ENROLLED HOUSE
BILL NO. 3299

By: Pope (Clay), Plunk, Covey, Hutchison, Voskuhl, Turner, Beutler, Matlock and Braddock of the House

and

Price, Muegge, Harrison, Dunlap and Kerr of the Senate

An Act relating to environment and natural resources; amending 82 O.S. 1991, Sections 1501-103, as renumbered by Section 359, Chapter 145, O.S.L. 1993 and as last amended by Section 12 of Enrolled House Bill 3348 of the 2nd Session of the 46th Oklahoma Legislature, and 1501-205, as renumbered by Section 359, Chapter 145, O.S.L. 1993 and as last amended by Section 5, Chapter 217, O.S.L. 1997 (27A O.S. Supp. 1997, Section 3-2-106), which relate to the Oklahoma Conservation Commission; modifying terms; clarifying and expanding certain duties; providing for the establishment and administration of a conservation cost-share program; providing for purpose of program; providing for promulgation of rules; prohibiting certain allocation of funds; requiring certain contracts; defining terms; creating the Conservation Cost-Share Fund; providing for composition of fund; providing for depositing and expenditure of monies; requiring submission of certain information; requiring certain actions; providing for liability of state; providing for codification; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 82 O.S. 1991, Section 1501-103, as renumbered by Section 359, Chapter 145, O.S.L. 1993 and as last amended by Section 12, of Enrolled House Bill No. 3348 of the 2nd Session of the 46th Oklahoma Legislature, is amended to read as follows:

Section 3-1-103. As used in the Conservation District Act:

1. "District" or "conservation district" means a governmental subdivision of this state, and a public body corporate and politic, organized in accordance with the provisions of the Conservation District Act, for the purposes, with the powers, and subject to the restrictions hereinafter set forth;

2. "Director" means a member of the governing body of a conservation district, elected or appointed in accordance with the provisions of the Conservation District Act;

3. "Commission" means the Oklahoma Conservation Commission;

4. "State" means the State of Oklahoma;

5. "Agency of this state" includes the government of this state and any subdivision, agency or instrumentality, corporate or otherwise, of the government of this state;

6. "United States" or "agencies of the United States" includes the United States of America, and any department, agency or instrumentality of the federal government;

7. "Government" or "governmental" includes the government of this state, the government of the United States, and any subdivision, agency or instrumentality, corporate or otherwise, of either of them;

8. "Due notice" which shall be in conformance with the Administrative Procedures Act means notice published at least twice, with an interval of at least seven (7) days between the two publication dates, in a newspaper or other publication of general circulation within the district, or, if no such publication of general circulation is available, by posting at five conspicuous places within the district, such posting to include, where possible, posting at public places where it may be customary to post notices concerning county or municipal affairs generally. At any hearing held pursuant to such notice, at the time and place designated in such notice, adjournment may be made from time to time without the necessity of renewing such notice for such adjourned dates;

9. "District cooperator" means any person that has entered into a cooperative agreement with a conservation district for the purpose of protecting, conserving and practicing wise use of the renewable natural resources under his or her control;

10. "Renewable natural resources", "natural resources" or "resources" include land, soil, ~~excess surface~~ water, vegetation, trees, natural beauty, scenery and open space;

11. "Conservation" includes conservation, development, improvement, maintenance, preservation, protection and wise use of land, water and related natural resources; the control and prevention of floodwater and sediment damages; and the disposal of excess surface waters;

12. "~~Cost/Share~~ Cost-Share program" means the assumption by the state of a proportional share of the cost of installing conservation structures ~~or~~, conservation practices or best management practices on lands for public and environmental benefits;

13. "Best Management practices" means a control method or combination of control methods that is determined to be the most effective and practicable means of preventing soil loss from erosion or reducing the amount of nonpoint source pollution from a given land use;

14. "Nonpoint source" shall have the same meaning as such word is defined by the Oklahoma Environmental Quality Act;

15. "Pollution" shall have the same meaning as such word is defined by the Oklahoma Environmental Quality Act;

16. "Nonpoint source working group" means an advisory group established by the Conservation Commission to provide input into the state's nonpoint source management and assessment program and is open to federal, state and local environmental agencies and natural resource agencies and other interested groups;

17. "Watershed" means an area of land that drains to a given point;

18. "Blue Thumb Program" means a nonpoint source educational program emphasizing water quality education, including volunteer monitoring;

