

STATE OF OKLAHOMA

2nd Session of the 46th Legislature (1998)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
SENATE BILL NO. 986

By: Easley, Long, Williams and
Cain of the Senate

and

Rice, Thornbrugh, Bryant
and Hastings of the House

COMMITTEE SUBSTITUTE

(Environment and natural resources - modifying certain duties - modifying certain powers of certain city-county health departments - providing for transfer of unexpended fees, property, records and certain employees - limiting benefits - noncodification - effective date - emergency)

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

SECTION 1. A. Effective July 1, 1998, all unexpended fees, property, records, and thirty-five (35) full-time-equivalent employee (FTE) positions, assigned and used by the city-county health departments to execute programs delegated by the Department of Environmental Quality are hereby transferred to the Department of Environmental Quality.

B. All full-time-equivalent employees assigned and used by the city-county health departments to execute programs delegated by the Department of Environmental Quality shall have the option on July 1, 1998, to fill the employment positions created pursuant to this section.

C. Any city-county health department employees who leave the employment of a city-county health department and obtain employment with the Department of Environmental Quality outside of the provisions of this act shall be treated as new employees and shall not be eligible for any of the benefits provided in this act.

SECTION 2. Any employee obtaining employment with the Department of Environmental Quality pursuant to Section 1 of this act shall be paid longevity pay pursuant to the provisions of Section 840-2.18 of Title 74 of the Oklahoma Statutes based on the total length of employment with both the Department of Environmental Quality and the city-county health department.

SECTION 3. A. Any employee obtaining employment with the Department of Environmental Quality pursuant to Section 1 of this act shall accrue annual leave pursuant to the provisions of Section 840-2.20 of Title 74 of the Oklahoma Statutes based upon the total length of employment with both the Department of Environmental Quality and the city-county health department. This accrual rate shall not be less than the rate at which the employee was accruing annual leave with the city-county health department of July 1, 1998.

B. Each city-county health department shall purchase from the Department of Environmental Quality, for all employees obtaining employment with the Department of Environmental Quality pursuant to Section 1 of this act, annual leave in an amount equal to the dollar amount of annual leave that the employee has accrued with the city-county health department, not to exceed the Department of Environmental Quality's annual leave accumulation limit.

C. Any employee obtaining employment with the Department of Environmental Quality pursuant to Section 1 of this act shall be entitled to commence employment with the Department of Environmental Quality with an equivalent amount of sick leave as the employee has accumulated as of July 1, 1998, while working for the city-county health department.

SECTION 4. Any employee obtaining employment with the Department of Environmental Quality pursuant to Section 1 of this act may elect to participate in the Oklahoma Public Employees Retirement System or to remain in the city-county health department's retirement system. Elections shall be made no later than August 1, 1998. If no election is made by August 1, 1998, an election to participate in the Oklahoma Public Employees Retirement System will be assumed.

1. Employees electing to participate in the Oklahoma Public Employees Retirement System shall be entitled to purchase service credit in the Oklahoma Public Employees Retirement System in an amount equal to the number of years of service they worked for the city-county health department.

a. Employees leaving the Tulsa City-County Health Department shall be entitled to use employee contributions made to the Tulsa City-County's retirement plan to purchase service credit in the Oklahoma Public Employees Retirement System.

b. Employees leaving the City-County Health Department of Oklahoma County shall be entitled to use up to the vested amount of contributions made to the City-County Health Department of Oklahoma County's retirement plan to purchase service credit in the Oklahoma Public Employees Retirement System.

2. The Department of Environmental Quality shall make contributions into the retirement plan elected pursuant to this section at a rate pursuant to the provisions of Section 920 of Title 74 of the Oklahoma Statutes. For employees electing to stay in a city-county health department retirement system, any contributions needed in excess of the state contribution, including all administrative fees, shall be paid by the employee.

SECTION 5. Any employee obtaining employment with the Department of Environmental Quality pursuant to Section 1 of this act shall be placed in at least an equivalent position for which they held on November 1, 1997. Such employees shall be placed in positions that are classified and shall receive, at a minimum, the same rate of pay from the Department of Environmental Quality as they were receiving from the city-county health department on November 1, 1997.

