

STATE OF OKLAHOMA

2nd Session of the 49th Legislature (2004)

COMMITTEE SUBSTITUTE
FOR
HOUSE BILL NO. 2457

By: Pope

COMMITTEE SUBSTITUTE

An Act relating to conservation districts; amending 27A O.S. 2001, Section 1-1-201, as amended by Section 1, Chapter 118, O.S.L. 2003 (27A O.S. Supp. 2003, Section 1-1-201), which relates to the Oklahoma Environmental Quality Act; clarifying definition; amending 74 O.S. 2001, Sections 85.58A, as last amended by Section 6, Chapter 483, O.S.L. 2002 and 85.58L, as amended by Section 11, Chapter 372, O.S.L. 2003 (74 O.S. Supp. 2003, Sections 85.58A and 85.58L) which relate to conservation districts participation in risk management; authorizing conservation districts to request supervision of Risk Management Administrator; clarifying cites; repealing 74 O.S. 2001, Section 85.58I, which relates to conservation districts participation in risk management; providing an effective date; and declaring an emergency.

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

SECTION 1. AMENDATORY 27A O.S. 2001, Section 1-1-201, as amended by Section 1, Chapter 118, O.S.L. 2003 (27A O.S. Supp. 2003, Section 1-1-201), is amended to read as follows:

Section 1-1-201. As used in the Oklahoma Environmental Quality Act:

1. "Clean Water Act" means the federal Water Pollution Control Act, 33 U.S.C., Section 1251 et seq., as amended;

2. "Discharge" includes but is not limited to a discharge of a pollutant, and means any addition of any pollutant to waters of the state from any point source;

3. "Environment" includes the air, land, wildlife, and waters of the state;

4. "Federal Safe Drinking Water Act" means the federal law at 42 U.S.C., Section 300 et seq., as amended;

5. "Groundwater protection agencies" include the:

- a. Oklahoma Water Resources Board,
- b. Oklahoma Corporation Commission,
- c. State Department of Agriculture,
- d. Department of Environmental Quality,
- e. Conservation Commission, and
- f. Department of Mines;

6. "Nonpoint source" means the contamination of the environment with a pollutant for which the specific point of origin may not be well defined and includes but is not limited to agricultural storm water runoff and return flows from irrigated agriculture;

7. "N.P.D.E.S." or "National Pollutant Discharge Elimination System" means the system for the issuance of permits under the Federal Water Pollution Control Act, 33 U.S.C., Section 1251 et seq., as amended;

8. "Point source" means any discernible, confined and discrete conveyance or outlet including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure container, rolling stock or vessel or other floating craft from which pollutants are or may be discharged into waters of the state. The term "point source" shall not include agricultural storm water runoff and return flows from irrigated agriculture;

9. "Pollutant" includes but is not limited to dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agribusiness waste;

10. "Pollution" means the presence in the environment of any substance, contaminant or pollutant, or any other alteration of the physical, chemical or biological properties of the environment or

the release of any liquid, gaseous or solid substance into the environment in quantities which are or will likely create a nuisance or which render or will likely render the environment harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life, or to property;

11. "Source" means any and all points of origin of any wastes, pollutants or contaminants whether publicly or privately owned or operated;

12. "State agencies with limited environmental responsibilities" means:

- a. the Department of Public Safety,
- b. the Department of Labor, and
- c. the Department of ~~Civil~~ Emergency Management;

13. "State environmental agency" includes the:

- a. Oklahoma Water Resources Board,
- b. Oklahoma Corporation Commission,
- c. State Department of Agriculture,
- d. Oklahoma Conservation Commission,
- e. Department of Wildlife Conservation,
- f. Department of Mines, and
- g. Department of Environmental Quality;

14. "Storm water" means rain water runoff, snow melt runoff, and surface runoff and drainage;

15. "Total maximum daily load" means the sum of individual wasteload allocations (W.L.A.) for point sources, safety, reserves, and loads from nonpoint sources and natural backgrounds;

16. "Waste" means any liquid, gaseous or solid or semi-solid substance, or thermal component, whether domestic, municipal, commercial, agricultural or industrial in origin, which may pollute

or contaminate or tend to pollute or contaminate, any air, land or waters of the state;

17. "Wastewater" includes any substance, including sewage, that contains any discharge from the bodies of human beings or animals, or pollutants or contaminating chemicals or other contaminating wastes from domestic, municipal, commercial, industrial, agricultural, manufacturing or other forms of industry;

