

ENROLLED HOUSE
BILL NO. 2408

By: Beutler, Widener and
Matlock of the House

and

Harrison and Littlefield
of the Senate

An Act relating to waters and water rights; amending 82 O.S. 1991, Sections 105.11, as last amended by Section 2, Chapter 112, O.S.L. 1995 and 105.13 (82 O.S. Supp. 1995, Section 105.11), which relate to stream water; amending 82 O.S. 1991, Sections 1020.8, as last amended by Section 6, Chapter 112, O.S.L. 1995 and 1020.10, as amended by Section 15, Chapter 164, O.S.L. 1995 (82 O.S. Supp. 1995, Sections 1020.8 and 1020.10), which relate to groundwater; updating language; providing an exception to notice and publication requirements; authorizing administrative issuance of limited quantity permits by executive director of the Oklahoma Water Resources Board; providing for promulgation of certain rules; specifying certain restrictions; specifying certain contents; amending 82 O.S. 1991, Sections 1324.10 and 1324.16, as amended by Section 3, Chapter 175, O.S.L. 1994 (82 O.S. Supp. 1995, Section 1324.16), which relate to the Rural Water, Sewer, Gas and Solid Waste Management Districts Act; clarifying duties of districts; removing certain reporting requirements; providing for construction of certain statute relating to continued employment of certain district employees; exempting such districts from certain laws relating to nepotism; and declaring an emergency.

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

SECTION 1. AMENDATORY 82 O.S. 1991, Section 105.11, as last amended by Section 2, Chapter 112, O.S.L. 1995 (82 O.S. Supp. 1995, Section 105.11), is amended to read as follows:

Section 105.11 A. ~~Upon~~ Except as otherwise provided by Section 2 of this act for limited quantity stream water permits, upon the acceptance of an application which complies with the provisions of this act Chapter 1 of this title, and the rules and regulations established thereunder promulgated by the Oklahoma Water Resources Board pursuant thereto, the Board shall instruct the applicant to publish, within the time required by the Board, a notice thereof, at the applicant's expense, in a form prescribed by the Board in a newspaper of general circulation in the county of the point of diversion, and in a newspaper of general circulation published within the adjacent downstream county and any other counties designated by the Board once a week for two (2) consecutive weeks. Such notice shall give all the essential facts as to the proposed appropriation, among them, the places of appropriation and of use,

amount of water, the purpose for which it is to be used, name and address of applicant, the hearing date, time and place if a hearing is scheduled by the Board before instructions to publish notice are given, and the manner in which a protest to the application may be made. In case of failure to give such notice in accordance with the rules and regulations applicable thereto within the time required, or if such notice is defective, the priority of application shall be lost; however, if proper notice shall be given within thirty (30) days after the Board has given him notice of his failure to give effective and proper notice, the application shall thereafter carry the original date of filing, and shall supersede any subsequent application to the same source of water supply. Any interested party shall have the right to protest said application and present evidence and testimony in support of such protest.

B. If the Board does not schedule a hearing on the application before instructing the applicant to publish notice, a hearing shall be scheduled by the Board upon receipt of a protest which meets the requirements of the Board's rules, the Board shall notify the applicant and protestant of such hearing.

SECTION 2. AMENDATORY 82 O.S. 1991, Section 105.13, is amended to read as follows:

Section 105.13 A. The Oklahoma Water Resources Board is authorized to issue, in addition to regular permits, seasonal, temporary, term or provisional temporary permits at any time ~~if the Board~~ finds such issuance will not impair or interfere with domestic uses or existing rights of prior appropriators and may do so even where it finds no unappropriated water is available for a regular permit. All seasonal, temporary, term and provisional temporary permits shall contain a provision making them subject to all rights of prior appropriators. If any such permit is for water impounded in any works for storage, diversion or carriage of water, the applicant must comply with the provisions of Section 105.21 of this title.

