

1 STATE OF OKLAHOMA

2 1st Session of the 52nd Legislature (2009)

3 HOUSE BILL 1884

By: Richardson

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6 AS INTRODUCED

7 An Act relating to waters and water rights; creating
8 the Oklahoma Dam Breach Safety Zone Act; stating
9 legislative findings; stating legislative intent;
10 establishing a safety zone below certain dams;
11 providing dimensions of a safety zone; allowing
12 certain development in safety zones subject to
13 permitting; specifying certain considerations for
14 permitting; providing for certain powers and duties
15 of the Oklahoma Water Resources Board; authorizing
16 the Board to take certain action when an owner fails
17 to comply with certain laws or orders; specifying
18 certain action the Board may take; authorizing the
19 Board to issue an emergency order in certain
20 circumstances; providing for a hearing; authorizing
21 the Board to impose administrative penalties;
22 providing for notice and hearing; setting amount of
23 penalty; allowing the Board to seek judicial relief
24 for certain purposes; requiring the Attorney General
to provide assistance upon request; requiring appeals
of orders to be taken pursuant to the Administrative
Procedures Act; providing for codification; and
providing an effective date.

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

SECTION 1. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 110.30 of Title 82, unless there
is created a duplication in numbering, reads as follows:

1 Sections 1 through 6 of this act shall constitute a part of the
2 Oklahoma Dam Safety Act and shall be known and may be cited as the
3 "Oklahoma Dam Breach Safety Zone Act".

4 SECTION 2. NEW LAW A new section of law to be codified
5 in the Oklahoma Statutes as Section 110.31 of Title 82, unless there
6 is created a duplication in numbering, reads as follows:

7 It is recognized by the Legislature that properly constructed,
8 operated, and maintained dams used to impound water and create
9 reservoirs for the purposes of flood prevention and control,
10 sediment control, and other beneficial uses constitute vital parts
11 of the State of Oklahoma's water resources, and that reasonable
12 regulation of land use downstream of these structures is beneficial
13 and necessary to protect lives and property and for the public
14 welfare. It is the intent of the Legislature that the provisions of
15 the Oklahoma Dam Breach Safety Zone Act shall assist in reducing the
16 risk to loss of life and damage to property from a catastrophic
17 breach of a dam constructed as a flood water retarding structure and
18 to assist landowners and developers in the safe establishment and
19 planning of inhabitable residential and business structures in safe
20 areas outside of the breach inundation areas of dams classified as
21 low- and significant-hazard and provide reasonable and viable
22 options for future development.

1 SECTION 3. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 110.32 of Title 82, unless there
3 is created a duplication in numbering, reads as follows:

4 A. The Oklahoma Dam Breach Safety Zone Act shall establish a
5 safety zone below every dam that has been constructed through the
6 Watershed Protection and Flood Prevention Act, Public Law 83-566,
7 the Flood Control Act of 1944, Public Law 78-534, or the United
8 State Department of Agriculture (USDA) Resource Conservation and
9 Development Program.

10 B. The standard safety zone shall be established as the width
11 of the dam extending five (5) miles downstream of the dam.

12 C. Residential or business development in a safety zone of
13 these dams may be allowed through a permitting process established
14 and implemented by the Oklahoma Water Resources Board. The
15 following analysis shall be completed and considered in the
16 permitting process:

17 1. A technical breach inundation analysis that indicates the
18 ground floor elevation of the development or structure is out of the
19 breach inundation area of a catastrophic breach for either low- or
20 significant-hazard classified dams; and

21 2. A cost-benefit analysis that estimates the cost of upgrading
22 a low- or significant-hazard dam to a high-hazard dam for landowners
23 or developers desiring to locate a residential or business structure
24 inside an established breach inundation area. This analysis shall

1 evaluate all available funding for the rehabilitation and upgrade of
2 the dam and provide the landowner or developer the option to fund an
3 upgrade of a dam to meet the high-hazard requirement thus allowing
4 them to plan for and develop residential and business structures.

