

1 ENGROSSED HOUSE
2 BILL NO. 1692

By: Russ of the House

3 and

4 Justice of the Senate
5
6

7 An Act relating to waters and water rights; amending
8 82 O.S. 2001, Sections 1603, as last amended by
9 Section 2, Chapter 95, O.S.L. 2004, 1604, as last
10 amended by Section 3, Chapter 95, O.S.L. 2004, 1606,
11 as amended by Section 6, Chapter 46, O.S.L. 2002,
12 1608, as amended by Section 8, Chapter 46, O.S.L.
13 2002, 1609, as amended by Section 9, Chapter 46,
14 O.S.L. 2002, 1610, as amended by Section 10, Chapter
15 46, O.S.L. 2002, 1611, as amended by Section 11,
16 Chapter 46, O.S.L. 2002, 1612, as amended by Section
17 12, Chapter 46, O.S.L. 2002, 1614, as amended by
18 Section 14, Chapter 46, O.S.L. 2002, 1615, as amended
19 by Section 15, Chapter 46, O.S.L. 2002, 1616, as
20 amended by Section 16, Chapter 46, O.S.L. 2002, 1617,
21 as amended by Section 17, Chapter 46, O.S.L. 2002 and
22 Section 4, Chapter 95, O.S.L. 2004 (82 O.S. Supp.
23 2010, Sections 1603, 1604, 1606, 1608, 1609, 1610,
24 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
injunctive relief for certain violations; providing
for noncodification; and declaring an emergency.

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

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

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

16 SECTION 2. AMENDATORY 82 O.S. 2001, Section 1603, as
17 last amended by Section 2, Chapter 95, O.S.L. 2004 (82 O.S. Supp.
18 2010, Section 1603), is amended to read as follows:

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

21 1. "Area of jurisdiction" means:

22 a. all of the ~~lands~~ areas within an incorporated town or
23 city, except locations of all property owned or
24 operated by the state for a municipality,

1 b. all of the unincorporated areas except locations of
2 all property owned or operated by the state of the
3 county, for a county, or

4 c. all property owned or operated by the state, ~~for~~
5 within the state, for the Board;

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

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

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

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

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

19 7. "Floodplain board" means:

20 a. an administrative and planning board established by a
21 board of county commissioners or governing body of a
22 municipality and composed of membership as specified
23 in Section 1605 of this title, for floodplain
24 management, of a county, or a municipality ~~or,~~

1 b. the ~~state or~~ Oklahoma Water Resources Board,

2 c. the planning commission of a municipality or a county
3 if so designated by the governing body of the
4 municipality or county, or

5 d. the board of county commissioners or governing body of
6 a municipality if a separate floodplain board composed
7 of membership as specified in Section 1605 of this
8 title is not established or if an established
9 floodplain board is dissolved by its respective board
10 of county commissioners or governing body of a
11 municipality after the effective date of this act;

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

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

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

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

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

8 SECTION 3. AMENDATORY 82 O.S. 2001, Section 1604, as
9 last amended by Section 3, Chapter 95, O.S.L. 2004 (82 O.S. Supp.
10 2010, Section 1604), is amended to read as follows:

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

17 2. If a board of county commissioners or municipal governing
18 body dissolves its respective floodplain board that had been
19 established prior to the effective date of this act, the floodplain
20 management regulations adopted by such floodplain board shall
21 continue in effect to be administered by the board of county
22 commissioners or municipal governing body that assumes the role of
23 the local floodplain board.

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

4 ~~1. The~~

5 a. delineation of floodplains and floodways~~†, ‡~~

6 ~~2. The~~

7 b. preservation of the capacity of the floodplain to
8 carry and discharge regional floods~~†, ‡~~

9 ~~3. The~~

10 c. minimization of flood hazards~~†, ‡~~

11 ~~4. The~~

12 d. establishment and charging of reasonable fees, not to
13 exceed Five Hundred Dollars (\$500.00), for services
14 provided by the Board, county commissioners and
15 municipalities in the administration of their
16 responsibilities pursuant to the Oklahoma Floodplain
17 Management Act~~†, ‡~~

18 ~~5. The~~

19 e. regulation of the use of land in the floodplain~~†, ‡~~

20 ~~6. The~~

21 f. protection of the natural and beneficial functions of
22 the floodplain, reducing damage to property from
23 floods, reducing injury and loss of life from floods,
24

1 and allowing communities to be eligible for flood
2 insurance, and

3 ~~7. The~~

4 g. hiring and employment of an accredited floodplain
5 administrator.