~~Application~~ B. Except as otherwise provided by this section, application, notice and administrative hearing as provided in Sections 105.9 through 105.12 of this title shall be required for all permits, provided, a. A provisional temporary permit may be immediately and summarily granted upon administrative approval by the Board. Provisional temporary permits shall ~~not~~:

1. Not be effective for a period of more than ninety (90) days, ~~shall be;~~

2. Be granted at the discretion of the Board; and ~~shall be~~

3. Be subject to such terms, conditions and rules ~~and regulations as may be imposed and adopted~~ promulgated by the Board for such purposes.

C. The Executive Director of the Board may administratively issue permits to use limited quantities of stream water. Notice, procedures and the maximum quantity authorized for limited quantity stream water permits shall be in compliance with rules promulgated by the Board. In no event shall the maximum quantity of water authorized in a limited quantity stream water permit exceed the amount of stream water that would otherwise be determined by the Board pursuant to Section 105.12 of this title.

SECTION 3. AMENDATORY 82 O.S. 1991, Section 1020.8, as last amended by Section 6, Chapter 112, O.S.L. 1995 (82 O.S. Supp. 1995, Section 1020.8), is amended to read as follows:

Section 1020.8 ~~Upon~~ Except as otherwise provided by Section 4 of this act for limited quantity groundwater permits, upon the filing of an application which complies with the provisions of this act Chapter 11 of this title, and the rules and regulations

~~established thereunder~~ promulgated by the Oklahoma Water Resources Board pursuant thereto, the Board shall instruct the applicant to provide notice thereof, at the applicant's expense, and as required by the Board's rules. Such notice shall give all the essential facts as to the proposed taking, among them, the places of taking and of use, amount of water, the purpose for which it is to be used, name and address of applicant, the hearing date, time and place if a hearing is scheduled by the Board before instructions to provide notice are given, and the manner in which a protest to the application may be made. No hearing shall be had upon the application until proper notice shall have been given. Any interested party shall have the right to protest said application and present evidence and testimony in support of such protest. If the Board does not schedule a hearing on the application before instructing the applicant to provide notice, a hearing on the application shall be scheduled by the Board upon receipt of a protest which meets the requirements of the Board's rules and the Board shall notify the applicant and protestant of such hearing.

SECTION 4. AMENDATORY 82 O.S. 1991, Section 1020.10, as amended by Section 15, Chapter 164, O.S.L. 1995 (82 O.S. Supp. 1995, Section 1020.10), is amended to read as follows:

Section 1020.10 A. The procedures provided ~~herein~~ for in this chapter for the granting of regular permits shall be applicable to the granting of temporary or special permits except that the determination of the maximum annual yield shall not be a condition precedent. Provided a provisional temporary permit for water may immediately be granted upon administrative approval by the Oklahoma Water Resources Board. This permit will not be effective for a period of more than ninety (90) days.

B. The Executive Director of the Board may administratively issue permits to use limited quantities of groundwater. Notice, procedures and the maximum groundwater quantity authorized for limited quantity groundwater permits shall be in compliance with rules promulgated by the Board. In no event shall the maximum quantity of water authorized in a limited quantity groundwater permit exceed the amount that would otherwise be allocated by this chapter.

SECTION 5. AMENDATORY 82 O.S. 1991, Section 1324.10, is amended to read as follows:

Section 1324.10 A. Every district incorporated hereunder shall have perpetual existence, subject to dissolution as provided by Section 1325.1 et seq. of this title the Rural Water, Sewer, Gas and Solid Waste Management Districts Act, and shall have power to:

