

**EHB 2457**

**THE STATE SENATE**  
**Monday, April 5, 2004**

**ENGROSSED**

**House Bill No. 2457**

**As Amended**

ENGROSSED HOUSE BILL NO. 2457 - By: POPE and SWEEDEN of the House  
and PRICE of the Senate.

[ conservation districts - amending 27A O.S., Section 1-1-  
201 - Oklahoma Environmental Quality Act - amending 74 O.S.,  
Sections 85.58A and 85.58L - risk management - repealing 74  
O.S., Section 85.58I - effective date -  
emergency ]

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;

1           5. "Groundwater protection agencies" include the:

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

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

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

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

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

6           10. "Pollution" means the presence in the environment of any  
7 substance, contaminant or pollutant, or any other alteration of the  
8 physical, chemical or biological properties of the environment or  
9 the release of any liquid, gaseous or solid substance into the  
10 environment in quantities which are or will likely create a nuisance  
11 or which render or will likely render the environment harmful or  
12 detrimental or injurious to public health, safety or welfare, or to  
13 domestic, commercial, industrial, agricultural, recreational, or  
14 other legitimate beneficial uses, or to livestock, wild animals,  
15 birds, fish or other aquatic life, or to property;

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

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

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

- 1           13. "State environmental agency" includes the:
- 2           a. Oklahoma Water Resources Board,
- 3           b. Oklahoma Corporation Commission,
- 4           c. State Department of Agriculture,
- 5           d. Oklahoma Conservation Commission,
- 6           e. Department of Wildlife Conservation,
- 7           f. Department of Mines, and
- 8           g. Department of Environmental Quality;
- 9           14. "Storm water" means rain water runoff, snow melt runoff,
- 10          and surface runoff and drainage;
- 11          15. "Total maximum daily load" means the sum of individual
- 12          wasteload allocations (W.L.A.) for point sources, safety, reserves,
- 13          and loads from nonpoint sources and natural backgrounds;
- 14          16. "Waste" means any liquid, gaseous or solid or semi-solid
- 15          substance, or thermal component, whether domestic, municipal,
- 16          commercial, agricultural or industrial in origin, which may pollute
- 17          or contaminate or tend to pollute or contaminate, any air, land or
- 18          waters of the state;
- 19          17. "Wastewater" includes any substance, including sewage, that
- 20          contains any discharge from the bodies of human beings or animals,
- 21          or pollutants or contaminating chemicals or other contaminating
- 22          wastes from domestic, municipal, commercial, industrial,
- 23          agricultural, manufacturing or other forms of industry;

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

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

15        20. "Waters of the state" means all streams, lakes, ponds,  
16 marshes, watercourses, waterways, wells, springs, irrigation  
17 systems, drainage systems, storm sewers and all other bodies or  
18 accumulations of water, surface and underground, natural or  
19 artificial, public or private, which are contained within, flow  
20 through, or border upon this state or any portion thereof, and shall  
21 include under all circumstances the waters of the United States  
22 which are contained within the boundaries of, flow through or border  
23 upon this state or any portion thereof. Provided, waste treatment

1 systems, including treatment ponds or lagoons designed to meet  
2 federal and state requirements other than cooling ponds as defined  
3 in the Clean Water Act or rules promulgated thereto and prior  
4 converted cropland are not waters of the state; and

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

9 SECTION 2. AMENDATORY 74 O.S. 2001, Section 85.58A, as  
10 last amended by Section 6, Chapter 483, O.S.L. 2002 (74 O.S. Supp.  
11 2003, Section 85.58A), is amended to read as follows:

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

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

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

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

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

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

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

10          7. When requested by a state retirement system, CompSource  
11 Oklahoma or the State and Education Employees Group Insurance Board,  
12 assist in obtaining insurance authorized by law. If requested by  
13 the Oklahoma State Regents for Higher Education, assist trust funds  
14 for which the State Regents serve as trustees in obtaining insurance  
15 authorized by law;

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

20          9. When requested by a public trust established pursuant to  
21 Title 60 of the Oklahoma Statutes of which the State of Oklahoma is  
22 the beneficiary, obtain, provide or assist the public trust in  
23 obtaining insurance authorized by law or trust indenture covering

1 any board member, trustee, official, officer, employee or volunteer  
2 for errors and omissions or liability risks arising from the  
3 performance of their official duties pursuant to law or trust  
4 indenture; and

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

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

17 C. The Risk Management Administrator shall evaluate insurance  
18 coverage needs and in force for state agencies, whether or not  
19 subject to the Central Purchasing Act, and other entities as  
20 provided by law. All entities shall submit to the Risk Management  
21 Administrator all information which the Risk Management  
22 Administrator deems necessary to perform this duty.

