

1 **SENATE FLOOR VERSION**

2 April 11, 2011

3 COMMITTEE SUBSTITUTE

4 FOR ENGROSSED

5 HOUSE BILL NO. 1943

By: Jackson of the House

and

Branan and Fields of the
Senate

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9 An Act relating to floodplain management; amending 82
10 O.S. 2001, Section 1603, as last amended by Section
11 2, Chapter 95, O.S.L. 2004 (82 O.S. Supp. 2010,
12 Section 1603), which relates to the Oklahoma
13 Floodplain Management Act; defining term; modifying
14 definitions; amending 82 O.S. 2001, Section 1604, as
15 last amended by Section 3, Chapter 95, O.S.L. 2004
16 (82 O.S. Supp. 2010, Section 1604), which relates to
17 authority of certain entities to establish floodplain
18 boards and charge fees for services; modifying fees
19 in certain areas; authorizing Oklahoma Water
20 Resources to promulgate governing certain activities
21 in certain floodplain areas; stating procedures;
22 amending 82 O.S. 2001, Section 1610, as amended by
23 Section 10, Chapter 46, O.S.L. 2002 and 1612, as last
24 amended by Section 12, Chapter 46, O.S.L. 2002 (82
O.S. Supp. 2010, Sections 1610 and 1612), which
relate to floodplain regulations; providing for
regulation of certain oil and gas exploration
activities; providing for certain development permit;
requiring notice and stating procedures; amending 82
O.S. 2001, Section 1614, as amended by Section 14,
Chapter 46, O.S.L. 2002 (82 O.S. Supp. 2010, Section
1614), which relates to consideration of certain
industries; requiring consideration of oil and gas
industry; repealing 82 O.S. 2001, Section 1609, as
amended by Section 9, Chapter 46, O.S.L. 2002 (82
O.S. Supp. 2010, Section 1609), which relates to
cooperative agreements; providing an effective date;
and declaring an emergency.

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

2 SECTION 1. AMENDATORY 82 O.S. 2001, Section 1603, as
3 last amended by Section 2, Chapter 95, O.S.L. 2004 (82 O.S. Supp.
4 2010, Section 1603), is amended to read as follows:

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

7 1. "Area of jurisdiction" means:

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

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

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

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

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

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

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

7 5- 6. "Floodplain" means the land adjacent to a body of water
8 which has been or may be covered by flooding, including, but not
9 limited to, the one-hundred-year flood;

10 6- 7. "Floodplain administrator" means a person accredited by
11 the Board and designated by a floodplain board, to administer and
12 implement laws and regulations relating to the management of
13 floodplains;

14 7- 8. "Floodplain board" means an administrative and planning
15 board, for floodplain management, of a county, a municipality or ~~the~~
16 ~~state or~~ the planning commission of a municipality or a county if so
17 designated by the governing body of the municipality or county, or
18 the Board for the state, provided that the Executive Director of the
19 Board shall administer floodplain rules and issue development
20 permits for oil and gas exploration and production activity and
21 associated development;

22 8- 9. "Floodplain regulations" mean the codes, ordinances and
23 other regulations relating to the use of land and construction
24 within the channel and floodplain areas including, but not limited

1 to, zoning ordinances, platting regulations, building codes, housing
2 codes, setback requirements and open area regulations;

3 ~~9.~~ 10. "Floodway" means the channel of a stream, watercourse or
4 body of water and those portions of floodplains which are reasonably
5 required to carry and discharge the floodwater or floodflow of any
6 river or stream;

7 ~~10.~~ 11. "One-hundred-year flood" means a flood which has a one
8 percent (1%) chance of occurring each year, based upon the criteria
9 established by the Oklahoma Water Resources Board; ~~and~~

10 12. "Oil and gas exploration and production activity and
11 associated development" means activity and development that take
12 place on land where a well is drilled to recover oil or gas, and
13 includes but is not limited to the construction of lease roads,
14 culverts and bridges for access to the site, installation of a
15 drilling or production pad regardless of the material used to
16 construct the pad, installation of a reserve pit or other open
17 liquid-holding facilities for drilling fluids, placement of
18 production storage tanks, fuel tanks, equipment and other materials
19 for use in the well-drilling process, installation of fencing, and
20 placement of permanent equipment, piping, valves and other
21 appurtenances that remain on site after completion of the well,
22 pipelines, and other associated development; and

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1 ~~11.~~ 13. "Program" means the overall national flood insurance
2 program authorized by the National Flood Insurance Act of 1968 (42
3 U.S.C. 4001-4128) as amended.

