ENGROSSED SENATE AMENDMENT
TO
ENGROSSED HOUSE
BILL NO. 1943 By: Jackson of the House

and

Branan of the Senate

An Act relating to waters and water rights; amending 82 O.S. 2001, Sections 1603, as last amended by Section 2, Chapter 95, O.S.L. 2004, 1604, as last amended by Section 3, Chapter 95, O.S.L. 2004, 1607, as amended by Section 7, Chapter 46, O.S.L. 2002, 1608, as amended by Section 8, Chapter 46, O.S.L. 2002, 1610, as amended by Section 10, Chapter 46, O.S.L. 2002, 1614, as amended by Section 14, Chapter 46, O.S.L. 2002 and 1616, as amended by Section 16, Chapter 46, O.S.L. 2002 (82 O.S. Supp. 2010, Sections 1603, 1604, 1607, 1608, 1610, 1614 and 1616), which relate to the Oklahoma Floodplain Management Act; modifying certain definitions; modifying certain purpose of floodplain management rules and regulations; limiting certain fees; requiring county floodplain regulations to be approved by the Oklahoma Water Resources Board; limiting certain submission requirements to certain floodplain boards; clarifying language; requiring certain information and notice to be posted on the floodplain board website; requiring consideration of the business needs of a certain industry in promulgating rules and regulations; adding certain appeals options; and providing an effective date.

NOTE: Emergency failed

AUTHOR: Add the following Senate Coauthor: Fields

AMENDMENT NO. 1. Page 1, strike the title, enacting clause and entire bill and insert

"[floodplain management - fees - governing certain activities - floodplain regulations - oil and gas industry - repealer]

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

SECTION 1. AMENDATORY 82 O.S. 2001, Section 1603, as last amended by Section 2, Chapter 95, O.S.L. 2004 (82 O.S. Supp. 2010, Section 1603), is amended to read as follows:

Section 1603. As used in the Oklahoma Floodplain Management Act:

1. "Area of jurisdiction" means:

a. all of the lands within an incorporated town or city, for a municipality,

b. all of the unincorporated areas ~~of the~~, except unincorporated areas where all development related to oil and gas exploration and production activity and associated development occur, within a county, for a county, or

c. all property owned or operated by the state, and areas where all development related to oil and gas exploration and production activity and associated development within a FEMA mapped one-hundred-year floodplain in unincorporated areas of counties participating in FEMA's national flood insurance program, for the state;

2. "Board" means the Oklahoma Water Resources Board or the Executive Director of the Oklahoma Water Resources Board for oil and gas exploration and production activity and associated development;

3. "Dwelling unit" means a place of residence and may be a single or multiple-dwelling building;

4. "FEMA" means the Federal Emergency Management Agency;

5. "Flood" or "flooding" means general and temporary conditions of partial or complete inundation of normally dry land areas from the overflow of lakes, streams, rivers or any other inland waters;

~~5.~~ 6. "Floodplain" means the land adjacent to a body of water which has been or may be covered by flooding, including, but not limited to, the one-hundred-year flood;

~~6.~~ 7. "Floodplain administrator" means a person accredited by the Board and designated by a floodplain board, to administer and implement laws and regulations relating to the management of floodplains;

~~7.~~ 8. "Floodplain board" means an administrative and planning board, for floodplain management, of a county, a municipality or ~~the state or~~ the planning commission of a municipality or a county if so designated by the governing body of the municipality or county, or the Board for the state, provided that the Executive Director of the Board shall administer floodplain rules and issue development permits for oil and gas exploration and production activity and associated development;

~~8.~~ 9. "Floodplain regulations" mean the codes, ordinances and other regulations relating to the use of land and construction within the channel and floodplain areas including, but not limited to, zoning ordinances, platting regulations, building codes, housing codes, setback requirements and open area regulations;

~~9.~~ 10. "Floodway" means the channel of a stream, watercourse or body of water and those portions of floodplains which are reasonably required to carry and discharge the floodwater or floodflow of any river or stream;

