An Act

ENROLLED HOUSE
BILL NO. 1692

By: Russ and Walker of the House

and

Justice and Fields 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, 1606, as amended by Section 6, Chapter 46, O.S.L. 2002, 1608, as amended by Section 8, Chapter 46, O.S.L. 2002, 1609, as amended by Section 9, Chapter 46, O.S.L. 2002, 1610, as amended by Section 10, Chapter 46, O.S.L. 2002, 1611, as amended by Section 11, Chapter 46, O.S.L. 2002, 1612, as amended by Section 12, Chapter 46, O.S.L. 2002, 1614, as amended by Section 14, Chapter 46, O.S.L. 2002, 1615, as amended by Section 15, Chapter 46, O.S.L. 2002, 1616, as amended by Section 16, Chapter 46, O.S.L. 2002, 1617, as amended by Section 17, Chapter 46, O.S.L. 2002 and Section 4, Chapter 95, O.S.L. 2004 (82 O.S. Supp. 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 floodplain boards; directing Oklahoma Water Resources Board to promulgate certain rules; providing that certain floodplain management rules and regulations procedures do not require participation in certain program or require nonparticipating communities to enforce certain regulations; 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; and providing for noncodification.

SUBJECT: Floodplain management

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

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

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

SECTION 2. 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~~ areas within an incorporated town or city, except locations of all property owned or operated by the state for a municipality,

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

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

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:

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

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

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

d. the board of county commissioners or governing body of a municipality if a separate floodplain board composed of membership as specified in Section 1605 of this title is not established or if an established floodplain board is dissolved by its respective board

of county commissioners or governing body of a municipality after the effective date of this act;

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

12. "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 3. 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,~~ 1. The boards of county commissioners and municipal governing bodies are authorized to establish floodplain boards, composed of membership as specified in Section 1605 of this title, for their respective area of jurisdiction ~~which may~~.

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

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

~~1. The~~

a. delineation of floodplains and floodways~~;~~,

~~2. The~~

b. preservation of the capacity of the floodplain to carry and discharge regional floods~~;~~,

~~3. The~~

c. minimization of flood hazards~~;~~,

~~4. The~~

d. establishment and charging of reasonable fees, 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~~;~~,

~~5. The~~

e. regulation of the use of land in the floodplain~~;~~,

~~6. The~~

f. 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~~

g. hiring and employment of an accredited floodplain administrator.

B. The ~~rules and~~ floodplain management 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 management regulations adopted by each floodplain board 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 Oklahoma Water Resources Board shall promulgate rules for the purposes specified in paragraph 3 of subsection A of this section.

E. Nothing contained within this section shall serve either to require any county or municipality to participate in the National Flood Insurance Program or to require any nonparticipating community to enforce regulations related to floodplain management.

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

Section 1606. The Oklahoma Water Resources Board shall ~~develop, adopt and promulgate criteria and rules for aiding the~~ coordinate with floodplain boards in the use of flood insurance rate maps and flood hazard boundary maps for the establishment and delineation of the floodplains and the one-hundred-year flood elevations for Oklahoma. The Board may also continue to assign a staff member to be the State Floodplain Coordinator that assists other state agencies, boards of county commissioners, governing bodies of municipalities, floodplain boards and floodplain administrators in coordinating with the Federal Emergency Management Agency in matters relating to the program.

SECTION 5. 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. A. All floodplain boards that ~~choose to~~ participate in the program shall adopt floodplain management regulations, which shall conform with the requirements necessary to establish eligibility and to maintain participation in the program ~~and~~. The regulations shall include, but not be limited to, the following:

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

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

~~2. Regulations which establish minimum~~ 3. Minimum flood protection elevations and flood damage prevention requirements for the issuance of development permits and 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 for coordination by the floodplain board with all other interested and affected political subdivisions and state agencies. The~~

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

5. A provision that the floodplain management 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.~~ B. Counties and municipalities that choose to participate in the program ~~and~~ shall 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~~ administrator that is

accredited by the Oklahoma Water Resources Board as required pursuant to Section 1620 of this title.

SECTION 6. AMENDATORY 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 amended to read as follows:

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

SECTION 7. 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 management 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 management regulations ~~enacted~~ adopted pursuant to the Oklahoma Floodplain Management Act and any amendments 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 have an opportunity to be heard. At least thirty (30) days prior to the hearing, a notice of the time and place of hearing~~ go into effect thirty (30) days after adoption unless the regulation or amendment specifies a later date; provided, that no floodplain management regulation or amendment thereto shall be in force unless published in a newspaper of general circulation regularly published nearest the area of jurisdiction within fifteen (15) days after adoption.

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

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

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

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

SECTION 9. AMENDATORY 82 O.S. 2001, Section 1612, as 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 adopted and submitted floodplain management regulations incorporating the most recent flood insurance rate maps or flood hazard boundary maps prepared by the Federal Emergency Management Agency or containing more specific information to delineate floodplains within the respective areas of jurisdiction 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~~ the delineated floodplain areas and are in full force and effect;

2. Prior to ~~regulations having been adopted~~ the platting, construction, and other development, a ~~special~~ development permit is granted by the floodplain board or accredited floodplain administrator if a floodplain administrator is authorized to issue development permits by the floodplain management regulations; 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 or operated by the state. ~~Provided, that notice~~ Notice of ~~such~~ the proposed construction or development must be ~~afforded~~ provided by the permit applicant to ~~all concerned governmental entities within~~ the respective floodplain

board of the county or municipality in which the development or construction is proposed thirty (30) days ~~of~~ before the decision of the Board to ~~undertake such~~ approve a development permit for the construction or development.

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

SECTION 10. 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 in promulgating rules pursuant to ~~Section 1606 of this title~~ the Oklahoma Floodplain Management Act and floodplain boards in preparing floodplain management regulations shall give due consideration to the needs of an industry, including agriculture, whose business requires that it be located within a floodplain.

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

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

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

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

SECTION 12. 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 final decision of the Oklahoma Water Resources Board relating to a development permit shall be in accordance with the Administrative Procedures Act.

B. Appeals of the decision of a county or municipal floodplain board, or floodplain administrator, 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.

C. 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, or a floodplain administrator, in administering the floodplain ~~board's~~ management regulations.

D. 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.

E. An appeal shall stay all proceedings in furtherance of the action appealed from unless the floodplain board, or the floodplain administrator, 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.

F. 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~~ management regulations~~.~~; and

2. ~~In exercising its powers, the appellant body may reverse~~ 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 or administrator from which the appeal is taken.

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

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

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

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

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

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

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

Passed the House of Representatives the 4th day of May, 2011.

Presiding Officer of the House of Representatives

Passed the Senate the 18th day of April, 2011.

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Governor this 5th

day of May, **20** 11,

at 12:08 **o'clock** P **M.**

By: Jessica R Byers

Approved by the Governor of the State of Oklahoma the 11th **day of** May, **20** 11, **at** 2:53 **o'clock** P **M.**

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Secretary of State this

11th **day of** May, **20** 11,

at 4:50 **o'clock** P **M.**

By: Michelle R Day