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

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

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

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

20           H. 1. a. Any community action agency established pursuant to  
21                       Sections 5035 through 5040 of this title may  
22                       participate in the comprehensive professional risk  
23                       management program established pursuant to this

1 section for risks incurred as a result of operating a  
2 Head Start program or providing transportation  
3 services to the public. The Risk Management  
4 Administrator shall obtain or provide for insurance  
5 coverage for such community action agencies or bonding  
6 for employees of such community action agencies. Any  
7 liability insurance coverage obtained or provided  
8 shall include expenses for administrative and legal  
9 services obtained or provided by the Risk Management  
10 Administrator.

- 11 b. The Risk Management Administrator shall determine  
12 criteria for participation in the risk management  
13 program by such community action agencies. In  
14 addition, the Risk Management Administrator may  
15 require each such community action agency to:
- 16 (1) provide adequate qualified personnel and suitable  
17 facilities and equipment for operating a Head  
18 Start program or providing transportation  
19 services to the public, and
  - 20 (2) comply with such standards as are necessary for  
21 the protection of the clients it serves.

22 2. To receive coverage pursuant to this section, a community  
23 action agency shall make payments for any insurance coverage and

1 shall otherwise comply with the provisions of this section and rules  
2 promulgated by the Department pursuant to the provisions of this  
3 section.

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

7 I. The Risk Management Administrator may provide or obtain for  
8 any state agency, public trust with the state as a beneficiary and  
9 a director, officer, employee or member thereof, insurance for  
10 liability for loss, including judgments, awards, settlements, costs  
11 and legal expenses, resulting from violations of rights or  
12 privileges secured by the Constitution or laws of the United States  
13 of America which occur while a director, officer, employee or member  
14 is acting within the scope of service to the State of Oklahoma. The  
15 insurance shall be for coverage in excess of the limits on liability  
16 established by the Governmental Tort Claims Act but shall not limit  
17 or waive any immunities now or hereafter available to the State of  
18 Oklahoma or any state agency, any public trust with the state as a  
19 beneficiary, or any director, officer, employee or member thereof,  
20 including, but not limited to, any immunities under the Eleventh  
21 Amendment to the Constitution of the United States, state sovereign  
22 immunity, and any absolute or qualified immunity held by any  
23 director, officer, employee or member.

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

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

7        Section 85.58L A. There is hereby created in the State  
8 Treasury a revolving fund for the Department of Central Services, to  
9 be designated the "Risk Management Political Subdivision  
10 Participation Revolving Fund". The fund shall be a continuing fund,  
11 not subject to fiscal year limitations, and shall consist of any  
12 monies transferred thereto by an act of the Legislature and any fees  
13 collected by the Department of Central Services and deposited  
14 pursuant to law. All monies accruing to the credit of said fund  
15 shall be expended by the Department of Central Services for the  
16 purposes specified by this section and the salaries and  
17 administrative expenses of support staff responsible for  
18 administering the fund and expenses the Department incurs to support  
19 program operations. Expenditures from the fund shall be made upon  
20 warrants issued by the State Treasurer against claims filed as  
21 prescribed by law with the Director of State Finance for approval  
22 and payment.

1           B. ~~Within the Risk Management Political Subdivision~~  
2 ~~Participation Revolving Fund, there is hereby created the~~  
3 ~~Conservation District Protection Account. The account shall be set~~  
4 ~~apart as a separate, permanent and perpetual account not subject to~~  
5 ~~fiscal year limitations and shall consist of:~~

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

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

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

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

- 20           a. the purposes specified by this section, and  
21           b. costs incurred by the Comprehensive Professional Risk  
22           Management Program for the administration of duties

1                   this section specifies and expenses the Department  
2                   incurs to support program operations.

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

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

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

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

15       SECTION 6. It being immediately necessary for the preservation  
16 of the public peace, health and safety, an emergency is hereby  
17 declared to exist, by reason whereof this act shall take effect and  
18 be in full force from and after its passage and approval.

19 COMMITTEE REPORT BY: COMMITTEE ON ENERGY, ENVIRONMENT &  
20 COMMUNICATIONS, dated 4-1-04 - DO PASS, As Amended.