~~10.~~ 11. "One-hundred-year flood" means a flood which has a one percent (1%) chance of occurring each year, based upon the criteria established by the Oklahoma Water Resources Board; ~~and~~

12. "Oil and gas exploration and production activity and associated development" means activity and development that take place on land where a well is drilled to recover oil or gas, and includes but is not limited to the construction of lease roads, culverts and bridges for access to the site, installation of a drilling or production pad regardless of the material used to construct the pad, installation of a reserve pit or other open liquid-holding facilities for drilling fluids, placement of production storage tanks, fuel tanks, equipment and other materials for use in the well-drilling process, installation of fencing, and placement of permanent equipment, piping, valves and other

appurtenances that remain on site after completion of the well, pipelines, and other associated development; and

~~11.~~ 13. "Program" means the overall national flood insurance program authorized by the National Flood Insurance Act of 1968 (42 U.S.C. 4001-4128) as amended.

SECTION 2. AMENDATORY 82 O.S. 2001, Section 1604, as last amended by Section 3, Chapter 95, O.S.L. 2004 (82 O.S. Supp. 2010, Section 1604), is amended to read as follows:

Section 1604. A. To allow participation in the program, the Oklahoma Water Resources Board, boards of county commissioners and municipal governing bodies are authorized to establish floodplain boards for their respective area of jurisdiction which may adopt, administer and enforce floodplain management rules and regulations, for the purpose of:

1. The delineation of floodplains and floodways;

2. The preservation of the capacity of the floodplain to carry and discharge regional floods;

3. The minimization of flood hazards;

4. The establishment and charging of fair and reasonable fees in an equitable manner, not to exceed Five Hundred Dollars ($500.00), for services provided by the Board, county commissioners and municipalities in the administration of their responsibilities pursuant to the Oklahoma Floodplain Management Act. Fees shall be

limited to development on lands within FEMA mapped one-hundred-year floodplains;

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

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

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

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

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

D. The Oklahoma Water Resources Board shall promulgate rules for the purposes specified in subsection A of this section, provided that effective July 1, 2011, the Board shall have exclusive jurisdiction to promulgate rules to regulate all oil and gas exploration and production activity and associated development in its area of jurisdiction, provided further that the Board may charge a fair and reasonable fee specified in paragraph 4 of subsection A of this section to administer such

rules. The Board shall establish standard and expedited permitting time frames where the standard permitting time frame does not exceed ten (10) calendar days and the expedited permitting time frame does not exceed five (5) calendar days for oil and gas exploration and production activity and associated development.

SECTION 3. AMENDATORY 82 O.S. 2001, Section 1610, as amended by Section 10, Chapter 46, O.S.L. 2002 (82 O.S. Supp. 2010, Section 1610), is amended to read as follows:

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

B. Floodplain regulations enacted pursuant to the Oklahoma Floodplain Management Act, amendments and associated requirements to the regulations shall only be adopted by the county or municipal floodplain boards after a public hearing at which parties ~~in interest~~ and other citizens with an interest have an opportunity to be heard. At least thirty (30) days prior to the hearing, ~~a~~ the proposed regulation, amendment and any associated requirements, and the notice of the time and place of hearing shall be published on the Oklahoma Water Resources Board's website. A notice of the time and place of the hearing shall be published in a newspaper of

general circulation regularly published nearest the area of jurisdiction.

C. At least thirty (30) days prior to the date of any hearing required by subsection B of this section, written notice shall be furnished the Board, accompanied by a copy of each proposed ~~rule to be acted upon~~ regulation, amendment and associated requirements. A copy of any regulation adopted by a floodplain board pursuant to the Oklahoma Floodplain Management Act shall be filed with the Board within fifteen (15) days of its adoption.