19. "Soil science" means the science which:

a. is the study of physical, chemical, and biological processes taking place in both naturally occurring and reconstructed unconsolidated material formed by the alteration of parent rock due to exposure at the earth's surface, and

b. includes sampling, measuring, identification, characterization, classification, and mapping of soil materials and migration of water solute, air and other gaseous components in the unsaturated portion of the earth; and

20. "Soil scientist" means a person who:

a. has earned a baccalaureate or higher degree in a field of soil science from an institution of higher education which is accredited by a regional or national accrediting agency, with a minimum of thirty (30) semester hours or forty-five (45) quarter hours of undergraduate work in a field of biological, physical, or earth science with a minimum of fifteen (15) semester hours of core soil science courses, and

b. has a specific and continuous record of related and verifiable soil science work experience for two (2) years. Publications in a soil science publication or prior qualifications as an expert witness in administrative or judicial proceeding, hearing or trial shall be prima facie verification of experience related to soil science.

SECTION 2. AMENDATORY 82 O.S. 1991, Section 1501-205, as renumbered by Section 359, Chapter 145, O.S.L. 1993 and as last amended by Section 5, Chapter 217, O.S.L. 1997 (27A O.S. Supp. 1997, Section 3-2-106), is amended to read as follows:

Section 3-2-106. A. In addition to other powers and duties specified by law and except as otherwise provided by law, the Oklahoma Conservation Commission shall have the power and duty to:

1. Offer the assistance as may be appropriate to the directors of conservation districts in the carrying out of any of their powers and programs and to:

a. assist and guide districts in the preparation and carrying out of programs for resource conservation authorized under the Conservation District Act,

b. review district programs,

c. coordinate the programs of the several districts and resolve any conflicts in such programs, and

d. facilitate, promote, assist, harmonize, coordinate and guide the resource conservation programs and activities of districts as they relate to other special purpose districts, counties and other public agencies;

2. Keep the directors of each of the several districts informed of the activities and experience of all other districts, and to facilitate an interchange of advice and experience between such districts and cooperation between them;

3. Review agreements, or forms of agreements, proposed to be entered into by districts with other districts or with any state, federal, or interstate, or other public or private agency, organization or individual, and advise the districts concerning such agreements or forms of agreements;

4. Secure the cooperation and assistance of the United States and any of its agencies, and of agencies of this state, in the work of such districts and to accept donations, grants, gifts and contributions in money, services or otherwise from the United States

or any of its agencies or from the state or any of its agencies in order to carry out the purposes of the Conservation District Act;

5. Disseminate information throughout the state concerning the activities and programs of the conservation districts and to make available information concerning the needs and the work of the conservation districts and Commission to the Governor, the Legislature, executive agencies of the government of this state, political subdivisions of this state, cooperating federal agencies and the general public;

6. Serve along with conservation districts as the official state agencies for cooperating with the ~~Soil~~ Natural Resources Conservation Service of the United States Department of Agriculture and carrying on conservation operations within the boundaries of conservation districts;

7. Cooperate with and give such assistance as they deem necessary and proper to conservancy districts, watershed associations and other special purpose districts in the State of Oklahoma for the purpose of cooperating with the United States through the Secretary of Agriculture in the furtherance of conservation pursuant to the provisions of the Federal Watershed Protection and Flood Prevention Act, as amended;

8. Recommend the inclusion in annual and longer term budgets and appropriation legislation of the State of Oklahoma of funds necessary for appropriation by the Legislature to finance the activities of the Commission and the conservation districts and to:

a. administer the provisions of the Conservation District Act hereafter enacted by the Legislature appropriating funds for expenditure in connection with the activities of conservation districts,

b. distribute to conservation districts funds, equipment, supplies and services received by the Commission for that purpose from any source, subject to such conditions as shall be made applicable thereto in any state or federal statute or local ordinance making available such funds, property or services,

c. issue regulations establishing guidelines and suitable controls to govern the use by conservation districts of such funds, property and services; and to review all budgets, administrative procedures and operations of such districts and advise the districts concerning their conformance with applicable laws and regulations;

9. Enlist the cooperation and collaboration of state, federal, regional, interstate, local, public and private agencies with the conservation districts and to facilitate arrangements under which the conservation districts may serve county governing bodies and other agencies as their local operating agencies in the administration of any activity concerned with the conservation of renewable natural resources;

