amended by Section 15, Chapter 46, O.S.L. 2002, 1616, as amended by Section 16, Chapter 46, O.S.L. 2002, 1617, as amended by Section 17, Chapter 46, O.S.L. 2002 and Section 4, Chapter 95, O.S.L. 2004 (82 O.S. Supp. 2007, Sections 1604, 1606, 1608, 1609, 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 regulations upon completion of certain construction; modifying prohibition on the construction of certain units or structures within a delineated floodplain area; requiring certain entities to consider certain industrial uses when preparing floodplain management regulations; modifying procedure for granting variances from floodplain regulation requirements; requiring certain notice of requested variance; providing for the appeal of decisions by certain entities; modifying the appeal

process; prohibiting certain development or improvements in a floodplain without approval or a development permit issued by a certain entity; requiring certain entities to designate a floodplain administrator; providing for noncodification; and declaring an emergency.

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

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

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

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

15 Section 1604. A. ~~To allow participation in the program, the Oklahoma Water~~
16 ~~Resources Board, The~~ boards of county commissioners and municipal governing bodies

1 are authorized to establish floodplain boards for their respective area of jurisdiction
2 ~~which may.~~ To allow participation in the program, the boards of county commissioners,
3 municipal governing bodies, or floodplain boards that are established by a county or a
4 municipality pursuant to this section shall adopt, administer and enforce floodplain
5 management ~~rules and~~ regulations, for the purpose of:

- 6 1. The delineation of floodplains and floodways;
- 7 2. The preservation of the capacity of the floodplain to carry and discharge regional
8 floods;
- 9 3. The minimization of flood hazards;
- 10 4. The establishment and charging of reasonable fees, not to exceed Five Hundred
11 Dollars (\$500.00), for services provided by the Oklahoma Water Resources Board, county
12 commissioners and municipalities in the administration of their responsibilities pursuant
13 to the Oklahoma Floodplain Management Act;
- 14 5. The regulation of the use of land in the floodplain;
- 15 6. The protection of the natural and beneficial functions of the floodplain, reducing
16 damage to property from floods, reducing injury and loss of life from floods, and allowing
17 communities to be eligible for flood insurance; and
- 18 7. The hiring and employment of an accredited floodplain administrator.

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

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

4 D. The Oklahoma Water Resources Board is authorized to establish a state
5 floodplain board for the state. If established, the state floodplain board shall promulgate
6 rules as provided by this section, which shall become effective upon approval by the
7 Board.

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

11 Section 1606. The Oklahoma Water Resources Board shall ~~develop, adopt and~~
12 ~~promulgate criteria and rules for aiding the~~ coordinate with the boards of county
13 commissioners, municipal governing bodies, and floodplain boards in the use of flood
14 insurance rate maps and flood hazard boundary maps for the establishment and
15 delineation of the floodplains and the one-hundred-year flood elevations for Oklahoma.

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

19 Section 1608. A. All boards of county commissioners, municipal governing bodies,
20 and floodplain boards created by a county or municipality as provided for in Section 1604
21 of this title that ~~choose to~~ participate in the program shall adopt floodplain regulations,

1 which shall conform with the requirements necessary to establish eligibility and to
2 maintain participation in the program ~~and~~. The regulations shall include the following:

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

7 2. Requirements for the issuance of development permits for any platting of land in
8 floodplains, construction of dwelling units and commercial or industrial structures in
9 floodplains, and all other construction and development in the floodplains, which may
10 divert, retard or obstruct floodwater and threaten public health, safety or welfare. The
11 regulations shall include a description of the process to apply for and obtain a
12 development permit to be issued by the board of county commissioners, municipal
13 governing body, floodplain board, or accredited floodplain administrator as specified in
14 the regulations;

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

20 ~~3. Regulations which provide~~ 4. Requirements for coordination of adopted
21 floodplain regulations and consideration of issuance of development permits by the

1 ~~floodplain board with giving notice to~~ all other interested and affected political
2 subdivisions and state agencies. ~~The; and~~

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

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

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

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

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

1 Section 1610. A. Floodplain rules enacted pursuant to the Oklahoma Floodplain
2 Management Act shall only be promulgated by the Oklahoma Water Resources Board in
3 accordance with the Administrative Procedures Act.