SECTION 4. AMENDATORY 82 O.S. 2001, Section 1612, as last amended by Section 12, Chapter 46, O.S.L. 2002 (82 O.S. Supp. 2010, Section 1612), is amended to read as follows:

Section 1612. A. After a floodplain board has submitted to the Oklahoma Water Resources Board definitions of all floodplains and one-hundred-year flood elevations within its area of jurisdiction, all platting of land, all construction of dwelling units or commercial or industrial structures, and all future development within the delineated floodplain area is prohibited unless:

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

2. Prior to regulations having been adopted, a ~~special~~ development permit is granted by the floodplain board; or

3. A ~~special~~ development permit is granted by the ~~state floodplain board~~ Board, if development or construction is ~~to be~~ proposed on lands owned or held in trust by the state, on or after July 1, 2011, is on lands where oil and gas exploration and production activity and associated development will occur. ~~Provided, that notice~~ Notice of ~~such~~ the proposed construction or development, except oil and gas exploration and production activity and associated development must be afforded to all concerned governmental entities within thirty (30) days of the decision to undertake such construction or development. The Oklahoma Water Resources Board shall provide notice of the location of the proposed development for oil and gas exploration and production activity and associated development to the Floodplain Administrator of the County in which the development is proposed. The County Floodplain Administrator shall have no more than five (5) calendar days for a standard permit and three (3) calendar days for an expedited permit to provide written information regarding the flood water flow at the proposed location to the Oklahoma Water Resources Board.

B. ~~Special~~ Development permits authorized by subsection A of this section may be issued when the applicable floodplain board determines that construction or development in the floodplain in question is not a danger to persons or property. In making its determination, the floodplain board shall comply with Section 1610 of this title.

SECTION 5. AMENDATORY 82 O.S. 2001, Section 1614, as amended by Section 14, Chapter 46, O.S.L. 2002 (82 O.S. Supp. 2010, Section 1614), is amended to read as follows:

Section 1614. The Oklahoma Water Resources Board, county boards, and municipal floodplain boards in promulgating rules pursuant to Section 1606 of this title ~~and floodplain boards~~ in preparing floodplain ~~management~~ regulations shall give due consideration to the needs of an industry, including agriculture and the oil and gas industry, whose business requires that it be located within a floodplain.

SECTION 6. REPEALER 82 O.S. 2001, Section 1609, as amended by Section 9, Chapter 46, O.S.L. 2002 (82 O.S. Supp. 2010, Section 1609), is hereby repealed."

Passed the Senate the 27th day of April, 2011.

_____
Presiding Officer of the Senate

Passed the House of Representatives the ____ day of _____, 2011.

_____
Presiding Officer of the House of Representatives

ENGROSSED HOUSE
BILL NO. 1943 By: Jackson of the House

and

Branan of the Senate

An Act relating to waters and water rights; amending 82 O.S. 2001, Sections 1603, as last amended by Section 2, Chapter 95, O.S.L. 2004, 1604, as last amended by Section 3, Chapter 95, O.S.L. 2004, 1607, as amended by Section 7, Chapter 46, O.S.L. 2002, 1608, as amended by Section 8, Chapter 46, O.S.L. 2002, 1610, as amended by Section 10, Chapter 46, O.S.L. 2002, 1614, as amended by Section 14, Chapter 46, O.S.L. 2002 and 1616, as amended by Section 16, Chapter 46, O.S.L. 2002 (82 O.S. Supp. 2010, Sections 1603, 1604, 1607, 1608, 1610, 1614 and 1616), which relate to the Oklahoma Floodplain Management Act; modifying certain definitions; modifying certain purpose of floodplain management rules and regulations; limiting certain fees; requiring county floodplain regulations to be approved by the Oklahoma Water Resources Board; limiting certain submission requirements to certain floodplain boards; clarifying language; requiring certain information and notice to be posted on the floodplain board website; requiring consideration of the business needs of a certain industry in promulgating rules and regulations; adding certain appeals options; and providing an effective date.

