

1 STATE OF OKLAHOMA

2 1st Session of the 53rd Legislature (2011)

3 COMMITTEE SUBSTITUTE

4 FOR

5 HOUSE BILL NO. 1692

6 By: Russ

7 COMMITTEE SUBSTITUTE

8 An Act relating to waters and water rights; amending
9 82 O.S. 2001, Sections 1603, as last amended by
10 Section 2, Chapter 95, O.S.L. 2004, 1604, as last
11 amended by Section 3, Chapter 95, O.S.L. 2004, 1606,
12 as amended by Section 6, Chapter 46, O.S.L. 2002,
13 1608, as amended by Section 8, Chapter 46, O.S.L.
14 2002, 1609, as amended by Section 9, Chapter 46,
15 O.S.L. 2002, 1610, as amended by Section 10, Chapter
16 46, O.S.L. 2002, 1611, as amended by Section 11,
17 Chapter 46, O.S.L. 2002, 1612, as amended by Section
18 12, Chapter 46, O.S.L. 2002, 1614, as amended by
19 Section 14, Chapter 46, O.S.L. 2002, 1615, as amended
20 by Section 15, Chapter 46, O.S.L. 2002, 1616, as
21 amended by Section 16, Chapter 46, O.S.L. 2002, 1617,
22 as amended by Section 17, Chapter 46, O.S.L. 2002 and
23 Section 4, Chapter 95, O.S.L. 2004 (82 O.S. Supp.
24 2010, Sections 1603, 1604, 1606, 1608, 1609, 1610,
1611, 1612, 1614, 1615, 1616, 1617 and 1620), which
relate to the Oklahoma Floodplain Management Act;
stating legislative intent; modifying definitions;
modifying regulations regarding county and municipal
flood plain boards; directing Oklahoma Water
Resources Board to promulgate certain rules;
directing board to coordinate with floodplain boards
and other agencies; modifying floodplain regulations
and requirements; modifying cooperative agreements;
modifying the procedure for promulgation of
floodplain rules; providing for the amending of
floodplain regulations; modifying exceptions to
development in a floodplain area; modifying granting
of variances; providing for notice and time of
hearing on variance; modifying appeals process;
modifying prohibitions and violations; authorizing

1 injunctive relief for certain violations; providing
2 for noncodification; and declaring an emergency.

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

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

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

20 SECTION 2. AMENDATORY 82 O.S. 2001, Section 1603, as
21 last amended by Section 2, Chapter 95, O.S.L. 2004 (82 O.S. Supp.
22 2010, Section 1603), is amended to read as follows:

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

- 1 1. "Area of jurisdiction" means:
- 2 a. all of the ~~lands~~ areas within an incorporated town or
- 3 city, except locations of all property owned or
- 4 operated by the state for a municipality,
- 5 b. all of the unincorporated areas except locations of
- 6 all property owned or operated by the state of the
- 7 county, for a county, or
- 8 c. all property owned or operated by the state, ~~for~~
- 9 within the state, for the Board;
- 10 2. "Board" means the Oklahoma Water Resources Board;
- 11 3. "Dwelling unit" means a place of residence and may be a
- 12 single or multiple-dwelling building;
- 13 4. "Flood" or "flooding" means general and temporary conditions
- 14 of partial or complete inundation of normally dry land areas from
- 15 the overflow of lakes, streams, rivers or any other inland waters;
- 16 5. "Floodplain" means the land adjacent to a body of water
- 17 which has been or may be covered by flooding, including, but not
- 18 limited to, the one-hundred-year flood;
- 19 6. "Floodplain administrator" means a person accredited by the
- 20 Board and designated by a floodplain board, to administer and
- 21 implement laws and regulations relating to the management of
- 22 floodplains;
- 23 7. "Floodplain board" means:
- 24