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

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

14 D. The Oklahoma Water Resources Board shall promulgate rules
15 for the purposes specified in paragraph 3 of subsection A of this
16 section.

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

20 Section 1606. The Oklahoma Water Resources Board shall ~~develop,~~
21 ~~adopt and promulgate criteria and rules for aiding the~~ coordinate
22 with floodplain boards in the use of flood insurance rate maps and
23 flood hazard boundary maps for the establishment and delineation of
24 the floodplains and the one-hundred-year flood elevations for

1 Oklahoma. The Board may also continue to assign a staff member to
2 be the State Floodplain Coordinator that assists other state
3 agencies, boards of county commissioners, governing bodies of
4 municipalities, floodplain boards and floodplain administrators in
5 coordinating with the Federal Emergency Management Agency in matters
6 relating to the program.

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

10 Section 1608. A. All floodplain boards that ~~choose to~~
11 participate in the program shall adopt floodplain management
12 regulations, which shall conform with the requirements necessary to
13 establish eligibility and to maintain participation in the program
14 ~~and~~. The regulations shall include, but not be limited to, the
15 following:

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

21 2. Requirements for the issuance of development permits for any
22 platting of land in floodplains, construction of dwelling units and
23 commercial or industrial structures in floodplains, and all other
24 construction and development in the floodplains, which may divert,

1 retard or obstruct floodwater and threaten public health, safety or
2 welfare; provided, that the regulations shall also include a
3 description of the process to apply for and obtain a development
4 permit to be issued by the floodplain board or accredited floodplain
5 administrator;

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

13 ~~3. Regulations which provide for coordination by the floodplain~~
14 ~~board with all other interested and affected political subdivisions~~
15 ~~and state agencies. The~~

16 4. Requirements to coordinate floodplain management regulations
17 and to require advance notice to adjoining counties, municipalities
18 or their respective floodplain boards before considering issuance of
19 development permits; and

20 5. A provision that the floodplain management regulations of a
21 ~~floodplain board~~ shall not apply to the use of the usual farm
22 buildings for agricultural purposes, the planting of agricultural
23 crops or the construction of farm ponds, ~~and~~.

24

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

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

11 Section 1609. ~~Floodplain~~ The floodplain boards may enter into
12 cooperative agreements pursuant to the "Interlocal Cooperation Act"
13 for the delineation of floodplains and adoption of regulations to
14 manage development within the floodplains.

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

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

22 B. Floodplain management regulations ~~enacted~~ adopted pursuant
23 to the Oklahoma Floodplain Management Act and any amendments to the
24 regulations shall ~~only be adopted by the county or municipal~~

1 ~~floodplain boards after a public hearing at which parties in~~
2 ~~interest and other citizens have an opportunity to be heard. At~~
3 ~~least thirty (30) days prior to the hearing, a notice of the time~~
4 ~~and place of hearing go into effect thirty (30) days after adoption~~
5 ~~unless the regulation or amendment specifies a later date; provided,~~
6 ~~that no floodplain management regulation or amendment thereto shall~~
7 ~~be in force unless published in a newspaper of general circulation~~
8 ~~regularly published nearest the area of jurisdiction within fifteen~~
9 ~~(15) days after adoption.~~

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

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

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

22 Section 1611. Within one hundred eighty (180) days after the
23 completion of construction of any flood control protective works,
24 the floodplain board in ~~its~~ the respective area of jurisdiction

1 shall redefine the floodplain as altered by the works by amending
2 the floodplain regulations pursuant to the procedures set forth in
3 Section 1610 of this title. ~~The new floodplain definition and~~
4 ~~one hundred year flood elevations shall then be submitted to the~~
5 ~~Oklahoma Water Resources Board.~~

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

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

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

23 2. Prior to ~~regulations having been adopted~~ the platting,
24 construction, and other development, a ~~special~~ development permit is