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

SECTION 7. AMENDATORY 82 O.S. 2001, Section 1603, as last amended by Section 2, Chapter 95, O.S.L. 2004 (82 O.S. Supp. 2010, Section 1603), is amended to read as follows:

Section 1603. As used in the Oklahoma Floodplain Management Act:

1. "Area of jurisdiction" means:

a. all of the lands within an incorporated town or city, for a municipality,

b. ~~all of~~ floodplains in the unincorporated areas of the county, for a county, or

c. all property owned or operated by the state, for the state;

2. "Board" means the Oklahoma Water Resources Board;

3. "Dwelling unit" means a place of residence and may be a single or multiple-dwelling building;

4. "Flood" or "flooding" means general and temporary conditions of partial or complete inundation of normally dry land areas from the overflow of lakes, streams, rivers or any other inland waters;

5. "Floodplain" means the land adjacent to a body of water which has been or may be covered by flooding, including, but not limited to, the one-hundred-year flood;

6. “Floodplain administrator” means a person accredited by the Board and designated by a floodplain board, to administer and implement laws and regulations relating to the management of floodplains;

7. "Floodplain board" means an administrative and planning board, for floodplain management, of a county, a municipality or the

state or the planning commission of a municipality or a county if so designated by the governing body of the municipality or county;

8. "Floodplain regulations" mean the codes, ordinances and other regulations relating to the use of land and construction within the channel and floodplain areas including, but not limited to, permits, zoning ordinances, platting regulations, building codes, housing codes, setback requirements and open area regulations;

9. "Floodway" means the channel of a stream, watercourse or body of water and those portions of floodplains which are reasonably required to carry and discharge the floodwater or floodflow of any river or stream;

10. "One-hundred-year flood" means a flood which has a one percent (1%) chance of occurring each year, based upon the criteria established by the Oklahoma Water Resources Board; and

11. "Program" means the overall national flood insurance program authorized by the National Flood Insurance Act of 1968 (42 U.S.C. 4001-4128) as amended.

SECTION 8. AMENDATORY 82 O.S. 2001, Section 1604, as last amended by Section 3, Chapter 95, O.S.L. 2004 (82 O.S. Supp. 2010, Section 1604), is amended to read as follows:

Section 1604. A. To allow participation in the program, the Oklahoma Water Resources Board, boards of county commissioners and municipal governing bodies are authorized to establish floodplain

boards for their respective area of jurisdiction which may adopt, administer and enforce floodplain management rules and regulations, for the purpose of:

1. The delineation of floodplains and floodways;

2. The preservation of the capacity of the floodplain to carry and discharge regional floods;

3. The minimization of flood hazards;

4. The establishment and charging of fair and reasonable fees in an equitable manner, not to exceed Five Hundred Dollars ($500.00), for services provided by the Board, county commissioners and municipalities in the administration of their responsibilities pursuant to the Oklahoma Floodplain Management Act. The charging of fees shall be limited to development on lands within the area of the one-hundred-year flood;

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

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

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

B. The floodplain management rules and regulations shall be based on adequate technical data and competent engineering advice

and shall be consistent with local and regional comprehensive planning.

C. The floodplain management rules and regulations shall be approved by the Oklahoma Water Resources Board, the county or the municipality, as the case may be, by appropriate order, resolution or ordinance.

D. The floodplain management rules and regulations enacted by a county shall be reviewed and approved by the Oklahoma Water Resources Board prior to adoption by the county to ensure that the requirements are fair and equitable.

SECTION 9. AMENDATORY 82 O.S. 2001, Section 1607, as amended by Section 7, Chapter 46, O.S.L. 2002 (82 O.S. Supp. 2010, Section 1607), is amended to read as follows:

Section 1607. The county and municipal floodplain boards shall delineate and submit to the Oklahoma Water Resources Board all floodplain definitions and one-hundred-year flood elevations within their respective area of jurisdiction, using methods consistent with the criteria and rules developed by the Board.