5 SECTION 4. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 110.33 of Title 82, unless there
7 is created a duplication in numbering, reads as follows:

8 The Oklahoma Water Resources Board, in addition to other powers
9 and duties as provided by law, shall have the following powers and
10 duties:

11 1. To promulgate rules in consultation and with the consent of
12 the Oklahoma Conservation Commission necessary to carry out the
13 provisions of the Oklahoma Dam Breach Safety Zone Act, including but
14 not limited to rules relating to standards and methods of
15 calculating and establishing breach inundation areas and cost-
16 benefit analysis, as well as the establishment of fees and fee
17 schedules for inspections and other services provided to carry out
18 this act;

19 2. To review and grant or deny applications for a permit to
20 allow for the construction of residential or business structures
21 inside a safety zone for existing dams;

22 3. To have reasonable access to public and private property for
23 the purpose of inspecting, investigating, and conducting the
24 technical breach inundation analysis;

1 4. To cooperate with agencies of federal, state, and local
2 governments and private persons, including but not limited to the
3 Oklahoma Conservation Commission and local conservation districts,
4 in carrying out its duties under this act;

5 5. To disseminate information with assistance from the Oklahoma
6 Conservation Commission and local conservation districts about this
7 act; and

8 6. To exercise all incidental powers which are necessary and
9 proper to carry out the purposes of this act.

10 SECTION 5. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 110.34 of Title 82, unless there
12 is created a duplication in numbering, reads as follows:

13 A. When an owner fails, neglects or refuses to comply with the
14 Oklahoma Dam Breach Safety Zone Act, rules promulgated pursuant to
15 this act, or orders of the Oklahoma Water Resources Board, and there
16 is no imminent peril to the public health or welfare shown, the
17 Board may, after notice and opportunity for hearing, issue an order
18 requiring the owner to take whatever action the Board deems
19 necessary to meet the requirements of this act, rules of the Board,
20 or the previous orders of the Board. Action that may be ordered
21 includes but is not limited to the:

22 1. Removal of a residential or business structure; and
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1 2. Repair, rehabilitation, upgrade, or modification of an
2 existing dam to meet the requirements of this act and the Oklahoma
3 Dam Safety Act;

4 B. When an owner fails, neglects or refuses to comply with this
5 act, rules promulgated pursuant to this act, or orders of the Board,
6 and there is an imminent peril to the public health or welfare
7 shown, the Executive Director of the Board or Assistant Director in
8 the absence of the Executive Director, may, without notice or
9 opportunity for hearing, issue an emergency order requiring the
10 owner to take certain actions the Board deems necessary to protect
11 loss of life and property. An emergency order shall indicate the
12 finding of imminent peril and shall specify the actions that are to
13 be taken immediately. The order shall also specify a time and place
14 for hearing to be held after the specified actions are taken.

15 C. The Board may impose administrative penalties against any
16 person that fails, refuses or neglects to comply with the provisions
17 of this act, rules of the Board promulgated pursuant to this act, or
18 orders of the Board. Administrative penalties shall be imposed only
19 after notice and opportunity for hearing on the proposed imposition
20 of the penalties. The notice and opportunity for hearing required
21 by this subsection may be combined with the notice and hearing
22 required in subsection A of this section. The penalties shall not
23 exceed One Thousand Dollars (\$1,000.00) per day for each violation.

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1 Each day a violation continues shall constitute a separate
2 violation.

3 D. The Board may seek judicial relief to enforce provisions of
4 this act, rules promulgated pursuant to this act, and orders of the
5 Board by instituting action in the district court where the dam
6 safety zone or a major portion of the safety zone is located.

7 E. If requested, the Oklahoma Water Resources Board, the
8 Oklahoma Conservation Commission, and local conservation districts
9 shall receive assistance from the Oklahoma Attorney General to
10 enforce the provisions of this act.

11 SECTION 6. NEW LAW A new section of law to be codified
12 in the Oklahoma Statutes as Section 110.35 of Title 82, unless there
13 is created a duplication in numbering, reads as follows:

14 Appeals of orders issued by the Oklahoma Water Resources Board
15 pursuant to the Oklahoma Dam Breach Safety Zone Act, except
16 emergency orders issued pursuant to subsection B of Section 5 of
17 this act, shall be taken subject to Article II of the Administrative
18 Procedures Act.

19 SECTION 7. This act shall become effective November 1, 2009.

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