1. ~~To sue~~ Sue and be sued, complain and defend, in its corporate name;
2. ~~To adopt~~ Adopt a seal which may be altered at pleasure, and to use it, or a facsimile thereof, as required by law;
3. ~~To acquire~~ Acquire by purchase, lease, gift, or in any other manner, and to maintain, use, and operate any and all property of any kind, real, personal, or mixed, or any interest therein; and to acquire and own water rights or rights to natural gas under the laws of this state, and to construct, erect, purchase, lease as lessee and in any manner acquire, own, hold, maintain, operate, sell, dispose of, lease as lessor, exchange and mortgage plants, buildings, works, machinery, supplies, equipment, apparatus, facilities, property rights and transportation and distribution lines, facilities, equipment or systems necessary to transport, distribute, sell, furnish and dispose of water or gas, and either subsequent to, or in connection with, the installation of water distribution, sewage facilities, gas distribution facilities or

solid waste management system, to construct, operate and maintain sewage disposal facilities or solid waste management system to serve the users of the district. Provided, all projects of the district shall be self-liquidating, and the costs of construction shall be payable solely from the income, revenues, and properties of the district, and all property, assets and revenues of the district shall constitute a special fund for the accomplishment of the purposes and objectives of this act-;

4. ~~To borrow~~ Borrow money and otherwise contract indebtedness for the purposes set forth in this act, and, without limitation of the generality of the foregoing, to borrow money and accept grants from the United States of America, or from any corporation or agency created or designated by the United States of America, and, in connection with such loan or grant, to enter into such agreements as the United States of America or such corporation or agency may require; and to issue its notes or obligations therefor, and to secure the payment thereof by mortgage, pledge or deed of trust on all or any property, assets, franchises, rights, privileges, licenses, rights-of-way, easements, revenues, or income of the said district-;

5. ~~To make~~ Make bylaws for the management and regulation of its affairs-;

6. ~~To appoint~~ Appoint officers, agents and employees, to prescribe their duties and to fix their compensation; and to employ such common and skilled labor and professional and other services as may be necessary to the proper performance of such work or improvement as is proposed to be done within any such district, and the maintenance thereof-;

7. ~~To sell~~ Sell or otherwise dispose of any property of any kind, real, personal, or mixed, or any interest therein, which shall not be necessary to the carrying on of the business of the district-;

8. In connection with the acquisition, construction, improvement, operation or maintenance of its transportation, and distribution lines, system, equipment, facilities or apparatus, ~~to~~ use any street, road, alley or highway which is owned or held by the state, or any political subdivision. The location of sewer, gas or water lines or other facilities connected with the water, sewer, gas or solid waste management district in such streets, roads, alleys or highways, must be concurred in by the governing or appropriate bodies of the cities, counties or state, which have jurisdiction over said property. The governing body of any such city, county or state agency may require, as a condition of the governing body's concurrence in the attachment of a gas line to any bridge, underpass or overpass, that such district furnish liability insurance in an amount to be determined by the governing body, covering damage which may be occasioned to such bridge, underpass or overpass, as a result of fire or explosion originating from said gas line. Provided that the relocation or rearrangement of any public utility's or common carrier's facilities of service required to be made to permit or accommodate installation or maintenance of a district's facilities on, across or under any such publicly owned or held real property or interest therein shall be performed at the sole cost of the district-;

9. ~~To make~~ Make any and all contracts necessary or convenient for the exercise of the powers of the district-;

10. ~~To fix~~ Fix, regulate and collect rates, fees, rents or other charges for water, gas and any other facilities, supplies, equipment or services furnished by the district. Said rates shall be just, reasonable and nondiscriminatory-;

~~11. No district organized hereunder shall sell or export water or gas under this act outside of the state without consent of the Legislature.~~

~~12. To do Do and perform all acts and things, and to have and exercise any and all powers as may be necessary, convenient or appropriate to effectuate the purposes for which the district is created-;~~

~~13. To buy 12. Buy from or sell water or gas to any municipality, or to another district created under this act, or to any other legal entity engaged in the distribution and storage of water or gas, provided quantities of water sold do not exceed any vested right of appropriation granted by the Oklahoma Water Resources Board-;~~

~~14. To enter 13. Enter into contracts with the United States of America, or any agency thereof, or the state, or any political subdivision or agency thereof, for the construction, operation and maintenance of structures needed to provide water storage to meet present and future anticipated needs and demands of the district-;~~