SECTION 10. AMENDATORY 82 O.S. 2001, Section 1608, as amended by Section 8, Chapter 46, O.S.L. 2002 (82 O.S. Supp. 2010, Section 1608), is amended to read as follows:

Section 1608. All floodplain boards that choose to participate in the program shall adopt floodplain regulations, which shall conform with the requirements necessary to establish eligibility and

to maintain participation in the program and shall include the following:

1. ~~Regulations for any~~ The platting of land in floodplains, construction of dwelling units and commercial or industrial structures in floodplains, and all other construction in the floodplains, which may divert, retard or obstruct floodwater and threaten public health, safety or welfare;

2. ~~Regulations which establish~~ Establishing minimum flood protection elevations and flood damage prevention requirements for use of structures and facilities which are located in a floodplain or are vulnerable to flood damage. Regulations adopted under this section are to be in accordance with any applicable state and local laws, regulations and ordinances;

3. ~~Regulations which provide~~ Provide for coordination by the floodplain board with all other interested and affected political subdivisions and state agencies. The regulations of a floodplain board shall not apply to the use of the usual farm buildings for agricultural purposes, the planting of agricultural crops or the construction of farm ponds; and

4. Counties and municipalities that choose to participate in the program and utilize a floodplain manager are encouraged to attend the floodplain development management classes offered by the National Flood Insurance Program and any additional annual

continuing education classes offered by the Oklahoma Water Resources Board.

SECTION 11. AMENDATORY 82 O.S. 2001, Section 1610, as amended by Section 10, Chapter 46, O.S.L. 2002 (82 O.S. Supp. 2010, Section 1610), is amended to read as follows:

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

B. Floodplain regulations enacted pursuant to the Oklahoma Floodplain Management Act shall only be adopted by the county or municipal floodplain boards after a public hearing at which time parties ~~in~~ and citizens with an interest and other citizens have an opportunity to be heard. At least thirty (30) days prior to the hearing, the proposed rules and any associated requirements and a notice of the time and place of hearing shall be published on the website of the board, and a notice of the time and place of the hearing shall be published in a newspaper of general circulation regularly published nearest the area of jurisdiction.

C. At least thirty (30) days prior to the date of any hearing required by subsection B of this section, written notice shall be furnished to the Oklahoma Water Resources Board, accompanied by a copy of each proposed rule and any associated requirement to be acted upon. A copy of any regulation adopted by a floodplain board

pursuant to the Oklahoma Floodplain Management Act shall be filed with the Board within fifteen (15) days of its adoption.

D. The floodplain regulations enacted by a county shall be reviewed and approved by the Oklahoma Water Resources Board prior to adoption by the county to ensure that the requirements are fair and equitable.

SECTION 12. AMENDATORY 82 O.S. 2001, Section 1614, as amended by Section 14, Chapter 46, O.S.L. 2002 (82 O.S. Supp. 2010, Section 1614), is amended to read as follows:

Section 1614. The Oklahoma Water Resources Board and county and municipal floodplain boards in promulgating rules pursuant to Section 1606 of this title and floodplain boards in preparing floodplain management regulations shall give due consideration to the needs of an industry, including agriculture and the oil and gas industry, whose business requires that it be located within a floodplain.

SECTION 13. AMENDATORY 82 O.S. 2001, Section 1616, as amended by Section 16, Chapter 46, O.S.L. 2002 (82 O.S. Supp. 2010, Section 1616), is amended to read as follows:

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

B. Appeals of the decision of a county or municipal floodplain board shall be taken to the board of adjustment for the area of

jurisdiction involved in the appeal ~~or~~, to the governing body of the county or municipality where no board of adjustment exists, or to the Oklahoma Water Resources Board. Appeals may be taken by any person aggrieved or by a public officer, department, board or bureau affected by any decision of the floodplain board in administering the floodplain board's regulations. The appeal shall be taken within a period of not more than ten (10) days, by filing written notice with the appellant body and the floodplain board, stating the grounds thereof. An appeal shall stay all proceedings in furtherance of the action appealed from unless the floodplain board from which the appeal is taken shall certify to the appellant ~~of~~ body that by reason of facts stated in the certificate a stay would, in its opinion, cause imminent peril to life or property. The appellant body shall have the following powers and duties:

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

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

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

SECTION 14. This act shall become effective November 1, 2011.

Passed the House of Representatives the 7th day of March, 2011.

_____
Presiding Officer of the House of Representatives

Passed the Senate the ____ day of _____, 2011.

_____
Presiding Officer of the Senate