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

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

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

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

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

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

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

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

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

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

19 3. A ~~special~~ development permit is granted by the state floodplain board, if
20 development or construction is to be on lands owned or ~~held in trust~~ operated by the
21 state for the state. ~~Provided, that notice~~ Notice of such the construction or development

1 must be afforded to all concerned governmental entities within thirty (30) days of the
2 decision to undertake ~~such~~ the construction or development.

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

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

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

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

21 Section 1615. A. ~~The~~ A board of county commissioners, governing body of a
22 municipality, or a floodplain board may grant variances ~~for uses which do not satisfy the~~

1 from requirements of local floodplain regulations that are more stringent than the
2 minimum requirements of the Oklahoma Floodplain Management Act upon presentation
3 of adequate proof that compliance with the local floodplain regulations adopted pursuant
4 to the Oklahoma Floodplain Management Act will result in an arbitrary and
5 unreasonable taking of property without sufficient benefit or advantage to the people.
6 However, no variance shall be granted where the effect of the variance will be to permit
7 the continuance of a condition which unreasonably creates flooding hazards. Any
8 variance so granted shall not be construed as to relieve any person who receives it from
9 any liability imposed by the Oklahoma Floodplain Management Act or by other laws of
10 the state.

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

13 C. ~~The~~ A board of county commissioners, governing body of a municipality, or a
14 floodplain board shall exercise wide discretion in weighing the equities involved and the
15 advantages and disadvantages to the applicant and to the public at large when
16 determining whether the variance shall be granted. ~~The floodplain board~~ appropriate
17 entity shall conduct a hearing which complies with all requirements of the Oklahoma
18 Floodplain Management Act for public notice for each requested variance. At least thirty
19 (30) days prior to the hearing, a notice of the time and place of the hearing shall be
20 published in a newspaper of general circulation regularly published nearest the area of
21 jurisdiction. In no case shall variances be effective for a period longer than twenty (20)

1 years. A copy of any variance issued shall be sent to the Oklahoma Water Resources
2 Board within fifteen (15) days of issuance.

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

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

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

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

14 D. Appeals may be taken by any person aggrieved or by a public officer,
15 department, board or bureau affected by any decision of ~~the~~ a board of county
16 commissioners, governing body of a municipality, floodplain board, or a floodplain
17 administrator in administering the floodplain ~~board's~~ regulations.

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

1 F. An appeal shall stay all proceedings in furtherance of the action appealed from
2 unless the board of county commissioners, governing body of a municipality, the
3 floodplain board, or the floodplain administrator from which the appeal is taken shall
4 certify to the appellant of body that by reason of facts stated in the certificate a stay
5 would, in its opinion, cause imminent peril to life or property.

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

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

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

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

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

20 Section 1617. A. No new development or substantial improvement to a structure,
21 or new fill, excavation or other floodplain use ~~that is unreasonably hazardous to the~~
22 ~~public or that unduly restricts the capacity of the floodway to carry and discharge the~~

1 regional flood shall be ~~permitted~~ allowed without securing written authorization or a
2 development permit from the board of county commissioners, governing body of a
3 municipality, or the floodplain board in which the has jurisdiction over the floodplain is
4 located.

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

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

9 Section 1620. A. Each board of county commissioners, governing body of a
10 municipality, or floodplain board participating in the program shall designate a person to
11 serve as the floodplain administrator to administer and implement floodplain
12 regulations.

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

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

18 COMMITTEE REPORT BY: COMMITTEE ON NATURAL RESOURCES, dated 02-28-
19 08 - DO PASS, As Amended and Coauthored.