SECTION 6. AMENDATORY Section 4, Chapter 215, O.S.L. 1992, as amended by Section 42, Chapter 145, O.S.L. 1993, and as renumbered by Section 359, Chapter 145, O.S.L. 1993 (27A O.S. Supp. 1997, Section 2-5-105), is amended to read as follows:

Section 2-5-105. The Department of Environmental Quality is hereby designated the administrative agency for the Oklahoma Clean Air Act for the state. The Department is empowered to:

1. Establish, in accordance with its provisions, those programs specified elsewhere in the Oklahoma Clean Air Act;
2. Establish, in accordance with the Oklahoma Clean Air Act, a permitting program for the state which will contain the flexible source operation provisions required by Section 502(b)(10) of the Federal Clean Air Act Amendments of 1990;
3. Prepare and develop a general plan for proper air quality management in the state in accordance with the Oklahoma Clean Air Act;
4. Enforce rules of the Board and orders of the Department and the Council;
5. Advise, consult and cooperate with other agencies of the state, towns, cities and counties, industries, other states and the federal government, and with affected groups in the prevention and control of new and existing air contamination sources within the state;

6. Encourage and conduct studies, seminars, workshops, investigations and research relating to air pollution and its causes, effects, prevention, control and abatement;

7. Collect and disseminate information relating to air pollution, its prevention and control;

8. Encourage voluntary cooperation by persons, towns, cities and counties, or other affected groups in restoring and preserving a reasonable degree of purity of air within the state;

9. Represent the State of Oklahoma in any and all matters pertaining to plans, procedures or negotiations for the interstate compacts in relation to the control of air pollution;

10. Provide such technical, scientific or other services, including laboratory and other facilities, as may be required for the purpose of carrying out the provisions of the Oklahoma Clean Air Act, from funds available for such purposes;

11. Employ and compensate, within funds available therefor, such consultants and technical assistants and such other employees on a full- or part-time basis as may be necessary to carry out the provisions of the Oklahoma Clean Air Act and prescribe their powers and duties;

12. Accept and administer grants or other funds or gifts for the purpose of carrying out any of the functions of the Oklahoma Clean Air Act;

13. Budget and receive duly appropriated monies and all other monies available for expenditures to carry out the provisions and purposes of the Oklahoma Clean Air Act;

14. Bring appropriate court action to enforce the Oklahoma Clean Air Act and final orders of the Department, and to obtain injunctive or other proper relief in the district court of the county where any alleged violation occurs or where such relief is determined necessary. The Department, in

furtherance of its statutory powers, shall have the independent authority to file an action pursuant to the Oklahoma Clean Air Act in district court. Such action shall be brought in the name of the Department of Environmental Quality;

15. Take such action as may be necessary to abate the alleged pollution upon receipt of evidence that a source of pollution or a combination of sources of pollution is presenting an immediate, imminent and substantial endangerment to the health of persons;

16. Recommend rules to the Department of Public Safety, to the extent necessary and practicable for periodic inspection and testing of motor vehicles to enforce compliance with applicable emission standards;

17. Periodically enter and inspect at reasonable times or during regular business hours, any source, facility or premises permitted or regulated by the Department, for the purpose of obtaining samples or determining compliance with the Oklahoma Clean Air Act or any rule promulgated thereunder or permit condition prescribed pursuant thereto, or to examine any records kept or required to be kept pursuant to the Oklahoma Clean Air Act. Such inspections shall be conducted with reasonable promptness and shall be confined to those areas, sources, facilities or premises reasonably expected to emit, control, or contribute to the emission of any air contaminant;

18. Require the submission or the production and examination, within a reasonable amount of time, of any information, record, document, test or monitoring results or emission data, including trade secrets necessary to determine compliance with the Oklahoma Clean Air Act or any rule promulgated thereunder, or any permit condition prescribed or order issued pursuant thereto. The

Department shall hold and keep as confidential any information declared by the provider to be a trade secret and may only release such information upon authorization by the person providing such information, or as directed by court order. Any documents submitted pursuant to the Oklahoma Clean Air Act and declared to be trade secrets, to be so considered, must be plainly labeled by the provider, and be in a form whereby the confidential information may be easily removed intact without disturbing the continuity of any remaining documents. The remaining document, or documents, as submitted, shall contain a notation indicating, at the place where the particular information was originally located, that confidential information has been removed. Nothing in this section shall preclude an in-camera examination of confidential information by an Administrative Law Judge during the course of a contested hearing;

19. Maintain and update at least annually an inventory of air emissions from stationary sources;

20. Accept any authority delegated from the federal government necessary to carry out any portion of the Oklahoma Clean Air Act;
and

21. ~~Delegate to any city-county health department that state authority necessary to implement the state program within the city-county jurisdiction.~~

~~a. Such delegation from the state shall only be made upon the condition that the local authority will maintain a program consistent with the state program. Said delegation may include the authority and the responsibility to enforce the Oklahoma Clean Air Act and rules of the Board, to operate a permitting program, and the authority to collect fees for sources within their jurisdiction and to use such fees in accordance with the purposes set forth in the Oklahoma~~

~~Clean Air Act. Delegation of authority to collect fees shall include the authority and duty to either:~~

- ~~(1) establish a special subaccount in the manner provided for in the Oklahoma Clean Air Act, or~~
- ~~(2) allow the collected funds to remain with the city-county health department to be used in accordance with the provisions of the Oklahoma Clean Air Act at that location; provided, however, that the Department shall require or perform, at least yearly, an audit verifying the expenditure of such funds for the purposes set forth herein.~~

