

THE HOUSE OF REPRESENTATIVES  
Thursday, April 10, 2008

Committee Substitute for  
ENGROSSED  
Senate Bill No. 746

COMMITTEE SUBSTITUTE FOR ENGROSSED SENATE BILL NO. 746 - By:  
BINGMAN of the Senate and MCNIEL of the House.

( Waters and water rights - Oklahoma Floodplain Management Act –  
noncodification –  
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.

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

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

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

1 7. The hiring and employment of an accredited floodplain administrator.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15 Section 1620. A. Each board of county commissioners, governing body of a  
16 municipality, or floodplain board participating in the program shall designate a person to  
17 serve as the floodplain administrator to administer and implement floodplain  
18 regulations.

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

1           SECTION 14. It being immediately necessary for the preservation of the public  
2 peace, health and safety, an emergency is hereby declared to exist, by reason whereof  
3 this act shall take effect and be in full force from and after its passage and approval.  
4 COMMITTEE REPORT BY: COMMITTEE ON NATURAL RESOURCES, dated 04-09-  
5 08 - DO PASS, As Amended and Coauthored.