

STATE OF OKLAHOMA

2nd Session of the 49th Legislature (2004)

HOUSE BILL HB2198:

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AS INTRODUCED

An Act relating to environment and natural resources; amending 51 O.S. 2001, Section 155, as amended by Section 3, Chapter 304, O.S.L. 2003 (51 Supp. 2003, Section 155), which relates to The Governmental Tort Claims Act; adding liability exemption for authorized environmental cleanup; amending 27A O.S. 2001, Section 1-2-101, as amended by Section 1, Chapter 381, O.S.L. 2003 (27A O.S. Supp. 2003, Section 1-2-101), which relates to duties of Secretary of the Environment; expanding distribution of certain reports; amending 68 O.S. 2001, Section 3134.1, which relates to dilapidated buildings acquired at resale by county; modifying scope of certain hearings; and providing an effective date.

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

SECTION 1. AMENDATORY 51 O.S. 2001, Section 155, as amended by Section 3, Chapter 304, O.S.L. 2003 (51 Supp. 2003, Section 155), is amended to read as follows:

Section 155. The state or a political subdivision shall not be liable if a loss or claim results from:

1. Legislative functions;
2. Judicial, quasi-judicial, or prosecutorial functions, other than claims for wrongful criminal felony conviction resulting in imprisonment provided for in Section 154 of this title;
3. Execution or enforcement of the lawful orders of any court;
4. Adoption or enforcement of or failure to adopt or enforce a law, whether valid or invalid, including, but not limited to, any statute, charter provision, ordinance, resolution, rule, regulation or written policy;

5. Performance of or the failure to exercise or perform any act or service which is in the discretion of the state or political subdivision or its employees;

6. Civil disobedience, riot, insurrection or rebellion or the failure to provide, or the method of providing, police, law enforcement or fire protection;

7. Any claim based on the theory of attractive nuisance;

8. Snow or ice conditions or temporary or natural conditions on any public way or other public place due to weather conditions, unless the condition is affirmatively caused by the negligent act of the state or a political subdivision;

9. Entry upon any property where that entry is expressly or implied authorized by law;

10. Natural conditions of property of the state or political subdivision;

11. Assessment or collection of taxes or special assessments, license or registration fees, or other fees or charges imposed by law;

12. Licensing powers or functions including, but not limited to, the issuance, denial, suspension or revocation of or failure or refusal to issue, deny, suspend or revoke any permit, license, certificate, approval, order or similar authority;

13. Inspection powers or functions, including failure to make an inspection, review or approval, or making an inadequate or negligent inspection, review or approval of any property, real or personal, to determine whether the property complies with or violates any law or contains a hazard to health or safety, or fails to conform to a recognized standard;

14. Any loss to any person covered by any workers' compensation act or any employer's liability act;

15. Absence, condition, location or malfunction of any traffic or road sign, signal or warning device unless the absence,

condition, location or malfunction is not corrected by the state or political subdivision responsible within a reasonable time after actual or constructive notice or the removal or destruction of such signs, signals or warning devices by third parties, action of weather elements or as a result of traffic collision except on failure of the state or political subdivision to correct the same within a reasonable time after actual or constructive notice. Nothing herein shall give rise to liability arising from the failure of the state or any political subdivision to initially place any of the above signs, signals or warning devices. The signs, signals and warning devices referred to herein are those used in connection with hazards normally connected with the use of roadways or public ways and do not apply to the duty to warn of special defects such as excavations or roadway obstructions;

16. Any claim which is limited or barred by any other law;

17. Misrepresentation, if unintentional;

18. An act or omission of an independent contractor or consultant or his employees, agents, subcontractors or suppliers or of a person other than an employee of the state or political subdivision at the time the act or omission occurred;

19. Theft by a third person of money in the custody of an employee unless the loss was sustained because of the negligence or wrongful act or omission of the employee;

20. Participation in or practice for any interscholastic or other athletic contest sponsored or conducted by or on the property of the state or a political subdivision;