18. "Wastewater treatment" means any method, technique or process used to remove pollutants from wastewater or sludge to the extent that the wastewater or sludge may be reused, discharged into waters of the state or otherwise disposed and includes, but is not limited to, the utilization of mechanized works, surface impoundments and lagoons, aeration, evaporation, best management practices (BMPs), buffer strips, crop removal or trapping, constructed wetlands, digesters or other devices or methods. "Treatment" also means any method, technique or process used in the purification of drinking water;

19. "Wastewater treatment system" means treatment works and all related pipelines or conduits, pumping stations and force mains, and all other appurtenances and devices used for collecting, treating, conducting or discharging wastewater;

20. "Waters of the state" means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, storm sewers and all other bodies or accumulations of water, surface and underground, natural or artificial, public or private, which are contained within, flow through, or border upon this state or any portion thereof, and shall include under all circumstances the waters of the United States which are contained within the boundaries of, flow through or border upon this state or any portion thereof. Provided, waste treatment systems, including treatment ponds or lagoons designed to meet federal and state requirements other than cooling ponds as defined

in the Clean Water Act or rules promulgated thereto and prior converted cropland are not waters of the state; and

21. "Wellhead protection area" means the surface and subsurface area surrounding a water well or wellfield supplying a public water system that defines the extent of the area from which water is supplied to such water well or wellfield.

SECTION 2. AMENDATORY 74 O.S. 2001, Section 85.58A, as last amended by Section 6, Chapter 483, O.S.L. 2002 (74 O.S. Supp. 2003, Section 85.58A), is amended to read as follows:

Section 85.58A A. The Department of Central Services shall establish for all state agencies, whether or not subject to the Central Purchasing Act, and other entities as provided by law a comprehensive professional risk management program which shall:

1. Identify and evaluate risks of loss and exposures to loss to officers, employees and properties;

2. Minimize risks through loss-prevention and loss-control programs;

3. Transfer risks, if economically advantageous to the state, by acquiring commercial insurance, contractual pass through of liability, or by other means;

4. Consolidate and administer risk management plans and programs including self-insurance programs, except Workers' Compensation Insurance and State Employees Group Insurance;

5. Determine feasibility of and, if feasible, establish self-insurance programs, considering whether a program may be self-supporting to remain financially and actuarially sound;

6. Provide a system to allocate insurance and program costs to determine payment for insurance coverage and program expenses provided by the Department of Central Services;

7. When requested by a state retirement system, CompSource Oklahoma or the State and Education Employees Group Insurance Board, assist in obtaining insurance authorized by law. If requested by

the Oklahoma State Regents for Higher Education, assist trust funds for which the State Regents serve as trustees in obtaining insurance authorized by law;

8. Assist state agencies and officers, employees, and members thereof, charged with licensing authority, in obtaining insurance for liability for judgments, based on the licensing authority, rendered by any court pursuant to federal law;

9. When requested by a public trust established pursuant to Title 60 of the Oklahoma Statutes of which the State of Oklahoma is the beneficiary, obtain, provide or assist the public trust in obtaining insurance authorized by law or trust indenture covering any board member, trustee, official, officer, employee or volunteer for errors and omissions or liability risks arising from the performance of their official duties pursuant to law or trust indenture; and

10. When requested by the State Regents, for the purpose of insuring real property required pursuant to Section 4018 of Title 70 of the Oklahoma Statutes, of which the State Regents is the beneficiary, obtain, provide or assist the State Regents in obtaining insurance for the real property pursuant to the provisions of this section.

B. The Director of Central Services may hire or contract for the services of a Risk Management Administrator to supervise the Comprehensive Professional Risk Management Program established pursuant to this section. If appointed by the Director as a state employee, the Risk Management Administrator shall be in the unclassified service.

C. The Risk Management Administrator shall evaluate insurance coverage needs and in force for state agencies, whether or not subject to the Central Purchasing Act, and other entities as provided by law. All entities shall submit to the Risk Management

Administrator all information which the Risk Management Administrator deems necessary to perform this duty.

D. The Risk Management Administrator in conjunction with the State Purchasing Director under the authority of the Director of Central Services may negotiate insurance coverage and services contracts. The State Purchasing Director shall ensure open processes for solicitation and qualification of insurance coverage and services providers. The State Purchasing Director shall award contracts for insurance coverage and services to the provider which offer the best and final terms and conditions.

E. The school districts of this state may request the Risk Management Administrator to advise for the purchase of insurance coverage for the school districts.

F. A state agency, whether or not subject to the Central Purchasing Act, that contemplates purchase of property and casualty insurance, shall provide details of the proposed purchase to the Risk Management Administrator for approval or disapproval prior to the purchase.