1 granted by the floodplain board or accredited floodplain
2 administrator if a floodplain administrator is authorized to issue
3 development permits by the floodplain management regulations; or

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

14 B. ~~Special~~ Development permits authorized by subsection A of
15 this section may be issued when the applicable floodplain board, or
16 accredited floodplain administrator or Board, as the case may be,
17 determines that construction or development in the floodplain in
18 question complies with the applicable floodplain regulations or
19 rules and is not a danger to persons or property. ~~In making its~~
20 ~~determination, the floodplain board shall comply with Section 1610~~
21 ~~of this title.~~

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

1 Section 1614. The Oklahoma Water Resources Board in
2 promulgating rules pursuant to ~~Section 1606 of this title~~ the
3 Oklahoma Floodplain Management Act and floodplain boards in
4 preparing floodplain management regulations shall give due
5 consideration to the needs of an industry, including agriculture,
6 whose business requires that it be located within a floodplain.

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

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

24

1 B. Any person seeking a variance shall file a petition with the
2 floodplain board, accompanied by a filing fee of Twenty-five Dollars
3 (\$25.00).

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

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

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

23 B. Appeals of the decision of a county or municipal floodplain
24 board, or floodplain administrator, shall be taken to the board of

1 adjustment for the area of jurisdiction involved in the appeal or to
2 the governing body of the county or municipality where no board of
3 adjustment exists.

4 C. Appeals may be taken by any person aggrieved or by a public
5 officer, department, board or bureau affected by any decision of the
6 floodplain board, or a floodplain administrator, in administering
7 the floodplain ~~board's~~ management regulations.

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

11 E. An appeal shall stay all proceedings in furtherance of the
12 action appealed from unless the floodplain board, or the floodplain
13 administrator, from which the appeal is taken shall certify to the
14 appellant ~~of~~ body that by reason of facts stated in the certificate
15 a stay would, in its opinion, cause imminent peril to life or
16 property.

17 F. The appellant body shall have the following powers and
18 duties:

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

23 2. ~~In exercising its powers, the appellant body may reverse~~
24 Reverse or affirm wholly or partly, or may modify the order,

1 requirement, decision or determination as ought to be made, and to
2 that end shall have all the powers of the floodplain board or
3 administrator from which the appeal is taken.

4 ~~3-~~ G. In acting upon any appeal, the appellant body shall apply
5 the principles, standards and objectives set forth and contained in
6 all applicable regulations and plans adopted.

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

10 Section 1617. A. No new development or substantial improvement
11 to a structure, or new fill, excavation or other floodplain use that
12 ~~is unreasonably hazardous to the public or that unduly restricts the~~
13 ~~capacity of the floodway to carry and discharge the regional flood~~
14 shall be ~~permitted~~ allowed without securing ~~written authorization a~~
15 development permit from the floodplain board in which the ~~floodplain~~
16 ~~is located~~ area of jurisdiction includes the proposed development,
17 substantial improvement, fill, excavation or other floodplain use.

18 B. The boards of county commissioners, the governing bodies of
19 municipalities and the Oklahoma Water Resources Board are authorized
20 to seek injunctive relief to prohibit activities that are not in
21 compliance with the respective floodplain management regulations or
22 rules applicable to their respective areas of jurisdiction and to
23 compel compliance with the respective floodplain management
24

1 regulations or rules applicable to their respective areas of
2 jurisdiction.

3 C. Any person convicted of violating the ~~provisions of this~~
4 ~~section~~ applicable floodplain management regulations or rules shall
5 be guilty of a misdemeanor.

6 SECTION 14. AMENDATORY Section 4, Chapter 95, O.S.L.
7 2004 (82 O.S. Supp. 2010, Section 1620), is amended to read as
8 follows:

9 Section 1620. A. Each floodplain board shall designate a
10 person to serve as the floodplain administrator to administer and
11 implement floodplain regulations.

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

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

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1 Passed the House of Representatives the 17th day of March, 2011.

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4 Presiding Officer of the House of
Representatives

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6 Passed the Senate the ____ day of _____, 2011.

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9 Presiding Officer of the Senate