21. Participation in any activity approved by a local board of education and held within a building or on the grounds of the school district served by that local board of education before or after normal school hours or on weekends;

22. Any court-ordered or Department of Corrections approved work release program; provided, however, this provision shall not

apply to claims from individuals not in the custody of the Department of Corrections based on accidents involving motor vehicles owned or operated by the Department of Corrections;

23. The activities of the National Guard, the militia or other military organization administered by the Military Department of the state when on duty pursuant to the lawful orders of competent authority:

- a. in an effort to quell a riot,
- b. in response to a natural disaster or military attack,
or
- c. if participating in a military mentor program ordered by the court;

24. Provision, equipping, operation or maintenance of any prison, jail or correctional facility, or injuries resulting from the parole or escape of a prisoner or injuries by a prisoner to any other prisoner; provided, however, this provision shall not apply to claims from individuals not in the custody of the Department of Corrections based on accidents involving motor vehicles owned or operated by the Department of Corrections;

25. Provision, equipping, operation or maintenance of any juvenile detention facility, or injuries resulting from the escape of a juvenile detainee, or injuries by a juvenile detainee to any other juvenile detainee;

26. Any claim or action based on the theory of manufacturer's products liability or breach of warranty, either expressed or implied;

27. Any claim or action based on the theory of indemnification or subrogation;

28. Any claim based upon an act or omission of an employee in the placement of children;

29. Acts or omissions done in conformance with then current recognized standards;

30. Maintenance of the state highway system or any portion thereof unless the claimant presents evidence which establishes either that the state failed to warn of the unsafe condition or that the loss would not have occurred but for a negligent affirmative act of the state;

31. Any confirmation of the existence or nonexistence of any effective financing statement on file in the office of the Secretary of State made in good faith by an employee of the office of the Secretary of State as required by the provisions of Section 1-9-320.6 of Title 12A of the Oklahoma Statutes; ~~or~~

32. Any court-ordered community sentence; or

33. Activities or effects associated with the remediation and any subsequent related maintenance of property pursuant to an authorized environmental remediation program, order, or requirement of a federal or state environmental agency.

SECTION 2. AMENDATORY 27A O.S. 2001, Section 1-2-101, as amended by Section 1, Chapter 381, O.S.L. 2003 (27A O.S. Supp. 2003, Section 1-2-101), is amended to read as follows:

Section 1-2-101. A. The Secretary of Environment or successor cabinet position having authority over the Department of Environmental Quality shall have the following jurisdictional areas of environmental responsibility:

1. Powers and duties for environmental areas designated to such position by the Governor;

2. The recipient of federal funds disbursed pursuant to the Federal Water Pollution Control Act, provided the Oklahoma Water Resources Board is authorized to be the recipient of federal funds to administer the State Revolving Fund Program. The federal funds received by the Secretary of Environment shall be disbursed to each state environmental agency and state agency with limited environmental responsibilities based upon its statutory duties and responsibilities relating to environmental areas as determined by

the Secretary of Environment in consultation with the Secretary of Agriculture. Such funds shall be distributed to the appropriate state environmental agency or state agency with limited environmental responsibilities within thirty (30) days of its receipt by the Secretary or as otherwise provided by grant or contract terms without any assessment of administrative fees or costs. Disbursement of other federal environmental funds shall not be subject to this section. The Secretary of Environment shall make an annual written report no later than November 1 to the President Pro Tempore of the Senate, ~~and~~ the Speaker of the House of Representatives, and the Chair of each environmental related committee of both the House and Senate detailing the disbursement of federal funds;

3. Coordinate pollution control and complaint management activities of the state carried on by all state agencies to avoid duplication of effort including but not limited to the development of a common data base for water quality information with a uniform format for use by all state agencies and the public; and

4. Act on behalf of the public as trustee for natural resources under the federal Oil Pollution Act of 1990, the federal Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, the federal Water Pollution Control Act and any other federal laws providing that a trustee for the natural resources is to be designated. The Secretary is authorized to make claims against federal funds, receive federal payments, establish and manage a revolving fund in relation to duties as the natural resources trustee consistent with the federal enabling acts and to coordinate, monitor and gather information from and enter into agreements with the appropriate state environmental agencies or state agencies with limited environmental responsibilities in carrying out the duties and functions of the trustee for the natural resources of this state.