~~b. Delegation from the state shall be made by written agreement and reviewed on a yearly basis. Said agreement shall contain reasonable terms and conditions as may be necessary to assure compliance with the requirements of the Oklahoma Clean Air Act and the Federal Clean Air Act, 42 U.S.C., Section 7401 et seq. Any delegation by the state shall not, however, deprive this state of primary or concurrent jurisdiction nor shall it be construed to include any powers of the Council or the Board.~~

~~c. A final order in any administrative action brought by either the Department or the city-county health department shall preclude an administrative action by the other for the same violation; and~~

22. Carry out all other duties, requirements and responsibilities necessary and proper for the implementation of the Oklahoma Clean Air Act and fulfilling the requirements of the Federal Clean Air Act.

SECTION 7. AMENDATORY 63 O.S. 1991, Section 1-215, as last amended by Section 21, Chapter 285, O.S.L. 1995 (63 O.S. Supp. 1997, Section 1-215), is amended to read as follows:

Section 1-215. ~~A.~~ The director of the city-county health department shall direct and supervise all public health activities in the county, except in incorporated cities and towns which are not governed by the provisions of Sections 210 to 218 of this article, and which have not entered into any agreement for the operation of the health department of such city or town. Such director shall administer and enforce all municipal and county ordinances and rules relating to public health matters, and he shall also administer state laws, and rules of the State Board of Health pertaining to public health, subject to administrative supervision of the State Commissioner of Health. ~~Such director shall also administer such state laws and rules of the Department of Environmental Quality as determined by, and subject to the supervision of, the Executive Director of the Department of Environmental Quality.~~ Any other powers, authority, duties or functions which are now or may hereafter be conferred by law on county or city superintendents of public health are hereby conferred on such director of the city-county health department.

~~B. The director of the city-county health department is authorized to perform such environmental services, under the direction of the Executive Director of the Department of Environmental Quality, as may be mutually agreed upon, to implement the provisions of the Oklahoma Environmental Quality Code. The director of the city-county health department shall agree to continue to perform such environmental services as were provided during fiscal year 1993 and shall not disproportionately reduce the level of support. The Department of Environmental Quality shall enter into agreements for this work with those city-county health departments that successfully perform such environmental services.~~

~~Employees performing such environmental services shall participate fully in the training and standardization programs of the Department of Environmental Quality, shall utilize procedures at least as stringent as the statewide standard procedures, and shall respond to complaints in the same manner as the Department of Environmental Quality employees. Employees who supervise such environmental services shall be jointly selected by the directors of the city-county health department and the Department of Environmental Quality. Employees desiring to transfer to similar positions in the other agency shall receive priority consideration and shall be exempt from any examination or other employment requirements for new state or local employees. As Department of Environmental Quality programs expand, the Department of Environmental Quality may, pursuant to a contract, assign employees to the city-county health departments. Any new initiatives mandated of city-county health departments by the Department of Environmental Quality will be funded by the Department of Environmental Quality.~~

~~C. A board or director of a city-county health department, in any county with a population of more than two hundred twenty-five thousand (225,000) according to the latest Federal Decennial Census, may notify the Department of Environmental Quality that 180 days after receipt of notice it will cease to provide or to fund one or more environmental services such that its fiscal year 1993 level of effort is not maintained. Such notice shall identify the recipients of the services and the associated funding. After providing such notice, the Environmental Quality Board shall by emergency and permanent rules promulgate specific fee schedules requiring the Department of Environmental Quality to charge such fees to cover the lost funding essential to providing such environmental services in such jurisdictional area.~~

~~D. If during any fiscal year a board or director of a city-county health department, in any county with a population of more~~

~~than two hundred twenty-five thousand (225,000) according to the latest Federal Decennial Census, fails to contract for, fails to provide or elects to stop providing any environmental services such that its fiscal year 1993 level of effort is not maintained, the Department of Environmental Quality, with written notice to the board of the city-county health department, may assume the duty of providing the services. Said notice shall request the identification of recipients of the services. Within one hundred eighty (180) days after such identification is received, the Environmental Quality Board shall promulgate rules setting fee schedules therefor and requiring the Department of Environmental Quality to charge fees essential to providing such services. Upon such cessation, to recover the lost funding, the appropriate proportion of funds, used by the city-county board of health to support those environmental services in fiscal year 1993 shall be paid, upon invoice at the end of the fiscal year, to the Department of Environmental Quality Revolving Fund for the period of time between the cessation of service and the effective date of the rules.~~

SECTION 8. NONCODIFICATION The provisions of Sections 1 through 5 of this act shall not be codified in the Oklahoma Statutes.

SECTION 9. This act shall become effective July 1, 1998.

SECTION 10. 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.

46-2-10338

JB