G. The Director of Central Services shall promulgate rules to effect the provisions of the comprehensive professional risk management program.

H. 1. a. Any community action agency established pursuant to Sections 5035 through 5040 of this title may participate in the comprehensive professional risk management program established pursuant to this section for risks incurred as a result of operating a Head Start program or providing transportation services to the public. The Risk Management Administrator shall obtain or provide for insurance coverage for such community action agencies or bonding for employees of such community action agencies. Any liability insurance coverage obtained or provided

shall include expenses for administrative and legal services obtained or provided by the Risk Management Administrator.

b. The Risk Management Administrator shall determine criteria for participation in the risk management program by such community action agencies. In addition, the Risk Management Administrator may require each such community action agency to:

- (1) provide adequate qualified personnel and suitable facilities and equipment for operating a Head Start program or providing transportation services to the public, and
- (2) comply with such standards as are necessary for the protection of the clients it serves.

2. To receive coverage pursuant to this section, a community action agency shall make payments for any insurance coverage and shall otherwise comply with the provisions of this section and rules promulgated by the Department pursuant to the provisions of this section.

3. Requests for the insurance coverage provided pursuant to the provisions of this subsection shall be submitted in writing to the Risk Management Administrator by the community action agencies.

I. The Risk Management Administrator may provide or obtain for any state agency, public trust with the state as a beneficiary and a director, officer, employee or member thereof, insurance for liability for loss, including judgments, awards, settlements, costs and legal expenses, resulting from violations of rights or privileges secured by the Constitution or laws of the United States of America which occur while a director, officer, employee or member is acting within the scope of service to the State of Oklahoma. The insurance shall be for coverage in excess of the limits on liability established by the Governmental Tort Claims Act but shall not limit

or waive any immunities now or hereafter available to the State of Oklahoma or any state agency, any public trust with the state as a beneficiary, or any director, officer, employee or member thereof, including, but not limited to, any immunities under the Eleventh Amendment to the Constitution of the United States, state sovereign immunity, and any absolute or qualified immunity held by any director, officer, employee or member.

J. The conservation districts of the state are authorized to request the Risk Management Administrator to supervise the purchase of insurance coverage for the conservation districts.

SECTION 3. AMENDATORY 74 O.S. 2001, Section 85.58L, as amended by Section 11, Chapter 372, O.S.L. 2003 (74 O.S. Supp. 2003, Section 85.58L), is amended to read as follows:

Section 85.58L A. There is hereby created in the State Treasury a revolving fund for the Department of Central Services, to be designated the "Risk Management Political Subdivision Participation Revolving Fund". The fund shall be a continuing fund, not subject to fiscal year limitations, and shall consist of any monies transferred thereto by an act of the Legislature and any fees collected by the Department of Central Services and deposited pursuant to law. All monies accruing to the credit of said fund shall be expended by the Department of Central Services for the purposes specified by this section and the salaries and administrative expenses of support staff responsible for administering the fund and expenses the Department incurs to support program operations. 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.

~~B. Within the Risk Management Political Subdivision Participation Revolving Fund, there is hereby created the Conservation District Protection Account. The account shall be set~~

~~apart as a separate, permanent and perpetual account not subject to fiscal year limitations and shall consist of:~~

~~1. All fees and other monies received pursuant to Section 1 of the act; and~~

~~2. Interest attributable to investment of monies in the account.~~

~~C.~~ 1. The monies deposited in the Risk Management Political Subdivision Participation Revolving Fund shall at no time become monies of any other state agency. Except as otherwise authorized by this subsection, no monies from the Risk Management Political Subdivision Participation Revolving Fund shall be transferred for any purpose to any other state agency or be used for the purpose of contracting with any other state agency or reimbursing any other state agency for any expense.

2. Monies in the Risk Management Political Subdivision Participation Revolving Fund shall only be expended for:

- a. the purposes specified by this section, and
- b. costs incurred by the Comprehensive Professional Risk Management Program for the administration of duties this section specifies and expenses the Department incurs to support program operations.

~~D.~~ C. Any costs incurred by the Department of Central Services pursuant to the provisions of this section shall not exceed the actual expenditures made by the Department of Central Services to implement the provisions of this section.

~~E.~~ D. Payment of claims from the Risk Management Political Subdivision Participation Revolving Fund shall not become or be construed to be an obligation of this state. No claims submitted for reimbursement or payment from the fund shall be paid with state monies.

SECTION 4. REPEALER 74 O.S. 2001, Section 85.58I, is hereby repealed.

SECTION 5. This act shall become effective July 1, 2004.

SECTION 6. 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.

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