10. Pursuant to procedures developed mutually by the Commission and federal, state and local agencies that are authorized to plan or administer activities significantly affecting the conservation of renewable natural resources, receive from such agencies for review and comment suitable descriptions of their plans, programs and activities for purposes of coordination with district conservation programs and to arrange for and participate in conferences necessary to avoid conflict among such plans and programs, to call attention to omissions and to avoid duplication of effort;

11. Compile information and make studies, summaries and analyses of district programs in relation to each other and to other resource conservation programs on a statewide basis;

12. Except as otherwise assigned by law, carry out the policies of this state in programs at the state level for the conservation of the renewable natural resources of this state and represent the state in matters affecting such resources;

13. Assist conservation districts in obtaining legal services from state and local legal officers;

14. Require annual reports from conservation districts, the form and content of which shall be developed by the Commission in consultation with the district directors;

15. Establish by regulations, with the assistance and advice of the State Auditor and Inspector, adequate and reasonably uniform accounting and auditing procedures which shall be used by conservation districts;

16. Conduct workshops for district directors to instruct them on the subjects of district finances, the Conservation District Law and related laws, and their duties and responsibilities as directors;

17. Assist and supervise districts in carrying out their responsibilities in accordance with the Oklahoma laws;

18. Have power, by administrative order, upon the written request of the board of directors of the conservation district or districts involved, with a showing that such request has been approved by a majority vote of the members of each of the boards involved, to:

a. transfer lands from one district established under the provisions of the Conservation District Act to another,

b. divide a single district into two or more districts, each of which shall thereafter operate as a separate district under the provisions of the Conservation District Act, and

c. consolidate two or more districts established under the provisions of the Conservation District Act, which consolidated area shall operate thereafter as a single district under the provisions of the Conservation District Act;

19. Except as otherwise provided by law, act as the management agency having jurisdiction over and responsibility for directing nonpoint source pollution prevention programs outside the jurisdiction or control of cities or towns in Oklahoma. The Commission, otherwise, shall be responsible for all identified nonpoint source categories except silviculture, urban storm water runoff and industrial runoff;

20. Administer ~~a cost/share program which would provide state monies to local districts~~ cost-share programs for the purpose of carrying out conservation or best management practices on the land to benefit the public through the prevention or reduction of soil erosion and nonpoint source pollution and through general resource management. The Commission is not authorized to implement mandatory compliance with management practices, except as otherwise provided by law, to abate agricultural nonpoint source pollution;

21. Plan watershed-based nonpoint source pollution control activities, including the development and implementation of conservation plans for the improvement and protection of the resources of the state;

22. Provide assistance to the Oklahoma Water Resources Board on lake projects through stream and river monitoring, assessing

watershed activities impacting lake water quality and assisting in the development of a watershed management plan;

23. Maintain the activities of the state's nonpoint source working group;

24. Prepare, revise and review Oklahoma's nonpoint source management program and nonpoint source assessment report in coordination with other state environmental agencies and compile a comprehensive assessment for the state every five (5) years. Such management program and assessment report shall be distributed to the Governor, Secretary of Environment, the President Pro Tempore of the Senate and the Speaker of the House of Representatives;

25. Under the direction of the Office of the Secretary of the Environment, develop and implement the state's nonpoint source water quality monitoring strategy in coordination with other environmental agencies;

26. Monitor, evaluate and assess waters of the state to determine the condition of streams and rivers impacted by nonpoint source pollution. In carrying out this area of responsibility, the Conservation Commission shall serve as the technical lead agency for nonpoint source pollution categories as defined in Section 319 of the Federal Clean Water Act or other subsequent federal or state nonpoint source programs;

27. Administer the Blue Thumb Program;

28. Enter into agreements or contracts for services with any of the substate planning districts recognized by the Oklahoma Department of Commerce;

29. Cooperate with the federal government, or any agency thereof, to participate in and coordinate with federal programs that will yield additional federal funds to the state for programs within the jurisdiction of the Conservation Commission. This participation shall be subject to the availability of state funds; and

30. Implement pilot projects and programs, subject to the availability of funds, that will demonstrate the latest technologies and applications in conservation programs that may provide direct or residual benefits to conservation practices in the state.