~~15. To enter 14. Enter into contracts jointly with any other district, municipality, city or town, the state, the United States of America, or any other governmental agency, or any of them, for the purpose of purchasing water, constructing, acquiring, operating water facilities or purchasing or leasing reservoir space-;~~

~~16. To enter 15. Enter into contracts for fire protection and to construct, enlarge, extend or otherwise improve community facilities providing essential services to rural residents, including, but not limited to, fire protection, ambulance service, community centers and outdoor recreational facilities-; and~~

~~17. To have 16. Have and exercise the right of eminent domain in the same manner and according to the procedures provided for in Sections 51 through 65 of Title 66 of the Oklahoma Statutes, provided, that the use of said eminent domain provisions, shall be restricted to the purpose of developing and providing rural gas distribution, water works and sewage disposal facilities. Provided, however, no personal or real property, easement or right-of-way of any utility may be acquired by eminent domain.~~

B. No district organized hereunder shall sell or export water or gas under this act outside of the state without consent of the Legislature.

C. Appropriative rights to water held by the district shall not be alienated or encumbered apart from the alienation or encumbrance of the facilities of the district.

~~C. The board of directors shall, on or before July 1 of each year, file with the county clerk of each county in which any part of said district is located, an annual report for the preceding calendar year. Such report shall list all monies collected and all monies disbursed during said calendar year. Said report shall also specify any and all indebtedness outstanding at the end of the calendar year.~~

SECTION 6. AMENDATORY 82 O.S. 1991, Section 1324.16, as amended by Section 3, Chapter 175, O.S.L. 1994 (82 O.S. Supp. 1995, Section 1324.16), is amended to read as follows:

Section 1324.16 A. Except as otherwise provided by law:

1. The term of office of every member elected to an original board shall be until the date of the annual meeting of the participating members of either the first, second or third year following the year of the incorporation of the district and until their successors are elected and have qualified, and as nearly as possible the terms of an equal number of directors on any such board shall expire on each of said dates-;

2. At the annual meeting of each year after the year of the election of the original board members, elections shall be held to elect directors to fill any position on the board, the term of office of which has expired, and any director so elected shall hold office for a term of three (3) years and until his successor is elected and has qualified-; and

3. For the purpose of election of board members and for such other purposes as the bylaws may prescribe, annual meetings of participating members shall be held by each district each year following the year of incorporation of such district. The board of directors shall cause notice of the time and place of each annual meeting and the purpose thereof to be given to each of its participating members. Each participating member shall be entitled to a single vote, regardless of the number of benefit units to which he has subscribed.

B. ~~Provided, from~~ 1. Beginning January 1, 1995, a requirement for qualification to serve as a board member for a rural water district shall be a written pledge that upon election such board member shall attend a minimum of six (6) hours of workshop training to be offered periodically on a regional basis within twelve (12) months following election of such board member, and to be organized by the Oklahoma Water Resources Board in cooperation with the Oklahoma Rural Water Association with the purpose of study and instruction in areas of district financing, law, and the ethics, duties and responsibilities of district board members; ~~provided further, that said.~~ Such requirement shall not apply to any board member who has had at least one (1) year of experience prior to the date of the board election as a member of the district board to which membership is sought.

2. The district shall reimburse all reasonable expenses incurred by any board member for attending such training workshop.

3. To avoid members having to interfere with their jobs or employment, such training sessions may be divided into three-hour segments, and insofar as possible be scheduled for evening sessions. Vocational-technical facilities, college facilities or other public facilities may be utilized in all parts of the state for convenience of the members. Such workshops must be offered within seventy-five (75) miles of the members' residences.

C. Upon the election of a board member, the provisions of Sections 481 through 487 of Title 21 of the Oklahoma Statutes shall not prohibit any employee already in the service of the district from continuing in such service or from promotion therein.

SECTION 7. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the House of Representatives the 14th day of May, 1996.

Speaker of the House of
Representatives

Passed the Senate the 15th day of May, 1996.

President of the Senate