- 1 a. an administrative and planning board established by a
2 board of county commissioners or governing body of a
3 municipality and composed of membership as specified
4 in Section 1605 of this title, for floodplain
5 management, of a county, or a municipality ~~or,~~
6 b. the ~~state or~~ Oklahoma Water Resources Board,
7 c. the planning commission of a municipality or a county
8 if so designated by the governing body of the
9 municipality or county, or
10 d. the board of county commissioners or governing body of
11 a municipality if a separate floodplain board composed
12 of membership as specified in Section 1605 of this
13 title is not established or if an established
14 floodplain board is dissolved by its respective board
15 of county commissioners or governing body of a
16 municipality after the effective date of this act;

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

22 9. "Floodway" means the channel of a stream, watercourse or
23 body of water and those portions of floodplains which are reasonably
24

1 required to carry and discharge the floodwater or floodflow of any
2 river or stream;

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

6 11. "BFE" means base flood elevation which is the elevation in
7 feet from mean sea level at which water level during a flood has a
8 one-percent chance of being equaled or exceeded in any given year;
9 and

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

13 SECTION 3. AMENDATORY 82 O.S. 2001, Section 1604, as
14 last amended by Section 3, Chapter 95, O.S.L. 2004 (82 O.S. Supp.
15 2010, Section 1604), is amended to read as follows:

16 Section 1604. A. ~~To allow participation in the program, the~~
17 ~~Oklahoma Water Resources Board,~~ 1. The boards of county
18 commissioners and municipal governing bodies are authorized to
19 establish floodplain boards, composed of membership as specified in
20 Section 1605 of this title, for their respective area of
21 jurisdiction which may.

22 2. If a board of county commissioners or municipal governing
23 body dissolves its respective floodplain board that had been
24 established prior to the effective date of this act, the floodplain

1 management regulations adopted by such floodplain board shall
2 continue in effect to be administered by the board of county
3 commissioners or municipal governing body that assumes the role of
4 the local floodplain board.

5 3. To participate in the program, floodplain boards shall
6 adopt, administer and enforce floodplain management rules and
7 regulations, for the purpose of:

8 ~~1. The~~

9 a. delineation of floodplains and floodways_{7,1}

10 ~~2. The~~

11 b. preservation of the capacity of the floodplain to
12 carry and discharge regional floods_{7,1}

13 ~~3. The~~

14 c. minimization of flood hazards_{7,1}

15 ~~4. The~~

16 d. establishment and charging of reasonable fees, not to
17 exceed Five Hundred Dollars (\$500.00), for services
18 provided by the Board, county commissioners and
19 municipalities in the administration of their
20 responsibilities pursuant to the Oklahoma Floodplain
21 Management Act_{7,1}

22 ~~5. The~~

23 e. regulation of the use of land in the floodplain_{7,1}

24 ~~6. The~~

1 f. protection of the natural and beneficial functions of
2 the floodplain, reducing damage to property from
3 floods, reducing injury and loss of life from floods,
4 and allowing communities to be eligible for flood
5 insurance~~7,~~ and

6 ~~7. The~~

7 g. hiring and employment of an accredited floodplain
8 administrator.

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

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

17 D. The Oklahoma Water Resources Board shall promulgate rules
18 for the purposes specified in paragraph 3 of subsection A of this
19 section.

20 SECTION 4. AMENDATORY 82 O.S. 2001, Section 1606, as
21 amended by Section 6, Chapter 46, O.S.L. 2002 (82 O.S. Supp. 2010,
22 Section 1606), is amended to read as follows:

23 Section 1606. The Oklahoma Water Resources Board shall ~~develop,~~
24 ~~adopt and promulgate criteria and rules for aiding the~~ coordinate

1 with floodplain boards in the use of flood insurance rate maps and
2 flood hazard boundary maps for the establishment and delineation of
3 the floodplains and the one-hundred-year flood elevations for
4 Oklahoma. The Board may also continue to assign a staff member to
5 be the State Floodplain Coordinator that assists other state
6 agencies, boards of county commissioners, governing bodies of
7 municipalities, floodplain boards and floodplain administrators in
8 coordinating with the Federal Emergency Management Agency in matters
9 relating to the program.