B. Nothing in this act shall take away any of the present duties or responsibilities delegated by law or constitution to other environmental agencies.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-3-114 of Title 27A, unless there is created a duplication in numbering, reads as follows:

A. The Oklahoma Conservation Commission is hereby authorized to establish and administer a conservation cost-share program as funds become available. The conservation cost-share program shall provide monies to eligible persons for the purpose of implementing conservation or best management practices on such eligible land as described in conservation management plans according to rules promulgated by the Commission.

B. The Commission shall promulgate rules governing the cost-share program.

C. To implement the program, the Commission shall require conservation districts to enter into contracts for approved projects on eligible land detailing the eligible person's responsibilities.

D. For purposes of the conservation cost-share program:

1. "Eligible person" means any individual, partnership, corporation, legally recognized Indian tribe, estate, or trust who as an owner, lessee, tenant, or operator participates in the care and/or management of land within a conservation district;

2. "Eligible land" means:

a. privately owned land within the state,

b. land owned by the state or a political subdivision of the state,

c. land owned by corporations which are partly owned by the United States,

d. land temporarily owned by the United States or a corporation wholly owned by it, which were not acquired or reserved for conservation purposes, including lands administered by the Farm Service Agency, the U.S. Department of Defense, or by any other government agency,

e. any cropland farmed by private persons which is owned by the United States or a corporation wholly owned by it, and

f. noncropland owned by the United States on which practices are performed by private persons where such practices directly conserve or benefit nearby or adjoining privately owned lands of the persons performing the practices and such persons maintain and use such federally owned noncropland under agreement with the federal agency having jurisdiction thereof; and

3. "Eligible projects" means conservation practices determined to be needed by a conservation district to:

a. improve or protect water quality, or

b. reduce soil erosion, or both.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-3-115 of Title 27A unless there is created a duplication in numbering, reads as follows:

A. There is hereby created within the State Treasury a cost-share fund for the Oklahoma Conservation Commission to be designated the "Conservation Cost-Share Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of all monies received by the Conservation Commission to implement and maintain the conservation cost-share program.

B. The Conservation Cost-Share Fund shall consist of:

1. Money received by the Conservation Commission in the form of gifts, grants, reimbursements, donations, industry contributions, state appropriations, funds allocated by federal agencies for cost-share programs and such other monies specifically designated for the cost-share program. All monies accruing to the credit of said fund are hereby appropriated and may be budgeted and expended by the Commission for the conservation cost-share program; and

2. Interest attributable to investment of money in the Conservation Cost-Share Fund.

C. All donations or other proceeds received by the Commission pursuant to the provisions of this section shall be deposited with the State Treasurer to be credited to the Conservation Cost-Share Fund. Expenditures from the fund shall be made upon warrants issued by the State Treasurer against claims filed as prescribed by law with the Director of State Finance for approval and payment.

D. The monies deposited in the Conservation Cost-Share Fund shall at no time become part of the general budget of the Conservation Commission or any other state agency. Except for any administration costs incurred in development and implementation of the cost-share program, no monies from the fund shall be transferred for any purpose to any other state agency or any account of the Conservation Commission or be used for the purpose of contracting with any other state agency or reimbursing any other state agency for any expense.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-3-116 of Title 27A, unless there is created a duplication in numbering, reads as follows:

A. The Conservation Commission shall require applicants to submit information, forms and reports as are necessary to properly and efficiently administer the conservation cost-share program.

B. Persons may apply to a conservation district for cost-share funds for eligible conservation projects in the State of Oklahoma, in accordance with rules promulgated by the Commission. To be eligible for reimbursement for a cost-share project, an eligible person must:

1. File a conservation plan approved by the conservation district in which the applicant's land is located; and

2. Enter into a contract with a conservation district detailing the responsibilities of the person.

C. Applications for funds shall be approved or denied by the conservation district in accordance with criteria promulgated by the Commission.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 3-3-117 of Title 27A, unless there is created a duplication in numbering, reads as follows:

Nothing in this act or in the contract executed pursuant to Section 3 of this act shall be interpreted or construed to constitute a financial or general obligation of the state. No state revenue shall be used to guarantee or pay for any damages to property or injury to persons as a result of the provisions of this act or the contract.

SECTION 7. This act shall become effective July 1, 1998.

SECTION 8. 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 19th day of May, 1998.

Speaker of the House of Representatives

Passed the Senate the 20th day of May, 1998.

President of the Senate