4 SECTION 2. AMENDATORY 82 O.S. 2001, Section 1604, as
5 last amended by Section 3, Chapter 95, O.S.L. 2004 (82 O.S. Supp.
6 2010, Section 1604), is amended to read as follows:

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

- 13 1. The delineation of floodplains and floodways;
- 14 2. The preservation of the capacity of the floodplain to carry
15 and discharge regional floods;
- 16 3. The minimization of flood hazards;
- 17 4. The establishment and charging of fair and reasonable fees
18 in an equitable manner, not to exceed Five Hundred Dollars
19 (\$500.00), for services provided by the Board, county commissioners
20 and municipalities in the administration of their responsibilities
21 pursuant to the Oklahoma Floodplain Management Act. Fees shall be
22 limited to development on lands within FEMA mapped one-hundred-year
23 floodplains;
- 24 5. The regulation of the use of land in the floodplain;

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

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

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

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

14 D. The Oklahoma Water Resources Board shall promulgate
15 rules for the purposes specified in subsection A of this
16 section, provided that effective July 1, 2011, the Board shall
17 have exclusive jurisdiction to promulgate rules to regulate all
18 oil and gas exploration and production activity and associated
19 development in its area of jurisdiction, provided further that
20 the Board may charge a fair and reasonable fee specified in
21 subsection A(4) of this section to administer such rules. The
22 Board shall establish standard and expedited permitting time
23 frames where the standard permitting time frame does not exceed
24 ten (10) calendar days and the expedited permitting time frame

1 does not exceed five (5) calendar days for oil and gas
2 exploration and production activity and associated development.

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

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

10 B. Floodplain regulations enacted pursuant to the Oklahoma
11 Floodplain Management Act, amendments and associated requirements to
12 the regulations shall only be adopted by the county or municipal
13 floodplain boards after a public hearing at which parties ~~in~~
14 ~~interest~~ and other citizens with an interest have an opportunity to
15 be heard. At least thirty (30) days prior to the hearing, ~~a~~ the
16 proposed regulation, amendment and any associated requirements, and
17 the notice of the time and place of hearing shall be published on
18 the Oklahoma Water Resources Board's website. A notice of the time
19 and place of the hearing shall be published in a newspaper of
20 general circulation regularly published nearest the area of
21 jurisdiction.

22 C. At least thirty (30) days prior to the date of any hearing
23 required by subsection B of this section, written notice shall be
24 furnished the Board, accompanied by a copy of each proposed ~~rule to~~

1 ~~be acted upon~~ regulation, amendment and associated requirements. A
2 copy of any regulation adopted by a floodplain board pursuant to the
3 Oklahoma Floodplain Management Act shall be filed with the Board
4 within fifteen (15) days of its adoption.

5 SECTION 4. AMENDATORY 82 O.S. 2001, Section 1612, as
6 last amended by Section 12, Chapter 46, O.S.L. 2002 (82 O.S. Supp.
7 2010, Section 1612), is amended to read as follows:

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

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

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

19 3. A ~~special~~ development permit is granted by the ~~state~~
20 ~~floodplain board~~ Board, if development or construction is ~~to be~~
21 proposed on lands owned or held in trust by the state, on or after
22 July 1, 2011, is on lands where oil and gas exploration and
23 production activity and associated development will occur.

24 ~~Provided, that notice~~ Notice of ~~such~~ the proposed construction or

1 development, except oil and gas exploration and production activity
2 and associated development must be afforded to all concerned
3 governmental entities within thirty (30) days of the decision to
4 undertake such construction or development. The Oklahoma Water
5 Resources Board shall provide notice of the location of the proposed
6 development for oil and gas exploration and production activity and
7 associated development to the Floodplain Administrator of the County
8 in which the development is proposed. The County Floodplain
9 Administrator shall have no more than five (5) calendar days for a
10 standard permit and three (3) calendar days for an expedited permit
11 to provide written information regarding the flood water flow at the
12 proposed location to the Oklahoma Water Resources Board.

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

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

22 Section 1614. The Oklahoma Water Resources Board, county
23 boards, and municipal floodplain boards in promulgating rules
24 pursuant to Section 1606 of this title ~~and floodplain boards~~ in

1 preparing floodplain ~~management~~ regulations shall give due
2 consideration to the needs of an industry, including agriculture and
3 the oil and gas industry, whose business requires that it be located
4 within a floodplain.

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

8 SECTION 7. This act shall become effective July 1, 2011.

9 SECTION 8. It being immediately necessary for the preservation
10 of the public peace, health and safety, an emergency is hereby
11 declared to exist, by reason whereof this act shall take effect and
12 be in full force from and after its passage and approval.

13 COMMITTEE REPORT BY: COMMITTEE ON ENERGY, dated 4-7-11 - DO PASS, As
14 Amended and Coauthored.

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