10 SECTION 5. AMENDATORY 82 O.S. 2001, Section 1608, as
11 amended by Section 8, Chapter 46, O.S.L. 2002 (82 O.S. Supp. 2010,
12 Section 1608), is amended to read as follows:

13 Section 1608. A. All floodplain boards that ~~choose to~~
14 participate in the program shall adopt floodplain management
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, but not be limited to, the
18 following:

19 1. Regulations Incorporation by reference, specifying the date
20 and panel number or numbers if appropriate, to the most recent flood
21 insurance rate maps or flood hazard boundary maps prepared by the
22 Federal Emergency Management Agency or more specific information to
23 delineate floodplains within the respective areas of jurisdiction;
24

1 2. Requirements for the issuance of development permits for any
2 platting of land in floodplains, construction of dwelling units and
3 commercial or industrial structures in floodplains, and all other
4 construction and development in the floodplains, which may divert,
5 retard or obstruct floodwater and threaten public health, safety or
6 welfare; provided, that the regulations shall also include a
7 description of the process to apply for and obtain a development
8 permit to be issued by the floodplain board or accredited floodplain
9 administrator;

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

17 ~~3. Regulations which provide for coordination by the floodplain~~
18 ~~board with all other interested and affected political subdivisions~~
19 ~~and state agencies. The~~

20 4. Requirements to coordinate floodplain management regulations
21 and to require advance notice to adjoining counties, municipalities
22 or their respective floodplain boards before considering issuance of
23 development permits; and

24

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

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

12 SECTION 6. AMENDATORY 82 O.S. 2001, Section 1609, as
13 amended by Section 9, Chapter 46, O.S.L. 2002 (82 O.S. Supp. 2010,
14 Section 1609), is amended to read as follows:

15 Section 1609. ~~Floodplain~~ The floodplain boards may enter into
16 cooperative agreements pursuant to the "Interlocal Cooperation Act"
17 for the delineation of floodplains and adoption of regulations to
18 manage development within the floodplains.

19 SECTION 7. AMENDATORY 82 O.S. 2001, Section 1610, as
20 amended by Section 10, Chapter 46, O.S.L. 2002 (82 O.S. Supp. 2010,
21 Section 1610), is amended to read as follows:

22 Section 1610. A. Floodplain management rules enacted pursuant
23 to the Oklahoma Floodplain Management Act shall only be promulgated
24

1 by the Oklahoma Water Resources Board in accordance with the
2 Administrative Procedures Act.

3 B. Floodplain management regulations ~~enacted~~ adopted pursuant
4 to the Oklahoma Floodplain Management Act and any amendments to the
5 regulations shall ~~only be adopted by the county or municipal~~
6 ~~floodplain boards after a public hearing at which parties in~~
7 ~~interest and other citizens have an opportunity to be heard. At~~
8 ~~least thirty (30) days prior to the hearing, a notice of the time~~
9 ~~and place of hearing~~ go into effect thirty (30) days after adoption
10 unless the regulation or amendment specifies a later date; provided,
11 that no floodplain management regulation or amendment thereto shall
12 be in force unless published in a newspaper of general circulation
13 regularly published nearest the area of jurisdiction within fifteen
14 (15) days after adoption.

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

20 D. A certified copy of any regulation or amendment thereto
21 adopted by a floodplain board pursuant to the Oklahoma Floodplain
22 Management Act shall be filed with the Oklahoma Water Resources
23 Board within fifteen (15) days ~~of its~~ after adoption.

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1 SECTION 8. AMENDATORY 82 O.S. 2001, Section 1611, as
2 amended by Section 11, Chapter 46, O.S.L. 2002 (82 O.S. Supp. 2010,
3 Section 1611), is amended to read as follows:

4 Section 1611. Within one hundred eighty (180) days after the
5 completion of construction of any flood control protective works,
6 the floodplain board in ~~it's~~ the respective area of jurisdiction
7 shall redefine the floodplain as altered by the works by amending
8 the floodplain regulations pursuant to the procedures set forth in
9 Section 1610 of this title. ~~The new floodplain definition and~~
10 ~~one hundred year flood elevations shall then be submitted to the~~
11 ~~Oklahoma Water Resources Board.~~