B. 1. The Secretary of the Environment or successor cabinet position having authority over the Department of Environmental Quality shall develop and implement, by January 1, 2000, public participation procedures for the development and/or modification of:

- a. the federally required list of impaired waters (303(d) report),
- b. the federally required water quality assessment (305(b) report),
- c. the federally required nonpoint source state assessment (319 report), and
- d. the continuing planning process document.

2. The procedures shall provide for the documents to be submitted for formal public review with a published notice consistent with the Administrative Procedures Act, providing for a thirty-day comment period and the preparation of a responsiveness summary by the applicable state environmental agency.

3. Information from current research shall be considered when made available to the agency.

SECTION 3. AMENDATORY 68 O.S. 2001, Section 3134.1, is amended to read as follows:

Section 3134.1 The board of county commissioners of any county in this state with a population in excess of five hundred fifty thousand (550,000) may cause dilapidated buildings acquired by resale to be torn down and removed in accordance with the following procedure:

1. For the purposes of this section, "dilapidated building" means a structure which through neglect or injury lacks necessary repairs or otherwise is in a state of decay or partial ruin to such an extent that said structure is a hazard to the health, safety, or welfare of the general public. "Owner" means the owner of record as shown by the tax rolls of the county treasurer, at the time property was bid off in the name of the county;

2. At least ten (10) days' notice that a building is to be torn down or removed shall be given before the board of county commissioners holds a hearing. A copy of the notice shall be posted on the property to be affected. In addition, a copy of said notice shall be sent by mail to the property owner at the address shown by the tax rolls in the office of the county treasurer. Written notice shall also be mailed to any mortgage holder as shown by the records in the office of the county clerk to the last-known address of the mortgagee. Notice shall also be given by posting a copy of the notice on the property, and by publication in a newspaper having a general circulation in the county. Such notice shall be published once not less than ten (10) days prior to any hearing or action by the board pursuant to the provisions of this section;

3. A hearing shall be held by the board of county commissioners to determine if the property is dilapidated and has become detrimental to the health, safety, or welfare of the general public and the community, or if said property creates a fire hazard or environmental condition which is dangerous to other property;

4. Pursuant to a finding that the condition of the property constitutes a detriment or a hazard and that the property would be benefited by the removal of such conditions, the board of county commissioners may cause the dilapidated building to be torn down and removed. The board of county commissioners shall fix reasonable dates for the commencement and completion of the work. The agents of the county are granted the right of entry on the property for the performance of the necessary duties as a governmental function of the county;

5. The board of county commissioners shall determine the actual cost of the dismantling and removal of dilapidated buildings and any other expenses that may be necessary in conjunction with the dismantling and removal of the buildings including the cost of notice and mailing. If dismantling and removal of the dilapidated

buildings is done on a private contract basis, the contract shall be awarded to the lowest and best bidder. All costs and expenses may be paid from the resale property fund of the county;

6. The board of county commissioners may designate, by resolution, an administrative officer or administrative body to carry out the duties of the board specified in this section. The property owner shall have the right of appeal to the board of county commissioners from any order of the administrative officer or administrative body. Such appeal shall be taken by filing written notice of appeal with the county clerk within ten (10) days after the administrative order is rendered;

7. Nothing in the provisions of this section shall prevent the county from abating a dilapidated building as a nuisance or otherwise exercising its duties to protect the health, safety, or welfare of the general public; and

8. The officers, employees or agents of the county shall not be liable for any damages or loss of property due to the removal of dilapidated buildings performed pursuant to the provisions of this section or as otherwise prescribed by law.

SECTION 4. This act shall become effective November 1, 2004.

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