12 SECTION 9. AMENDATORY 82 O.S. 2001, Section 1612, as
13 amended by Section 12, Chapter 46, O.S.L. 2002 (82 O.S. Supp. 2010,
14 Section 1612), is amended to read as follows:

15 Section 1612. A. After a floodplain board has adopted and
16 submitted floodplain management regulations incorporating the most
17 recent flood insurance rate maps or flood hazard boundary maps
18 prepared by the Federal Emergency Management Agency or containing
19 more specific information to delineate floodplains within the
20 respective areas of jurisdiction to the Oklahoma Water Resources
21 Board ~~definitions of all floodplains and one hundred year flood~~
22 ~~elevations within its area of jurisdiction,~~ all platting of land,
23 all construction of dwelling units or commercial or industrial
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1 structures, and all future development within the delineated
2 floodplain area is prohibited unless:

3 1. Floodplain regulations have been adopted pursuant to the
4 Oklahoma Floodplain Management Act for ~~such~~ the delineated
5 floodplain areas and are in full force and effect;

6 2. Prior to ~~regulations having been adopted~~ the platting,
7 construction, and other development, a ~~special~~ development permit is
8 granted by the floodplain board or accredited floodplain
9 administrator if a floodplain administrator is authorized to issue
10 development permits by the floodplain management regulations; or

11 3. A ~~special~~ development permit is granted by the ~~state~~
12 ~~floodplain board~~ Board, if development or construction is ~~to be~~
13 proposed on lands owned, ~~or~~ held in trust or operated by the state.
14 ~~Provided, that notice~~ Notice of ~~such~~ the proposed construction or
15 development must be ~~afforded~~ provided by the permit applicant to ~~all~~
16 ~~concerned governmental entities within~~ the respective floodplain
17 board of the county or municipality in which the development or
18 construction is proposed thirty (30) days ~~of~~ before the decision of
19 the Board to ~~undertake such~~ approve a development permit for the
20 construction or development.

21 B. ~~Special~~ Development permits authorized by subsection A of
22 this section may be issued when the applicable floodplain board, or
23 accredited floodplain administrator or Board, as the case may be,
24 determines that construction or development in the floodplain in

1 question complies with the applicable floodplain regulations or
2 rules and is not a danger to persons or property. ~~In making its~~
3 ~~determination, the floodplain board shall comply with Section 1610~~
4 ~~of this title.~~

5 SECTION 10. AMENDATORY 82 O.S. 2001, Section 1614, as
6 amended by Section 14, Chapter 46, O.S.L. 2002 (82 O.S. Supp. 2010,
7 Section 1614), is amended to read as follows:

8 Section 1614. The Oklahoma Water Resources Board in
9 promulgating rules pursuant to ~~Section 1606 of this title~~ the
10 Oklahoma Floodplain Management Act and floodplain boards in
11 preparing floodplain management regulations shall give due
12 consideration to the needs of an industry, including agriculture,
13 whose business requires that it be located within a floodplain.

14 SECTION 11. AMENDATORY 82 O.S. 2001, Section 1615, as
15 amended by Section 15, Chapter 46, O.S.L. 2002 (82 O.S. Supp. 2010,
16 Section 1615), is amended to read as follows:

17 Section 1615. A. ~~The~~ A floodplain board may grant variances
18 ~~for uses which do not satisfy the~~ from requirements of floodplain
19 management regulations that are more stringent than the minimum
20 requirements of the Oklahoma Floodplain Management Act upon
21 presentation of adequate proof that compliance with the local
22 floodplain management regulations adopted pursuant to the Oklahoma
23 Floodplain Management Act will result in an arbitrary and
24 unreasonable taking of property without sufficient benefit or

1 advantage to the people. However, no variance shall be granted
2 where the effect of the variance will be to permit the continuance
3 of a condition which unreasonably creates flooding hazards. Any
4 variance so granted shall not be construed as to relieve any person
5 who receives it from any liability imposed by the Oklahoma
6 Floodplain Management Act or by other laws of the state.

7 B. Any person seeking a variance shall file a petition with the
8 floodplain board, accompanied by a filing fee of Twenty-five Dollars
9 (\$25.00).

10 C. ~~The A~~ floodplain board shall exercise wide discretion in
11 weighing the equities involved and the advantages and disadvantages
12 to the applicant and to the public at large when determining whether
13 the variance shall be granted. The floodplain board shall conduct a
14 hearing ~~which complies with all requirements of the Oklahoma~~
15 ~~Floodplain Management Act for public notice~~ for each requested
16 variance. At least thirty (30) days prior to the hearing, a notice
17 of the time and place of the hearing shall be published at the
18 petitioner's expense in a newspaper of general circulation regularly
19 published nearest the area of jurisdiction. In no case shall
20 variances be effective for a period longer than twenty (20) years.
21 A copy of any variance issued shall be sent to the Oklahoma Water
22 Resources Board within fifteen (15) days ~~of~~ after issuance.

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1 SECTION 12. AMENDATORY 82 O.S. 2001, Section 1616, as
2 amended by Section 16, Chapter 46, O.S.L. 2002 (82 O.S. Supp. 2010,
3 Section 1616), is amended to read as follows:

4 Section 1616. A. Appeals of any final decision of the Oklahoma
5 Water Resources Board relating to a development permit shall be in
6 accordance with the Administrative Procedures Act.

7 B. Appeals of the decision of a county or municipal floodplain
8 board, or floodplain administrator, shall be taken to the board of
9 adjustment for the area of jurisdiction involved in the appeal or to
10 the governing body of the county or municipality where no board of
11 adjustment exists.

12 C. Appeals may be taken by any person aggrieved or by a public
13 officer, department, board or bureau affected by any decision of the
14 floodplain board, or a floodplain administrator, in administering
15 the floodplain ~~board's~~ management regulations.

16 D. The appeal shall be taken within a period of not more than
17 ten (10) days, by filing written notice with the appellant body and
18 the floodplain board, stating the grounds thereof.

19 E. An appeal shall stay all proceedings in furtherance of the
20 action appealed from unless the floodplain board, or the floodplain
21 administrator, from which the appeal is taken shall certify to the
22 appellant ~~of~~ body that by reason of facts stated in the certificate
23 a stay would, in its opinion, cause imminent peril to life or
24 property.

1 F. The appellant body shall have the following powers and
2 duties:

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

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

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

15 SECTION 13. AMENDATORY 82 O.S. 2001, Section 1617, as
16 amended by Section 17, Chapter 46, O.S.L. 2002 (82 O.S. Supp. 2010,
17 Section 1617), is amended to read as follows:

18 Section 1617. A. No new development or substantial improvement
19 to a structure, or new fill, excavation or other floodplain use ~~that~~
20 ~~is unreasonably hazardous to the public or that unduly restricts the~~
21 ~~capacity of the floodway to carry and discharge the regional flood~~
22 shall be ~~permitted~~ allowed without securing ~~written authorization~~ a
23 development permit from the floodplain board in which the ~~floodplain~~

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1 ~~is located~~ area of jurisdiction includes the proposed development,
2 substantial improvement, fill, excavation or other floodplain use.

3 B. The boards of county commissioners, the governing bodies of
4 municipalities and the Oklahoma Water Resources Board are authorized
5 to seek injunctive relief to prohibit activities that are not in
6 compliance with the respective floodplain management regulations or
7 rules applicable to their respective areas of jurisdiction and to
8 compel compliance with the respective floodplain management
9 regulations or rules applicable to their respective areas of
10 jurisdiction.

11 C. Any person convicted of violating the ~~provisions of this~~
12 ~~section~~ applicable floodplain management regulations or rules shall
13 be guilty of a misdemeanor.

14 SECTION 14. AMENDATORY Section 4, Chapter 95, O.S.L.
15 2004 (82 O.S. Supp. 2010, Section 1620), is amended to read as
16 follows:

17 Section 1620. A. Each floodplain board shall designate a
18 person to serve as the floodplain administrator to administer and
19 implement floodplain regulations.

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

23 SECTION 15. It being immediately necessary for the preservation
24 of the public peace, health and safety, an emergency is hereby

1 declared to exist, by reason whereof this act shall take effect and
2 be in full force from and after its passage and approval.

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